



# AGENDA REPORT

Finance Department

<b>DATE:</b>	July 26, 2022
<b>TO:</b>	Mayor Butt and Members of the City Council
<b>FROM:</b>	Shasa Curl, City Manager Delmy Cuellar, Director of Finance Antonio Banuelos, Accounting Manager
<b>Subject:</b>	2005 Pension Bond Refinancing/Restructuring, approving bond sale documents and revised fees for underwriter and consultants.
<b>FINANCIAL IMPACT:</b>	Potential increase in annual debt service required because of need to fund termination payment on an interest rate swap. Potential future interim General Fund budget savings because of term extension.
<b>PREVIOUS COUNCIL ACTION:</b>	April 6, 2021; October 5, 2021; December 7, 2021, June 7th, 2022, June 21, 2022, July 19, 2022
<b>STATEMENT OF THE ISSUE:</b>	On June 21st, the City Council approved a resolution authorizing the issuance of refunding bonds for the 2005 POBs. The City Council is being asked to approve a final resolution (“Resolution”) confirming its authorization of the bonds and approving certain sale documents and offering documents related to the 2022 Refunding Bonds and providing for the defeasance of the 1999 POBS
<b>RECOMMENDED ACTION:</b>	ADOPT a resolution authorizing the sale of the taxable pension refunding bonds, and approving an official statement for such bonds, approving the execution of the bond purchase agreement, a continuing disclosure certificate, and escrow agreements, and approving and directing related matters in connection therewith and approving increased fees for underwriter, bond counsel disclosure counsel, and other city consultants as

	provided in the Staff Report.– Finance Department (Delmy Cuellar 510-620-6790).
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**DISCUSSION:**

**Background**

The City currently has the following outstanding two series of 2005 POBs: (i) \$17.899 million principal amount series maturing in 2023 (the "B-1 Bonds"), and (ii) \$127.868 million principal amount series maturing in 2034 (the "B-2 Bonds" and, together with the B-1 Bonds (the "2005 POBs"). The City is strongly recommended to refinance the B-1 and B-2 Bonds given existing outstanding challenges. The City is party to two interest rate swaps (the "Swaps") associated with the 2005 POBs. However, the swap for the B-2 Bonds (the "B-2 Swap") is subject to mandatory early termination on August 1, 2023, before which time the City will need to either (a) arrange financing to pay the market value of the B-2 Swap upon such early termination or (b) amend the B-2 Swap to remove, reduce, or delay the mandatory early termination.

At its meeting of June 21, 2022, the City Council adopted a resolution (the "Resolution Authorizing Issuance of Series 2022 Bonds") approving the issuance of the Series 2022 Refunding Bonds in one or more series for the purpose refunding all or a portion of the outstanding 2005 POBs, paying the termination payment associated with the Swaps, and paying costs of issuance, subject to certain conditions. The Resolution Authorizing Issuance of Series 2022 Bonds also, among other items, approved a form of First Supplemental Indenture for the Series 2022 Refunding Bonds and directed staff to return to the City Council for final approval of the Series 2022 Refunding Bonds and related documents. The City Council is now asked to authorize the sale of the Series 2022 Refunding Bonds and approve other related documents. As structured, the Series 2022 Refunding Bonds will (1) pay the termination fee and eliminate both the B-2 Swap and another outstanding swap on the 2005 B-1 Bonds, as well as (2) refund both the B-1 Bonds and the B-2 Bonds

**Approval of Resolution**

The proposed resolution (the "Resolution") confirms the City Council's actions in the Resolution Authorizing Issuance of Series 2022 Bonds and approves the following documents (1) Preliminary Official Statement, (2) Bond Purchase Agreement and (3) Escrow Agreements to refund the 2005 POBs and defease the 1999 Bonds. Note that the form of First Supplemental Indenture for the Series 2022 Refunding Bonds was approved by the Council on June 21, 2022, as described above. The proposed resolution also, as noted above, allows for a term extension on the Series 2022 Refunding Bonds through 2044 and a maximum underwriter's discount of .40%. The Authorizing Resolution also specifies that the Mayor, Assistant City Manager, City Manager or Finance Director, each acting alone, ("Authorized Officers") are authorized

to execute legal documents. The Authorizing Resolution also provides for the transfer of up to \$2.5 million in City cash to defease the 1999 Taxable Limited Obligation Pension Bonds ("1999 Bonds"). These provisions are discussed in more detail below.

### **Authorization of Term Extension for the Series 2022 Refunding Bonds**

The City's finance team has made a preliminary determination that extending the amortization period for the Series 2022 Refunding Bonds beyond the current final maturity for the B-2 Bonds of August 1, 2034, is advisable. In making the recommendation, the City's finance team took a holistic look at all of the City's outstanding pension debt including normal payments, unfunded liability (currently estimated at \$360 Million and the 2005 POBs. The City's finance team recommends an extension to August 1, 2044. Such an extension can reduce General Fund expenses needed to pay CalPERS costs from regular General Fund revenues by an average of approximately \$7 million per year through 2034. Because of the term extension, the City would be paying debt service on the proposed refinancing bonds through 2044 instead of 2034. Therefore, there would be debt service that would be paid from general fund revenues following 2034 which would not be there with no term extension. However, the term extension would lower the huge hump of required debt service prior to 2034 and more manageably distribute the obligation for the City. The proposed Authorizing Resolution allows for an extension of the amortization period of the 2022 Refunding Bonds through 2044. Other alternatives which were looked at were keeping it at the same term or extending the term to 2054. The finance team believes 2044 is an appropriate term there is a good balance between cash flow savings to the General Fund through 2034 and the extra interest payments after 2034 to provide lesser burden on the general fund now. The refunding of the bonds does not deal with the other \$360 Million in unfunded liability or any future unfunded liability. The City will have to deal with this in the future. One recent item approved by the City Council was the 115 Pension Trust and staff will be working on plans to reduce liability overall.

### **Underwriter's Discount**

The proposed authorizing resolution sets a not to exceed amount for the fee paid to the bond underwriters of 0.4% of the principal amount of the Series 2022 Refunding Bonds. The underwriting firms retained by the City for the Series 2022 Refunding Bonds are Loop Capital and Hilltop Securities. It is notable that this amount is an increase from the original amount authorized for the underwriters. Please review the section entitled increased fees below.

### **Cash defeasance of the 1999 Bonds**

The proposed resolution provides for the transfer of up to \$2.5 million to pay off the 1999 Pension Obligation Bonds. This is necessary to eliminate the complex and cumbersome covenants and legally mandated cash flow provisions for both the 1999 Bonds and the 2005 B-1 Bonds and 2005 B-2 Bonds. The proposed structure of the Series 2022 Refunding Bonds will result in full reimbursement of this amount to the City within a combination of the FY 2023 and FY 2024 budget cycle from cash flow savings to both the General Fund and the pension tax override. This is a cost to the City to

prepay the 1999 Bonds prior to their maturity but it will strengthen the security on the 2022 Bonds so they will not have to be subordinate to the 1999 Bonds in any respect.

Note that while a loan of \$2.5 million is authorized, the outstanding par value of the 1999 Bonds is \$2.1 million. The difference is the estimated cost of fully funding an escrow to pay principal and interest on the 1999 Bonds through their maturity date of August 1, 2029.

### **Approval of Preliminary Official Statement**

In order to effect a public sale of the Series 2022 Refunding Bonds to the underwriters, the City is required under federal securities laws and regulations to prepare a preliminary official statement (the "Preliminary Official Statement") disclosing material information about the City and the Series 2022 Refunding Bonds. The proposed resolution approves the form of Preliminary Official Statement presented to this meeting together with such changes, insertions and omissions as the Authorized Officer, acting alone, may, upon consultation with Best Best & Krieger LLP, the City's disclosure counsel, require or approve.

The attached Preliminary Official Statement has been reviewed and approved for transmittal to the City Council by the City's financing team. The distribution of the Preliminary Official Statement by the City is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the Preliminary Official Statement to include all facts that would be material to an investor in the Series 2022 Refunding Bonds. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the Series 2022 Refunding Bonds. If the City Council concludes that the Preliminary Official Statement includes all facts that would be material to an investor in the Series 2022 Refunding Bonds, it must adopt a resolution that authorizes staff to execute a certificate to the effect that the Preliminary Official Statement has been "deemed final."

The Securities and Exchange Commission (the "SEC"), the agency with regulatory authority over the City's compliance with the federal securities laws, has issued guidance as to the duties of the City Council with respect to its approval of the Preliminary Official Statement. In its "Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors" (Release No. 36761 / January 24, 1996) (the "Release"), the SEC indicated that, if a member of the City Council has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the Series 2022 Refunding Bonds, whether relating to their repayment, tax-exempt status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should endeavor to discover whether such facts are adequately disclosed in the Preliminary Official Statement. In the Release, the SEC indicated that the steps that a member of the City Council could take include becoming familiar with the Preliminary Official Statement and questioning staff and consultants about the disclosure of such facts.

The entire document should be reviewed by the Council, however, set forth below are sections of the Preliminary Official Statement of particular importance.

Section 1. Plan of Financing. This section discusses the payment of the swaps together with the refunding of the 2005 Bonds.

Section 2. Security and Sources of Repayment for the Series 2022 Refunding Bonds. This section summarizes the sources of repayment for the Series 2022 Refunding Bonds which includes a discussion of the Pension Tax Over-ride and the General Fund.

Section 3. Risks Factors. This section discusses risks inherent to the ownership of the Series 2022 Refunding Bonds and discusses the risks existing in the City and the State of California which could have a negative impact on the tax revenue sources to the General Fund and the Pension Tax Over-ride.

Section 4. The City and Appendix A Information Regarding the City of Richmond. These two parts of the POS, one in the body of the document and the Appendix A. The body of the POS contains a very general description, and the Appendix A is very detailed in the discussion of the City, its outstanding obligations, revenue sources, and known impacts to the General Fund.

#### **Approval of Continuing Disclosure Certificate**

The continuing disclosure certificate is attached as Appendix F to the Preliminary Official Statement. It describes the City's obligations to provide annual reports and notices of certain of listed events so long as the Series 2022 Refunding Bonds are outstanding. This document is required in order to assist the underwriters to comply with federal securities laws. This allows the City to keep current the information in the market for future purchasers of its bonds and requires it to disclose certain material facts if they happen subsequent to the bond issue.

#### **Approval of Bond Purchase Agreement**

This document sets for the conditions under which the bond underwriting firms will commit to purchasing the Series 2022 Refunding Bonds from the City and reselling them to investors. The proposed resolution approves the form of the Bond Purchase Agreement in substantially the form presented to this meeting, together with such changes, insertions and omissions as an Authorized Officer, acting alone, may, upon consultation Jones Hall, A Professional Law Corporation, as Bond Counsel ("Bond Counsel"), require or approve. The purchase price for the Series 2022 Refunding Bonds, interest rates and other pricing related information in the Bond Purchase Agreement will be determined on the date the bonds are priced by the underwriters in the market, which is currently anticipated to occur in late August or September. The Purchase agreement, among other items, contains many representations of the City relative to the Official Statement and its completeness and other representations related to litigation and finances.

### Approval of Escrow Agreements

These agreements are between the City and US Bank, serving as both trustee and escrow agent to the City. The funds provided from the Series 2022 Refunding Bonds or from the City's own cash to pay the remaining principal and interest on the 2005 B-1 Bonds, the 2005 B-2 Bonds and the 1999 Bonds must be held in escrow until the respective call dates on the 2005 B-1 Bonds and 2005 B-2 Bonds, and until the final maturity on the 1999 Bonds. These funds will be invested as permitted by the original bond documents until needed to pay off the 2005 Bonds and the 1999 Bonds. The escrow agreements set forth the terms and conditions for these escrows. The proposed resolution approves the form of the forms of the Escrow Agreements in substantially the form presented to this meeting, together with such changes, insertions and omissions as an Authorized Officer, acting alone, may, upon consultation with Bond Counsel, require or approve. The escrow will be verified by a verification agent.

### Other Agreements

The resolution also approves other agreements, like insurance agreements, or swap termination agreements as may be necessary to effectuate the purposes of the refunding.

### Increased Fees

All of the City's consultants and the Underwriters have requested increased fees due to the complexity of the transaction. The City has received a letter from the underwriters with their request and the proposed increases and a summary from the municipal advisor for the proposed increases in the fees of bond counsel, disclosure counsel and the municipal advisor. The requests are attached as Attachment 6. City staff is requesting that the City Council approve an increase that is approximately half of that requested and is illustrated in the table below. The City's municipal advisor has recommended that the underwriter's fee is warranted due to the current volatility of the market. Furthermore, the City Attorney's Office and City staff members are continuing to negotiate with the consultants

<b>Firm</b>	<b>Best Best &amp; Krieger</b>	<b>Jones Hall</b>	<b>NHA Advisors</b>	<b>Henry Gardner</b>	<b>Underwriters (assumes \$155 million par value)</b>	<b>Total</b>
<b>Role</b>	Disclosure Counsel	Bond Counsel	Municipal advisor	Consultant		
<b>Original Contract Amount</b>	50,000	55,000	110,000	15,000	465,000	695,000
<b>Proposed New Contract Amount</b>	65,000	75,000	130,000	20,000	620,000	910,000
<b>Difference</b>	15,000	20,000	20,000	5,000	155,000	215,000
<b>Payable from bond proceeds</b>	Yes	Yes	Yes	Yes	Yes	Yes

**DOCUMENTS ATTACHED:**

- Attachment 1 – A Resolution of the City Council of the City of Richmond Authorizing the Sale of its Taxable Pension Refunding Bonds, Series 2022 to Refund Certain Outstanding Taxable Pension Funding Bonds of the City, Approving an Official Statement for Such Bonds, Approving the Form of and Authorizing the Execution of a Bond Purchase Agreement, A Continuing Disclosure Certificate and Escrow Agreements in Connection Therewith, and Approving and Directing Related Matters
- Attachment 2 – Preliminary Official Statement for the Series 2022 Bonds
- Attachment 3 – Bond Purchase Agreement for the Series 2022 Bonds
- Attachment 4 – Escrow Agreements for the Series 2022 Bonds
- Attachment 5 – First Supplemental Indenture for the Series 2022 Bonds
- Attachment 6 – Requests