

**RESOLUTION NO. 3026**

**A RESOLUTION OF THE CITY OF BEND, OREGON, AUTHORIZING THE ISSUANCE, SALE, EXECUTION AND DELIVERY OF WATER REVENUE BONDS, IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT SUFFICIENT TO PRODUCE NET PROCEEDS OF UP TO \$63,000,000, FOR THE PURPOSES OF FINANCING AND REFINANCING ALL OR A PORTION OF THE COSTS OF ADDITIONS, REPLACEMENTS, EXPANSIONS OR IMPROVEMENTS TO THE CITY'S WATER SYSTEM INFRASTRUCTURE INCLUDING REFUNDING CERTAIN OUTSTANDING OBLIGATIONS OF THE CITY RELATED THERETO, AND PAYING COSTS OF ISSUANCE RELATED THERETO; AUTHORIZING THE PLEDGE OF NET REVENUES OF THE CITY'S WATER SYSTEM; AUTHORIZING THE EXECUTION AND DELIVERY OF FINANCING, LEGAL AND DISCLOSURE DOCUMENTS; DESIGNATING AUTHORIZED REPRESENTATIVES AND DELEGATING AUTHORITY; AND RELATED MATTERS.**

**FINDINGS**

- A. The City of Bend, Oregon (the "City") is authorized pursuant to the laws of the State of Oregon, including the applicable provisions of Oregon Revised Statutes ("ORS") chapter 287A 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 "Resolution 2971"), was adopted by the City Council on December 17, 2014, pursuant to which the City is authorized to issue one or more series of water revenue bonds (the "Water 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 Water Revenue Bonds was published in the Bend Bulletin on December 20, 2014 (the "Notice"). The sixty (60) day referral period following the publication of the Notice has expired and the City is authorized to issue Water Revenue Bonds.
- D. On June 3, 2015, the \$30,000,000 City of Bend, Oregon Water System Interim Financing Note, Series 2015 (the "2015 Note") was executed, delivered and sold by the City to JPMorgan Chase Bank, National Association to provide interim financing for the Project.
- E. The City is currently obligated to pay an outstanding loan with an original principal amount of \$2,806,500, dated September 8, 2009, entered into with the State of

Oregon acting by and through its Business Development Department, for the purpose of designing and constructing improvements to the System (the "Safe Drinking Water Loan"), which was entered into pursuant to ORS 285A.213 and secured by a pledge of the revenues of the System and the City's full faith and credit and taxing power.

- F. The City has determined that refunding the Safe Drinking Water Loan, pursuant to ORS 287A.360, will produce debt service payment savings.
- G. The City has determined that it is financially feasible and in the best interests of the City to authorize the issuance, sale, execution and delivery of Water Revenue Bonds to be designated as the "City of Bend, Oregon Water Revenue Bonds, Series 2016" (the "2016 Bonds") in one or more series, to (i) refund the 2015 Note, (ii) refund the Safe Drinking Water Loan, (iii) finance all or a portion of the remaining costs of the Project and (iv) pay costs of issuance of the 2016 Bonds, including without limitation, the funding of any required reserves and payment of costs in connection with obtaining a Credit Enhancement Device (as defined in ORS chapter 287A) for the 2016 Bonds, if beneficial to the City.

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

**SECTION 1. Authorization of the 2016 Bonds.** The City Council authorizes the issuance, sale, execution and delivery of the 2016 Bonds, to be designated the "City of Bend, Oregon Water Revenue Bonds, Series 2016" in an aggregate principal amount not to exceed \$70,000,000, sufficient to produce net proceeds of up to \$63,000,000 for costs of the Project, plus amounts sufficient to fund costs of issuance and required reserves. The proceeds of the 2016 Bonds shall be used for the purpose of: (i) refunding the 2015 Note, (ii) financing all or a portion of the remaining costs of the Project, (iii) currently refunding the Safe Drinking Water Loan as provided in Section 3 hereto, and (iv) paying costs of issuance of the 2016 Bonds, including without limitation, the funding of any required reserves and payment of costs in connection with obtaining a Credit Enhancement Device for the 2016 Bonds, if beneficial to the City as determined by the Authorized Representative (defined below). The 2016 Bonds may be signed with the manual or facsimile signature of an Authorized Representative and shall be manually authenticated by the Bond Registrar (defined below). The maximum interest rate on the 2016 Bonds shall not exceed five percent (5%) per annum. The terms and conditions for the sale, issuance, execution, delivery and administration of the 2016 Bonds shall be established consistent with the authorization of this Resolution.

**SECTION 2. Security.** The 2016 Bonds shall not be a general obligation of the City, nor a charge on its tax revenues. As security for the payment of the 2016 Bonds, the City pledges the Net Revenues (defined below) of the System to the punctual payment of principal and interest on the 2016 Bonds. 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 set forth in the Bond Declaration (defined below) shall be valid and binding upon the execution and delivery of the 2016 Bonds and the Bond Declaration. The owners of the 2016 Bonds will not have a lien on or security interest in the Project or any other property financed with the proceeds of the 2016 Bonds. "Net Revenues" means the gross revenues of the System less payment of operating expenses, as those

terms are further defined in the Bond Declaration subject to the review and approval of the Authorized Representative (defined below).

**SECTION 3. Refunding the Safe Drinking Water Loan.** The City entered into the Safe Drinking Water Loan pursuant to the authority of ORS 285A.213. Pursuant to 287A.360, the City authorizes a portion of the proceeds of the 2016 Bonds to be applied to currently refund the outstanding principal and interest due on the Safe Drinking Water Loan.

**SECTION 4. Designation, Authorization and Direction of Authorized Representative; Bond Declaration and Rate Covenant; Bond Documents.**

(a) The City authorizes and directs the City Manager or the Finance Director or each of their respective designees (each, an "Authorized Representative") to evaluate, negotiate, enter into, execute, deliver and otherwise implement on behalf of the City, the terms and conditions for the issuance, sale, execution and delivery and administration of the 2016 Bonds, as may in the judgment of such Authorized Representative be in the best interests of the City and in a manner consistent with and in furtherance of this Resolution.

(b) The Authorized Representative is directed to negotiate and establish in a master water revenue bond declaration (the "Master Declaration") and a first supplement thereto (the "Supplemental Declaration" and together with the Master Declaration, collectively, the "Bond Declaration") the terms of the sale, issuance, security for and administration of the 2016 Bonds and any additional water revenue bonds secured by the Net Revenues on the same lien as the 2016 Bonds (collectively, the "Parity Bonds"). The Authorized Representative is authorized to include in the Master Declaration, without limitation, a rate covenant pursuant to which (i) the City will charge rates and fees in connection with the operation of the System that will be adequate to generate in each fiscal year Net Revenues that will be not less than 1.15 times and not more than 1.35 times the required annual debt service payments due on all Parity Bonds outstanding under the Master Declaration, and (ii) the City will increase the rates and fees imposed in connection with the System and/or reduce expenses to a level so that Net Revenues are projected to meet the required level if the Net Revenues fail to meet the levels required by the rate covenant for the Parity Bonds.

(c) The Authorized Representative is further authorized and directed on behalf of the City to negotiate, review, execute and deliver all other documents, agreements, supplemental actions and certificates (collectively, the "Bond Documents"), in connection with the offering, sale, administration, execution and delivery of the 2016 Bonds pursuant to the authorization of this Resolution.

**SECTION 5. Tax Covenants.** The City covenants to use the proceeds of the 2016 Bonds and the facilities financed or refinanced with the 2016 Bonds, and to otherwise comply with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), so that interest paid on the 2016 Bonds will not be includable in gross income of the holders of the 2016 Bonds 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 2016 Bonds; and

(b) to operate the facilities financed or refinanced with the proceeds of the 2016 Bonds so that the 2016 Bonds are not "private activity bonds" under Section 141 of the Code; and

(c) to comply with all reporting requirements.

Each Authorized Representative is authorized and directed, on behalf of the City without further approval of the City Council, to enter into covenants on behalf of the City to maintain the tax-exempt status of the 2016 Bonds.

**SECTION 6. Delegation for Establishment of Terms and Sale of the 2016 Bonds.** Each Authorized Representative is hereby authorized and directed, on behalf of the City without further approval of the City Council to take or direct to be taken all such further actions as may be necessary, desirable or appropriate in the opinion of the Authorized Representative in connection with the 2016 Bonds or to carry out the purposes of this Resolution, including but not limited to:

- a) establish the maturity dates for the 2016 Bonds, and establish the principal amounts, optional or mandatory redemption provisions, interest rates or method for determining a variable or adjustable interest rate, premiums and discounts, if any, denominations, costs, fees and expenses relating thereto, if any, and all other terms and conditions for the 2016 Bonds;
- b) sell the 2016 Bonds through a negotiated sale with Wells Fargo Bank, National Association, as representative of the underwriters (the "Underwriter") and negotiate, execute and deliver a bond purchase contract between the City and the Underwriter (the "Purchase Contract") that establishes the terms and conditions of the sale of the 2016 Bonds by the City and the purchase of the 2016 Bonds by the Underwriter;
- c) determine the form and content of the preliminary and final bond disclosure documents (collectively, the "Official Statement");
- d) negotiate the terms and conditions for the issuance, sale, execution and delivery and administration of the 2016 Bonds, the Bond Declaration and the Bond Documents necessary or desirable to obtain good financing terms for the 2016 Bonds, Parity Bonds and subordinate obligations, including covenants for the benefit of bond owners or the provider of a Credit Enhancement Device, including but not limited to, covenants regarding issuance of additional Parity Bonds and subordinate obligations, rate covenants (consistent with the parameters of Section 4(b) herein) and bond debt service reserves;
- e) establish and fund a bond debt service reserve, if necessary or desirable, for the 2016 Bonds;

- f) negotiate and establish the terms of and execute and deliver an undertaking to provide ongoing disclosure (the "Continuing Disclosure Certificate") for the benefit of owners of the 2016 Bonds that satisfies the requirements of Section (b)(5)(i) of the Securities and Exchange Commission Rule 15c2-12;
- g) execute and deliver the 2016 Bonds, the Bond Declaration, the Purchase Contract, the Bond Documents, the Continuing Disclosure Certificate and any other documents and certificates and opinions required in connection with the offering, sale, execution and delivery of the 2016 Bonds;
- h) obtain ratings on the 2016 Bonds if determined by the Authorized Representative to be in the best interest of the City and expend proceeds of the 2016 Bonds to pay costs for obtaining such ratings;
- i) solicit proposals for services and select a paying agent and registrar (the "Bond Registrar") for the 2016 Bonds;
- j) approve the form of the 2016 Bonds and take actions necessary to qualify the 2016 Bonds for the book-entry system of the Depository Trust Company ("DTC"), and provide for the authentication, registration, payment, exchange and transfer of the 2016 Bonds;
- k) negotiate with the State any matters necessary in connection with the current refunding of the Safe Drinking Water Loan;
- l) seek any consents, if necessary, from the State of Oregon and any of its agencies that have outstanding loans to the City ("State Loans") that are secured by any revenues of the System, to comply with the provisions of any such State Loans, so that the 2016 Bonds 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;
- m) enter into covenants regarding the use of the proceeds of the 2016 Bonds and the Project financed with the proceeds of the 2016 Bonds to maintain the tax-exempt status of the 2016 Bonds;
- n) evaluate any proposals from providers of Credit Enhancement Devices for the 2016 Bonds and, subject to a determination by the Authorized Representative that such Credit Enhancement Device is beneficial to the City and the 2016 Bonds, obtain a Credit Enhancement Device for the 2016 Bonds and execute and deliver agreements related to such Credit Enhancement Device and/or include representations, agreements and covenants in the Supplemental Declaration for the 2016 Bonds or the Bond Documents with respect to such Credit Enhancement Device; and
- o) execute and deliver a certificate specifying the actions taken pursuant to this Resolution and take such other actions and execute and deliver such other certificates, documents or agreements in connection with the 2016

Bonds that the Authorized Representative determines are desirable in connection with the 2016 Bonds and in accordance with this Resolution.

**SECTION 7. Bond Counsel, Financial Advisor and Underwriter.** In connection with the 2016 Bonds, the City confirms its prior appointment of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the City and Public Financial Management, Inc., Financial Advisor to the City. In connection with the negotiated sale of the 2016 Bonds, the City confirms its prior designation of Wells Fargo Bank, National Association as the lead Underwriter, and Bank of America Merrill Lynch and D.A. Davidson as co-managing underwriters.


**SECTION 8. Binding Agreement of the City.** The covenants, pledges, representations and agreements set forth in this Resolution, the Bond Declaration and the Bond Documents executed in connection with the 2016 Bonds, 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 owners of the 2016 Bonds, all of which shall be of equal rank without preference, priority or distinction of the 2016 Bonds over any other thereof, except as expressly provided in or pursuant to this Resolution.

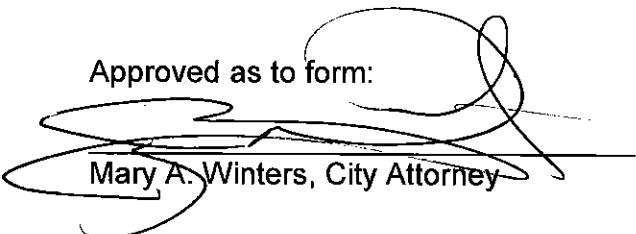
**SECTION 9. Effective Date of Resolution.** This Resolution shall take effect immediately upon its adoption by the City Council.

ADOPTED BY ROLL CALL VOTE ON MAY 4, 2016.

YES: Jim Clinton, Mayor      NO: Nathan Boddie  
Doug Knight                      Barb Campbell  
Victor Chudowsky  
Sally Russell  
Casey Roats

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

ATTEST:  
  
\_\_\_\_\_  
Robyn Christie, City Recorder

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