



TOWN OF FAIRFAX

STAFF REPORT

November 2, 2016

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*
Michael Vivrette, Finance Director

SUBJECT: Adopt a resolution authorizing the issuance and sale of Town of Fairfax 2016 Certificates of Participation to refinance certain Town of Fairfax CalPERS Retirement obligations for the purpose of generating savings to the Town's General Fund

RECOMMENDATION

Adopt a resolution authorizing the execution, delivery, and sale of Town of Fairfax 2016 Certificates of Participation (the "COPs") to refinance certain Town of Fairfax CalPERS Retirement obligations (i.e., CalPERS side fund and pre-2013 UAL obligations).

DISCUSSION

At its May 2016 budget workshop, the Council discussed possible options for refinancing the Town's CalPERS side fund (i.e., retirement obligation) and infrastructure/capital improvements. The Council indicated it was interested in the options and would like further discussion at a future meeting.

One of the FY16-17 goals for the Finance department is to "refinance" the CalPERS side fund. The side fund is the amount calculated by CalPERS which represents the unfunded pension liability prior to 2007. CalPERS has also calculated the unfunded liability for communities between 2007 and 2013 referred to as the pre-2013 UAL (Unfunded Accrued Liability). The combined total of the side fund and pre-2013 UAL is approximately \$4.1 million (side fund-\$1.4 million and pre-2013 UAL- \$2.7 million).

At its October meeting, the Council directed staff and the Town's Municipal Advisor, Mark Pressman of Wulff, Hansen & Co, to move forward in refinancing the side fund and pre-2013 UAL obligations. The Council did not want to "pull out" any financing for capital improvements. The term of the refinancing would not extend past the existing 20-year term of payments. The interest rate for refinancing the CalPERS retirement obligations is at a taxable interest rate because the funds are not for public purpose. They benefit "private" individuals. Projected savings are dependent on the actual interest rate obtained for the COPs and are subject to change until the COPs are priced.

The Town anticipates "saving" approximately \$100,000 annually in each of the next five years. In year 6 (2022), the side fund is paid off and the Town will continue to make payments for the pre-2013 UAL. As a result, the annual savings to the Town decreases from \$100,000 to an approximate average of \$50,000 per year. However, you will note that the Town's annual payment has dropped by \$240,000. While this is not technically a "savings" it is money available

to be allocated toward other Town expenses (e.g., current retirement obligations). The refinancing will save the Town approximately \$1.4 million over the 20-year period.

The financing mechanism is COPs which is a lease financing structure used by many municipalities to finance capital improvements and facilities as well as retirement obligations. Mr. Pressman can provide more details on this commonly used public financing technique at the Council meeting

To proceed with the refinancing the Town will need to approve a resolution authorizing 2016 Certificates of Participation. The resolution provides the Town Manager the authority to sign:

- Site and Facility Lease
- Lease Agreement
- Trust Agreement
- Certificate Purchase Agreement
- Preliminary Official Statement

The current schedule is to have the COPSs close in December 2016. The Town is using the same financing team as was used for the refunding bonds in June 2016. The Town Municipal Advisor and Bond Counsel (Brian Quint of Quint & Thimmig) will be available at the meeting to answer any questions.

FISCAL IMPACT

Significant interest savings to the Town.

ATTACHMENTS

1. Resolution of the Town Council of the Town of Fairfax Approving the Form and Authorizing and Directing the Execution of Certain Lease Financing Documents Relating to the Refinancing of a Portion of the Town's Outstanding Obligations to the California Public Employees' Retirement System and Approving the Form and Authorizing the Distribution of a Preliminary Official Statement, All in Connection with the Offering and Sale of Certificates of Participation Relating thereto, and Authorizing and Directing Certain Actions with Respect thereto
2. Site and Facility Lease
3. Lease Agreement
4. Trust Agreement
5. Certificate Purchase Agreement
6. Preliminary Official Statement

RESOLUTION 16- _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX APPROVING THE FORM AND AUTHORIZING AND DIRECTING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS RELATING TO THE REFINANCING OF A PORTION OF THE TOWN'S OUTSTANDING OBLIGATIONS TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND APPROVING THE FORM AND AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT, ALL IN CONNECTION WITH THE OFFERING AND SALE OF CERTIFICATES OF PARTICIPATION RELATING THERETO, AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

RESOLVED, by the Town Council (the "Council") of the Town of Fairfax (the "Town"), as follows:

WHEREAS, the Town is a contracting member of the California Public Employees' Retirement System ("PERS") and, under its contract with PERS, the Town is obligated to make certain payments to PERS for both active and retired Safety employees and Miscellaneous employees (the "PERS Obligations");

WHEREAS, the Town has determined at this time, due to prevailing interest rates in the municipal bond market and for other reasons, to refinance, in their entirety, the Town's Side Fund obligations and pre-2013 unfunded actuarial accrued liability with respect to the PERS Obligations, and thereby realize interest savings;

WHEREAS, it is in the public interest and for the public benefit that the Town authorize and direct execution of the Lease Agreement (hereinafter defined) and certain other documents in connection therewith;

WHEREAS, a preliminary official statement (the "Preliminary Official Statement") containing information material to the offering and sale of the Certificates described below has been prepared on behalf of the Town; and

WHEREAS, the documents below specified shall be filed with the Town and the members of the Council, with the aid of its staff, shall review said documents;

NOW, THEREFORE, it is hereby DECLARED and ORDERED, as follows:

Section 1. Certificates of Participation (2016 Refinancing Project—Taxable) (the "Certificates") are hereby authorized to be executed and delivered pursuant to the provisions of the Trust Agreement (hereinafter defined) for the purpose of refinancing, in their entirety, the Town's Side Fund obligations and pre-2013 unfunded actuarial accrued liability with respect to the PERS Obligations, as reported to the Town by PERS. The principal amount of the Certificates

shall not exceed the amount required to refund such unfunded accrued actuarial liability plus an amount required to pay all costs of delivering the Certificates.

Section 2. The below-enumerated documents, in the forms on file with the Town Clerk, be and are hereby approved, and the Mayor, the Town Manager, the Finance Director, or the assignee of any such official, is hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such official, and the Town Clerk is hereby authorized and directed to attest to such official's signature:

(a) a site and facility lease, between the Town, as lessor, and the Fairfax Financing Authority (the "Authority"), as lessee, pursuant to which the Town will lease certain existing, unencumbered property to the Authority (the "Property");

(b) a lease agreement, by and between the Authority, as lessor, and the Town, as lessee (the "Lease Agreement"), pursuant to which the Authority will lease the Property back to the Town, so long as the total principal amount of the Lease Agreement does not exceed \$4,500,000, and so long as the interest rate applicable to the Certificates is not greater than 6% per annum; and

(c) a trust agreement, by and among the Authority, the Town and U.S. Bank National Association, as trustee (the "Trust Agreement"), relating to the financing, and the execution and delivery of the Certificates.

Section 3. A certificate purchase agreement, by and between Brandis Tallman LLC (the "Underwriter") and the Town, relating to the purchase by the Underwriter of the Certificates, in the form on file with the Town Clerk, be and is hereby approved, and the Mayor, the Town Manager, the Finance Director, or the assignee of any such official, is hereby authorized and directed to execute said document, with such changes, insertions and omissions as may be approved by such official, so long as the Underwriter's discount does not exceed 1% of the principal amount of the Certificates, exclusive of any original issue discount which does not represent compensation to the Underwriter.

Section 4. The Council hereby approves the Preliminary Official Statement, in the form on file with the Town Clerk, together with any changes therein or additions thereto deemed advisable by the Mayor, the Town Manager, the Finance Director, or the assignee of any such official. The Council authorizes and directs the Mayor, the Town Manager, the Finance Director, or the assignee of any such official, to deem "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") the Preliminary Official Statement prior to its distribution by the Underwriter.

Section 5. The Mayor, the Town Manager, the Finance Director, or the assignee of any such official, is authorized and directed to cause the Preliminary Official Statement to be brought into the form of a final official statement (the "Final Official Statement") and to execute the Final Official Statement, dated as of the date of the sale of the Certificates, and a statement that the facts contained in the Final Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of sale of the Certificates, true and correct in all material respects and that the Final Official Statement did

not, on the date of sale of the Certificates, and does not, as of the date of delivery of the Certificates, contain any untrue statement of a material fact with respect to the Town or omit to state material facts with respect to the Town required to be stated where necessary to make any statement made therein not misleading in the light of the circumstances under which it was made. The Mayor, the Town Manager, the Finance Director, or the assignee of any such official, shall take such further actions prior to the signing of the Final Official Statement as are deemed necessary or appropriate to verify the accuracy thereof. The execution of the final Official Statement, which shall include such changes and additions thereto deemed advisable by the Mayor, the Town Manager, the Finance Director, or the assignee of any such official, and such information permitted to be excluded from the Preliminary Official Statement pursuant to the Rule, shall be conclusive evidence of the approval of the final Official Statement by the Town.

Section 6. The Final Official Statement, when prepared, is approved for distribution in connection with the offering and sale of the Certificates.

Section 7. The Mayor, the Town Manager, the Finance Director, the Town Clerk and all other appropriate officials of the Town are hereby authorized and directed to solicit proposals for a reserve fund municipal bond insurance for the Certificates. The Mayor, the Town Manager, the Finance Director, or the assignee of any such official, is hereby authorized to determine if such reserve fund municipal bond insurance is financially advantageous to the Town and if it is determined that such reserve fund municipal bond insurance is financially advantageous to the Town and a commitment therefor is received, the Mayor, the Town Manager, the Finance Director, or the assignee of any such official, is hereby authorized to accept such commitment and to revise the legal documents as may be appropriate to provide for such items.

Section 8. The Mayor, the Town Manager, the Finance Director, the Town Clerk and all other appropriate officials of the Town are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution and the financing herein authorized.

Section 9. This Resolution shall take effect upon its adoption by this Council.

The foregoing Resolution was duly and regularly passed and adopted at a Regular Meeting of the Town Council of the Town of Fairfax held in said Town on the 2nd day of November 2016, by the following vote, to wit:

AYES:
NOES:
ABSENT:

Renée Goddard, Mayor

ATTEST: _____
Michele Gardner, Town Clerk

\AFTER RECORDATION PLEASE RETURN TO:

Quint & Thimmig LLP
900 Larkspur Landing Circle, Suite 270
Larkspur, CA 94939-1726
Attention: Brian D. Quint, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

SITE AND FACILITY LEASE

Dated as of December 1, 2016

by and between the

TOWN OF FAIRFAX, as Lessor

and the

FAIRFAX FINANCING AUTHORITY, as Lessee

(2016 Refinancing Project—Taxable)

SITE AND FACILITY LEASE

THIS SITE AND FACILITY LEASE (this "Site and Facility Lease"), dated as of December 1, 2016, is by and between the TOWN OF FAIRFAX, a municipal corporation and general law city, duly organized and existing under and by virtue of the laws of the State of California, as lessor (the "Town"), and the FAIRFAX FINANCING AUTHORITY, a joint exercise of powers entity organized and existing under the laws of the State of California, as lessee (the "Authority");

WITNESSETH:

WHEREAS, the Authority intends to assist the Town in undertaking to refinance, in their entirety, the Town's Side Fund obligations and pre-2013 unfunded actuarial accrued liability with respect to the Town's obligation to make certain payments to the California Public Employees' Retirement System for both active and retired Safety employees and Miscellaneous employees and thereby realize interest savings (the "PERS Obligations"), by leasing certain land and improvements to the Town pursuant to a Lease Agreement, dated as of August 1, 2015 (the "Lease Agreement"); and

WHEREAS, the Town proposes to enter into this Site and Facility Lease with the Authority as a material consideration for the Authority's agreement to lease such land and improvements to the Town;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, as follows:

Section 1. Definitions. Capitalized terms used, but not otherwise defined, in this Site and Facility Lease shall have the meanings ascribed to them in the Lease Agreement.

Section 2. Site and Facility Lease. The Town hereby leases to the Authority and the Authority hereby leases from the Town, on the terms and conditions hereinafter set forth, those certain parcels of real property situated in Marin County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements on the Site more particularly described in Exhibit B attached hereto and made a part hereof (collectively, the "Facility").

Section 3. Term. The term of this Site and Facility Lease shall commence on the date of recordation of this Site and Facility Lease in the Office of the County Recorder of Marin County, State of California, and shall end on June 15, 2037, unless such term is extended or sooner terminated as hereinafter provided. If, on June 15, 2037, the aggregate amount of Lease Payments (as defined in and as payable under the Lease Agreement) shall not have been paid, or provision shall not have been made for their payment, then the term of this Site and Facility Lease shall be extended until such Lease Payments or Additional Payments (as defined in the Lease Agreement), if any, shall be fully paid or provision made for such payment. When all Lease Payments shall be fully paid or provision made for such payment in accordance with Section 4.4 or 10.1 of the Lease Agreement, the term of this Site and Facility Lease shall end. In no event shall this Site and Facility Lease terminate until all amounts owed to the Municipal Bond Insurer in connection with the Reserve Policy are paid in full.

Notwithstanding the foregoing, the term of this Site and Facility Lease shall not end so long as any amounts are owed to Municipal Bond Insurer with respect to the Reserve Policy or the Insurance Agreement (as such capitalized terms are defined in the Lease Agreement).

Section 4. Advance Rental Payment. The Town agrees to lease the Site and the Facility to the Authority in consideration of the payment by the Authority of an advance rental payment of _____ dollars (\$_____). The Town and the Authority agree that by reason of the sale of the Certificates and deposit of proceeds pursuant to the provisions of the Trust Agreement, dated as of December 1, 2016, by and among the Town, the Authority and U.S. Bank National Association, as trustee thereunder (the "Trust Agreement"), the advance rental payment referenced in the preceding sentence shall be deemed to have been paid.

Section 5. Purpose. The Authority shall use the Site and the Facility solely for the purpose of leasing the Site and the Facility to the Town pursuant to the Lease Agreement and for such purposes as may be incidental thereto; *provided, however*, that in the event of default by the Town under the Lease Agreement, the Authority and its assigns may exercise the remedies provided in the Lease Agreement.

Section 6. Town's Interest in the Site and the Facility. The Town covenants that it is the owner in fee of the Site and the Facility.

Section 7. Assignments and Subleases. Unless the Town shall be in default under the Lease Agreement, the Authority may not assign its rights under this Site and Facility Lease or sublet the Site or the Facility, except as provided in the Lease Agreement, without the prior written consent of the Town and Municipal Bond Insurer.

Section 8. Right of Entry. The Town reserves the right for any of its duly authorized representatives to enter upon the Site and the Facility at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 9. Termination. The Authority agrees, upon the termination of this Site and Facility Lease, to quit and surrender the Site and the Facility in the same good order and condition as the same were in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Site at the time of the termination of this Site and Facility Lease shall remain thereon and title thereto shall vest in the Town.

Section 10. Default. In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms of this Site and Facility Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Authority, the Town may exercise any and all remedies granted by law, except that no merger of this Site and Facility Lease and of the Lease Agreement shall be deemed to occur as a result thereof and the Town shall have no right to terminate this Site and Facility Lease as a remedy for such default; *provided, however*, that so long as any Certificates are Outstanding and unpaid in accordance with the terms thereof, the Lease Payments assigned by the Authority to the Trustee under the Assignment Agreement shall continue to be paid to the Trustee.

Section 11. Quiet Enjoyment. The Authority, at all times during the term of this Site and Facility Lease, shall peaceably and quietly have, hold and enjoy all of the Site subject to the provisions of the Lease Agreement and the Trust Agreement.

Section 12. Waiver of Personal Liability. All liabilities under this Site and Facility Lease on the part of the Authority are solely liabilities of the Authority and the Town hereby releases each and every, member, director, officer, employee and agent of the Authority of and from any personal or individual liability under this Site and Facility Lease. No member, director, officer, employee or agent of the Authority shall at any time or under any circumstances be

individually or personally liable under this Site and Facility Lease for anything done or omitted to be done by the Authority hereunder.

Section 13. Taxes. All assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Site and the Facility (including both land and improvements) will be paid in accordance with the Lease Agreement.

Section 14. Eminent Domain. In the event the whole or any part of the Site or the Facility thereon is taken by eminent domain proceedings, the interest of the Authority shall be recognized and is hereby determined to be the amount of the then unpaid Certificates including the unpaid principal and interest with respect to any then outstanding Certificates and, subject to the provisions of the Lease Agreement and all amounts owed to the Municipal Bond Insurer in connection with the Reserve Policy are paid in full, the balance of the award, if any, shall be paid to the Town.

Section 15. Use of the Proceeds. The Town and the Authority hereby agree that the lease to the Authority of the Town's right and interest in the Site and the Facility pursuant to Section 2 serves the public purposes of the Town by providing funds to enable the Town to refund the 2011 Certificates.

Section 16. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site and Facility Lease shall, to any extent, be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding, order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site and Facility Lease shall be affected thereby, and each provision of this Site and Facility Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 17. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, and, if to the Town, addressed to the Town in care of the Finance Director, Town of Fairfax, 142 Bolinas Road, Fairfax, CA 94930, or if to the Authority, addressed to the Authority in care of the Executive Director, Fairfax Financing Authority, 2945 Townsgate Road, Suite 200, Westlake Village, CA 91361, if to Municipal Bond Insurer, addressed to _____, _____, Attention: _____, Re: Reserve Policy No. _____, Telephone: (____) _____; Fax: (____) ____-____, or to such other addresses as the respective parties may from time to time designate by notice in writing.

Section 18. Binding Effect. This Site and Facility Lease shall inure to the benefit of and shall be binding upon the Town and the Authority and their respective successors and assigns. The Municipal Bond Insurer shall be deemed to be a third party beneficiary of this Site and Facility Lease.

Section 19. Amendment. This Site and Facility Lease may not be amended except as permitted under Section 10.01 of the Trust Agreement.

Section 20. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site and Facility Lease.

Section 21. Applicable Law. This Site and Facility Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 22. Execution in Counterparts. This Site and Facility Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Town and the Authority have caused this Site and Facility Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

TOWN OF FAIRFAX

By _____
Garrett Toy
Town Manager

Attest:

Michele Gardner
Town Clerk

FAIRFAX FINANCING AUTHORITY

By _____
Garrett Toy
Executive Director

Attest:

Michele Gardner
Secretary

[NOTARY ACKNOWLEDGMENTS TO BE ATTACHED]

EXHIBIT A
DESCRIPTION OF THE SITE

All that certain real property situated in Marin County, State of California, described as follows:

EXHIBIT B

DESCRIPTION OF THE FACILITY

The Facility consists of the following:

Town Hall/Police Department, located at 142 Bolinas Road, Fairfax, CA. The Town Hall/Police Department {SHORT NARRATIVE DESCRIPTION TO COME}. The 2016 insured value of the Town Hall/Police Department is \$831,981, excluding land value.

Maintenance Shop, located at 142 Bolinas Road, Fairfax, CA. The Maintenance Shop {SHORT NARRATIVE DESCRIPTION TO COME}. The 2016 insured value of the Maintenance Shop is \$271,840, excluding land value.

Pavilion/Gymnasium, located at 142 Bolinas Road, Fairfax, CA. The Pavilion/Gymnasium {SHORT NARRATIVE DESCRIPTION TO COME}. The 2016 insured value of the Pavilion/Gymnasium is \$1,805,604, excluding land value.

Fire Station, located at 10 Park Road, Fairfax, CA. The Fire Station {SHORT NARRATIVE DESCRIPTION TO COME}. The 2016 insured value of the Fire Station is \$1,684,088, excluding land value.