

## RESOLUTION NO. 2977

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BEND, OREGON, AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF A CONTINGENT LOAN AGREEMENT AND RELATED DOCUMENTS; DESIGNATING AUTHORIZED REPRESENTATIVES AND DELEGATING AUTHORITY; AND RELATED MATTERS.

#### Findings

- A. The Bend Urban Renewal Agency (the "Agency") is the urban renewal agency of the City of Bend ("City") under ORS 457.010 to 457.460.
- B. The Bend City Council ("Council") approved the Murphy Crossing Urban Renewal Plan (the "Urban Renewal Plan") for the Murphy Crossing Urban Renewal Area (the "Urban Renewal Area") by Ordinance No. NS-2104, adopted August 20, 2008.
- C. The Agency intends to issue an Urban Renewal Tax Increment Revenue Note, Series 2015 (the "Agency's 2015 Note") to finance or refinance (1) the costs of design, acquisition, construction, improvement and equipping of transportation improvements within the Urban Renewal Area in accordance with the Urban Renewal Plan, and the acquisition of all real and personal property necessary, useful or convenient thereto and (2) related financing and issuance costs. The Agency's 2015 Note will be issued in an amount not exceeding \$3,000,000.
- D. The Bank of the Cascades, as lender to the Agency of the Agency's 2015 Note proceeds (the "Lender"), requires a guarantee by the City to commit to repay amounts owing by the Agency under the Agency's 2015 Note to the extent the payments are not made by the Agency.
- E. The City is authorized by ORS 271.390 and the City Charter to enter into financing agreements, lease-purchase agreements or other contracts of purchase for any real or personal property that the Council determines is needed, and may provide that the obligations of the City under those contracts are payable out of all or any portion of lawfully available funds of the City, and that lawfully available funds may be pledged to the payment of the obligations.
- F. The City and the Agency have determined that it is in the best interests of the City and the Agency to execute and deliver a Contingent Loan Agreement (the "Contingent Loan Agreement"), authorizing, among other things, a commitment by the City to repay amounts owing by the Agency under the Agency's 2015 Note under the circumstances and conditions set forth in the Contingent Loan Agreement, to the extent not paid by the Agency (a "Contingent Loan Payment"), and to provide for the repayment of the indebtedness by the Agency to the City in the event of the City's payment.

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

**Section 1. Authorization of the Contingent Loan Agreement and Related Agreements.** The City authorizes the negotiation, execution and delivery of the

Contingent Loan Agreement. The terms of the Contingent Loan Agreement and the various other documents relating thereto, if any, shall be established by the Authorized Representative, without further approval by the Council.

**Section 2. Authorized Representative.** The City authorizes and directs each of the City Manager, the Finance Director, or the designee of either of them (each, an "Authorized Representative") to act on behalf of the City and execute and deliver the Contingent Loan Agreement and such other documents related thereto.

**Section 3. Security.** The Contingent Loan Payments made under the Contingent Loan Agreement shall be payable from the City's general non-restricted revenues and other lawfully available funds, including revenues derived from other taxes, if any, levied by the City in accordance with and subject to limitations and restrictions imposed under applicable law or contract, that are not dedicated, restricted or obligated by law or contract to other use. The City pledges its full faith and credit and taxing powers to the payment of the Contingent Loan Payments as contemplated by ORS 287A.315, or any successor statute. The Lender will not have a lien on or security interest in the Agency's 2015 Note nor any projects financed with the Agency's 2015 Note.

**Section 4. Appointment of Special Counsel.** The City appoints Orrick, Herrington & Sutcliffe LLP of Portland, Oregon, as special counsel to the City with respect to the Contingent Loan Agreement.

**Section 5. Effective Date of Resolution.** This Resolution shall take effect immediately upon its adoption.

ADOPTED BY ROLL CALL VOTE ON JANUARY 21, 2015.

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

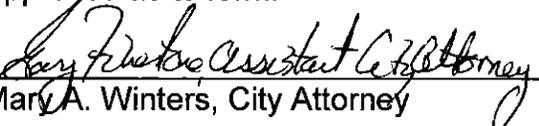
No: None

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

ATTEST:

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

Approved as to form:

  
\_\_\_\_\_  
Mary A. Winters, City Attorney

## CONTINGENT LOAN AGREEMENT

THIS CONTINGENT LOAN AGREEMENT (this "Agreement"), is dated [January \_\_], 2015 and is entered into between the CITY OF BEND, OREGON (the "City") and the BEND URBAN RENEWAL AGENCY OF THE CITY OF BEND, OREGON (the "Agency").

### RECITALS:

WHEREAS, the Agency has been established in accordance with and is organized and exists under the provisions of Oregon Revised Statutes ("ORS") 457.010 to 457.470.

WHEREAS, the City Council of the City approved the Murphy Crossing Urban Renewal Plan (the "Urban Renewal Plan") for the Murphy Crossing Urban Renewal Area (the "Urban Renewal Area") by Ordinance No. NS-2104, adopted August 20, 2008.

WHEREAS, the Agency is authorized by ORS 457.440(8) to incur indebtedness, including obtaining loans and advances in carrying out the Urban Renewal Plan and the portion of taxes received under ORS 457.440, or funds from other sources may be irrevocably pledged for the payment of principal of and interest on such indebtedness.

WHEREAS, the Agency intends to issue an Urban Renewal Tax Increment Revenue Note, Series 2015 (the "2015 Note") for the purpose of financing and refinancing (1) the costs of design, acquisition, construction, improvement and equipping of transportation improvements within the Urban Renewal Area in accordance with the Urban Renewal Plan, and the acquisition of all real and personal property necessary, useful or convenient thereto and (2) related financing and issuance costs.

WHEREAS, the Bank of the Cascades, as purchaser of the 2015 Note (the "Purchaser"), requires a commitment from the City to directly or indirectly provide a form of guarantee of the Agency's repayment obligations under the 2015 Note as described in a Business Loan Agreement dated [January \_\_], 2015, between the City and the Purchaser (the "Loan Agreement").

WHEREAS, the City and the Agency have determined that it is in the best interest of the Agency and the City to execute and deliver this Agreement to establish, among other things, (i) a commitment by the City to make loan payments on behalf of the Agency that come due under the Loan Agreement in the event of nonpayment by the Agency, (ii) the repayment of such indebtedness by the Agency to the City in the event the City makes such loan payments on behalf of the Agency, and (iii) establish the terms, conditions and circumstances set forth herein.

WHEREAS, the City is authorized pursuant to ORS Section 271.390, the laws of the State of Oregon and its City Charter to enter into financing agreements, lease-purchase agreements or other contracts of purchase for any real or personal property that the Council determines is needed, and may provide that the obligations of the City under such contracts are payable out of all or any portion of lawfully available funds of the City, and that lawfully available funds may be pledged to the payment of such obligations.

WHEREAS, the actions undertaken herein have been authorized by Resolution No. [ ] adopted by the City Council of the City on January 21, 2015 (the "City Resolution") and Resolution No. [ ] adopted by the Board of Directors of the Agency on January 21, 2015 (the "Agency Resolution").

WHEREAS, capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings given to such terms in the City Resolution, the Agency Resolution or the Loan Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

## **ARTICLE I LOANS TO THE AGENCY; REPAYMENT TERMS**

*Section 1.01. Loans to the Agency.* The City will lend money to the Agency at the times and in the amounts set forth in Section 1.02 (each a "Loan"). The Agency will borrow such amounts from the City pursuant to this Agreement for the purpose of making payments under the Loan Agreement (the "Loan Payments"). The aggregate principal amount of outstanding Loans to be made by the City pursuant to this Agreement shall not exceed the original principal amount of Loan Payments, plus all interest accrued and to accrue on the Loan Payments until the same are paid or discharged, together with any costs, including reasonable attorneys' fees, owing to the Purchaser pursuant to the terms of the Loan Agreement and the 2015 Note.

*Section 1.02. Time of Loans.*

(a) Review of Sufficiency of the Agency Account Balances. No later than 60 days prior to each semi-annual payment date under the Loan Agreement (each a "Loan Payment Date"), the Agency and the City shall review the amount of tax increment revenues and other lawfully available funds pledged by the Agency under the Agency Resolution and available to pay Loan Payments (collectively, the "Agency Available Funds") to determine whether any budgetary action by the City may be required under this Agreement to allow funding of any anticipated Loan prior to the related Loan Payment Date.

(b) Deficiency. If on any date that is 30 days prior to a Loan Payment Date (or the next Business Day if such day is not a Business Day), the cumulative amount of the Agency Available Funds is insufficient to make the required Loan Payment coming due on the upcoming Loan Payment Date, the Agency shall immediately provide the City with a notice of deficiency (a "Deficiency Notice") in the form set forth as Exhibit A attached hereto.

(c) Funding of Loans by City to the Agency. For as long as the Loan Agreement remains outstanding, if the City receives a Deficiency Notice from the Agency then the City shall loan to the Agency an amount that, when added to the Agency Available Funds, is sufficient to pay all principal of and interest on the Loan Payments due on each Loan Payment Date. Each such transfer by the City shall constitute a Loan.

The City shall cause the amount of each Loan hereunder to be transferred to the Purchaser, as assignee of the Agency, unless the Purchaser waives such right, or directs otherwise, in writing delivered to the City, in immediately available funds no later than two business days prior to the applicable Loan Payment Date, or as otherwise required by the 2015 Note and the Loan Agreement taking into account the timing requirements for Loan Payments specified thereby.

(d) Full Faith and Credit Pledge. The City irrevocably pledges its full faith, credit and resources to make Loans to the Agency under Subsection 1.02(c).

(e) Method of Notice. Deficiency Notices shall be sent by an Authorized Representative on behalf of the Agency to the City's Finance Director, with a copy to the Purchaser, by electronic transmission, which electronic transmission shall be promptly confirmed by telephone communication to the Finance Director, at the respective email addresses or telephone numbers provided in Section 4.02 below unless otherwise specified in writing by the City.

*Section 1.03. Repayment Terms.*

(a) Source of Repayment. The principal amount of each Loan to the Agency, together with interest thereon as provided in the following paragraph (each, a "Loan Payment"), shall be repaid by the Agency from the funds pledged thereto in the Agency Resolution, subject to the prior pledge of such funds to the payment of the Loan Payments due thereunder. Such Loan Payments will be applied as follows:

*first*, to interest owed to the City on account of all outstanding Loans; and

*second*, to the principal of all outstanding Loans in the order in which such Loans were incurred.

(b) Interest. Each Loan made under the terms of this Agreement will bear interest from the date of the Loan until the date such Loan is repaid. Interest on the Loans will be calculated on the basis of a 365-day year, for the actual number of days elapsed. The rate of interest borne by each Loan hereunder shall be a variable rate equal to the monthly average rate of return on the State of Oregon Local Government Investment Pool (or its successor), as determined as of the last day of each month in which a Loan is outstanding, and shall change monthly for such month as of the first day of each month in which a Loan is outstanding. The City may in its discretion charge a lower rate of interest. In no event shall interest on the Loans exceed the maximum rate permitted under Oregon law.

(c) Term. Unless paid earlier pursuant to paragraph (a) of this Section 1.03, all Loans hereunder shall mature on the date that is one year after final Maturity of the Loan Payments as set forth in the 2015 Note and the Loan Agreement.

*Section 1.04. Nature of the Agency's Obligation.* Except as specifically set forth in Section 1.03, the Agency's obligation to repay Loans made to the Agency by the City under this Agreement shall constitute an indebtedness of the Agency to the extent the City has made a Loan

to the Agency, but shall otherwise not be considered or deemed to be an indebtedness for purposes of the Agency's maximum indebtedness under the Urban Renewal Plan. The Agency's obligations to the City hereunder shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise, and shall continue in effect and shall survive the satisfaction of the Agency's obligations under the Loan Agreement until such time as principal and interest due to the City pursuant to any Loan or Loans made hereunder have been repaid, together with any costs owed to the City hereunder.

*Section 1.05. Nature of City's Obligation.* The City's obligation to make Loans to the Agency in the amounts, at the times and in the manner described herein shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise. The obligations of the City to make Loans hereunder shall terminate upon discharge of or payment in full of the principal of and interest on all outstanding Loan Payments.

## **ARTICLE II RIGHTS OF CITY UPON MAKING LOANS**

*Section 2.01. Right of Inspection.* If the City has made any Loans to the Agency under this Agreement and for such time until such Loans have been repaid in full (whether or not the Loan is in default), the City may have access to and inspect, examine and make copies of the books and records and any and all accounts and data of the Agency.

## **ARTICLE III REMEDIES UPON DEFAULT**

*Section 3.01. Remedies of City on Default.* Upon the occurrence of a default by the Agency in its obligations hereunder, the City may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the City may deem most effectual to protect and enforce any of its rights or interests hereunder; provided, that pursuant to Section 1.04 the obligation of the City to make Loans hereunder is unconditional regardless of any default by the Agency hereunder, and such rights are subordinate to the rights of the Purchaser under the Loan Agreement.

*Section 3.02. Remedies of the Agency on Default.* Upon the occurrence of a default by the City in its obligations hereunder, the Agency may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the Agency may deem most effectual to protect and enforce any of its rights or interests hereunder.

*Section 3.03. No Remedy Exclusive.* No remedy conferred upon or reserved to either party by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative. Either party shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Agreement, or otherwise.

*Section 3.04. No Implied Waiver.* No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. For the exercise of any remedy, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

#### **ARTICLE IV MISCELLANEOUS**

*Section 4.01. Governing Law; Venue.* This Agreement is governed by and shall be construed in accordance with the substantive laws of the State of Oregon. Except as otherwise required by applicable law, any action under this Agreement shall be brought in the Circuit Court of Deschutes County.

*Section 4.02. Notices.* Except as otherwise provided herein, all notices, consents or other communications required hereunder shall be in writing and shall be sufficiently given if addressed and hand delivered or mailed by first-class mail, as follows:

To the City:                    Finance Director  
   City of Bend  
   710 NW Wall Street  
   PO Box 431  
   Bend, OR 97709  
   Tel: (541) 693-2158  
   Fax: (541) 385-6675  
   Email: swojda@bendoregon.gov

To the Agency:                Economic Development Director  
   Bend Urban Renewal Agency  
   City of Bend  
   710 NW Wall Street  
   PO Box 431  
   Bend, OR 97709  
   Tel: (541) 693-2158  
   Fax: (541) 385-6676  
   Email: swojda@bendoregon.gov

With a copy to:                Bank of the Cascades  
   Commercial Loan Department  
   1100 N.W. Wall Street  
   Bend, OR 97701  
   Tel: (541) 330-7556  
   Toll Free: (817) 617-3400  
   Email: bkuhn@botc.com

The City or the Agency may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications

shall be sent. Notices shall be deemed served upon deposit of such notices in the United States mail in the manner provided above.

*Section 4.03. Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon the City and the Agency and their successors. This Agreement may not be assigned except as provided in Section 4.06.

*Section 4.04. Severability.* In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 4.05. Amendments.* This Agreement may be amended in writing by the City and the Agency (or their successors in title), subject to the prior written consent of the Purchaser, which consent shall not be unreasonably withheld. The obligation of the City to make Loans under this Agreement shall not be terminated until the Loan Payments have been paid in full.

*Section 4.06. Third Party Rights.* The terms of this Agreement are not intended to establish nor to create any rights in any persons or entities other than the City, the Agency and the respective successors and assigns of each; *provided*, that the Agency is permitted to assign its rights under this Agreement to the Purchaser, and *provided further*, that so long as the Loan Agreement is in force and effect or any Loan Payments are outstanding, that the Purchaser (including its permitted successors and assigns, which are limited to (i) an affiliate or successor of the Purchaser or (ii) a "qualified institutional buyer" as defined in Rule 144A promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, and subject to delivery of written notice to the City and the Agency thirty (30) Business Days prior to the effectiveness of any such successor or assignment) is intended to and shall be a direct third-party beneficiary of this Agreement and as such shall be entitled to enforce directly against the City the rights of the Agency under this Agreement.

*Section 4.07. Attorneys' Fees.* In the event of a lawsuit or arbitration proceeding with respect to this Agreement by or among the City, the Agency, and/or any assignee thereof, including the Purchaser, the prevailing party is entitled to recover costs and reasonable attorneys' fees incurred in connection with the lawsuit or arbitration proceeding, as determined by the court or arbitrator. In the event that any case is commenced with respect to any party hereto or assignee thereof under the Bankruptcy Code (Title 11, United States Code) or any similar or successor statute, the enforcing party is entitled to recover costs and reasonable attorneys' fees incurred with respect to the preservation, protection, or enforcement of any rights of such party in such a case. As used in this paragraph, "attorneys' fees" includes the allocated costs of the any party's in-house counsel.

*Section 4.08. Time of Essence.* Time and all terms and conditions shall be of the essence in carrying out this Agreement.

*Section 4.09. Discharge of Obligations.* If the Agency shall pay or cause to be paid, or there shall otherwise be paid on behalf of the Agency (i) to the Purchaser, all interest, principal and costs, including reasonable attorneys' fees, owing on the 2015 Note and (ii) to the City, all Loans made hereunder at the times and in the manner specified therein and herein, then the

obligations of the Agency hereunder shall cease and all covenants, agreements and other obligations of the Agency hereunder shall thereupon terminate and be discharged and satisfied. In such event, the City shall execute and deliver to the Agency such instruments as may be desirable to evidence such discharge and satisfaction, and the City shall pay over or deliver to the Agency all money or securities held by the City, if any, that are not required for the payment of the interest due on and the principal of the Loans or the 2015 Note.

*Section 4.10. Term of Agreement.* This Agreement shall be effective upon its execution. This Agreement shall terminate upon the later of (i) payment in full of all principal of and interest on the Loan Payments under the Loan Agreement or (ii) payment in full of any principal and interest due to the City pursuant to any Loan or Loans made hereunder have been repaid, together with any costs owed to the City hereunder.

***[Remainder of Page Intentionally Left Blank]***

IN WITNESS WHEREOF, the City and the Agency have caused this Agreement to be executed and delivered in their respective names by their duly authorized representatives, and have caused this Agreement to be dated as of the date set forth in the introductory paragraph hereof.

**CITY OF BEND, OREGON**

By: \_\_\_\_\_

Authorized Representative

**BEND URBAN RENEWAL AGENCY**

By: \_\_\_\_\_

Authorized Representative

**EXHIBIT A**

Form of Deficiency Notice

VIA ELECTRONIC TRANSMISSION  
(telephone confirmation to follow)

City of Bend  
Finance Director  
710 NW Wall Street  
Bend, OR 97709

Re: Bend Urban Renewal Agency Tax Increment Revenue Note, Series 2015

The undersigned, a duly Authorized Officer of the Bend Urban Renewal Agency (“the Agency”), hereby certifies to the City of Bend, Oregon (the “City”), with reference to that certain Contingent Loan Agreement, dated as of [January \_\_], 2015, by and between the City and the Agency (the “Agreement”), and the Business Loan Agreement dated [January \_\_], 2015, by and between the Agency and Bank of the Cascades, as Purchaser thereunder (the “Loan Agreement”), that:

- (1) The next Loan Payment Date for the 2015 Note is: \_\_\_\_\_;
- (2) The aggregate amount due on such date is \$ \_\_\_\_\_, which represents principal of the 2015 Note in the amount of \$ \_\_\_\_\_ and interest on the 2015 Note in the amount of \$ \_\_\_\_\_;
- (3) The cumulative amount of the Agency Available Funds available as of \_\_\_\_\_, 20\_\_, was \$ \_\_\_\_\_, and it appears there will be insufficient Agency Available Funds available on the upcoming Loan Payment Date to make the payments described in clause (2); and
- (4) This is a “Deficiency Notice” within the meaning of the Agreement.

Pursuant to Section 1.02(c) of the Agreement, the City will take such action as is necessary to budget the amount required to provide the Agency a Loan prior to \_\_\_\_\_, 20\_\_, in the amount of \$ \_\_\_\_\_ (which is equal to the difference between the first amount listed in clause (2) and the amount listed in clause (3)).

Any capitalized term used herein and not defined shall have the meaning assigned to such term in the Agreement or, if not therein defined, as defined in the Loan Agreement.

DATED: \_\_\_\_\_, 200\_.

**BEND URBAN RENEWAL AGENCY**

By: \_\_\_\_\_

Authorized Representative