

RESOLUTION NO. 19-__

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES AUTHORIZING THE ISSUANCE OF REFUNDING BONDS AND APPROVING AND AUTHORIZING RELATED DOCUMENTS AND ACTIONS

WHEREAS, the City Council (the “City Council”) of the City of Hercules (the “City”) has previously undertaken proceedings pursuant to the terms and provisions of the Municipal Improvement Act of 1913 (Division 12 of the Streets and Highways Code of the State of California) to form the Assessment District No. 2005-1 (John Muir Parkway) of the City of Hercules (the “Assessment District”), and confirm assessments on the parcels therein; and

WHEREAS, the City issued improvement bonds in the amount of \$6,550,345 known as the “City of Hercules Assessment District No. 2005-1 (John Muir Parkway) Limited Obligation Improvement Bonds” (the “2005 Bonds”) in the manner provided in the Improvement Bond Act of 1915 (Division 10 of said Streets and Highways Code); and

WHEREAS, the outstanding 2005 Bonds are secured by the unpaid assessments on properties in the Assessment District; and

WHEREAS, the public interest requires the refunding of the 2005 Bonds and this City Council intends to accomplish the refunding through the levy of reassessments and the issuance of refunding bonds upon the security of such reassessments and certain unpaid assessments; and

WHEREAS, on November 12, 2019, this City Council adopted its “Resolution of the City Council of the City of Hercules Declaring its Intention to Levy Reassessments and to Issue Refunding Bonds” (the “Resolution of Intention”) in and for Reassessment District No. 2005-1 (John Muir Parkway) of the City of Hercules (the “Reassessment District”), and therein directed the making and filing of a reassessment report (the “Report”) in writing, all in accordance with and pursuant to the Refunding Act of 1984 for 1915 Improvement Act Bonds, Division 11.5 of the Streets and Highways Code of California (the “Refunding Act”); and

WHEREAS, the proceedings under the Refunding Act and the Resolution of Intention are now completed, a list of unpaid assessments and reassessments (the “List of Unpaid Assessments and Reassessments”) is on file with the City Clerk, and this City Council wishes to provide for the issuance of refunding improvement bonds hereinafter described and defined as the “Refunding Bonds” on the security of such unpaid reassessments and certain unpaid assessments pursuant to the Refunding Act; and

WHEREAS, the purpose of the issuance of the Refunding Bonds shall be to refund and redeem the 2005 Bonds; and

WHEREAS, there has been submitted to this City Council an agreement (the “Fiscal Agent Agreement”) providing for the issuance of the Refunding Bonds by the City, and the City Council, with the aid of City staff, has reviewed the Fiscal Agent Agreement and found it to be in proper order, and now desires to approve the Fiscal Agent Agreement and the issuance of the Refunding Bonds; and

WHEREAS, there has been presented to this City Council an escrow agreement, relating to the 2005 Bonds (the “Escrow Agreement”), which will be used to refund and redeem the 2005 Bonds and the

City Council now desires to approve such Escrow Agreement in connection with the refunding of the 2005 Bonds; and

WHEREAS, there has been a request for bids pursuant to a Bid and Summary of Terms and Conditions (the “Bid Request”); and

WHEREAS, in response to the Bid Request, Opus Bank (the “Purchaser”) offered the most favorable combination of terms and cost of borrowing in connection with the sale on a direct placement basis of the Refunding Bonds; and

WHEREAS, there has been presented to this City Council the List of Unpaid Assessments and Reassessments showing the unpaid reassessments upon the security of which the Refunding Bonds shall be issued, and this City Council, with the aid of City staff, has reviewed and considered the List of Unpaid Assessments and Reassessments; and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Refunding Bonds and the levy of the reassessments as contemplated by this Resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Refunding Act.

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

1. Unpaid Reassessments. The assessments and reassessments that remain unpaid are as shown on the List of Unpaid Assessments and Reassessments, which is hereby approved and incorporated herein by this reference. The total principal amount of the unpaid assessments is \$3,060,000. For a particular description of the lots, pieces and parcels of land bearing the respective reassessment numbers set forth in the List of Unpaid Reassessments, reference is hereby made to the reassessment and to the reassessment diagram, and any amendments thereto approved by this City Council, all as recorded in the office of the official who is the Superintendent of Streets of the City.
2. Refunding Bonds Authorized. Pursuant to the Refunding Act, this Resolution and the Fiscal Agent Agreement, Refunding Bonds of the City designated as “City of Hercules Reassessment District No. 2005-1 (John Muir Parkway) Limited Obligation Improvement Bonds, Series 2019” in an aggregate principal amount of not to exceed \$3,050,000 are hereby authorized to be issued. The date, manner of payment, interest rate or rates, interest payment dates, denominations, form, registration privileges, manner of execution, place of payment, terms of redemption and other terms, covenants and conditions of the Refunding Bonds shall be as provided in the Fiscal Agent Agreement as finally executed. The first interest payment on the Refunding Bonds may be September 2, 2020; provided that a portion of such interest payment shall be funded.
3. Authorization and Conditions. The Mayor, the City Manager, the Finance Director, the Administrative Services Director, and the City Clerk, or any other City officer or employee authorized by the City Council or by any of the foregoing individuals to undertake any action referenced in this Resolution (each, an “Authorized Officer”) is hereby authorized and directed to execute and deliver the various documents and instruments described in this Resolution, provided that no additions or changes shall authorize an aggregate principal amount of Refunding Bonds in excess of \$3,050,000, a final maturity date of the Refunding Bonds after September 2, 2035, or a stated interest rate on the Refunding Bonds in excess of 2.50% per annum. The approval of such

additions or changes shall be conclusively evidenced by the execution and delivery of such documents or instruments by an Authorized Officer, upon consultation with Stradling Yocca Carlson & Rauth, A Professional Corporation, the City's bond counsel ("Bond Counsel"), Urban Futures, Inc., the City's municipal advisor (the "Municipal Advisor"), and Hilltop Securities, Inc., the City's placement agent (the "Placement Agent").

4. Fiscal Agent Agreement. The proposed form of Fiscal Agent Agreement with respect to the Refunding Bonds, dated as of December 1, 2019, by and between the City and The Bank of New York Mellon Trust Company, N.A., as fiscal agent, is hereby approved, with such additions thereto and changes therein as the officer or officers executing the same deem necessary to cure any ambiguity or defect therein, to insert the offering price(s), interest rate(s), selling compensation, principal amount per maturity, redemption dates and prices and such other related terms and provisions as limited by Section 3 hereof, to conform any provisions therein to the Commitment Letter (as defined below) and to conform to any requirements of the Purchaser. Approval of such changes shall be conclusively evidenced by the execution and delivery of the Fiscal Agent Agreement by one or more Authorized Officers.
5. Escrow Agreement. The refunding of the 2005 Bonds with the proceeds of the Refunding Bonds and other available moneys, in accordance with the provisions of the documents pursuant to which such 2005 Bonds were sold and delivered, and pursuant to the Escrow Agreement is hereby approved, and the form of Escrow Agreement by and between the City and The Bank of New York Mellon Trust Company, N.A., as escrow agent, in the form presented to this City Council at this meeting is hereby approved, with such additions thereto and changes therein as the officer or officers executing the same deem necessary. Approval of such changes shall be conclusively evidenced by the execution and delivery of the Escrow Agreement by one or more Authorized Officers.
6. Placement Agent Agreement. The form of the Placement Agent Agreement between the City and the Placement Agent presented herewith is hereby approved and any one of the Authorized Officers, acting alone, is hereby authorized and directed, for and in the name of the City, to execute the Placement Agent Agreement substantially in the form approved, with such additions thereto and changes therein as the officer or officers executing the same deem necessary. Approval of such changes shall be conclusively evidenced by the execution and delivery of the Placement Agent Agreement by one or more Authorized Officers.
7. Bid Request. The City Council hereby ratifies the distribution of the Bid Request.
8. Sale of Refunding Bonds. The sale of the Refunding Bonds to the Purchaser in conformance with the Purchaser's Term Sheet dated October 15, 2019 (the "Commitment Letter") is hereby ratified and approved subject to Section 3 above and each of the Authorized Officers is hereby authorized and directed to enter into and execute an agreement with the Purchaser relating to the purchase of the Refunding Bonds in form and substance satisfactory to Bond Counsel, the Municipal Advisor and the Placement Agent.
9. Refunding Bonds Prepared and Delivered. Upon the sale of the Refunding Bonds to the Purchaser, the Refunding Bonds shall be prepared, authenticated and delivered, all in accordance with the applicable terms of the Fiscal Agent Agreement, and each of the Authorized Officers is hereby authorized and directed to take such actions as are required under the Fiscal Agent Agreement or

the agreement with the Purchaser (if any) to complete all actions required to evidence the delivery of the Refunding Bonds upon the receipt of the purchase price thereof from the Purchaser.

10. Good Faith Estimates. The City Council acknowledges that the good faith estimates required by Section 5852.1 of the California Government Code are disclosed in the City Council agenda staff report with respect to the issuance of the Refunding Bonds and are available to the public at the meeting at which this Resolution is approved.
11. Actions. All actions heretofore taken by the officers and agents of the City with respect to the establishment of the Reassessment District and the sale and issuance of the Refunding Bonds, including but not limited to the distribution of the Bid Request and acceptance of the Commitment Letter, are hereby approved, confirmed and ratified, and the proper officers of the City are hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements, contracts, and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Refunding Bonds in accordance with this Resolution, the Fiscal Agent Agreement and any certificate, agreement, contract, and other document described in the documents herein approved.
12. Effective Date. This resolution shall take effect from and after its adoption.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 12th day of November, 2019 by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Dan Romero, Mayor
Mayor

Attest:

Lori Martin, MMC
Administrative Services Director/City Clerk