

MEMORANDUM

TO: Mayor and City Council

FROM: Roberta Likens, Finance Director

SUBJECT: RESOLUTION AUTHORIZING FULL FAITH AND CREDIT
BORROWINGS TO FINANCE COMMUNITY CENTER ROOF
PROJECT

DATE: March 9, 2022

Background

The City Council awarded the Community Center Roof Repair Project to Richard's Remodeling LLC, in the amount of \$781,328. In the loan proposal, we have included asbestos abatement of approximately \$25,000 and a 15% contingency amount of \$123,672 to address unforeseen costs during the contract period. The roof project is expected to be completed by the end of September, 2022.

Financing proposals were sought in January, with one response from Banner Bank. US Bank responded after the closing of the proposal request but indicated they were not able to be competitive with Banner Bank's submission.

Banner Bank's proposal, simply stated, is a Fixed rate, tax-exempt bank-qualified interest rate of 2.77%, City to make quarterly payments, with bank legal fees and origination fees of \$5,825. The City is responsible for any City legal counsel fees as well. Local Government Law Group has drafted the financing agreement. The City may utilize a draw down period of six months, or shorter, during the construction stage.


Full details are included in the attached Full Faith and Credit Financing Agreement.


Recommendation

That the Council approve the proposed resolution and authorize the City Manager to sign the financing agreements with Banner Bank.

Cost

The face value of the loan plus accrued interest and fees over the course of the loan.


Richard Meyers, City Manager


Roberta Likens, Finance Director

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING FULL FAITH AND CREDIT BORROWINGS TO FINANCE
COMMUNITY CENTER ROOF PROJECT

WHEREAS, the City of Cottage Grove, Oregon (“the “City”) is authorized by Oregon Revised Statutes Section 287A.315 to pledge its full faith and credit and taxing power to secure a financing agreement for real property improvements which the City Council determines is needed; and

WHEREAS, the City finds it desirable to finance up to \$930,000 for a building improvement project to reroof the Community Center Building, including related projects, and may be used to pay the cost of issuance of the loan; and

WHEREAS, Banner Bank (“Bank”) has offered to finance the improvements to the Community Center Building by way of a tax-exempt, bank-qualified, full faith and credit financing agreement in the amount not to exceed \$930,000; and

WHEREAS, Bank financing will consist of the City issuing and the Bank purchasing a Financing Agreement through a private sale to the Bank for direct private placement into the Bank’s portfolio, where it will remain for the life of the Financing Agreement; and

WHEREAS, the financing will be secured by and payable from the City’s general non-restricted revenues and other funds that are lawfully available for that purpose, including revenues from an ad valorem tax authorized to be levied under the City’s permanent rate limit under sections 11 and 11b, Article XI of the Oregon Constitution, and revenues derived from other taxes, if any, levied by the City in accordance with and subject to limitations and restrictions imposed under applicable or contract, that are not dedicated, restricted or obligated by law or contract to an inconsistent expenditure or use. The City pledges its full faith and credit and taxing powers to the repayment of the Agreement as contemplated by ORS 287A.315, and any successor statute. And the full faith, credit and resources of the City will also be pledged for the inclusion in its annual budget of sufficient funds to pay interest and principal payments when due, for the prompt payment of that principal and interest and for compliance with a mandamus order, if necessary.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cottage Grove as follows:

Section 1. Authorization of Financing Agreement. The City is hereby authorized to enter into a Financing Agreement pursuant to ORS 287A.315 to finance the costs of improvements to the Community Center (Community Center Building Improvement Project) and to pay estimated costs of the financing in the amount of \$930,000. The financing agreements authorized by this Section 1 are referred to in this Resolution as the “Financing Agreement.”

Section 2. Determination of Need. The City hereby determines that the Community Center Building Improvement Project is needed.

Section 3. Security. The Financing Agreement shall constitute an unconditional obligation of the City, which is payable from all legally available funds of the City. The full faith and credit of the City is hereby pledged to the punctual payment of the amounts due under the Financing Agreement.

Section 4. Delegation. The City Manager and the Finance Director (each of whom is referred to in this resolution as a “Authorized Officer”) is hereby authorized, on behalf of the City, to:

- (a) Establish the final principal amount, interest rate, payment date, prepayment rights and all other terms of 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 Officer may approve;
- (b) Negotiate, execute and deliver note to evidence amount due under the Financing Agreement;
- (c) Pledge the City’s legally available funds to pay the amounts due under the Financing Agreement;
- (d) Covenant for the benefit of the bank providing the Financing Agreement to comply with all provisions of the Internal Revenue Code of 1986, as amended (the “Code) which is required for the interest paid under the Financing Agreement to be excluded from gross income for federal income tax purposes or issue the Financing Agreements as taxable borrowings;
- (e) Determine that interest on any Financing Agreement will be includable in gross income under the Code;
- (f) Designate the Financing Agreement as a “qualified tax-exempt obligation” pursuant to Section 265(b)(3) of the Code, if applicable; and
- (g) Execute and deliver any other certificates or documents and take any other actions which the City Official determines are desirable to carry out this resolution.

Section 5. Appointment of Note Counsel. The Local Government Law Group P.C. of Eugene, Oregon is appointed as note counsel to the City.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS 14TH DAY OF MARCH, 2022.

Jeffrey D. Gowing, Mayor
Dated: _____

ATTEST:

Richard Meyers, City Manager
Dated: _____

FULL FAITH AND CREDIT FINANCING AGREEMENT

COTTAGE GROVE, OREGON

This Full Faith and Credit Financing Agreement is entered into between the City of Cottage Grove, Oregon (the “Borrower”) and Banner Bank (the “Lender”), as of the Closing Date.

Section 1. Definitions.

For purposes of this Financing Agreement, the following capitalized terms shall have the following meanings, unless the context clearly requires otherwise:

“Banking Day” means any day except a Saturday, a Sunday or any other day on which commercial banks in Oregon are authorized or required by law to close.

“Borrower Legal Counsel” means Borrower Legal Counsel set forth in Exhibit A.

“Borrower Official” means one of the Borrower Officials set forth in Exhibit A, authorized to act as Borrower Official under the Official Action.

“Closing Date” means the Closing Date set forth in Exhibit A.

“Code” means the United States Internal Revenue of 1986, as amended.

“Event of Default” means the occurrence of any of the following: (i) a failure to pay within 10 days after the due date thereof any principal or interest that is required to be paid under this Financing Agreement; (ii) a final determination by the Internal Revenue Service that interest on this Financing Agreement is includable in gross income under the Code because of actions or omissions of the Borrower; (iii) a failure by the Borrower to comply with any of its obligations or to perform any of its duties under this Financing Agreement, other than a failure described in clauses (i) or (ii) of this definition, which failure continues and is not cured for a period of more than 60 days after the Lender has made written demand on the Borrower to cure such failure; or, (iv) a material misrepresentation to the Lender by the Borrower when obtaining this Financing Agreement, as reasonably concluded by the Lender after investigation and discussion with the Borrower.

“Financing Agreement” means this Full Faith and Credit Financing Agreement.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or as otherwise defined by Oregon Law.

“Government Obligations” means direct obligations of the United States, or obligations the principal of and interest on which are fully and unconditionally guaranteed by the United States.

“Interest Rate” means the Interest Rate set forth in Exhibit A, which is a fixed annual interest rate per annum, calculated on a 30/360-day basis.

“Maturity Date” means the Maturity Date set forth in Exhibit A.

“Official Action” means the Borrower’s resolution or ordinance referenced in Exhibit A, and attached hereto, authorizing this Financing agreement.

Section 5. Accounting and Billing.

The Lender shall provide the Borrower with a written accounting of all payments and other transactions relating to this Financing Agreement quarterly. The Lender shall send the Borrower a bill for the amount due on each Financing Agreement payment date not later than seven Banking Days prior to the Payment date.

Section 6. Use of Financing Agreement Proceeds

The Borrower shall apply the amount it receives under this Financing Agreement to pay costs of financing this Project and to pay costs related to this Financing Agreement.

Section 7. Tax-Exemption.

- 7.1. Borrower will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest payable under this Financing Agreement and will not use or permit the use of the Project in such a manner as to cause this Financing Agreement to be a "private activity bond" under Section 141(a) of the Code. Borrower covenants and agrees that it will use the proceeds of this Financing Agreement as soon as practicable and with all reasonable dispatch for the purpose for which this Financing agreement has been entered into and that no part of the proceeds of this Financing Agreement shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of this Financing Agreement, would have cause any portion of this Financing Agreement to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of this Financing Agreement.
- 7.2. Pursuant to Treasury Regulations Section 1.148-7(d), the gross proceeds of this Financing Agreement will be expended for the governmental purposes for which this Financing Agreement was entered into, as follows: at least 15% within six months after the Closing Date, at least 60% within 12 months after the Closing Date, and 100% within 18 months after the Closing Date. If Borrower is unable to comply with Section 1.148-7(d) of the Treasury Regulations, Borrower shall compute rebatable arbitrage on this Financing Agreement and pay rebatable arbitrage to the United States at least once every five years, and within 60 days after payment of the final payment due under this Financing Agreement.
- 7.3. The Borrower hereby designates this Financing Agreement as a "qualified tax-exempt obligation" under Section 265(b) of the Code, if designated Bank Qualified in Exhibit A.
- 7.4. Interest paid pursuant to this Financing Agreement is exempt from State of Oregon personal income taxes.

8.6 The Borrower hereby certifies, recites and declares that all things, conditions and acts required by the Constitution and Statutes of the State of Oregon and by this Financing Agreement to exist, to have happened and to have been performed precedent to and in the execution and the delivery of this Financing Agreement, do exist, have happened and have been performed in due time, form and manner, as required by law, and that this Financing Agreement is a valid and binding obligation of the Borrower which is enforceable against the Borrower in accordance with its terms, except to the extent that enforceability may be limited by i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other laws affecting creditors' rights generally; (ii) the application of equitable principles and the exercise of judicial discretion in appropriate cases; (iii) common law and statutes affecting the enforceability of contractual obligations generally; and (iv) principles of public policy concerning, affecting or limiting the enforcement of rights or remedies against governmental entities such as the Borrower.

Section 9. Covenants of the Borrower.

The Borrower covenants for the benefit of the Lender that while this Financing Agreement is in effect and until full payment of the Outstanding Balance and all accrued and unpaid interest and fees:

- 9.1. Unless otherwise available on the Electronic Municipal Market Access system ("EMMA") or the Borrower's website, the Borrower shall provide Lender with audited annual financial statements prepared by an independent Certified Public Accountant, within 270 days of the close of its Fiscal Year. However, if the Borrower's audited annual financial statements are not available within 270 days after the end of its Fiscal Year, the Borrower shall file its unaudited financial statements for that Fiscal Year with the Lender not later than 270 days after the end of that Fiscal Year, and shall make the audited annual financial statements for that Fiscal Year available on the Borrower's website or EMMA promptly after the audited annual financial statements become available.
- 9.2. Additionally, unless otherwise available on EMMA or the Borrower's website, the Borrower will provide Lender with a copy of its annual budget, as adopted or amended, within 90 days of adoption or amendment. These may be submitted electronically.
- 9.3. The Borrower shall provide the Lender with such additional information as the Lender may reasonably request to the extent permitted by law.

Section 10. Fees, Costs and Expenses.

- 10.1. Lender Fees. The Borrower will pay the Lender's Counsel Fees in the amount set forth in Exhibit A. The Lender may deduct such fee from the purchase price of this Financing Agreement. The Borrower shall pay a Lender's Fee in the amount of the Lender's Fee set forth in Exhibit A.
- 10.2. Costs of Enforcement. If the either party incurs any expenses in connection with enforcing this Financing Agreement, or if the Lender takes collection action under this

Financing Agreement to provide any disclosure regarding operating information or material events to the Municipal Securities Rulemaking Board or any dissemination agent. The Borrower is obligated to provide information to the Lender in connection with this Financing Agreement only as specifically stated in this Financing Agreement.

- 13.2. The Lender has undertaken an independent review of the credit of the Borrower and has been provided with all necessary information. The Lender intends to hold this Financing Agreement until maturity and does not intend to resell.
- 13.3. The Lender may not assign its rights and obligations under this Financing Agreement except to either a “qualified institutional buyer” as defined in Rule 144A(a)(1) promulgated under the Securities Act, as amended, or an “accredited investor” by virtue of being a “bank,” as defined in Section 3(a)(2) of the Securities Act. Lender shall provide notice of such assignments to Borrower and Borrower shall retain a register of such assignments.
- 13.4. The Borrower may not assign its rights and obligations under this Financing Agreement without the prior written consent of the Lender.
- 13.5. The Borrower acknowledges that in entering into this Financing Agreement, the Lender intends to make a loan and to hold the Financing Agreement as one single debt instrument. Accordingly, the Borrower agrees that it will not take affirmative action to:
(i) register this Financing Agreement under the Securities Act or register or otherwise qualify this Financing Agreement for sale under the “Blue Sky” laws and regulations of any state; (ii) obtain CUSIP numbers for this Financing Agreement; (iii) prepare an official statement in connection with the private placement of this Financing Agreement; (iv) close this Financing Agreement through the Depository Trust Company or any similar repository or in book entry form; or (v) list this Financing Agreement on any stock or other securities exchange.

Section 14. Dispute Resolution.

To the extent permitted by applicable law, each of the parties waives any right to have a jury participate in resolving any dispute, whether sounding in contract, tort, or otherwise between the parties arising out of, connected with, related to, or incidental to the relationship between any of them in connection with this Financing Agreement or the transactions contemplated hereby. Instead, any such dispute resolved in court will be resolved in a bench trial without a jury.

Section 15. Miscellaneous.

- 15.1. Any notices required to be given pursuant to this commitment letter or this Financing Agreement shall be given to such party pursuant to the Notice Information for each party set forth in Exhibit A.
- 15.2. All representations, warranties, and agreements contained in this Financing Agreement shall survive the execution, delivery and payment of this Financing Agreement. This Financing Agreement shall constitute a contract between the Borrower and the Lender.

By: _____
Richard Meyers, City Manager

Attachments:

Exhibit A – Specific Terms

Schedule 1 – Amortization Schedule

Exhibit B – Form of Opinion of Borrower Legal Counsel

Exhibit C – Governing Body Action

Frequency: Quarterly, on March 1, June 1, September 1, and December 1, commencing March 1, 2023.

Amortization: See Attached Schedule 1

Prepayment Terms: Borrower may not prepay this Agreement in years one and two. Borrower may prepay this Agreement on or after March 1, 2024; in whole or in part, together with accrued interest to the date of prepayment, on any payment date with fifteen days prior written notice to Lender. Lender will charge a 4% fee on any amounts prepaid during the third year; a 3% fee on any amounts paid during the fourth year; a 2% fee during the fifth year; a 1% fee during the sixth year; and no fee on any amounts prepaid after the sixth year. Prepayments shall not result in a change in the quarterly payment amount, but in an earlier retirement of the term debt.

Lender's Fee: Lender origination fee is \$2,325 (0.25%).

Lender's Counsel Fees: \$3,500 (To be paid by Borrower)

Borrower's Legal Counsel: Carolyn H. Connelly, Local Government Law Group, P.C.

Bank Qualified: Yes. Borrower designates the Financing Agreement as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code.

Notice Address for Each Party:

Borrower:

City of Cottage Grove
400 E. Main Street
Cottage Grove, OR 97424
Attention: City Manager

Lender:

Banner Bank
[Insert Address]
[Insert City, State Zip]