

COUNCIL RESOLUTION No. 19-2018

A RESOLUTION OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE EXECUTION AND DELIVERY OF FINANCING AGREEMENTS, ESCROW AGREEMENTS, AND RELATED SALE DOCUMENTS; PLEDGING THE CITY'S FULL FAITH AND CREDIT TO THE FINANCING PAYMENTS DUE UNDER THE FINANCING AGREEMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF THE CITY OF MILWAUKIE, OREGON FULL FAITH AND CREDIT OBLIGATIONS, IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$21,000,000 TO FINANCE CAPITAL CONSTRUCTION AND IMPROVEMENTS RELATED TO STREETS, SIDEWALKS AND VARIOUS OTHER TRANSPORTATION PROJECTS AND FOR PAYMENT OF COSTS OF ISSUANCE; DESIGNATING AUTHORIZED REPRESENTATIVES AND DELEGATING AUTHORITY; DECLARING AN INTENT TO REIMBURSE; AND RELATED MATTERS.

WHEREAS, the City Council (the "City Council") of the City of Milwaukie, Oregon (the "City") finds that it is financially feasible and in the City's best interest to finance (1) the costs of design, acquisition, construction, improvement and equipping of, and additions, replacements, expansions and/or improvements of capital projects related to streets, sidewalks and various other transportation projects, (2) the funding of one or more debt service reserve funds, if necessary and (3) related financing and issuance costs (collectively, the "Project"); and

WHEREAS, the City is authorized pursuant to Oregon Revised Statutes ("ORS") Section 271.390 (i) to enter into financing agreements, lease-purchase agreements or other contracts of purchase for any real or personal property that the City Council determines is needed and to provide for the issuance of certificates of participation in the payment obligations of the City under such financing agreements, lease-purchase agreements or other contracts of purchase and (ii) to pledge lawfully available funds to payment of such financing agreements, lease-purchase agreements or other contracts of purchase; and

WHEREAS, after consultation with its financial advisor, the City finds it is in the best interests of the City to authorize the execution and delivery of one or more taxable or tax-exempt Financing Agreements (collectively, the "Financing Agreement") between the City and an escrow agent appointed pursuant to Section 9 hereof (the "Escrow Agent") and one or more Escrow Agreements (collectively, the "Escrow Agreement") between the City and the Escrow Agent, to provide the terms for the execution, delivery and sale of certificates of participation in the principal and interest components payable under the Financing Agreement in the form of one or more series of full faith and credit obligations (the "Obligations"); and

WHEREAS, the City expects to pay debt service with respect to the Obligations from street maintenance fees, the City's portion of state and local gas taxes, and other transportation-related revenues; and

WHEREAS, the City anticipates incurring expenditures ("Expenditures") in connection with the Project and wishes to declare its official intent to reimburse itself with the proceeds of the Obligations for qualifying Expenditures incurred in connection with the Project in conformity with the requirements of the Internal Revenue Code and United States Treasury Regulations Section 1.150-2; and

WHEREAS, the City adopts this Resolution (i) to authorize the execution and delivery of the Financing Agreement, and the Escrow Agreement, (ii) to provide the terms under which the City may sell the Obligations through a public competitive sale or a negotiated sale and enter into the Financing Agreement and the Escrow Agreement, (iii) to provide the terms of execution, delivery and sale of the Obligations, in one or more series, evidencing and representing the payment obligations of the City under the Financing Agreement and (iv) to designate certain officials and employees of the City as authorized representatives to take action on the City's behalf.

NOW, THEREFORE, BE IT RESOLVED, by the City of Milwaukie, Oregon:

Section 1. Authorization of the Obligations and Related Agreements. The City hereby authorizes the execution and delivery of the Financing Agreement and the Escrow Agreement, and related documents and the execution and delivery of the Obligations, in one or more series, by the Escrow Agent, in an aggregate principal amount not to exceed \$21,000,000. The proceeds of the Obligations received by the City pursuant to the terms of the Financing Agreement and the Escrow Agreement shall be used to pay all or a portion of the costs of the Project. The true interest cost of each series of Obligations shall not exceed 4.5% per annum. The Obligations shall have a final maturity not later than 30 years from the date of their respective issuance. The Obligations shall be subject to optional prepayment without penalty no later than 10 years following the date the Obligations are executed and delivered. Notwithstanding anything to the contrary in this Resolution, all Obligations shall be executed and delivered simultaneously, and not from time to time.

The Obligations shall be subject to a book-entry only system of ownership and transfer as provided in Section 6 hereof.

The remaining terms of the Obligations, the Financing Agreement, the Escrow Agreement and such other documents necessary or relating to the sale, execution and delivery of the Obligations shall be established as provided in Section 9 hereof.

The City hereby authorizes the Obligations to be sold by negotiated sale or by a public competitive sale and delegates to the Authorized Representative (as defined in Section 2 hereof) the authority to establish the terms for the sale as set forth in Section 9 hereof.

Section 2. Authorized Representative. The City authorizes and directs each of the City Manager, the Finance Director or the designee of any of them (each acting individually or collectively, an "Authorized Representative") to act on behalf of the City and execute and deliver the Financing Agreement, the Escrow Agreement and such other agreements, certificates and documents necessary or related to the sale, execution, delivery and administration of the Obligations and to determine the remaining terms of the Obligations to be established as set forth in Section 9 hereof.

Section 3. Security. The Financing Payments under the Financing Agreement shall be secured by and payable from the City's general non-restricted revenues and other funds that are lawfully available for that purpose, including the proceeds of the Financing Agreement and revenues from an ad valorem tax authorized to be levied under the City's permanent rate limit under sections 11 and 11b, Article XI of the Oregon Constitution, and revenues derived from

other taxes, if any, levied by the City in accordance with and subject to limitations and restrictions imposed under applicable law or contract, that are not dedicated, restricted or obligated by law or contract to an inconsistent expenditure or use. The City pledges its full faith and credit and taxing powers to the payment of the Financing Payments as contemplated by ORS 287A.315, or any successor statute. The registered owners of the Obligations will not have a lien or security interest on the Project financed or refinanced with the proceeds of the Financing Agreement.

Section 4. Form of Obligations. The Obligations shall be prepared in book-entry only form by Special Counsel in substantially the form approved by the Authorized Representative and the Escrow Agent. The Obligations may be printed or typewritten.

Section 5. Authentication, Registration, Payment, Exchange and Transfer.

(a) None of the Obligations shall be entitled to any right or benefit under this Resolution unless an authorized officer of the registrar appointed pursuant to Section 9 hereof (the "Registrar") shall have authenticated it. The date of authentication shall be the date the Registered Owner's name is listed on the register for the Obligations (the "Register").

(b) All Obligations shall be in registered form. The Registrar shall authenticate all Obligations to be delivered on the closing date of the transaction and shall additionally authenticate all Obligations properly surrendered for exchange or transfer pursuant to this Resolution.

(c) The ownership of all Obligations shall be entered in the Register maintained by the Registrar, and the City and the Registrar may treat the person listed as owner in the Register as the owner of the Obligations for all purposes.

(d) The Registrar shall mail or cause to be delivered the amount due under each Obligations to the registered owner at the address appearing on the Register on the fifteenth (15th) day of the month preceding the payment date (the "Record Date"). If payment is so mailed, neither the City nor the Registrar shall have any further liability to any party for such payment.

(e) The Obligations may be exchanged for obligations representing the same aggregate principal component payment amounts with the same principal payment date in different authorized denominations, and the Obligations may be transferred to other owners if the Registered Owners submit the following to the Registrar:

(1) written instructions for exchange or transfer satisfactory to the Registrar, signed by the Registered Owner or his attorney in fact and guaranteed or witnessed in a manner satisfactory to the Registrar; and

(2) the Obligations to be exchanged or transferred.

(f) The Registrar shall not be required to exchange or transfer any Obligations submitted to it during any period beginning with a Record Date and ending on the next following payment date; however, such Obligations shall be exchanged or transferred promptly following that payment date.

(g) The Registrar shall not be required to exchange or transfer any Obligations that have been designated for prepayment if such Obligations are submitted to the Registrar during the 15-day period preceding the designated prepayment date.

(h) For purposes of this section, Obligations shall be considered submitted to the Registrar on the date the Registrar actually receives the materials described in subsection (e) of this Section 5.

(i) In the event any Obligation is mutilated, lost, stolen or destroyed, the Registrar may issue a new Obligation of like principal payment date, interest component and denomination if the asserted owner of such Obligation provides to the Registrar and the City an affidavit, certificate or other reliable proof that the Registrar or the City reasonably finds protects the City from conflicting claims for payment under the Obligations.

(j) The City may alter these provisions regarding registration, exchange and transfer by mailing notification of the altered provisions to all Registered Owners and the Registrar. The altered provisions shall take effect on the date stated in the notice, which shall not be earlier than 45 days after notice is mailed.

Section 6. Book-Entry System. During any time that the Obligations are held in a book-entry-only system (the "Book-Entry System"), the registered owner of all of the Obligations shall be The Depository Trust Company, New York, New York ("DTC"), and the Obligations shall be registered in the name of Cede & Co., as nominee for DTC. The City has entered into a Blanket Issuer Letter of Representations (the "Issuer Letter") wherein the City represents that it will comply with the requirements stated in DTC's Operational Arrangements as they may be amended from time to time.

Under the Book-Entry System, the Obligations shall be initially executed and delivered in the form of a single fully registered obligation certificate, one for each Series and maturity of the Obligations. Upon initial execution and delivery, the ownership of such Obligations shall be registered by the Registrar on the registration books in the name of Cede & Co., as nominee of DTC. The City and the Registrar may treat DTC (or its nominee) as the sole and exclusive registered owner (the "Registered Owner") of the Obligations registered in its name for the purposes of: (i) payment of the principal component evidenced and represented by such Obligations; (ii) prepayment price of, and premium, if any, or interest component evidenced and represented by the Obligations; (iii) selecting the Obligations or portions thereof to be redeemed, if any; (iii) giving notice as required under this Resolution; (v) registering the transfer of Obligations; and (vi) obtaining any consent or other action to be taken by the owners and for all other purposes whatsoever; and neither the Registrar nor the City shall be affected by any notice to the contrary.

The Registrar shall not have any responsibility or obligation to any person claiming a beneficial ownership interest in the Obligations under or through DTC or any DTC Participant ("Participant"), or any other person that is not shown on the registration books of the Registrar as being a registered owner, with respect to: (i) the accuracy of any records maintained by DTC or any Participant; (ii) the payment by DTC or any Participant of any amount in respect of the principal component evidenced and represented by or prepayment price of or interest component evidenced and represented by the Obligations; (iii) any notice or direction which is

permitted or required to be given to or received from owners under this Resolution or the Obligations; (iv) the selection by DTC or any DTC Participant of any person to receive payment in the event of a partial prepayment of the Obligations; or (v) any consent given or other action taken by DTC as owner; nor shall any DTC Participant or any such person be deemed to be a third party beneficiary of any owners' rights under this Resolution or the Obligations. The Registrar shall pay from moneys available under the Escrow Agreement all principal components evidenced and represented by and premium, if any, and interest components evidenced and represented by the Obligations only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations under the Financing Agreement and the Registrar's obligations under the Escrow Agreement and the Obligations with respect to the principal components evidenced and represented by and premium, if any, and interest evidenced and represented by the Obligations to the extent of the sum or sums so paid. So long as the Obligations are held in the Book-Entry System, no person other than DTC shall receive an authenticated Obligation for each separately stated principal component payment date evidencing the obligation of the Registrar to make payments of principal components evidenced and represented by the Obligations and premium, if any, and interest components evidenced and represented by the Obligations pursuant to this Resolution. Upon delivery by DTC to the Registrar of DTC's written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions of this Resolution with respect to transfers of Obligations, the term "Cede & Co.," in this Resolution shall refer to such new nominee of DTC.

At any time it determines that it is in the best interests of the owners, the City may notify the Registrar, and the Registrar will subsequently notify DTC, whereupon DTC will notify the DTC Participants, of the availability through DTC of Obligation certificates. In such event, the Registrar shall issue, transfer and exchange, at the City's expense, Obligation certificates as requested in writing by DTC in appropriate amounts. DTC may determine to discontinue providing its services with respect to the Obligations at any time by giving written notice to the Registrar and discharging its responsibilities with respect thereto under applicable law. If DTC resigns as securities depository for the Obligations, such Obligation certificates shall be delivered pursuant to this section. Under such circumstances (if there is no successor securities depository), the Registrar shall be obligated to deliver Obligation certificates as described in this Resolution, provided that the expense in connection therewith shall be paid by the City. In the event Obligation certificates are executed and delivered, the provisions of this Resolution shall apply to, among other things, the transfer and exchange of such Obligation certificates and the method of payment of principal components evidenced and represented by the Obligations, premium, if any, and interest components evidenced and represented by such Obligations. Whenever DTC requests the Registrar to do so, the Registrar will cooperate with DTC in taking appropriate action after written notice (a) to make available one or more separate Obligation certificates evidencing the Obligations to any DTC Participant having Obligations credited to its DTC account, or (b) to arrange for another securities depository to maintain custody of certificates evidencing the Obligations.

Section 7. Prepayment. Amounts payable by the City under the Financing Agreement and amounts payable under the Obligations may be subject to optional,

mandatory, extraordinary and/or conditional prepayment prior to stated principal component payment dates as determined by the Authorized Representative pursuant to Section 9 hereof.

Section 8. Tax-Exempt Status and Covenant as to Arbitrage; Reimbursement.

(a) The City covenants to comply with the instructions and requirements of the Tax Certificate to be executed upon delivery of the Obligations. This covenant shall survive payment in full or defeasance of the Obligations.

(b) The City hereby declares its official intent to use proceeds of the tax-exempt obligations to reimburse Expenditures. This declaration is made solely for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations. This declaration does not obligate the City to make any expenditure, incur any indebtedness, or proceed with the Project.

Section 9. Delegation for Establishment of Terms and Sale of the Obligations. Each Authorized Representative is hereby authorized and directed, on behalf of the City without further approval of the City Council to:

(a) appoint an Escrow Agent and Registrar for the Obligations;

(b) establish the series designations, the principal and interest component payment dates, principal component amounts, prepayment provisions, if any, interest component amounts, premium and/or discount, if any, denominations and all other terms for the Financing Agreement and the Obligations;

(c) establish the method of sale of the Obligations as authorized in Section 1 hereof, and if the Obligations are sold on a negotiated basis, negotiate, execute and deliver one or more bond purchase contracts in the form approved by the Authorized Representative and such other agreements, certificates or sale documents as are necessary in connection therewith, or if the Obligations are sold on in a public competitive sale, approve the final form of and cause one or more Official Notices of Obligation Sale (the "Notice") for one or more competitive sales, substantially in the form approved by the Authorized Representative to be published electronically and award the successful bid or reject the bids for the Obligations, as directed by this Section 9;

(d) make any covenants or agreements necessary or desirable to obtain favorable financing terms for the Obligations, including without limitation, a pledge of the City's full faith and credit and, if desirable, a pledge of other amounts available to the City;

(e) negotiate the terms of, and execute and deliver the Financing Agreement and the Escrow Agreement;

(f) approve and authorize the preparation and distribution of one or more preliminary and final official statements relating to the Obligations;

(g) obtain ratings on the Obligations if determined by the Authorized Representative to be in the best interest of the City and expend Obligation proceeds to pay for such ratings;

(h) obtain credit enhancement for the Obligations and execute and deliver any related agreements or other documents;

(i) approve the form of the Obligations and take such actions as are necessary to qualify the Obligations for the book-entry system of DTC;

(j) approve, execute and deliver one or more Continuing Disclosure Certificates pursuant to the Securities and Exchange Commission Rule 15c2-12, as amended;

(k) enter into covenants regarding the use of the proceeds of the Obligations received by the City pursuant to the Financing Agreement and the use of the Project to maintain, if applicable, the tax-exempt status of the Obligations;

(l) approve, execute and deliver closing documents and certificates relating to the sale of the Obligations and the execution and delivery of the Financing Agreement, the Escrow Agreement and the Obligations;

(m) execute and deliver certificates specifying the actions taken pursuant to this Section 9, and any other certificates, documents or agreements that an Authorized Representative determines are desirable to execute, deliver and administer the Financing Agreement and the Escrow Agreement and otherwise to sell, deliver and administer the Obligations in accordance with this Resolution.

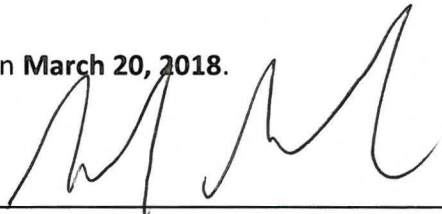
Section 10. Procedures for Sale of the Obligations. Pursuant to Sections 1 and 9 hereof, the Authorized Representative shall establish the method of sale of the Obligations. If the Obligations are sold pursuant to a public competitive sale, the Authorized Representative shall cause the Notice, or a summary thereof, to be published electronically on the Internet prior to the sale date stated in the Notice. For a competitive sale, bids to purchase the Obligations shall be received and reviewed on the date specified by the Authorized Representative in the Notice or upon such later date determined by the Authorized Representative if the sale is postponed based on market or other conditions. The Authorized Representative is authorized, on behalf of the City, to accept or reject the bids for the Obligations. The Authorized Representative may postpone the sale of the Obligations to a later date, cancel the sale based upon market conditions or, alternatively, enter into a negotiated sale of the Obligations pursuant to terms determined and approved by the Authorized Representative and as authorized by this Resolution.

Section 11. Defeasance. The City may defease any of its Obligations under the Financing Agreement by setting aside, with a duly appointed escrow agent, in a special escrow account irrevocably pledged to the payment of the principal and interest components of the Financing Agreement to be defeased, cash or direct obligations of the United States of America, including obligations of any federal agencies to the extent they are unconditionally guaranteed by the United States of America, in an amount which, in the opinion of a nationally recognized expert in the field of mathematical calculations relating to tax-exempt obligations, is sufficient without reinvestment to pay all principal components and interest components of the defeased Financing Agreement until the principal payment date or any earlier prepayment date. The obligations of the City under the Financing Agreement that have been defeased pursuant to this Section shall be deemed paid and no longer outstanding, and shall cease to be entitled to any lien, benefit or security under this Resolution, the Financing Agreement or the Escrow Agreement except the right to receive payment from such special escrow account.

Section 12. Resolution to Constitute Contract. In consideration of the purchase and acceptance of any or all of the Obligations by those who shall own the same from time to time (the "Obligation Owners"), the provisions of this Resolution shall be part of the contract of the City with the Obligation Owners and shall be deemed to constitute a contract between the City and the Obligation Owners pursuant to ORS 287A.315 and ORS 287A.325, or any successor statute. The covenants, pledges, representations and warranties contained in this Resolution, or in the closing documents executed in connection with the Obligations, including without limitation the City's covenants and pledges contained in Section 3 hereof, and the other covenants and agreements herein set forth to be performed by or on behalf of the City shall be contracts for the equal benefit, protection and security of the Obligation Owners, all of which shall be of equal rank without preference, priority or distinction of any of such Obligations over any other thereof, except as expressly provided in or pursuant to this Resolution.

Section 13. Effective Date. This Resolution shall take effect immediately upon its adoption by the City Council.

Introduced and adopted by the City Council on **March 20, 2018.**



Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis, PC



Scott Stauffer, City Recorder



City Attorney