

## **RESOLUTION NO. 14-055**

### **RESOLUTION AUTHORIZING THE REFUNDING OF THE OUTSTANDING 2004 CERTIFICATES OF PARTICIPATION; APPROVING THE FORMS OF AND AUTHORIZING AND DIRECTING EXECUTION AND DELIVERY OF LEASE AGREEMENT, SITE AND FACILITY LEASE AND ESCROW AGREEMENT; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATED THERETO**

#### **FINDINGS**

1. The City has heretofore issued 2004 Golf Course Certificates of Participation in the original amount of \$3,960,000, which are presently outstanding in the approximate aggregate principal amount of \$3,220,000 (the "Prior Obligations"), the proceeds of which were used to finance certain additions, betterments, extensions and improvements to the City's Golf Course (the "Golf Course").
2. The City Council, on February 6, 2013, expressed its desire to refund the Prior Obligations (the "Refunding"), and retained The Weist Law Firm as bond counsel (the "Bond Counsel") to take legal action and to prepare and submit to the appropriate parties all proceedings, agreements and other documents as shall be necessary and customary in connection with the refunding of the Prior Obligations.
3. Mid-way through the Refunding process, the City determined that it was in the best interest of the City to lease the Golf Course to a private company specializing in golf course management and operations (the "Management Lease").
4. The Management Lease unavoidably requires the City to take all appropriate action necessary to convert the tax status of the Prior Obligations from tax-exempt to taxable.
5. City staff has worked with the City Attorney and Bond Counsel to develop a legal financing structure that accomplishes the Refunding on taxable basis, while still providing savings to the City, and the City Council, after due investigation and deliberation, determined that it is in the interests of the City at this time to provide for the Refunding and complete legal defeasance of the Prior Obligations.
6. For the purpose of providing for the funds necessary to consummate the Refunding, the City has proposed to lease the Golf Course site and facilities to Umpqua Bank, an Oregon State Chartered Bank (the "Bank") pursuant to a Site and Facility Lease (the "Site Lease"), dated as of August 1, 2014, by and between the Bank and the City, pursuant to which the Bank agrees to make an upfront lump sum payment in the amount necessary to successfully accomplish the Refinancing (the "Financing Proceeds").
7. The Bank has proposed to sublease the Site and Facility back to the City pursuant to a Lease Agreement (the "Lease Agreement"), dated as of August 1, 2014, by and between the Bank and the City, pursuant to which the City will make lease payments, sufficient in amount to pay back the debt service on the Financing Proceeds advanced by the Bank under the Site Lease.
8. To properly account for the Refunding, and cause the legal defeasance of all Prior Obligations, it is now appropriate and necessary for the City to approve the form of Escrow Agreement (the "Escrow

Agreement”), dated as of August 1, 2014 (the “Escrow Agreement”), pursuant to which The Bank of New York Mellon Trust Company, N. A., as Escrow Agent (the “Escrow Agent”) will irrevocably hold and invest all Financing Proceeds for a period of approximately thirty (30) days, and then deploy such invested funds to prepay all outstanding Prior Obligations in accordance with the specific terms of the Escrow Agreement.

9. The City Council, with the aid of its staff, has reviewed the Site Lease, the Lease Agreement, and the Escrow Agreement, the forms of which are on file with the City Clerk, and the Council wishes at this time to approve the foregoing documents (collectively, the “Refinancing Documents”) as being in the public interests of the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:**

1. The foregoing Findings are adopted as findings of the City Council as though set forth fully herein.
2. The Mayor, Mayor Pro tempore, City Manager, Finance Director, City Clerk, and any other person authorized by the Council to act on behalf of the City shall each be an “Authorized Representative” of the City for the purposes of structuring and providing for the execution and delivery of the Refunding Documents, and are hereby authorized, jointly and severally, for and in the name of and on behalf of the City, to execute and deliver any and all documents and certificates that may be required to be executed in connection with the Refunding, and to do any and all things and take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions which the Council has approved in this Resolution.
3. The Council hereby authorizes and approves the lease of the Site and Facility to the Bank pursuant to the Site Lease. The Council hereby approves the Site Lease in substantially the form on file with the City Clerk and consents to such revisions, amendments and completions as shall be approved by the City. Any Authorized Representative of the City is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to, the final form of the Site Lease for and in the name and on behalf of the City and the execution thereof shall be conclusive evidence of the Council’s approval of any such additions and changes. The Council hereby authorizes the delivery and performance of the Site Lease.
4. The Council hereby authorizes and approves the sublease of the Site and Facility back from the Bank pursuant to the Lease Agreement. The Council hereby approves the Lease Agreement in substantially the form on file with the City Clerk and consents to such revisions, amendments, and completions as shall be approved by the City. Any Authorized Representative of the City is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to, the final form of the Lease Agreement for and in the name and on behalf of the City and the execution thereof shall be conclusive evidence of the Council’s approval of any such additions and changes. The Council hereby authorizes the delivery and performance of the Lease Agreement.
5. The Financing Proceeds received by the City from the Refunding shall be applied to pay off the entire balance of the City’s outstanding Prior Obligations. The Refunding shall be accomplished pursuant to the Escrow Agreement, in substantially the form on file with the City Clerk together with any changes therein or additions thereto deemed advisable by an Authorized Representative. The Council hereby authorizes and directs any Authorized Representative to execute and deliver said form of the Escrow

Agreement for and in the name of the City. The Council hereby authorizes the delivery and performance of the Escrow Agreement.

6. All actions heretofore taken by the officers and agents of the City with respect to the Refunding are hereby approved, confirmed and ratified. The Mayor, Mayor Pro tempore, City Manager, Finance Director, 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, including requisitions for the payment of costs of issuance, agreements, notices, consents, instruments of conveyance, title reports, insurance policies, warrants, and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the Refunding in accordance with the Refinancing Documents approved herein. Whenever in this Resolution any officer of the City is authorized 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 and confirmed in a closing certificate by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.
7. The City Clerk shall certify to the adoption of this resolution. Notwithstanding the foregoing, such certification and any of the other duties and responsibilities assigned to the City Clerk pursuant to this resolution may be performed by an assistant to the City Clerk with the same force and effect as if performed by the City Clerk hereunder.
8. The Council hereby finds and determines that it has taken all of the foregoing actions, and made all of the foregoing findings, in full compliance with the law, and that all prior proceedings taken with respect to the Refunding were duly considered, and are hereby considered valid and in conformity with the requirements of law.
9. This Resolution shall take effect from and after the date of its passage and adoption.

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**PASSED AND ADOPTED** BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 20<sup>th</sup> day of August, 2014, by the following vote:

AYES: Mayor Kampe, Councilmembers Cohen, Cuneo, Fischer, Huitt, Lucius, Miller

NOES: None

ABSENT: None

APPROVED:

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BILL KAMPE, Mayor

ATTEST:

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ANN CAMEL, Interim City Clerk

APPROVED AS TO FORM:

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DAVID C. LAREDO, City Attorney