

HAYWARD CITY COUNCIL

RESOLUTION NO. 23-_____

Introduced by Council Member

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD AMENDING THE SAVINGS REQUIRMENTS ESTABLISHED BY THE CITY COUNCIL IN RESOLUTION NO. 23-168 RELATED TO THE DELIVERY AND SALE OF REFUNDING CERTIFICATES OF PARTICIPATION TO REFINANCE OUTSTANDING 2014 LEASE PAYMENTS AND 2015 LEASE PAYMENTS, APPROVING A PRELIMINARY AND FINAL OFFICIAL STATEMENTS AND A PURCHASE CONTRACT, AND PROVIDING OTHER MATTERS RELATED THERETO

WHEREAS, the City of Hayward (the "City") previously entered into a Lease Agreement dated as of August 1, 2014 (the "2014 Lease"), with the Public Property Financing Corporation of California (the "Corporation"), for the purpose of financing a new Fire Station No. 7 and a Firehouse Health Clinic to be located at the same site as Fire Station No. 7 (the "2014 Project"), under which the City agreed to pay semiannual lease payments (the "2014 Lease Payments") to the Corporation for use and occupancy of a Police Station, located at 300 West Winton Avenue in the City (the "2014 Leased Property"); and

WHEREAS, the Corporation assigned its right to receive the 2014 Lease Payments to Umpqua Bank ("Umpqua Bank") pursuant to an Assignment Agreement, dated as of August 1, 2014 (the "2014 Assignment Agreement"); and

WHEREAS, Section 10.2 of the 2014 Lease provides that the City may prepay the 2014 Lease Payments on any date on and after August 1, 2019, subject to providing 45 days' prior written notice to the Corporation and Umpqua Bank, in an amount equal to the principal amount of the 2014 Lease Payments to be prepaid, plus accrued interest to the prepayment date, without a prepayment premium after August 1, 2022; and

WHEREAS, Section 10.1 of the 2014 Lease authorizes the City to establish a security deposit for prepayment of the 2014 Lease Payments, after which all obligations of the City under the 2014 Lease shall cease and terminate, except for the obligation to pay the 2014 Lease Payments from the security deposit; and

WHEREAS, the Hayward Public Financing Authority (the "Authority") and the City previously entered into a Lease Agreement, dated as of October 1, 2015 (the "2015 Lease"), for the purpose of financing acquisition and construction of a number of capital improvements, including, but not limited to, (i) a new library and community learning center, (ii) improvements to existing fire stations and (iii) complete street rehabilitation and slurry seal repairs (collectively, the "2015

Project”), under which the City agreed to pay semiannual lease payments (the “2015 Lease Payments”) to the Authority for use and occupancy of certain of the City’s fire stations and a library and community learning center (the “2015 Leased Property”); and

WHEREAS, the Authority assigned its rights to receive the 2015 Lease Payments to The Bank of New York Mellon Trust Company, N.A. (the “2015 Trustee”), pursuant to an Assignment Agreement, dated as of October 1, 2015 (the “2015 Assignment Agreement”); and

WHEREAS, pursuant to a Trust Agreement, dated as of October 1, 2015 (the “2015 Trust Agreement”), the 2015 Trustee caused to be executed and delivered the \$67,535,000 City of Hayward 2015 Certificates of Participation (Capital Projects) (the “2015 Certificates”), which evidence direct, undivided fractional ownership interests in the 2015 Lease Payments; and

WHEREAS, Section 9.2 of the 2015 Lease provides that the City may prepay the 2015 Lease Payments on November 1 2023, in an amount equal to the principal component of the 2015 Lease Payments to be prepaid, plus accrued interest to the prepayment date, without a prepayment premium; and

WHEREAS, Section 9.1 of the 2015 Lease authorizes the City to establish a security deposit for prepayment of the 2015 Lease Payments in amount sufficient to prepay the 2015 Lease Payments, after which all obligations of the City under the 2015 Lease shall cease and terminate, except for the obligation to pay the 2015 Lease Payments from the security deposit; and

WHEREAS, under Section 3.01 of the 2015 Trust Agreement, the 2015 Certificates are subject to prepayment on November 1, 2023, and any date thereafter, without premium; and

WHEREAS, pursuant to Resolution No. 23-168 adopted by the City Council on June 20, 2023 (the “City Financing Resolution”), the City Council (i) authorized the delivery and sale of 2023 Refunding Certificates of Participation (Lease Refinancing), (the “Refunding Certificates”) to provide for the refinancing of the 2014 Lease Payments, the 2015 Lease Payments and the 2015 Certificates, (ii) authorized and directed the Finance Director, following consultation with the City Attorney, municipal advisor and special counsel, to determine whether it would be more beneficial to the City to sell the Refunding Certificates to an underwriter in a negotiated public offering or to sell the Refunding Certificates in a private placement transaction, (iii) obtained and disclosed certain information in Exhibit A of the City Approval Resolution in accordance with Government Code Section 5852.1, (iv) directed the Finance Director, if they determined that a negotiated public offering would be more beneficial to the City, to work with the City Attorney, municipal advisor and special counsel/disclosure counsel to prepare a form of Official Statement describing the Refunding Certificates and containing material information

relating to the City and the Refunding Certificates, the preliminary form of which would be submitted to the City Council for approval and (v) following a competitive process, approved BofA Securities, Inc. to act as underwriter (the "Underwriter") if the Refunding Certificates were sold in a negotiated public offering; and

WHEREAS, the Finance Director, following consultation with the City Attorney, municipal advisor and special counsel, has determined that it will be more beneficial to the City to sell the Refunding Certificates to the Underwriter in a negotiated public offering, and there has been submitted to the City Council a form of preliminary Official Statement to be used in connection with the marketing of the Refunding Certificates, and the City Council, with the aid of its staff, has reviewed the preliminary Official Statement to assure proper disclosure of all material facts relating to the Refunding Certificates that are in the personal knowledge of the members of the City Council and the City staff; and

WHEREAS, there has also been submitted to the City Council a form of a purchase contract (the "Purchase Contract") among the City, the Authority and the Underwriter; and

WHEREAS, in Section 2 of the City Financing Resolution, the City Council directed that the Refunding Certificates shall be sold at such price and shall bear interest at such rates as shall produce (i) an aggregate minimum net present value savings to the City of at least 3% of the principal component of the 2014 Lease Payments and the 2015 Lease Payments and (ii) positive net present value savings for each of the 2014 Lease Payments and the 2015 Lease Payments (when calculated separately) (collectively, the "Savings Requirements"); and

WHEREAS, the City Council wishes to amend the Savings Requirements to authorize the sale of the Refunding Certificates without positive net present value savings as a result of the refunding of the 2014 Lease Payments if (i) the refunding produces an aggregate minimum net present value savings to the City of at least 3% of the principal component of the 2014 Lease Payments and the 2015 Lease Payments and (ii) the Finance Director determines it is in the best interests of the City to proceed without positive net present value savings from the refunding of the 2014 Lease Payments; and

WHEREAS, in furtherance of the public purposes of the City, the City Council wishes at this time to approve the Purchase Contract and the Official Statement as set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward as follows:

Section 1. Recitals. The City Council hereby determines that the preceding recitals are true and correct.

Section 2. Approval of Official Statement. The City Council hereby approves the preparation of, and hereby authorizes the Mayor, the City Manager, or any designees of the City Manager (each, an "Authorized Officer"), acting alone, to deem final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (except for permitted omissions), the preliminary form of the Official Statement describing the Refunding Certificates (the "Preliminary Official Statement") on file with the City Clerk, together with such changes or additions as an Authorized Officer, acting alone may deem necessary, desirable or appropriate upon consultation with special counsel/disclosure counsel. Distribution of the Preliminary Official Statement by the Underwriter is hereby approved. An Authorized Officer, acting alone, is hereby authorized to execute the final form of the Official Statement with such changes or additions as the Authorized Officer deems necessary, desirable or appropriate upon consultation with special counsel/disclosure counsel, and the execution of the final Official Statement by the City shall be conclusive evidence of the approval of any such additions and changes. The City Council hereby authorizes the distribution of the final Official Statement.

Section 3. Approval of Purchase Contract. The City Council hereby approves the form of the Purchase Contract on file with the City Clerk, with such additions thereto and changes therein as an Authorized Officer, acting alone, deems necessary, desirable or appropriate upon consultation with the municipal advisor and the special counsel, the execution of which by an Authorized Officer shall be conclusive evidence of the approval of any such additions or changes; provided that the Refunding Certificates shall comply with the financing parameters set forth in Section 2 of the City Financing Resolution.

An Authorized Officer, acting alone, is hereby authorized and directed to execute the Purchase Contract on behalf of the City and to take all actions necessary to fulfill the City's obligations thereunder. Execution of the Purchase Contract by an Authorized Officer shall be conclusive evidence of the approval of any changes therein or additions thereto by an Authorized Officer.

Section 4. Amended Savings Requirements. The City Council hereby amends the Savings Requirements approved pursuant to the City Financing Resolution to authorize the sale of the Refunding Certificates without positive net present value savings as a result of the refunding of the 2014 Lease Payments if (i) the refunding produces an aggregate minimum net present value savings to the City of at least 3% of the principal component of the 2014 Lease Payments and the 2015 Lease Payments and (ii) the Finance Director determines it is in the best interests of the City to proceed without positive net present value savings from the refunding of the 2014 Lease Payments.

Section 5. Official Actions. The Authorized Officers, the City Clerk, and all other officers of the City, are authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or

any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this resolution any officer of the City is directed to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 6. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

HAYWARD, IN COUNCIL, HAYWARD, CALIFORNIA _____, 2023.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward