



# TOWN OF FAIRFAX

## STAFF REPORT

### August 5, 2020

**TO:** Mayor and Town Council

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

**SUBJECT:** Adopt a resolution authorizing the commencement of proceedings in connection with the issuance and sale of lease revenue bonds of the Fairfax Financing Authority to finance and refinance Town pension obligations to the California Public Employees' Retirement system (CalPERS) in an approximate amount of \$9,600,000, retaining an underwriter/placement agent, bond counsel, and disclosure counsel and directing certain actions.

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#### **RECOMMENDATION**

Adopt a resolution authorizing the commencement of proceedings in connection with the issuance and sale of lease revenue bonds of the Fairfax Financing Authority to finance and refinance pension obligations of the town to the California Public Employees' Retirement system (CalPERS), retaining an underwriter/placement agent, bond counsel, and disclosure counsel and directing certain actions.

#### **BACKGROUND**

In FY16-17, the Town worked with the Town's Municipal Advisor, Wulff, Hansen & Co, to explore refinancing of the Town's retirement liability as well as the potential for financing additional capital improvements with the savings. After discussing the options, the Council decided that it wanted to refinance only the CalPERS side fund and pre-2013 UAL pension obligations. The Council approved the refinancing in early 2017. The refinancing was structured as a long-term lease agreement with the Town Hall, Pavilion, Fire Station, and Corporate Yard as the leased assets and was anticipated to save the Town over \$1.4 million in interest over the 20-year period.

At its May 2020 meeting, the Council authorized the Town's Municipal Advisor to explore options for refinancing the 2017 lease agreement (approximately \$2.9 million), as well as to prepay the Town's current unfunded pension liability to CalPERS (approximately \$6.5 million), to take advantage of lower rates with of goal of saving the Town additional money.

The options included:

- 1) Renegotiating the interest rate with Capital One which currently holds the 2017 lease agreement,
- 2) Refinancing the lease agreement with a new lender,
- 3) Refinancing the Town's current unfunded pension liability, and

- 4) Combining the refinancing of the 2017 lease agreement and refinancing the Town's current unfunded pension liability into one new refinancing structure.

In terms of process, the Town's Municipal Advisor discussed the advantages and disadvantages of each option with the Town's Finance Committee for consideration and a recommendation would be made to the Council.

## **DISCUSSION**

The Town's Municipal Advisor met with the Council's Finance Committee twice: June 22 and July 14. At the June 22<sup>nd</sup> meeting, the Town's Municipal Advisor reported the best option for the Town to pursue would be Option #4 above which is combining the refinancing of the 2017 lease agreement and refinancing the Town's current unfunded pension liability into one new refinancing structure. This was the most financially attractive because Capital One, the holder of the 2017 lease agreement, offered to waive costly prepayment penalties for the 2017 lease agreement in exchange for increased loan size that would include the Town's current unfunded pension liability. This approach included selling the securities to Capital One via a private placement, which, in essence, means one institutional investor such as Capital One as opposed to public offering, which has multiple investors and significantly more issuance costs. The process would require a "validation" suit. A validation suit is required to confirm that the Town's obligation to CalPERS is an "obligation imposed by law" and an exception to the constitutional limit on the incurrence of debt by a municipality without an election. The validation action is a fairly standard process for these transactions (e.g., Larkspur did one recently). The Finance Committee recommended that the Town's Municipal Advisor and staff bring Option #4 to the Council for consideration. Option #4 would save the Town millions of dollars in interest payments.

However, subsequent to the June Finance Committee meeting, the Town's Municipal Advisor reported to staff that two validation suits in Southern California for large issuances (over \$100 million) were unexpectedly challenged by a taxpayer's association. Given this potential risk, the Town might be better off considering an alternative approach to the typical validation process.

At the July 14<sup>th</sup> Finance Committee meeting, the Town's Municipal Advisor discussed the potential financial risks to the Town to pursue a validation suit, given the situation in Southern California. However, the Town's Municipal Advisor discussed an alternative approach to the refinancing. The Town's Municipal Advisor suggested a lease structure similar to the Town's 2017 Lease. This structure would use the Town's streets as the leased assets within the financing structure. Notwithstanding the provisions of the Lease Agreement purporting to permit the Property to be entered upon and re-let in the event of a default by the Town thereunder, it is extremely unlikely that such a remedy would be permitted by the court, in light of the essential public purposes served by the Town streets which constitute the Property.

The Town's Municipal Advisor indicated that underwriters and investors in the public market are currently willing to buy "street leases" from high quality issues such as the Town. However, private placement investors such as Capital One will generally not accept streets as assets and, thus, would not be interested in a street lease. While the public offering would have higher issuance costs than a private placement due to additional financial and legal disclosures, the Town would still experience millions of dollars of interest savings by refinancing its unfunded

pension obligations. *The Finance Committee recommended the street lease option be brought to the Town Council for consideration, eliminating the need for a Validation.*

Subsequent to the July 14<sup>th</sup> Finance Committee meeting, Capital One expressed interested in a private placement lease financing utilizing the currently leased assets plus a portion of the Streets. Staff did not have time to schedule another Finance Committee meeting prior to this Council meeting but believes the terms are quite favorable to the Town. The term offer sheet is attached to the staff report and is available for acceptance by the Town via Council approval.

We have attached the PowerPoint slides prepared by the Town's Municipal Advisor which provide background on the Town's current unfunded pension liability, the 2017 Lease, and the Capital One proposal. The Town's Municipal Advisor will explain these slides in detail during their presentation to the Council.

In summary, Town will save approximately \$3.6 million in interest payments over time with the refinancing. This in addition to the approximate \$1M in interest payments the Town saved with the 2017 Lease. The combined total savings is approximately \$4.6 million. Specifically, the Town will save approximately \$105,000 in interest annually over the next 16 years (total of \$1.7 million in interest savings). The debt is paid off in 2037 as opposed to 2047 if the Town did not refinance its pension obligation debt. By refinancing its pension obligations, the Town will save approximately \$1.9 million in interest over that ten-year period (2037-2047).

The resolution formally requests the Fairfax Finance Authority to issue lease revenue bonds and to assist the Town for such purposes, authorizes the preparation of the necessary documents in connection with the issuance and sale of the Bonds, and formally retains the municipal advisor, an underwriter/placement agent, bond counsel and disclosure counsel to assist the Town. The Town's Municipal Advisor is Wulf, Hansen & Co., Brandis Tallman LLC is the underwriter/placement agent, and Quint & Thimmig LLP is bond counsel and disclosure counsel for the Town in connection with the issuance and sale of the Bonds.

#### Next Step

We are recommending the Council hold a public hearing on August 19<sup>th</sup> to consider the issuance by the Authority of the Bonds and consider adoption of a resolution approving the issuance of the Bonds and approving related documents. The Town's Municipal Advisor recommends the FFA Board and Town Council meet in August because we have a favorable, firm proposal from Capital One, which is time sensitive and must be agreed to and closed by September 15<sup>th</sup>.

#### **FISCAL IMPACT**

Including all costs of issuance, the Capital One proposal will result in overall savings of \$3.6 million to the Town's General Fund.

#### **ATTACHMENTS**

- A. Resolution
- B. PowerPoint presentation