

HAYWARD CITY COUNCIL

RESOLUTION NO. 23-_____

Introduced by Council Member

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD
AUTHORIZING DELIVERY AND SALE OF REFUNDING CERTIFICATES OF
PARTICIPATION TO REFINANCE OUTSTANDING 2014 LEASE PAYMENTS
AND 2015 LEASE PAYMENTS, AND APPROVING RELATED DOCUMENTS AND
ACTIONS

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 August 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, in order to take advantage of favorable interest rates prevailing in the municipal bond market, the City wishes at this time to provide for the refinancing of the 2014 Lease Payments, the 2015 Lease Payments and the 2015 Certificates from the proceeds of 2023 Refunding Certificates of Participation (Lease Refinancing), (the “Refunding Certificates”); and

WHEREAS, the Refunding Certificates will be executed and delivered under a Trust Agreement (the “Trust Agreement”), among The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), the Authority and the City; and

WHEREAS, the Refunding Certificates will represent direct, undivided fractional ownership interests in lease payments (the “Lease Payments”) to be made by the City to the Authority under a Lease Agreement (the “Lease Agreement”) for use and occupancy of certain real property and improvements (the “Leased Property”); and

WHEREAS, to accommodate the Lease Agreement, the City and the Authority will simultaneously enter into a Site and Facilities Lease (the “Site Lease”), under which the City will lease the Leased Property to the Authority, and the Authority will agree to make a one-time lease payment from proceeds of the Refunding Certificates; and

WHEREAS, the lease payment made by the Authority to the City shall be used to prepay the 2014 Lease Payments, the 2015 Lease Payments and the 2015 Certificates, and to pay the financing costs; and

WHEREAS, the City may enter into an Escrow Deposit and Trust Agreement with an trustee to establish a security deposit for the prepayment of the 2014 Lease Payments; and

WHEREAS, the City will enter into an Escrow Deposit and Trust Agreement with the 2015 Trustee to establish a security deposit for the prepayment of the 2015 Lease Payments and the 2015 Certificates; and

WHEREAS, the City Council wishes to authorize and direct staff, without further authorization or approval by this City Council, to determine whether the Refunding Certificates should be sold to an underwriter in a public offering or privately placed with a financial institution to be identified by staff, with such determination to be based upon staff's conclusion, subject to compliance of the sale with the parameters set forth in this Resolution, that the method of sale selected by staff will be most beneficial to the City; and

WHEREAS, in furtherance of the public purposes of the City, the City Council wishes at this time to authorize and approve all proceedings for the refinancing of the 2014 Lease Payments, the 2015 Lease Payments and the 2015 Certificates, the delivery and sale of the Refunding Certificates for such purpose, and the documents specified below, subject to staff returning to the City Council for final approval of a Preliminary Official Statement and a purchase agreement among the City, the Authority and the underwriter of the Refunding Certificates, if staff determines that the Refunding Certificates should be sold in a public offering (no further approvals being required for a private placement of the Refunding Certificates with a financial institution); and

WHEREAS, in accordance with Government Code Section 5852.1, the City Council has obtained and wishes to disclose the information set forth in Exhibit A hereto.

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

Section 1. Approval of Refinancing Plan and Related Documents. The City Council hereby approves the refinancing plan outlined above. To that end, the City Council hereby approves each of the following financing documents in substantially the respective forms on file with the City Clerk, together with any changes therein or additions thereto approved by the Mayor, the City Manager, or any designees of the City Manager (each, an "Authorized Officer"):

- Site Lease, between the City as lessor and the Authority as lessee, whereby the City leases the Leased Property to the Authority. An Authorized Officer shall select the Leased Property for purposes of this financing.

- Lease Agreement, between the Authority as lessor and the City as lessee, whereby the Authority leases the Leased Property back to the City in consideration of the payment by the City of semiannual lease payments.
- Trust Agreement, among the City, the Authority and the Trustee, whereby the Trustee agrees to execute and deliver the Refunding Certificates.
- Escrow Deposit and Trust Agreement between the City and the 2015 Trustee, relating to prepayment of the 2015 Lease and the 2015 Certificates.

Each Authorized Officer is hereby authorized and directed on behalf of the City to execute the final form of each of the foregoing documents, and the City Clerk is hereby authorized and directed to attest to the final form of each of the foregoing documents. Execution of each of the foregoing documents by an Authorized Officer shall be conclusive evidence of the approval of any changes therein or additions thereto by an Authorized Officer. The schedule of lease payments attached to the Lease Agreement shall correspond to the payments of principal and interest represented by the Refunding Certificates, to be determined upon the sale thereof as set forth in Section 2.

Section 2. Sale of Refunding Certificates. The City Council hereby authorizes and directs the Finance Director, following consultation with the City Attorney, municipal advisor and special counsel, to determine whether selling the Refunding Certificates to an underwriter in a negotiated public offering, or selling the Refunding Certificates in a private placement to one or more financial institutions to be selected by the Finance Director will be more beneficial to the City. The City Council hereby approves BofA Securities, Inc. to act as underwriter if the Refunding Certificates are sold in a negotiated public offering and placement agent if the Refunding Certificates are privately placed; BofA Securities, Inc. was selected following a competitive process.

The City Council hereby directs the Finance Director to work with the City Attorney, municipal advisor and special counsel to prepare a form of purchase agreement for execution by the City in connection with a negotiated public offering and to submit the agreement to the City Council for approval if the Finance Director determines to sell the Refunding Certificates in a negotiated public offering.

The City Council hereby authorizes an Authorized Officer to execute a term sheet with a private placement purchaser of the Refunding Certificates, subject to the terms meeting the parameters set forth in the following paragraph.

The Refunding Certificates shall be sold at such price and shall bear interest at such rates as shall (a) 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 (b) positive net present value savings for each of the 2014 Lease Payments and the 2015 Lease Payments (when calculated separately), as such savings shall be verified and

conclusively determined by the City's municipal advisor. The underwriter's discount shall not exceed 0.275% if the Refunding Certificates are sold in a negotiated underwriting.

Section 3. Official Statement. If it is determined that the Refunding Certificates should be sold in a negotiated public offering, the City Council hereby directs the Finance Director 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 will be submitted to the City Council for approval for distribution by the underwriter of the Refunding Certificates to persons and institutions interested in purchasing the Refunding Certificates.

Section 4. Authorization to Obtain Municipal Bond Insurance. The City Council hereby authorizes an Authorized Officer to determine whether the Refunding Certificates are eligible for municipal bond insurance and reserve fund insurance and, if so, whether it is in the best interests of the City to obtain such insurance or surety bond. An Authorized Officer is hereby authorized to execute a commitment for such insurance or surety bond and to take all actions required to implement the delivery of such municipal bond insurance policy or surety bond.

Section 5. Appointment of Professionals. The following professionals are hereby appointed to provide services relating to the Bonds: Jones Hall, A Professional Law Corporation, as special counsel and disclosure counsel; NHA Advisors, LLC., as municipal advisor; and The Bank of New York Mellon Trust Company, N.A. as trustee and escrow agent. The Finance Director is authorized to select an independent certified public accountant to provide escrow verification services. An Authorized Officer is hereby authorized to execute agreements for services with such professionals relating to the Refunding Certificates in substantially the forms presented at this meeting.

Section 6. 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, including termination agreements intended to terminate the documents related to the 2014 Lease Payments and the 2015 Lease Payments and an escrow deposit and trust agreement for the 2014 Lease Payments in substantially the form of the Escrow Deposit and Trust Agreement for the 2015 Lease Payments and the 2015 Certificates. 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 7. 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

EXHIBIT A

GOVERNMENT CODE SECTION 5852.1 DISCLOSURE

The following information consists of estimates that have been provided by the City's municipal advisor, which has been represented by such party to have been provided in good faith:

(A) True Interest Cost with respect to the Refunding Certificates: 2.96%.

(B) Finance Charge with respect to the Refunding Certificates (Sum of all fees paid to third parties): \$397,470.

(C) Net Proceeds to be Received from the sale of the Refunding Certificates (net of finance charges, reserves and capitalized interest, if any): \$47,141,475.

(D) Total Payment Amount Through Maturity: \$55,693,111.

The foregoing estimates constitute good faith estimates only based on a refinancing of the 2014 Lease Payments and the 2015 Lease Payments. The principal amount of the Refunding Certificates, the true interest cost of the Refunding Certificates, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the Refunding Certificates being different than the date assumed for purposes of such estimates, (b) the actual principal amount of Refunding Certificates sold being different from the estimated amount used for purposes of such estimates, (c) the actual amortization of the Refunding Certificates being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the Refunding Certificates being different than those estimated for purposes of such estimates, (e) other market conditions, (f) alterations in the City's financing plan, or a combination of such factors and (g) the treatment of the interest with respect to the Refunding Certificates under federal tax law. The actual date of sale of the Refunding Certificates and the actual principal amount of Refunding Certificates sold will be determined by the City based on the timing of the need for proceeds of the Refunding Certificates and other factors. The actual interest rates borne by the Refunding Certificates will depend on market interest rates at the time of sale thereof. The actual amortization of the Refunding Certificates will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the City.