

## RESOLUTION NO. 2987

A RESOLUTION PROVIDING FOR THE AUTHORIZATION OF INTERIM FINANCING FOR THE PURPOSES OF FINANCING A PORTION OF THE COSTS OF ADDITIONS, REPLACEMENTS, EXPANSIONS OR IMPROVEMENTS TO THE CITY'S WATER SYSTEM INFRASTRUCTURE AND TO PAY COSTS OF ISSUANCE RELATED THERETO, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$30,000,000, PURSUANT TO A TAX-EXEMPT NON-REVOLVING LINE OF CREDIT AGREEMENT AND A PROMISSORY NOTE; DESIGNATING AUTHORIZED REPRESENTATIVES AND DELEGATING AUTHORITY; AUTHORIZING THE EXECUTION AND DELIVERY OF SALE DOCUMENTS; AND RELATED MATTERS.

### FINDINGS

A. The City is authorized pursuant to ORS 287A.010, ORS 287A.150 to 287A.350, the laws of the State of Oregon and the City Charter to issue revenue bonds to finance capital improvements, including the Project (as defined below), that the City Council determines are needed.

B. Resolution No. 2971 (the "Bond Resolution") was adopted by the City Council on December 17, 2014, pursuant to ORS 287A.150, authorizing the issuance and negotiated sale, in one or more series, of Water Revenue Bonds (the "Revenue Bonds") in an amount sufficient to produce net proceeds of up to \$63,000,000 to finance the costs of additions, replacements, expansions or improvements to the City's water system and water reclamation infrastructure (the "System"), including the Bridge Creek Pipeline and water treatment facilities, and acquisition of real and personal property and all equipment and appurtenances necessary, useful or convenient thereto (collectively, the "Project"), plus amounts sufficient to fund costs of issuance and required reserves.

C. Pursuant to ORS 287A.150, notice of the proposed Revenue Bonds was published in the Bend Bulletin on December 20, 2014 (the "Notice"). More than sixty (60) days has passed since the publication of the Notice and the referral period for the Bond Resolution has now expired and the City is now authorized to issue Revenue Bonds pursuant to the Bond Resolution.

D. The City Council has determined that it is in the best interests of the City to (i) authorize interim financing (the "Interim Financing") for the Project, (ii) provide the basic terms of the execution, delivery and sale of a Water System Interim Financing Note, Series 2015 (the "Note"), a tax-exempt non-revolving line of credit agreement (the "Interim Financing Agreement") and related financing documents (collectively, the "Interim Financing Documents") and (iii) authorize certain officials of the City of Bend, Oregon (the "City") to execute and deliver documents related to the Interim Financing and to take action on the City's behalf.

E. The City has evaluated proposals submitted in response to a Request for Proposal to provide the Interim Financing, and has determined that it is in the best

interests of the City to select JPMorgan Chase Bank, N.A. (the "Bank") to provide the Interim Financing.

Based on these findings, the City Council resolves as follows:

**SECTION 1. Interim Financing Authorized.** The City Council authorizes the Interim Financing of the Project through the issuance, sale, execution and delivery of its Note in an aggregate principal amount not to exceed \$30,000,000, pursuant to the terms set forth in the Interim Financing Agreement. The proceeds of the Note shall be used for the purpose of providing interim financing or reimbursement of the actual costs of the Project, to pay interest on the Note while it is outstanding, if necessary, and to pay costs of issuance of the Note. The maximum interest rate on the Note shall not exceed twelve percent (12%) per annum. The remaining terms for the issuance of the Note shall be established as provided in Section 7 of this Resolution.

**SECTION 2. Security.** The Note shall not be a general obligation of the City, nor a charge on its tax revenues. As security for the payment of the Note, the City pledges the Net Revenues (as defined below) of the System to the punctual payment of principal and interest on the Note as set forth herein. "Net Revenues" means the gross revenues of the System less payment of operating expenses (all as may be further defined in the Interim Financing Agreement). Pursuant to ORS 287A.310, or any successor provision in law, the pledge of the Net Revenues made by the City under this Resolution and in the Interim Financing Agreement shall be valid and binding upon the execution and delivery of the Interim Financing Agreement.

The owner of the Note will not have a lien on or security interest in the Project or any other property financed with the proceeds of the Note.

**SECTION 3. Designation of Authorized Representative.** The City authorizes and directs each of the City Manager or the Finance Director, or their respective designees (each, an "Authorized Representative") to act on behalf of the City to negotiate, review, execute and deliver the Note, the Interim Financing Agreement and any other Interim Financing Documents that are necessary in connection with the issuance, sale and delivery of the Note as specified in Section 7.

**SECTION 4. Form and Execution of Note; Maturity of Note.** The Note shall be prepared in substantially the form approved by the Authorized Representative and shall be executed on behalf of the City with the manual signature of the Authorized Representative. The Note shall mature on or before June 30, 2017; provided, however, that the Authorized Representative and the Bank may execute a written agreement extending the maturity without further action or approval by the City Council.

**SECTION 5. Prepayment of Note.** The Note may be prepaid prior to maturity as determined by the Authorized Representative pursuant to Section 7 hereof.

**SECTION 6. Tax Covenants.** The City covenants to use the proceeds of the Note, and the facilities financed with the Note, and to otherwise comply with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), so that interest paid on the Note will not be includable in gross income of the holder of the Note for federal income tax purposes. The City specifically covenants:

(a) to comply with the "arbitrage" provisions of Section 148 of the Code, and to pay any rebates to the United States on the gross proceeds of the Note; and

(b) to operate the facilities financed or refinanced with the proceeds of the Note so that the Note is not a "private activity bond" under Section 141 of the Code; and

(c) to comply with all reporting requirements.

The Authorized Representative may enter into covenants on behalf of the City to protect the tax-exempt status of the Note.

**SECTION 7. Delegation for Establishment of Terms and Sale of the Note.**

Each Authorized Representative is hereby authorized and directed, on behalf of the City without further approval of the City Council to:

(a) establish the principal and interest payment dates, principal amounts, prepayment provisions for the Note, if any, interest rates (which may be fixed or variable rates as approved by the Authorized Representative), premiums and discounts, if any, denominations, costs, fees and expenses relating thereto, if any, and all other terms for the Interim Financing Agreement and the Note, including executing an agreement to confirm the interest rate in advance of the date of closing and delivery of the Note to the Bank;

(b) negotiate and make any covenants necessary or desirable to obtain good financing terms for the Note with respect to the pledge of security in the Interim Financing Agreement;

(c) establish in the Interim Financing Agreement, and in any other Interim Financing Documents related to the City's Interim Financing to be issued for the Project, provisions that provide for the use of Net Revenues of the System revenues to pay the principal and interest components of the Interim Financing;

(d) negotiate the terms of the Interim Financing Agreement, including covenants regarding the operation of the System and the rates of System fees and charges that the City must impose, and the terms and conditions under which future obligations may be issued on a parity with the Note, and execute and deliver the Interim Financing Agreement and the Note and any other Interim Financing Documents that are necessary and desirable in connection therewith;

(e) approve, execute and deliver the closing documents and certificates and opinions in connection with the Note and the execution and delivery of the Interim Financing Agreement and any other Interim Financing Documents;

(f) seek any consents, if necessary, from the State of Oregon and any of its agencies that have outstanding loans to the City ("State Loans") in connection with the System, to comply with the provisions of any such State Loans, so that the Interim Financing may be issued with a lien on the Net

Revenues of the System that is at least equal to the lien that secures any State Loan;

(g) enter into covenants regarding the use of the proceeds of the Note and the Project financed with the proceeds of the Note, to maintain the tax-exempt status of the Note; and

(h) execute and deliver a certificate specifying the action taken pursuant to this Section 7, and any other certificates, documents or agreements that the Authorized Representative determines are desirable in connection with the execution and delivery of the Interim Financing Agreement and any other Interim Financing Documents and to sell the Note to the Bank in accordance with this Resolution.

**SECTION 8. Designation of Note Counsel and Financial Advisor.** The City appoints Orrick, Herrington & Sutcliffe LLP, to serve as Note Counsel to the City with respect to the Interim Financing, and Public Financial Management, Inc., as Financial Advisor to the City with respect to the Interim Financing.


**SECTION 9. Binding Agreement of the City.** The covenants, pledges, representations and warranties contained in this Resolution or in the closing documents executed in connection with the Note, including without limitation the City's covenants and pledges contained in Sections 2 and 6 hereof, and the other covenants and agreements herein set forth to be performed by or on behalf of the City shall be for the benefit, protection and security of the Bank, all of which shall be of equal rank without preference, priority or distinction of the Note over any other thereof, except as expressly provided in or pursuant to this Resolution.

**SECTION 10. Effective Date of Resolution.** This Resolution shall take effect immediately upon its adoption by the City Council.

ADOPTED BY ROLL CALL VOTE ON MAY 20, 2015.

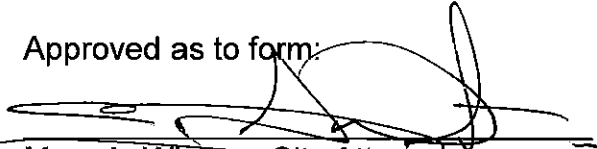
Yes: Jim Clinton, Mayor  
Victor Chudowsky  
Doug Knight  
Sally Russell  
Casey Roats  
Barb Campbell

No: Nathan Boddie

  
\_\_\_\_\_  
Jim Clinton, Mayor

ATTEST:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

Approved as to form:  
  
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Mary A. Winters, City Attorney