

**CITY OF FLORENCE  
ORDINANCE NO. 1, SERIES 2023**

**AN ORDINANCE OF THE CITY OF FLORENCE, OREGON AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE TAXABLE AND TAX-EXEMPT FULL FAITH AND CREDIT FINANCING AGREEMENTS AND NOTES FOR THE PURPOSE OF FINANCING REAL AND PERSONAL PROPERTY IN THE AGGREGATE AMOUNT NOT TO EXCEED \$13,650,000; DESIGNATING AN AUTHORIZED REPRESENTATIVE AND SPECIAL COUNSEL; AND RELATED MATTERS.**

RECITALS:

1. The City of Florence, Oregon (the "City"), is authorized by Oregon Revised Statutes ("ORS") Sections 271.390 and 287A.315 to (i) enter into financing agreements to finance 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
2. The Charter of the City does not (i) prohibit the City from entering into a financing agreement and note and pledging its full faith and credit as security for the financing agreement, nor (ii) require a non-appropriation clause to be included in the financing agreement; and
3. Certain capital projects of the City are needed including the projects listed on Exhibit A attached hereto (collectively, the "Project"); and
4. The City anticipates incurring expenditures (the "Expenditures") to finance the costs of the Project and on February 27, 2023, declared its official intent to reimburse itself for any Expenditures it may make from City funds on the Project 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
5. The City now desires to authorize the execution and delivery of a financing agreement(s) to finance the Project and related matters; and
6. The estimated weighted average life of the financing agreement will not exceed the estimated dollar weighted average life of the Project.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

**Section 1. Financing Agreement and Note.**

The City Council hereby authorizes the execution and delivery of full faith and credit financing agreement(s) and note(s) (the "Financing Agreement") in a form satisfactory to the Authorized Representative (defined herein). The aggregate principal amount of the Financing Agreement may not exceed \$13,650,000 and the proceeds shall be used to finance the Project and 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 a true effective rate(s) as determined by the Authorized Representative and shall mature on date(s) set by the Authorized Representative. The Financing Agreement may be evidenced by a note and may be entered into with a lender(s) as determined by the Authorized Representative.

### **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 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 hereby authorizes the City Manager, Administrative Services Director, or any designee of the 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. negotiate the terms and approve of the Financing Agreement as the Authorized Representative determines to be in the best interest of the City, and to execute and deliver the Financing Agreement;
- 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 shall be issued, sold, executed, and delivered;
- C. 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;
- D. approve, execute and deliver a Tax Certificate for the portion of the Agreement issued on a tax-exempt basis;
- E. engage the services of any professionals whose services the Authorized Representative determines are necessary or desirable;
- F. execute and deliver a certificate specifying the action taken pursuant to this Ordinance, and any other documents, agreements or certificates that the Authorized Representative determines are necessary and desirable to issue, sell and deliver the Financing Agreement in accordance with this Ordinance and take any other actions that the Authorized Representative determines are necessary

or desirable to finance the Project with the Agreement in accordance with this Ordinance; and

- G. take any other actions which the Authorized Representative determines are necessary or desirable to finance the Projects in accordance with this Ordinance.

**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 Project 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 refinanced with tax-exempt Financing Agreement so that the Financing Agreement do not become "private activity bonds" 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.
- E. 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. Appointment of Special Counsel.** The City appoints Mersereau Shannon LLP as special counsel to the City for the issuance of the Financing Agreement.

**Section 7. Closing of the Financing Agreement.** The Authorized Representative is authorized to negotiate the terms and conditions of a commitment letter, the Financing Agreement and related documents. The Authorized Representative is authorized to execute the commitment letter 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 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 8. Ordinance to Constitute Contract.** In consideration of the purchase and acceptance of any or all of the Financing Agreement by those who shall own the same from time to time (the "Owners"), the provisions of this Ordinance 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 Ordinance or in the closing documents executed in connection with the Financing Agreement 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 over any other thereof, except as expressly provided in or pursuant to this Ordinance.

**Section 9. Bank Designation.** For purposes of paragraph (3) of Section 265(b) of the Code, the City designates the Financing Agreement issued on a tax-exempt basis 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 shall 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 10. Post Issuance Compliance Procedures.** The Authorized Representative is authorized to procedures regarding post issuance compliance related to tax-exempt and taxable obligations of the City.

**Section 11. 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 Agreement.

**Section 12. Effective Date.** This Ordinance shall take effect on the date of its adoption.

ADOPTION:

First Reading on the 20<sup>th</sup> day of March, 2023

Second Reading on the 20<sup>th</sup> day of March, 2023

This ordinance is passed and adopted on the 20<sup>th</sup> day of March, 2023.

AYES	5	Councilors: Carp, Beaudreau, Meyer, Wantz	Mayor Ward
NAYES	0		
ABSTAIN	0		
ABSENT	0		

  
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Rob Ward, Mayor

ATTEST:

  
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Lindsey White, City Recorder

## Exhibit A

Water, wastewater, stormwater, street, and public works projects, including:

- 9th Street Preservation
- Rhododendron Drive Realign
- UV System Upgrade
- Gravity Sewer (35th to Siuslaw Village)
- Fuel Farm
- Well 14
- Sewer Line Replacement
- Water Line Replacement

Equipment, including:

- Backhoe
- Dump Truck/Trailer
- Screw Press
- Ford Mavericks
- Combination Sewer Cleaner
- EV Van
- Blower (Phase 2)