



DATE: February 20, 2018

TO: Mayor and Members of the City Council

VIA: Kevin M. Miller, City Manager

FROM: Edmund Suen, Finance Director  
Jeff Moneda, Public Works Director/District Engineer  
Priscilla Tam, Communications Director/City Clerk  
Jean Savaree, City Attorney

SUBJECT: APPROVAL OF RESOLUTION DETERMINING PUBLIC INTEREST AND NECESSITY REQUIRING THE CONSTRUCTION OF THE LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT (CIP 301-657) AND INTRODUCTION OF AN ORDINANCE CALLING A GENERAL OBLIGATION BOND ELECTION TO PROVIDE THE FUNDING FOR SUCH PROJECT

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#### RECOMMENDATION

It is recommended that the City Council of the City of Foster City hold a public hearing and then adopt the attached resolution and introduce and pass to second reading an ordinance:

1. A resolution determining that the public interest and necessity demand the acquisition, construction, repair and replacement of certain municipal improvements and making findings relating thereto; and
2. An ordinance of the City of Foster City calling for an all mail-ballot municipal bond election for the purpose of submitting to the electors of the City a measure providing for the issuance of general obligation bonds of the City for the acquisition, construction, repair and replacement of a public levee system; declaring the estimated cost of the municipal improvements, the amount of the principal of the indebtedness to be incurred therefore, and the maximum rate of interest to be paid thereon; making provision for the levy and collection of taxes; fixing the date of the election as June 5, 2018 and the manner of holding the

same; and providing for notice thereof.

## EXECUTIVE SUMMARY

The proposed Levee Protection Planning and Improvements Project (Levee Project) will improve the City's existing levee system to provide flood protection in accordance with updated Federal Emergency Management Agency (FEMA) guidelines, allow the City to retain FEMA accreditation for the levee, and protect against future sea level rise.

At its May 8, 2017 meeting, the City Council directed City staff to proceed with arranging for general obligation bond financing for the project. Approval of the attached resolution is the first step of this process.

By 2/3rds vote, the City Council first must adopt a resolution determining that it is in the public interest and necessity to improve and repair the City's levees. Then it must approve the introduction of an ordinance providing for the issuance of general obligation bonds in a principal amount not to exceed \$90 million. Assuming the City Council decides to approve the resolution and introduce the ordinance and pass to second reading, the next step will be on March 5, 2018 to approve the Ordinance by 2/3rds vote, adopt a resolution requesting the consolidation of the general obligation bond election with other countywide elections to be held on June 5, 2018, and adopt a resolution to approve a tax rate statement specifying the expected cost to taxpayers if general obligation bonds are issued and other matters related to the bond election.

Based on a single issue of bonds at the full authorization of \$90 million and assuming that bonds are repaid over 30 years, it is expected that the average property tax levy will be approximately \$39.66/\$100,000 of assessed valuation (the "Tax Rate"), with the highest annual levy of \$40.01/\$100,000 occurring in the final year of the bond issue, fiscal year 2047/2048. The amounts are based on an average annual growth in assessed value of about 2% and projected interest rates. Actual yearly Tax Rates will depend upon interest rates when the bonds are sold and actual assessed value levels in the future. A higher annual assessed value growth will result in a lower Tax Rate and lower annual assessed value growth will result in a higher Tax Rate. Foster City has had an average annual growth rate of 4.7% in assessed value over the last 10 years.

## BACKGROUND AND ANALYSIS

In 2003, FEMA undertook a plan to modernize its flood maps and determined that some previously accredited levees did not meet its accreditation standard that the levee be able to protect against a "one percent annual chance" flood. A 1% annual chance flood describes a water elevation level that has a 1-in-100 chance of being exceeded in any year. A property located in a one percent annual chance floodplain has a 26% chance of being flooded at least once during the lifetime of a 30-year mortgage payoff

period.

Levees that do not provide a 1% annual chance flood protection are not accredited. A non-accredited levee is considered by FEMA in its analyses to be the same as no levee at all; this means that communities protected by levees that do not meet the 1% annual chance standard are considered “without levees” and are mapped into a Special Flood Hazard Area.

Approximately 85% of the 8 miles of levees protecting Foster City were determined by FEMA in 2014 to not meet its 1% annual chance accreditation standard. Unless the City improves the levee system sufficiently to meet FEMA’s accreditation standard, the City will be placed into a Special Flood Hazard Area by FEMA and all properties with mortgages that are issued by federally chartered banks, banks whose deposits are insured by the FDIC, or properties that are in any way otherwise eligible for a direct or indirect federal loan or payment, will be required to obtain flood insurance. Even if a lender is not federally chartered or insured, it may still require flood insurance. A direct or indirect federal loan or payment would include low-interest disaster loans from the U.S. Small Business Administration or FEMA disaster grants, both of which are commonly used to help businesses and homeowners rebuild in the event of a flood. Based on information obtained from several local insurance brokers, the price range for basic flood insurance cost in a Special Flood Hazard Area is estimated to cost between \$2,000 and \$3,000 per year, depending on the amount of the deductible.

Unless the City makes demonstrable progress toward re-accrediting its levees, FEMA will designate the entire City as being in a Special Flood Hazard Area. The measures the City has taken to-date to plan and design levee improvements have forestalled such designation.

On May 8, 2017, the City Council approved a levee improvement project designed to a year 2050 sea level rise plus future adaptation scenario, which would meet the FEMA accreditation standard and more stringent permitting requirements imposed by the Bay Conservation and Development Commission (BCDC). The design provides protection sufficient to satisfy FEMA freeboard plus 24 inches of sea level rise and allows for future adaptation to projected year 2100 sea level rise. At an expected cost of \$90 million, this was the least expensive feasible alternative that would meet both FEMA accreditation standards and satisfy regulatory agency permitting requirements.

On March 27, 2017, City staff presented to the City Council a report prepared by the City’s independent municipal advisors (MAs) that discussed financing options available for three large projects under consideration: the Levee Project, the City’s approximately \$155 million share of improvements required to be made to the wastewater treatment plant owned jointly with the City of San Mateo, and a recreation facility with an estimated cost of approximately \$30 million. The MAs recommended general obligation

bonds as the most appropriate and lowest cost financing alternative for the Levee Project in light of the three major projects under consideration. The City Council directed City staff to proceed with the planning necessary to implement a general obligation bond sale for the Levee Project.

## **GENERAL OBLIGATION BONDS**

General obligation bonds are used by communities to finance facilities of widespread general benefit to the community. The bonds must be approved by 2/3rds of those voting on the bond measure and are repaid with a tax imposed on all taxable property within the City that is levied in an amount sufficient to pay annual debt service on the bonds. Based on a bond structure designed to produce an approximately level Tax Rate over the 30-year term of the bonds assuming a 2% annual increase in City-wide assessed valuation, City staff estimates that the average annual Tax Rate would be approximately \$39.66/\$100,000 of assessed value to repay a \$90 million bond issue, plus interest. At current interest costs of 3.62%, total principal and interest paid over the life of the bonds would be approximately \$155.1 million. The highest annual levy of \$40.01/\$100,000 would occur in the final year of the bond issue, fiscal year 2047/2048. These amounts are estimates only.

The bonds will be repaid over 30 years, which means that both current and future generations of Foster City residents will repay the bonds. Allowing debt service to increase at 2% annually equalizes the cost of repaying these bonds among all present and future property owners, assuming two percent annual inflation. In other words, if \$1 today loses purchasing power at the rate of two percent annually, allowing debt service to increase at 2% annually keeps the present value of future debt service payments approximately equal. This achieves some measure of “intergenerational” equity.

The amount a taxpayer contributes towards bond debt service is based on the assessed value of that taxpayer’s property. If the bonds are structured with debt service increasing at approximately 2% annually, but assessed valuation grows at a rate faster than 2%, then the tax levy will decrease over time. The table in Attachment 3 shows how the tax levy would decrease over time if assessed valuation grew at the 10-year historical average of 4.68%.

If issued, general obligation bonds would be an obligation of the City’s General Fund. The City would have unlimited ad valorem taxing power to raise sufficient tax revenues to make annual debt service payments on the bonds. The tax levy associated with general obligation bonds may only be used to pay debt service on such bonds.

## **STAFF RECOMMENDATIONS**

City staff recommends that the City Council adopt the resolution attached to this report

and introduce and pass the ordinance to a second reading on March 5, 2018. The actions requested of the City Council are:

1. Adopt a resolution to find and declare public interest and necessity demanding the construction and completion by the City of certain public levee system municipal improvements as required to retain FEMA accreditation; and
2. Introduce and pass to second reading an ordinance calling for a municipal bond election on a measure providing for the issuance of not more than \$90 million of general obligation bonds.

#### FISCAL IMPACT

The City has retained a communications consultant to assist City staff in educating the community and providing informational outreach about the Levee Project. This cost is expected to be approximately \$143,201.

The City has expended \$44,000 in connection with public opinion polling in connection with the ballot proposition. A second round of polling is being conducted and a summary of the results will be provided at the February 20 City Council meeting as the results have not been finalized at the time of the agenda's publication.

The City will incur a cost imposed by the County to conduct the election. \$57,000 has been allocated in the FY 2017/18 Budget for this purpose.

Special legal counsel has been retained to assist the City to place the measure on the ballot. Fees are hourly and capped at \$15,000. Municipal advisors are under contract to assist the City to determine the most appropriate financing vehicle and if necessary, place a measure on the ballot. Fees are hourly and are capped at \$25,000.

The above fees will be paid out of the FY 2017/2018 budget, as invoiced. If the bond measure passes, these fees may be reimbursed from bond proceeds.

If the bonds are approved and subsequently sold, additional fees will be incurred to prepare documents in connection with the bond sale and to implement the sale. The bulk of such fees will be contingent on the sale of bonds and, in total, are estimated at \$265,000. Professional services include bond counsel, disclosure counsel, municipal advisors, and trustee services. Other expected expenses include rating fees, bidding platform fees, publication fees, and official statement printing, posting and electronic distribution fees. All contingent fees would be paid from the proceeds of the bond sale. Additionally, a contingent bond underwriting fee of not more than 1% of the par amount of bonds sold is expected to be paid to the securities firm that buys the City's bonds and distributes them to investors. This fee would be paid from the proceeds of the

bonds.

## NEXT STEPS

City staff estimates that the Levee Project will be fully designed and ready for construction bidding by October 2018.

At its regularly scheduled meeting on March 5, 2018, the City Council will vote on adoption of the ordinance calling for the bond election. If the ordinance passes by 2/3rds vote, the City Council will be asked to adopt a resolution requesting the consolidation of the election with other countywide elections to be held on June 5, 2018 and to adopt a resolution to approve a tax rate statement specifying the expected cost to taxpayers if general obligation bonds are issued and other matters related to the bond election, including directing the preparation of an impartial analysis by the City Attorney and establishing deadlines for the submittal of arguments for and against the bond measure. The City Clerk must transmit the resolution requesting consolidation and the approved ordinance to the County no later than March 9 for a June 5, 2018 election.

After the election is called and the bond measure is added to the June 5, 2018 election, the City will continue to provide information and updates to the public as the Levee Project progresses. The City will also continue to provide factual information regarding the bond measure to residents and businesses. However, the City will not utilize its funds, resources, or staff time to advocate for or against the bond measure.

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### Submission Deadlines for Arguments, Rebuttals and Impartial Analysis:

- March 16, 2018: Last day to submit primary arguments for or against measure (5:00 p.m.)
- March 26, 2018: Last day to submit rebuttals to arguments for or against measure (5:00 p.m.)
- March 26, 2018: Last day to submit impartial analysis (5:00 p.m.)

If the measure is approved, bonds would be sold after the successful construction bid is determined in an amount not to exceed \$90 million.

All expenditures will be subject to oversight by a committee, of citizens appointed by the City Council. No funds will go toward administrators' salaries or be taken by the

State of California. The committee will meet twice a year and provide a report to the City Council on expenditures and management of funds.

Attachments:

- Attachment 1 - Resolution finding and declaring the public interest and necessity demanding the construction and completion by the City of certain public levee system municipal improvements as required to retain FEMA accreditation
- Attachment 2 - Ordinance calling for a municipal bond election on a measure providing for the issuance of not more than \$90 million of general obligation bonds
- Attachment 3 - Comparison of annual tax levies for 2% annual AV growth and 4.68% annual AV growth