

CITY OF SAN LEANDRO

MEMORANDUM

DATE: December 2, 2011

TO: Finance Committee

FROM: Lianne Marshall, Interim City Manager

BY: Jim O'Leary, Interim Finance Director

SUBJECT: Resolution Authorizing the Sale of Pension Obligation Bonds to Refinance Outstanding Side Fund Obligations of the City to the California Public Employees' Retirement System, Approving the Final Form of Related Financing Documents, and Approving Official Actions

RECOMMENDATION

Staff recommends that the Finance Committee recommend City Council approval of the resolution authorizing issuance of pension obligation bonds, approving the final form of the related financing documents, and approving official actions to refinance the outstanding Public Safety side fund obligations of the City. The bond transaction would refund the existing CalPERS side fund obligation over the same term in the same total amount, plus issuance costs (less \$6,000,000 to be borrowed from the Water Pollution Plant Fund for the initial pay-down of the side fund obligation) and take advantage of lower bond interest rates. Financing documents include the Indenture of Trust between the City and U.S. Bank National Association, Bond Purchase Agreement, and the Official Statement and Continuing Disclosure Certificate.

BACKGROUND

The City's Safety Plan in the CalPERS retirement system is a cost-sharing multiple-employer plan with pooling (cost-sharing) arrangements for participating employers. All risks, rewards, and costs, including benefit costs, are shared and are not attributable to the individual employers. A single valuation covers plan members and the same contribution rate applies to all employers. A menu of benefit provisions and other requirements are established by state statute within the Public Employees' Retirement Law. The City has contractually selected optional benefit provisions from the benefit menu and adopted these benefits by City Council resolution.

At the time the City was required to join the Safety Risk Pool in 2004, a side fund was created to account for the difference between the funded status of the pool and the funded status of the previous City Plan. Today, the City's total outstanding CalPERS pension obligation and the required annual employer contribution is determined by the City's share of the Safety Risk Pool and separate amortization of the City's side fund. The proposed transaction would refinance the existing side fund obligation to take advantage of low bond market rates. It would not change benefits owed to existing or prior employees.

DISCUSSION

Effective June 30, 2004, CalPERS created risk pools by pooling assets and liabilities across groups of employers to produce large risk sharing pools intended to dramatically eliminate or at least reduce large fluctuations in employers' contribution rates caused by unexpected demographic events. CalPERS combined the retirement plans for all public agencies with less than 100 active members to reduce the volatility of employer contribution rates. CalPERS also created for each member a side fund to amortize each agency's June 30, 2003 unfunded liability over a fixed term at a fixed interest rate. A negative side fund, like San Leandro's Public Safety's, causes the required employer contribution rate to be increased by the amortization of the side fund.

The safety side fund is distinct from the City's other CalPERS plans and liabilities. Side funds are retired over a fixed term with a fixed amortization schedule based on CalPERS actuarial earnings assumption rate (7.75%). The City's plan has the side fund scheduled to be fully amortized by June 30, 2024. The City's actuary has estimated the outstanding side fund balance at \$24.4 million as of June 30, 2011.

For pension obligation bonds to provide the City cost savings, the interest rate, including the cost of issuance, must be significantly less than the interest rate the CalPERS charges to amortize the side fund. These bonds are not tax exempt under Federal regulations. Therefore, the taxable bonds, not to exceed the amount of \$19,000,000, must be placed at a rate significantly less than the 7.75% charged by CalPERS to realize savings.

The 13-year amortization period for the City's side fund frames the savings opportunity being considered. U.S. Treasury yield continue to fluctuate weekly because of the ongoing national and global economic turmoil and uncertainty. In just the past number of months, rates have moved from 4.6% to 5.1% dropped significantly lower. The City's actuary and underwriter have estimated that the City's pension obligation bonds, together with the Water Pollution Control Plant Fund loan, will save the General Fund between \$250,000 and 500,000 annually.

The resolution approves the financing documents including the Indenture of Trust between the City and U.S. Bank National Association, Bond Purchase Agreement, and the Official Statement and Continuing Disclosure Certificate. These documents are presented in draft form as reviews and updating continue by the Financing Team, which include the City Attorney, Bond Counsel, Financial Advisor, Underwriter, Actuary, and Finance staff. These documents are available for Finance Committee reference, but are not included in the Committee agenda packet.

Indenture of Trust

The bonds will be issued under an indenture of trust between the City and the trustee, U.S. Bank. The final form of the indenture of trust will be approved by the City Council following the conclusion of the validation proceedings. The indenture of trust provides for the authorization and terms of the bonds, the deposit and application of the bond proceeds, the security of the bonds and investment of the proceeds, the role of the trustee, and other provisions.

Bond Purchase Agreement

Under the terms and conditions and upon the basis of the representations set forth in the Purchase Agreement, the Underwriter agrees to purchase from the City all of the principle amount of the City of San Leandro 2012 Taxable Pension Obligation Bonds. The bonds shall be dated the date of delivery and shall have the maturities, bear interest at the rates per annum, have the yields, and be subject to mandatory sinking fund redemption, all as set forth in the agreement. The purchase price for the bonds shall be calculated as the principal amount of the bonds, less an underwriters' discount plus (or minus) and a net original issue premium (or discount). The bonds shall be as described in, secure under and issued pursuant to the Indenture and Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code.

Official Statement and Continuing Disclosure Certificate

The purpose of the Official Statement is to provide information concerning the issuance of the City of San Leandro 2012 Taxable Pension Obligation Bonds. The Official Statement has been prepared in connection with the sales of the bonds but does not constitute an offer to sell or the solicitation of an offer to buy. The Official Statement fully describes the pension obligation bonds including the purpose, authority for issuance, security, plan for financing, and the financial condition of the City. Statements from the City's CAFR are significant in the disclosure.

CONCLUSION

Staff recommends that the Finance Committee recommend City Council approval of the resolution authorizing issuance of pension obligation bonds, approving the final form of the related financing documents, and approving official actions to refinance the outstanding Public Safety side fund obligations of the City. The bond transaction would refund the existing CalPERS side fund obligation, not to exceed \$19,000,000, over the same term in the same amount plus issuance costs and take advantage of lower bond interest rates.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN
LEANDRO AUTHORIZING THE SALE OF PENSION
OBLIGATION BONDS TO REFINANCE OUTSTANDING SIDE
FUND OBLIGATIONS OF THE CITY TO THE CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM, APPROVING
THE FINAL FORM OF RELATED FINANCING DOCUMENTS
AND APPROVING OFFICIAL ACTIONS**

WHEREAS, the City of San Leandro (the "City") is a contracting member of the California Public Employees' Retirement System ("PERS"), and under its contract with PERS the City is obligated to make certain payments to PERS in respect of retired public safety employees under the Side Fund program of PERS which amortizes such obligations over a fixed period of time (the "PERS Side Fund Obligations"); and

WHEREAS, the City is authorized under the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code (the "Bond Law"), to issue its bonds for the purpose of refunding certain outstanding obligations of the City, including the PERS Side Fund Obligations; and

WHEREAS, on September 19, 2011, the City Council adopted its resolution (the "Authorizing Resolution") authorizing the issuance of bonds under the Bond Law (the "Bonds"), to be payable from the General Fund of the City, the proceeds of which will be applied to pay the PERS Side Fund Obligations, thereby refunding the PERS Side Fund Obligations; and

WHEREAS, the issuance of the Bonds has been validated by judgment of the Alameda County Superior Court; and

WHEREAS, in accordance with Section 6 of the Authorizing Resolution the City Council wishes at this time to approve the final form of the documents relating to the issuance and sale of the Bonds, and to approve official actions relating to the closing of the Bonds;

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

Section 1. Approval of Bond Indenture. The City Council hereby approves the issuance of the Bonds under the Authorizing Resolution and the Bond Law in the aggregate principal amount of not to exceed \$20,000,000 (the "Bonds"). The City Council hereby approves the Indenture of Trust between the City and U.S Bank National Association, as trustee, prescribing the terms and provisions of the Bonds, in substantially the form on file with the City Clerk together with any additions thereto or changes therein deemed necessary or advisable by the City Manager or the Finance Director (each, an "Authorized Officer"). An Authorized Officer is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest to, the final form of the Indenture of Trust for and in the name and on behalf of the City. The City Council hereby authorizes the delivery and performance of the Indenture of Trust.

Section 2. Sale of Bonds; Approval of Bond Purchase Agreement. The City Council hereby authorizes the sale of the Bonds to Morgan Keegan & Company, Inc. and Wedbush Securities Inc., as underwriters (together, the "Underwriters") under the Bond Purchase Agreement in substantially the form on file with the City Clerk together with any additions thereto or changes therein approved by an Authorized Officer, whose execution thereof shall be conclusive evidence of such approval. The City Council hereby delegates to an Authorized Officer the authority to accept an offer from the Underwriters to purchase the Bonds and to execute the Bond Purchase Agreement for and in the name and on behalf of the City. The amount of Underwriters' discount shall not exceed 0.70% of the par amount of the Bonds.

The Bonds shall be sold only if the net present value savings of refunding the PERS Side Fund Obligations are at least equal to 3.00% of the principal amount of the PERS Side Fund Obligations which are refunded. For purposes of determining the net present value savings of the refunding, the rate of interest on the PERS Side Fund Obligations shall be assumed to be 7.75%. Determination of such net present value savings shall be made by Public Financial Management Inc., as financial advisor to the City, whose determination shall be final and conclusive.

Section 3. Approval of Official Statement and Continuing Disclosure Certificate. The City Council hereby approves the Preliminary Official Statement describing the Bonds in substantially the form on file with the City Clerk. An Authorized Officer is hereby authorized to approve any additions to or changes in such Preliminary Official Statement, to deem the resulting Preliminary Official Statement nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934 and to execute an appropriate certificate stating such Authorized Officer's determination that the Preliminary Official Statement has been deemed nearly final within the meaning of such Rule. Distribution of the Preliminary Official Statement by the Underwriters is hereby approved. An Authorized Officer is hereby authorized and directed to approve any changes in or additions to the Final Official Statement, and the execution thereof by an Authorized Officer shall be conclusive evidence of approval of any such changes and additions. The City Council hereby authorizes the distribution of the Final Official Statement by the Underwriters. The Final Official Statement shall be executed in the name and on behalf of the City by an Authorized Officer.

The City Council hereby approves the Continuing Disclosure Certificate in substantially the form set forth as Appendix F to the Preliminary Official Statement. An Authorized Officer is hereby authorized to approve any additions to or changes in such Continuing Disclosure Certificate, and is hereby authorized and directed to execute the final form of the Continuing Disclosure Certificate for and in the name and on behalf of the City. The City Council hereby authorizes the delivery and performance of the Continuing Disclosure Certificate.

Section 4. Taxable Status of the Bonds. The City Council hereby determines that interest payable on the Bonds will be subject to federal income taxation, and that the provisions of Section 5900 et seq. of the California Government Code (the "Taxable Bond Act") apply to the Bonds. The City may take any action and exercise any power permitted to be taken by it under the Taxable Bond Act in connection with the issuance and sale of the Bonds.

Section 5. Official Actions. The Mayor, the City Manager, the Finance Director, the City Clerk and any and all other officers of the City are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance, sale and delivery of the Bonds and the consummation of the transactions approved herein. 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.

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I, the undersigned City Clerk of the City of San Leandro, hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the City Council of the City at a meeting thereof on the 19th day of December, 2011, by the following vote of the members thereof:

AYES:

NOES:

ABSTAIN:

ABSENT:

City Clerk