

RESOLUTION NO. 2308

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF FULL FAITH AND CREDIT OBLIGATIONS TO FINANCE CAPITAL PROJECTS; AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE AGENCY; DESIGNATING AN AUTHORIZED REPRESENTATIVE; AND RELATED MATTERS.

RECITALS:

- A. City of Hermiston, Umatilla County, Oregon (the “**City**”), is authorized by Oregon Revised Statutes (“**ORS**”) Sections 271.390 and 287A.315 to (i) enter into financing agreements to finance and refinance real and personal property that the City determines is needed, (ii) pledge its full faith and credit, and (iii) pay the costs of issuance of such financing agreements; and
- B. The Charter of the City does not (1) prohibit the City from entering into a financing agreement and pledging its full faith and credit as security for a financing agreement, nor (2) require a non-appropriation clause to be included in a financing agreement; and
- C. The City has determined that capital projects are needed including improving, constructing, and equipping the Library, City Hall, Public Safety Center, park and recreation buildings, Eastern Oregon Trade and Event Center, streets, water system and related improvements (collectively, the “**Projects**”); and
- D. Street and water improvement projects are included in the North Hermiston Urban Renewal Plan and Report (the “**North Plan**”) of the Urban Renewal Agency of the City of Hermiston (the “**Agency**”).
- E. The City anticipates incurring expenditures (the “**Expenditures**”) to finance the costs of the Projects and wishes to declare its official intent to reimburse itself for any Expenditures it may make from City funds on the Projects from the proceeds of a financing agreement, the interest on which may be excluded from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the “**Code**”); and
- F. The City desires to authorize the execution and delivery of a financing agreement(s) to finance the Projects and related matters.
- G. The City further desires to enter into an intergovernmental agreement(s) (the “**2024 IGA**”) with the Agency to receive funds from the Agency to repay the portion of the Agreement allocable to projects in the North Plan including the street and water projects and costs incidental thereto (the “**Agency Projects**”).

- H. The estimated weighted average life of the financing agreement will not exceed the estimated dollar weighted average life of the Projects; and
- I. The Agreement will be issued as a full faith and credit obligation of the City, secured by the general, non-restricted revenues of the City and other funds that may be available for that purpose, including taxes levied within the restrictions of Sections 11 and 11b, Article XI of the Constitution of the State of Oregon.

NOW, THEREFORE, THE CITY OF HERMISTON RESOLVES AS FOLLOWS:

Section 1. Authorization. The Council of the City hereby authorizes:

A. Financing Agreement. The City authorizes the execution and delivery of one or more full faith and credit financing agreements (the “**Financing Agreement**”) in a form satisfactory to the Authorized Representative (defined herein). The aggregate principal amount of the Financing Agreement may not exceed \$20,000,000 and the proceeds shall be used to finance the Projects. The Financing Agreement may consist of one or more financing agreements and may be issued as taxable and/or tax-exempt obligations at true effective rates as determined by the Authorized Representative and shall mature on date(s) set by the Authorized Representative.

B. Method of Sale. As determined by the Authorized Representative, the Financing Agreement may be entered into directly with a lender (a “**Private Placement**”) and obligations representing the principal amount payable under the Financing Agreement may be sold to an underwriter by negotiated or competitive sale (a “**Public Offering**”).

C. Private Placement. The Financing Agreement may be evidenced by a note and may be entered into with a lender(s) as determined by the Authorized Representative.

D. Public Offering. The Financing Agreement may be issued through a Public Offering. If the Financing Agreement is issued through a Public Offering, the City authorizes the issuance and sale of Full Faith and Credit Obligations, Series 2024 (the “**Series 2024 Obligations**”) which shall be issued by the escrow agent (the “**Escrow Agent**”), for and on behalf of the City, representing the principal amount payable under the Financing Agreement. The Series 2024 Obligations may be issued in one or more series, shall be issued at a true effective rate as determined by the Authorized Representative and shall mature on dates set by the Authorized Representative. The City authorizes the execution and delivery of one or more escrow agreements between the City and the Escrow Agent (the “**Escrow Agreement**”), in a form satisfactory to the Authorized Representative, pursuant to which the Escrow Agent shall execute the Series 2024 Obligations representing the principal amount payable under the Financing Agreement, and evidencing the right of the Escrow Agent to receive the City’s financing payments under the Financing Agreement (the “**Financing Payments**”).

E. Intergovernmental Agreement. The City Council authorizes the 2024 IGA with the Agency for the Agency Projects and to receive funds from the Agency to repay the portion of the Financing Agreement allocable to the Agency Projects.

Section 2. Security.

The Financing Agreement shall be payable from the lawfully available, non-restricted funds of the City, including the unspent proceeds of the Financing Agreement, and other funds which may be available for that purpose, including taxes levied within the restrictions of Sections 11 and 11b, Article XI of the Constitution of the State of Oregon. The obligation of the City to make payments under the Financing Agreement shall be a full faith and credit obligation of the City, not subject to annual appropriation. The Financing Agreement shall not be secured by any real or personal property of the City. The City may issue additional agreements on parity with the Financing Agreement.

Section 3. Designation of Authorized Representative.

The City Council of the City hereby authorizes the City Manager or the Assistant City Manager (the “**Authorized Representative**”) to act as the authorized representative on behalf of the City and determine the remaining terms of the Financing Agreement as delegated herein.

Section 4. Delegation of Final Terms of the Financing Agreement and Additional Documents.

The Authorized Representative is authorized, on behalf of the City, to:

A. determine the method of sale, determine the provisions of the notice of sale if sold at a competitive sale, act upon bids received, negotiate the terms of, and execute and deliver a purchase agreement if sold at a negotiated sale, and negotiate the terms of, and execute and deliver documents if privately placed with a lender.

B. establish the maturity and interest payment dates, dated dates, principal amounts, capitalized interest (if any), optional and/or mandatory redemption provisions, interest rates, draw-down provisions, amortization schedules, covenants, fees, denominations, and all other terms under which the Financing Agreement and Series 2024 Obligations shall be issued, sold, executed, and delivered;

C. negotiate the terms and approve of the Financing Agreement and the Escrow Agreement, if applicable, as the Authorized Representative determines to be in the best interest of the City, and to execute and deliver the Financing Agreement and the Escrow Agreement;

D. deem final, approve of and authorize the distribution of any preliminary and final Official Statements to prospective purchasers of the Series 2024 Obligations;

E. determine whether the Series 2024 Obligations shall be Book-Entry certificates and to take such actions as are necessary to qualify the Series 2024 Obligations for the Book-Entry System of DTC, including the execution of a Blanket Issuer Letter of Representations;

F. apply for ratings for the Series 2024 Obligations and determine whether to purchase municipal bond insurance or other credit enhancement, negotiate and enter into agreements with providers of credit enhancers, and expend proceeds to pay credit enhancement fees;

G. determine if the Financing Agreement will be issued on a tax-exempt basis and/or a taxable basis; and all other terms of the Financing Agreement and approve, execute and deliver the Financing Agreement;

H. designate the Financing Agreement and the Series 2024 Obligations as a “qualified tax-exempt obligation” pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”) if they qualify for such designation;

I. approve, execute and deliver a Tax Certificate for that portion of the Financing Agreement issued on a tax-exempt basis;

J. approve, execute and deliver a continuing disclosure certificate pursuant to SEC Rule 15c2-12, as amended (17 CFR Part 240, §240.15c2-12) for each series of Series 2024 Obligations;

K. engage the services of any professionals whose services the Authorized Representative determines are necessary or desirable for the Series 2024 Obligations;

L. determine which fund or funds are available to pay the Financing Agreement;

M. negotiate the terms of and enter into the 2024 IGA with the Agency;

N. execute and deliver a certificate specifying the action taken pursuant to this Resolution, and any other documents, agreements or certificates that the Authorized Representative determines are necessary and desirable to issue, sell and deliver the Financing Agreement and Series 2024 Obligations in accordance with this Resolution; and

O. take any other actions which the Authorized Representative determines are necessary or desirable to finance the Project in accordance with this Resolution.

Section 5. Maintenance of Tax-Exempt Status.

The City hereby covenants for the benefit of the Owners of the Financing Agreement issued on a tax-exempt basis to use the Financing Agreement proceeds and the Projects financed with such proceeds in the manner required, and to otherwise comply with

all provisions of the Code, which are required so that interest paid on the Financing Agreement will not be includable in gross income of the Owners of such Financing Agreement for federal income tax purposes. The City makes the following specific covenants with respect to the Code:

A. The City will not take any action or omit any action if it would cause the Financing Agreement to become “arbitrage bonds” under Section 148 of the Code.

B. The City shall operate the Projects financed with a tax-exempt Financing Agreement so that the Financing Agreement does not become a “private activity bond” within the meaning of Section 141 of the Code.

C. The City shall comply with appropriate Code reporting requirements.

D. The City shall pay, when due, all rebates and penalties with respect to the Financing Agreement which are required by Section 148(f) of the Code.

The covenants contained in this Section 5 and any covenants in the closing documents for the Financing Agreement shall constitute contracts with the owners of the Financing Agreement, and shall be enforceable by them. The Authorized Representative may enter into covenants on behalf of the City to protect the tax-exempt status of the Financing Agreement.

Section 6. Conditional Notice of Optional Redemption.

Any notice of optional redemption to the Paying Agent or to the Owners may state that the optional redemption is conditional upon receipt by the Paying Agent of moneys sufficient to pay the redemption price of such Series 2024 Obligations or upon the satisfaction of any other condition, and/or that such notice may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such redemption price if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission or of the failure of any such condition shall be given by the Paying Agent to affected Series 2024 Owners of Obligations as promptly as practicable upon the failure of such condition or the occurrence of such other event.

Section 7. Appointment of Placement Agent/Underwriter.

The City appoints Piper Sandler & Co. as placement agent/underwriter for the issuance of the Financing Agreement and the Series 2024 Obligations.

Section 8. Continuing Disclosure.

The City covenants and agrees to comply with and carry out all of the provisions of any Continuing Disclosure Agreement which may be negotiated with the underwriter. Notwithstanding any other provision of this Resolution, failure by the City to comply with

the Continuing Disclosure Agreement will not constitute an event of default; however, owners may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section and the Continuing Disclosure Certificate.

Section 9. Preliminary and Final Official Statement.

The City may prepare or cause to be prepared a preliminary official statement for the Series 2024 Obligations which shall be available for distribution to prospective purchasers. In addition, an official statement may be prepared and shall be ready for delivery to the purchasers of the Series 2024 Obligations no later than the seventh (7th) business day after the sale of the Series 2024 Obligations. When the City determines that the final official statement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained in the official statement not misleading in the light of the circumstances under which they are made, the Authorized Representative is authorized to certify the accuracy of the official statement on behalf of the City.

Section 10. Closing of the Financing Agreement.

The Authorized Representative is authorized to negotiate the terms and conditions of a term sheet or commitment letter in the case of a Private Placement or a purchase agreement in the case of a Public Offering. The Authorized Representative is authorized to execute the commitment letter or the purchase agreement, as the case may be, for and on behalf of the City and to execute such additional documents, including a Tax Certificate, and to perform any and all other things or acts necessary for the sale and delivery of the Financing Agreement or Series 2024 Obligations as herein authorized. Such acts of the Authorized Representative are for and on behalf of and are authorized by the Council of the City of the City.

Section 11. Resolution to Constitute Contract.

In consideration of the purchase and acceptance of any or all of the Financing Agreement or Series 2024 Obligations by those who shall own the same from time to time (the "Owners"), the provisions of this Resolution shall be part of the contract of the City with the Owners and shall be deemed to be and shall constitute a contract between the City and the Owners. The covenants, pledges, representations and warranties contained in this Resolution or in the closing documents executed in connection with the Financing Agreement or Series 2024 Obligations 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 Owners, all of which shall be of equal rank without preference, priority or distinction of any of such Financing Agreement and Series 2024 Obligations over any other thereof, except as expressly provided in or pursuant to this Resolution.

Section 12. Bank Designation.

For purposes of paragraph (3) of Section 265(b) of the Code, the Authorized Representative is authorized to designate the Financing Agreement as a “qualified tax-exempt obligation” provided the Financing Agreement does not constitute a private activity bond as defined in Section 141 of the Code and not more than \$10,000,000 aggregate principal amount of obligations, the interest on which is excludable under Section 103(a) of the Code from gross income for federal income tax purposes (excluding, however, private activity bonds other than qualified 501(c)(3) bonds) including the Financing Agreement have been or reasonably expects to be issued by the City, including all subordinate entities of the City, if any, during the current calendar year in which the Financing Agreement is entered into.

Section 13. Defeasance.

A. If the Financing Agreement is issued through a Public Offering, the City may defease the Series 2024 Obligations by irrevocably depositing with the Escrow Agent or an independent escrow agent, Defeasance Obligations in such amount which will, together with the interest to accrue thereon, be sufficient to pay all Financing Payments attributable to such Obligations, as and when the same become due and payable, as evidenced by a verification report. Obligations which have been defeased shall cease and terminate, except for the obligation of the City to pay the Additional Charges specified in the Financing Agreement and to pay Financing Payments from the amount so deposited, and of the Escrow Agent to apply amounts on deposit to the payment of the Financing Payments. For the purposes of this section, “Defeasance Obligations” means non-callable direct obligations of the United States of America or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. If the Financing Agreement is entered into directly with a lender in a Private Placement, paragraph A above does not apply and the Authorized Representative shall determine the requirements for defeasance.

Section 14. Post Issuance Compliance Procedures.

The Authorized Representative is authorized to adopt, or modify existing, procedures regarding post issuance compliance related to tax-exempt and taxable obligations of the City.

Section 15. Reimbursement.

The City hereby declares its official intent to reimburse itself with the proceeds of the Financing Agreement for any of Expenditures incurred by it prior to the issuance of the Financing Agreement.

Section 16. Effective Date.

This resolution shall take effect on the date of its adoption.

PASSED by the Common Council this 12th day of February 2024.

SIGNED by the Mayor this 12th day of February 2024.

Dr. David Drotzmann, MAYOR

ATTEST:

Lilly Alarcon-Strong, CMC, CITY RECORDER