

RESOLUTION NO. 2165

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FULL FAITH AND CREDIT FINANCING AGREEMENT FOR THE PURPOSE OF REFINANCING OUTSTANDING OBLIGATIONS OF THE CITY; DESIGNATING AN AUTHORIZED REPRESENTATIVE, PLACEMENT AGENT/UNDERWRITER AND SPECIAL COUNSEL; 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 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. On or about April 21, 2010, the City entered into a Clean Water State Revolving Fund Loan Agreement R43770 in the original principal amount of \$4,047,328 (the “R43770 Loan”) to finance improvements to the wastewater treatment system described in the City’s application dated December 31, 2008; and
- C. On or about December 27, 2010, the City entered into a Clean Water State Revolving Fund Loan Agreement R43771 in the original principal amount of \$11,409,645 (the “R43771 Loan”) to finance improvements to the wastewater treatment system described in the City’s application dated December 31, 2008; and
- D. The R43770 Loan and R43771 Loan may be prepaid without penalty in whole or in part upon 24 hours prior written notice; and
- E. The City is advised refinancing the R43770 Loan and R43771 Loan will result in debt service savings to the City; and
- D. The City desires to refinance the R43770 Loan and R43771 Loan (collectively, the “Loans”); and
- E. The City desires to authorize the execution and delivery of one or more financing agreements and escrow agreements to refinance the Loans and related matters; and
- F. The estimated weighted average life of the financing agreements will not exceed the estimated dollar weighted average life of that portion of the facilities financed with the Loans being refinanced.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF HERMISTON, UMATILLA COUNTY, OREGON 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 shall be in an amount sufficient to refinance the Loans and pay the costs of issuance of the Financing Agreement. The Financing Agreement may consist of one or more financing agreements and may be issued as taxable and/or tax-exempt obligations at an interest rate not to exceed five percent (5.0%) per annum as determined by the Authorized Representative and shall mature not later than thirty (30) years from the date of issuance on date(s) set by the Authorized Representative.

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

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 City authorizes the issuance and sale of Full Faith and Credit Obligations, Series 2020 (the “Series 2020 Obligations”) which shall be issued by the escrow agent, for and on behalf of the City, representing the principal amount payable under the Financing Agreement. The Series 2020 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 2020 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.

Section 2. Security.

The Financing Agreement shall be a full faith and credit obligation of the City 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.

Section 3. Designation of Authorized Representative.

The City Council of the City hereby authorizes the City Manager or the Finance Director (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 2020 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 2020 Obligations;

E. determine whether the Series 2020 Obligations shall be Book-Entry certificates and to take such actions as are necessary to qualify the Series 2020 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 2020 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 2020 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 2020 Obligations;

K. engage the services of any professionals whose services the Authorized Representative determines are necessary or desirable, including the appointment of an escrow agent for the Series 2020 Obligations;

L. 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 2020 Obligations in accordance with this Resolution and take any other actions that the Authorized Representative determines are necessary or desirable to refinance the Loans with the Financing Agreement in accordance with this Resolution; and

M. take any other actions which the Authorized Representative determines are necessary or desirable to refinance the Loans 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 facilities refinanced 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 facilities refinanced 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 2020 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 2020 Owners of Obligations as promptly as practicable upon the failure of such condition or the occurrence of such other event.

Section 7. Defeasance.

The City may defease the Series 2020 Obligations by setting aside, with a duly appointed escrow agent, in a special escrow account irrevocably pledged to the payment of the Series 2020 Obligations to be defeased, cash or direct obligations of the United States in an amount which, in the opinion of an independent certified public accountant, is sufficient without reinvestment to pay all principal and interest on the defeased Series 2020 Obligations until their maturity date or any earlier redemption date. Series 2020 Obligations which have been defeased pursuant to this Resolution shall be deemed paid and no longer outstanding, and shall cease to be entitled to any lien, benefit or security under this Resolution except the right to receive payment from such special escrow account.

Section 8. Appointment of Independent Municipal Financial Advisor

If it is deemed advisable by the Authorized Representative, the Authorized Representative is authorized to appoint an independent municipal financial advisor to the City.

Section 9. 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 2020 Obligations.

Section 10. Appointment of Special Counsel.

The City appoints Mersereau Shannon LLP as special counsel to the City for the issuance of the Financing Agreement and the Series 2020 Obligations.

Section 11. Continuing Disclosure.

The City covenants and agrees to comply with and carry out all of the provisions of a 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, any 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 may prepare or cause to be prepared a preliminary official statement for the Series 2020 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 2020 Obligations no later than the seventh (7th) business day after the sale of the Series 2020 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 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 2020 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 14. Resolution to Constitute Contract.

In consideration of the purchase and acceptance of any or all of the Financing Agreement or Series 2020 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 2020 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 2020 Obligations over any other thereof, except as expressly provided in or pursuant to this Resolution.

Section 15. 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 16. 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.

This resolution is adopted by the Council of the City of Hermiston, Umatilla County, Oregon this 24th day of August 2020.

CITY OF HERMISTON
UMATILLA COUNTY, OREGON

By _____
Mayor

ATTEST:

By _____
City Recorder