



# TOWN OF FAIRFAX

## STAFF REPORT

### December 7, 2016

**TO:** Mayor and Town Council

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

**SUBJECT:** Adopt a Resolution amending and restating Resolution No. 16-29 adopted on November 2, 2016 modifying the sale of Town of Fairfax 2016 Certificates of Participation from a public offering to a private placement for the purpose of refinancing certain Town of Fairfax CalPERS retirement obligations

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#### **RECOMMENDATION**

Adopt a resolution authorizing the amendment and restating of Resolution No. 16-29 adopted on November 2, 2016 regarding 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**

Following approval of Resolution No. 16-29, the Town's financing team worked to finalize disclosure and other documents and interacted with Standard & Poor's, the bond rating agency, and bond insurance companies to prepare the COPs for sale and distribution as a public offering.

One component of the rating and bond insurance analysis is a seismic evaluation of the buildings that are to secure the lease between the Town and the Town's Financing Authority. After a week of submittals and additional information requests, it was determined that the buildings did not meet the seismic requirements of the rating and bond insurance companies. As a result, the Town cannot get the COPs rated or insured. If the transaction is to continue forward, the Town has no alternative other than to proceed without a rating and/or bond insurance and redirect the transaction to be sold as a non-rated direct placement. In other words, the COPs would be sold (i.e., direct placement) to one institutional buyer (e.g., bank) who does not require a rating or bond insurance. The Town did a direct placement for the refinancing of the Town's General Obligation Bonds in May 2016.

Since November 8, interest rates have risen significantly. The recent increase in interest rates combined with the transaction now being sold as a non-rated, as opposed to AA rated, offering has had a negative effect on projected savings to the Town. However, there are still meaningful savings projected to result from the transaction (see Fiscal Impact below).

*The Resolution before the Council simply changes the method of sale of the COPS with the other components of Resolution 16-29 remaining unchanged.* The Council approved documents from the November 2<sup>nd</sup> meeting will be amended, as needed, to reflect the direct placement

structure. Attached is the new direct placement agreement which was not previously considered by the Council.

The revised schedule is to have the COPSs close by year-end 2016. The Town is using the same financing team as was used for the refunding bonds in June 2016. The Town's Municipal Advisor will be available at the meeting to provide more detail on the interest differences between a public offering and direct placement at the Council meeting as well as to answer any questions. Please note that this action does not require approval by the Fairfax Financing Authority.

### **FISCAL IMPACT**

The Town anticipates "saving" approximately \$40,000 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 \$40,000 to an approximate average of \$20,000 per year. In comparison, with a public offering, we estimated savings of approximately \$100,000 per year over the first five years, decreasing to approximately \$50,000 per year over the remaining 15 years. It should also be noted that in year six after the side fund is paid off, the Town will have reduced principal payments of over \$200,000 per year. While technically not a "savings" it will be money available to be allocated toward other Town expenses.

The Council will recall that earlier projections for the CalPERS refinancing estimated the Town would save approximately \$1,400,000+ over the 20-year period. Now, with a non-rated financing and the significant increase in interest rates following the election, we estimate the Town will save approximately \$600,000 over the same 20-year period.

### **ATTACHMENT**

1. Resolution
2. Direct Placement Agreement
3. Bond Interest Rate Graph

RESOLUTION 16- \_\_\_\_

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX, AMENDING AND RESTATING RESOLUTION NO. 16-29, ADOPTED ON NOVEMBER 2, 2016, 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, on November 2, 2016, the Council adopted its Resolution No. 16-29 (the "Original Resolution"), approving the form and authorizing the execution of various documents in connection with a proposed public offering of certificates of participation, to be underwritten by Brandis Tallman LLC;

WHEREAS, it was subsequently determined that, because of the age and seismic instability of the properties proposed be included in the financing, it was not possible to obtain a rating for the proposed public offering and that a private placement of the certificates of participation with an institutional investor would be more appropriate;

WHEREAS, it is in the public interest and for the public benefit that the Council amend and restate the Original Resolution to authorize and direct execution of the Lease Agreement (hereinafter defined) and certain other documents necessary in connection with the private placement of the certificates of participation; 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:

**ATTACHMENT** 

*Section 1.* The Original Resolution is hereby amended and restated by this resolution.

*Section 2.* 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 designee 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.* 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 designee 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:

(a) a certificate purchase agreement, by and between an institutional investor (the “Purchaser”) to be selected by Wulff Hansen & Co., the Town’s municipal advisor, and Brandis Tallman LLC, as placement agent (the “Placement Agent”), and the Town, relating to the purchase by the Purchaser of the Certificates; and

(b) a placement agent agreement, by and between the Placement Agent, and the Town.

*Section 4.* 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 5.* This Resolution shall take effect upon its adoption by this Council.

The foregoing Resolution was duly introduced and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 7<sup>th</sup> day of December 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

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Mayor

Attest: \_\_\_\_\_  
Michele Gardner, Town Clerk

\$ \_\_\_\_\_

## DIRECT PLACEMENT AGREEMENT

\_\_\_\_\_, 2016

Town of Fairfax  
142 Bolinas Rd.  
Fairfax, California 94930

The undersigned, Brandis Tallman LLC (the "Placement Agent"), offers to enter into this Direct Placement Agreement (this "Agreement") with the Town of Fairfax (the "Town"), which upon acceptance, will be binding upon the Town and the Placement Agent.

Upon the terms and conditions and upon the basis of the representations, warranties and agreements set forth herein, the Placement Agent and Town hereby agree as follows:

1. Appointment of Placement Agent; Placement of the Certificates of Participation (2016 Refinancing Project – Taxable) (the "Financing").

a). the Town hereby appoints the Placement Agent to act as the exclusive placement agent for the Town in connection with the private sale and issuance of the Financing, and the Placement Agent hereby accepts such appointment. As compensation for its services hereunder, the Placement Agent shall charge a fee equal to \$25,000. At the closing of any such sale, the Town shall pay or cause to be paid such fees to the Placement Agent by wire transfer of immediately available funds. The Town shall pay all other costs and expenses incurred in connection with the issuance and placement of the Financing, including, but not limited to, all fees to be paid to the California Debt and Investment Advisory Commission, if any. The above fees do not include any services the Placement Agent may render in the future to the Town with respect to any offering or placement of municipal securities other than the Financing.

b). the Town will provide the purchaser of the Financing (the "Purchaser") with the opportunity to ask questions and receive answers, and the Lease Agreement (as defined herein) sets forth the terms and conditions of the sale and purchase of the Financing. Copies of the reports and other documents that have been furnished to the Placement Agent by the Town in connection with the proposed offer and sale of the Financing are listed in Exhibit A hereto (it being understood that, prior to the consummation of any sale of the Financing, Exhibit A may be supplemented from time to time as mutually agreed by the parties hereto). The Town hereby authorizes the Placement Agent to use such reports and documents in connection with the placement of the Financing.

c). the Town understands that the Placement Agent will be acting as the agent of the Town in the offering and sale of the Financing and agrees that, in connection therewith, the Placement Agent will use its "best efforts" to place the Financing. This Agreement shall not give

rise to any expressed or implied commitment by the Placement Agent to purchase or place any of the Financing.

d). the Town acknowledges and agrees that, in arranging for approved buyers to purchase the Financing, the Placement Agent is not acting as the fiduciary of the Town and has not assumed an advisory or fiduciary responsibility in favor of the Town. In connection with such transaction, the Town has consulted its own legal, tax and financial advisors to the extent it deemed appropriate. The Town agrees that it will not claim that the Placement Agent has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Town in connection with such transaction or the process leading thereto. The Placement Agent is not acting as a municipal advisor as defined in Section 15B of the Securities Exchange Act of 1934, as amended, in connection with the matters contemplated by this Agreement.

2. Covenants, Representations and Warranties of the Town. The Town represents, warrants and agrees as follows:

a). the Town is, and will be on the Closing Date (defined below), duly organized, and validly existing and operating Town pursuant to the laws of the State of California with full power and authority to observe and perform the covenants and agreements set forth in this Agreement, the Lease Agreement, the Site Lease, and the Trust Agreement, (collectively, the "Town Documents");

b). by official action of the Town, prior to or concurrently with the acceptance hereof, the Town (i) has duly adopted a resolution by the Council of the Town (the "Council") on December 7, 2016, (the "Resolution") amending and restating Resolution No. 16-29, adopted on November 2, 2016, 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, and (ii) the Resolution is in full force and effect and has not been amended or supplemented as of the date hereof;

c). the execution and delivery of the Town Documents and compliance with the provisions on the Town's part contained therein do not and will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, statute, Bond Resolution, mortgage, deed of trust, bond, note, resolution, agreement or other instrument to which the Town is a party or by which the Town is bound;

d). any certificate signed by an authorized officer of the Town and delivered to the Placement Agent shall be deemed a representation and warranty by the Town in connection with this Agreement to the Placement Agent as to the statements made therein for the purposes for which such statements are made;

e). the Town agrees promptly from time to time to take such action as the Placement Agent may reasonably request to qualify, if such qualification is necessary, the Financing for offering and sale as a private placement under the securities laws of such states as the Placement Agent may reasonably request, and the Town further agrees to comply with such laws so as to permit such offers and sales. Any applicable filings will be prepared by the Town's counsel, whose fees and disbursements in connection therewith shall be for the account of the Town;

f). no litigation is pending, or, to the knowledge of the Town, threatened in any court in any way affecting the existence of the Town or the title of the members of the Council to their respective offices or seeking to restrain or to enjoin the execution and delivery of the Financing or in any way contesting or affecting the validity or enforceability of the Trust Agreement or any other Town Documents, or contesting the powers of the Town or the members of the Council with respect to the within-described transaction;

g). the Town will not knowingly take any action or fail to take any action, which action or omission would result in the loss of the exclusion of interest on the Financing from gross income for federal income tax purposes; and

h). At the Closing Date, the Town will permit the Placement Agent to rely on the Town's representations and warranties, and cause the Town's counsel to permit the Placement Agent to rely upon any opinion, furnished to the Purchaser of the Financing.

3. Payment and Delivery of Financing. The Financing shall be dated the date of delivery, shall bear interest at the rate(s), shall be payable on the dates, shall mature on the date and shall be subject to redemption prior to its maturity all as set forth in the Trust Agreement. At 8:00 a.m., Pacific time, on \_\_\_\_\_, or at such other time or on such other date as shall have been mutually agreed upon by the Town, the Placement Agent and the Purchaser (the "Closing Date"), the Town will deliver or cause to be delivered to, or to the direction of, the Placement Agent the Financing as a physical certificate (not held in book-entry form by a securities depository) to the Purchaser thereof at such place as the Town and Placement Agent may mutually agree upon, duly executed, in authorized denominations of \$1,000 or more, and registered in the name of the Purchaser, and shall cause each certificate, document, instrument and opinion required to be delivered pursuant to the Trust Agreement to be delivered to the Town at the offices of Quint & Thimmig, Larkspur, California; and, subject to the conditions of this Agreement, the Placement Agent will cause payment to be made of the purchase price thereof as set forth in the Trust Agreement in immediately available funds (by wire transfer or such other manner of payment as the Placement Agent and Town shall reasonably agree upon) payable to the order of the Paying Agent. The Town acknowledges that the Placement Agent is causing such payment to be made as an accommodation to the Town, and the Placement Agent is under no obligation to purchase the Financing.

The obligation of the Placement Agent to cause payment for the Financing to be made on the Closing Date shall be subject, at the option of the Placement Agent, to the Town entering into the Trust Agreement with respect to all (but not less than all) of the \$ \_\_\_\_\_



aggregate principal amount of the Financing, to the accuracy in all material respects of the representations, warranties and agreements on the part of the Town contained herein and in the Trust Agreement as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the Town made in any certificates or other documents furnished pursuant to the provisions of the Trust Agreement, to the performance by the Town of its obligations to performed hereunder and under the Trust Agreement at or prior to the Closing Date, to the delivery of each certificate, document, instrument and opinion required by the Trust Agreement, and any termination of the obligation to purchase the Financing pursuant to the Trust Agreement.

4. Reliance. The Town recognizes that, in providing services under this Agreement, the Placement Agent will rely upon and assume the accuracy and completeness of the financial, accounting, tax and other information discussed with or reviewed by the Placement Agent for such purpose, and the Placement Agent does not assume responsibility for the accuracy and completeness thereof. The Placement Agent will have no obligation to conduct any independent evaluation or appraisal of the assets or the liabilities of the Town or any other party or to advise or opine on related solvency issues. Nothing in this Agreement is intended to confer upon any other person (including creditors, employees or other constituencies of the Town) any rights or remedies hereunder or by reason hereof.

5. Termination; Expenses. The Placement Agent's authorization to carry out its duties hereunder may be terminated by the Town or the Placement Agent at any time with or without cause, effective upon receipt of written notice to that effect by the other party. This Agreement terminates at the Closing Date of the Financing. If for any reason other than failure of the Placement Agent to perform hereunder the purchase of the Financing is not completed, the Town shall remain responsible for the expenses to be paid or reimbursed to the Placement Agent, if any.

6. Notices. Any notice or other communication to be given to any of the parties to this Agreement may be given by delivering the same in writing to the Town at: Town of Fairfax, 142 Bolinas Rd. Fairfax, California 94930; and to the Placement Agent at: 22 Battery Street #500, San Francisco, CA 94111.

7. Survival of Representations, Warranties and Agreements. This Agreement is made solely for the benefit of the Town and the Placement Agent, and no other person shall acquire or have any right hereunder or by virtue hereof. All of the representations, warranties and agreements of the Town contained in this Agreement shall remain operative and in full force and effect regardless of delivery of any payment for the Financing.

8. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

9. Effectiveness. This Agreement shall become effective upon the execution of the acceptance hereof by a duly authorized signatory of the Town, which acceptance hereof shall be indicated on the signature page hereof, and shall be valid and enforceable as of the time of such acceptance. This Agreement may be executed by facsimile transmission and in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Trust Agreement.

[SIGNATURE PAGE FOLLOWS]

This Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the Town and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

Accepted and Agreed this \_\_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF FAIRFAX

By: \_\_\_\_\_  
Authorized Officer

BRANDIS TALLMAN LLC

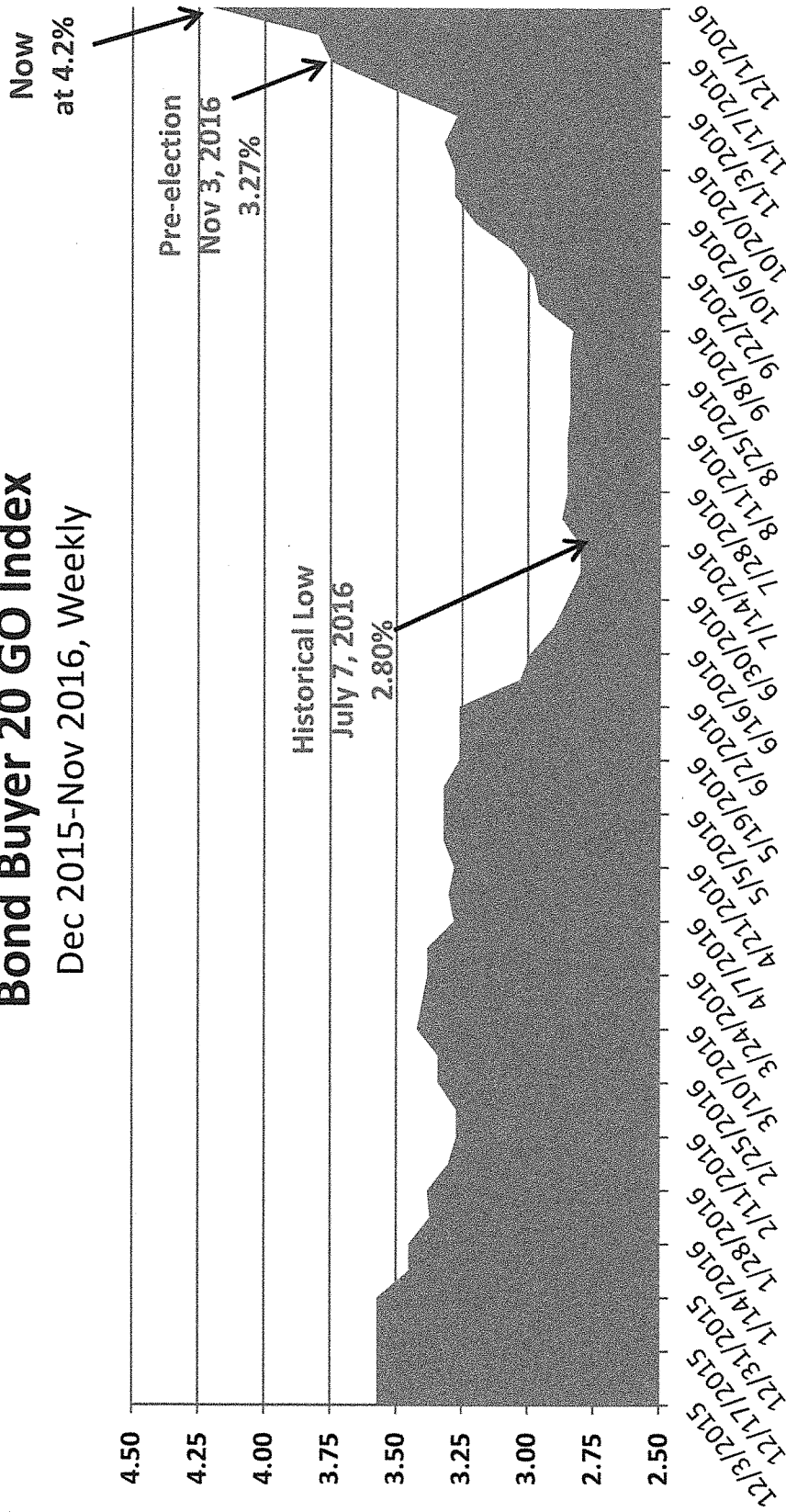
By: \_\_\_\_\_  
Authorized Officer

## EXHIBIT A

Copies of the reports and other documents that have been furnished to the Placement Agent by the Town in connection with the proposed offer and sale of the Financing are last three years of audited financials, 2014 GO Rating Report, and general Town information.

# Bond Buyer 20 GO Index

Dec 2015-Nov 2016, Weekly



The 20-Bond Index consists of 20 general obligation bonds that mature in 20 years.

The average rating is roughly equivalent to Moody's Aa2 rating and S&P's AA.

Prepared by Wulff, Hansen & Co.  
on December 2, 2016