

City of St. Helens
RESOLUTION NO. 1899

**A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A
FINANCING AGREEMENT AND ESCROW AGREEMENT; AUTHORIZING THE
ISSUANCE AND NEGOTIATED SALE OF FULL FAITH AND CREDIT
REFUNDING OBLIGATIONS TO REFUND OUTSTANDING LOANS;
DESIGNATING AN AUTHORIZED REPRESENTATIVE, SPECIAL COUNSEL,
AND UNDERWRITER; AND RELATED MATTERS**

WHEREAS, the City of St. Helens, Columbia County, Oregon (the "City") is authorized pursuant to the Constitution and laws of the State of Oregon, namely, Oregon Revised Statutes Sections 271.390, 287A.315 and 287A.360, to (1) enter into financing agreements to refinance real and personal property the City determines is needed, (2) pledge its full faith and credit and taxing power in connection with such financing agreements, and (3) pay the costs of issuance of such financing agreements; and

WHEREAS, 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 the financing agreement, nor (2) require a non-appropriation clause to be included in the financing agreement; and

WHEREAS, on or about July 27, 2010, the City entered into a Clean Water State Revolving Fund Loan Agreement R80163 with the State of Oregon, acting by and through its Department of Environmental Quality ("DEQ") in the original, amended principal amount of \$4,558,019 (the "DEQ Loan") to finance improvements to the wastewater system described in the City's application dated May 15, 2003; and

WHEREAS, the DEQ Loan is subject to optional prepayment by the City without penalty on any business day upon 24 hours prior written notice, plus accrued and unpaid interest through the date of prepayment; and

WHEREAS, on or about June 29, 2015, the City entered into a Financing Agreement (Real Property) with Columbia State Bank in the original principal amount of \$1,000,000 (the "Columbia Bank Loan") to finance the acquisition of an approximately 22-acre site along the Columbia River; and

WHEREAS, the Columbia Bank Loan is subject to optional prepayment by the City, with a prepayment fee through June 28, 2021 equal to 3% of the Outstanding Balance to be prepaid, plus accrued and unpaid interest through the date of prepayment, on any payment date (December 15 and June 15) upon 30 days prior notice; and

WHEREAS, on or about August 10, 2016, the City entered into a Master Tax-Exempt Lease/Purchase Agreement with U.S. Bancorp Government Leasing and Finance, Inc. in the original principal amount of \$747,631 (the "US Bank Loan") to finance an Energy Savings Performance Contract providing certain energy conservation measures; and

WHEREAS, the US Bank Loan is subject to optional prepayment by the City in whole at any time by the payment of the applicable Termination Amount set forth in Exhibit 1 (Payment Schedule), plus accrued and unpaid interest through the date of prepayment; and

WHEREAS, on or about June 20, 2013, the City entered into a Financing Agreement with Capital One Public Funding, Inc. in the original principal amount of \$6,142,000 (the "Capital One Water Refunding Loan") to refund loans between the City and the Oregon Business Development Department (formerly, the Oregon Economic and Community Development Department) (Loan G04004 and Loan S04004) for water system improvements; and

WHEREAS, the Capital One Water Refunding Loan is subject to optional prepayment by the City, in whole or in part, through May 31, 2023 at 101% of the amount prepaid, plus accrued and unpaid interest through the date of prepayment, on any Business Day upon 30 days prior notice; and

WHEREAS, on or about June 20, 2013, the City entered into a Financing Agreement with Capital One Public Funding, Inc. in the original principal amount of \$1,912,000 (the "Capital One Sewer Refunding Loan") to refund a loan between the City and DEQ (Loan R80161) for sewer system improvements; and

WHEREAS, the Capital One Sewer Refunding Loan is subject to optional prepayment by the City, in whole or in part, through May 31, 2023 at 101% of the amount prepaid, plus accrued and unpaid interest through the date of prepayment, on any Business Day upon 30 days prior notice; and

WHEREAS, based on current market conditions, present value savings may be achieved by issuing refunding obligations for the purpose of refunding all or a portion of the DEQ Loan, the Columbia Bank Loan, the US Bank Loan, the Capital One Water Refunding Loan, and the Capital One Sewer Refunding Loan (collectively, the "Loans") and paying the costs of issuance of the refunding obligations; and

WHEREAS, the estimated weighted average life of the financing agreement will not exceed the estimated dollar weighted average life of that portion of the facilities financed with the Loans being refinanced; and

WHEREAS, the financing agreement will be issued as a full faith and credit obligation of the City payable from the lawfully available, non-restricted funds of the City 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.

NOW, THEREFORE, THE CITY OF ST. HELENS, OREGON RESOLVES AS FOLLOWS:

Section 1. Definitions. Unless the context clearly requires otherwise, capitalized terms not defined in this Section 1 shall have the meanings defined for such terms in the Escrow Agreement and capitalized terms used in this Resolution which are defined in this Section 1 shall have the following meanings:

"Authorized Representative" means the Mayor, the City Administrator or the Assistant City Administrator, or person designated by the Council to act as Authorized Representative under this Resolution.

"Code" means the Internal Revenue Code of 1986, as amended, including regulations, rulings and judicial decisions promulgated thereunder.

“City” means the City of St. Helens, Oregon.

“Escrow Agent” means the Escrow Agent under the Escrow Agreement, or its successors.

“Escrow Agreement” means the Escrow Agreement between the Escrow Agent and the City.

“Financing Agreement” means the City’s Financing Agreement that is authorized by Section 2 of this Resolution.

“Financing Payments” means amounts, including the principal and interest payments, due under the Financing Agreement.

“Obligations” means the obligations issued by the Escrow Agent under the Escrow Agreement which represent undivided ownership interest in the Financing Payments.

Section 2. Authorization. The City hereby authorizes the execution and delivery of one or more Financing Agreements in a form satisfactory to the Authorized Representative in an amount sufficient to refund all or a portion of the Loans and to pay related costs of issuance. The final maturity shall not be more than 20 years from the date of the Financing Agreement and the all-in interest cost on the Financing Agreement shall not exceed 4.00%.

Section 3. Financing Payments. The Financing Payments shall be payable from the lawfully available, non-restricted funds of the City 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 Financing Payments shall be a full faith and credit obligation of the City. The Registered Owners of the Obligations shall not have a lien or security interest on the property financed with the proceeds of the Financing Agreement or the Obligations.

Section 4. Designation of Authorized Representative. The City hereby authorizes the Authorized Representative to act as the authorized representative on behalf of the City and determine the remaining terms of the Financing Agreement and Obligations pursuant to this Resolution.

Section 5. Delegation of Final Terms and Sale of Financing Agreement and Obligations and Additional Documents. The Authorized Representative is authorized, on behalf of the City, to:

- a. Determine whether it is desirable to refinance all, a portion of, or none of the Loans;
- b. Determine the dated date, interest payment dates, amount, maturity date, capitalized interest (if any), optional and/or mandatory redemption or prepayment provisions, defeasance provisions, interest rates, denominations, serial and term maturities, payment provisions, events of default, remedies, fees, whether the Obligations are issued on a taxable and/or tax-exempt basis, determine if the Obligations are issued in one or more series, and other terms under which the Financing Agreement and Obligations shall be issued, sold, executed, and delivered;
- c. Negotiate, execute, and deliver the Financing Agreement. Subject to the limitations of this Resolution, the Financing Agreement may be in such form and contain such terms as the Authorized Representative may approve;
- d. Negotiate the terms and approve of the Obligations;

e. Negotiate, execute, and deliver the Escrow Agreement, which provides for the issuance of the Obligations. Subject to the limitations of this Resolution and the Escrow Agreement, the Obligations may be in such form and contain such terms as the Authorized Representative may approve;

f. Determine which fund or funds are available to pay the Financing Payments;

g. Deem final and authorize the distribution of a preliminary official statement for the Obligations, authorize the preparation and distribution of a final official statement or other disclosure document for the Obligations, and enter into agreements to provide continuing disclosure for owners of the Obligations;

h. Appoint and engage the services of the Escrow Agent, paying agents, financial adviser, verification agents, and any other professionals whose services are desirable for the refinancing;

i. Apply for ratings for the Obligations, determine whether to purchase municipal bond insurance or obtain other forms of credit enhancement for the Financing Agreement or the Obligations, including a reserve surety policy, enter into agreements with the providers of credit enhancement, and execute, deliver, and acquire related documents, if applicable;

j. Call, defease, redeem, and prepay all or a portion of the Loans;

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

l. Approve, execute, and deliver a continuing disclosure certificate pursuant to SEC Rule 15c2-12, as amended (17 CFR Part 240, § 240.15c2-12) for the Obligations;

m. Approve, execute and deliver a Tax Certificate and 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 Obligations in accordance with this Resolution; and

n. Execute and deliver any other certificates or documents and take any other actions which the Authorized Representative determines are desirable to refinance the Loans in accordance with this Resolution.

Section 6. Maintenance of Tax-Exempt Status. The City hereby covenants to use the Financing Agreement and Obligation proceeds and the facilities refinanced with such proceeds in the manner required, and to otherwise comply with all provisions of the Code which are required for interest paid on the Financing Agreement to be excluded from gross income for federal income tax purposes if the Obligations are issued on a tax-exempt basis. The City makes the following specific covenants with respect to the Code if the Obligations are issued as a tax-exempt obligation:

a. The City will not take any action or omit any action if it would cause the Financing Agreement to become an arbitrage bond under Section 148 of the Code;

b. The City shall operate the facilities refinanced with the Financing Agreement and

Obligation proceeds 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; and
- 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 and any covenants in the closing documents for the Financing Agreement shall constitute contracts with the owners of the Obligations 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 7. Bank Designation. The City designates the Financing Agreement for purposes of paragraph (3) of Section 265(b) of the Code as a "qualified tax-exempt obligation" since 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 shall be issued by the City, including all subordinate entities of the City, if any, during the calendar year 2020.

Section 8. Escrow Deposit Agreement. The Authorized Representative is authorized to enter into an Escrow Deposit Agreement for the establishment of an Escrow Deposit Fund if deemed necessary or desirable to complete the refunding.

Section 9. Appointment of Special Counsel. The City appoints Mersereau Shannon LLP as special counsel to the City for the Financing Agreement and Obligations.

Section 10. Appointment of Underwriter. The City appoints D.A. Davidson & Co. as the underwriter for the issuance of the Obligations.

Section 11. Continuing Disclosure. The City covenants and agrees to comply with and carry out all of the provisions of the Continuing Disclosure Agreement to 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, any Registered Owner 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 12. Preliminary and Final Official Statement. The City shall prepare or cause to be prepared a preliminary official statement for the Obligations which shall be available for distribution to prospective purchasers. In addition, an official statement shall be prepared and ready for delivery to the purchasers of the Obligations no later than the seventh (7th) business day after the sale of the 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 13. Closing of the Sale and Delivery of the Financing Agreement. The Authorized

Representative is authorized to negotiate with the Underwriter as to the terms and conditions of a Purchase Agreement providing for the private negotiated sale of the Financing Agreement. The Authorized Representative is authorized to execute the Purchase Agreement 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 and the Obligations and the refunding and redemption of the Loans as herein authorized. Such acts of the Authorized Representative are for and on behalf of and are authorized by the Council of the City.

Section 14. Effective Date. This Resolution takes effect upon adoption by the Council.

Approved and adopted by the City Council on September 16, 2020, by the following vote:

Ayes:

Nays:

Rick Scholl, Mayor

ATTEST:

Kathy Payne, City Recorder