

RESOLUTION NO. 3103

A RESOLUTION OF THE CITY OF BEND, OREGON, AUTHORIZING THE ISSUANCE OF FULL FAITH AND CREDIT NOTES IN AN AMOUNT SUFFICIENT TO PROVIDE OF UP TO \$7,000,000, PLUS AMOUNTS SUFFICIENT TO FUND COSTS OF ISSUANCE, FOR THE PURPOSE OF FINANCING COSTS RELATED TO ERP ACQUISITION, IMPLEMENTATION AND TRAINING; PROVIDING FOR PUBLICATION OF NOTICE; AUTHORIZING A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF FINANCING DOCUMENTS; DESIGNATING AUTHORIZED REPRESENTATIVES AND DELEGATING AUTHORITY; AND RELATED MATTERS.

FINDINGS

- A. It is financially feasible and in the best interests of the City of Bend, Oregon (the "City") and will serve a public purpose to provide funds to finance the costs of licensing and installation of enterprise resource planning (ERP) software and related training and implementation costs, and all equipment and appurtenances necessary, useful or convenient thereto (collectively, the "Project") and pay note issuance costs.
- B. ORS 287A.150 authorizes the City to finance the Project by issuing obligations.
- C. ORS 287A.150(5) authorizes the City to secure the obligations by any revenues or property of the City.
- D. ORS 287A.315 authorizes the City to pledge its full faith and credit and tax powers to repayment of the obligations when the obligations are secured by all lawfully available revenues of the City.
- E. The City wishes to authorize full faith and credit notes in an amount sufficient to produce net proceeds of up to \$7,000,000 (the "Notes") for Project costs, plus amounts sufficient to fund costs of issuance.
- F. The City will solicit and obtain a commitment from a lender (the "Lender") to purchase the Notes from the City. The terms and conditions under which the City will issue, execute and deliver the Notes, and the Lender will purchase the Notes, will be established in a loan and purchase agreement (the "Purchase Agreement") to be executed and delivered by the City and the Lender.
- G. The City adopts this Resolution to (i) provide the terms under which the Notes may be issued to finance and refinance the costs of the Project, (ii) provide for the issuance, execution and delivery of the Notes, and the negotiation,

execution and delivery of the Notes, the Purchase Agreement, and other documents, agreements or certificates (collectively, the "Financing Documents") by the City; and (iii) to authorize certain City officials to take action on the City's behalf and to execute and deliver the Financing Documents.

- H. Upon adoption of this Resolution, the City will cause Notice of the Notes to be published in The Bend Bulletin, pursuant to ORS 287.150 and as provided for herein in Section 2, and none of the Notes may be sold, and no purchase agreement for the Notes may be executed, until at least sixty (60) days following publication of the notice.

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

SECTION 1: Notes Authorized

(a) The City Council authorizes the issuance of the Notes in an amount sufficient to produce net proceeds of up to \$7,000,000 for Project costs, plus amounts sufficient to fund costs of issuance. The Notes are authorized to be issued in any combination of tax-exempt notes (the "Tax-Exempt Notes") or federally taxable notes (the "Taxable Notes"). The proceeds of the Notes received by the City pursuant to the terms of the Financing Documents shall be used to pay all or a portion of the costs of the Project. The true interest cost of the Notes shall not exceed three percent (3.00%) per annum.

(b) Subject to the limitations of ORS 287A.150(3) and Sections 2 and 5 below, the City Manager or the Finance Director or their respective designees (each, an "Authorized Representative") are authorized pursuant to ORS 287A.300 to take actions as may be necessary in connection with the issuance, sale, execution and delivery of the Notes including, without limitation, determining the terms, conditions or covenants regarding the Notes or the Project that are necessary or desirable to effect the issuance of the Notes.

SECTION 2: Notice; Procedure

(a) None of the Notes may be issued, and no purchase agreement for Notes may be executed, until at least 60 days following publication of the Notice of Note Authorization in substantially the form of the attached Exhibit "A" (the "Notice").

(b) As required by ORS 287A.150(4)(c), the Notice shall provide that the estimated principal amount of the Notes to be sold is not to exceed \$7,000,000, which would be sufficient to produce net proceeds of up to \$7,000,000 for costs of the Project, plus amounts sufficient to fund costs of issuance.

(c) The Notice shall also specify the last date on which petitions from qualified electors of the City may be submitted, and shall be published in The

Bend Bulletin, Bend, Oregon, a newspaper of general circulation within the boundaries of the City, in the same manner as are other public notices of the City.

(d) If petitions for an election, containing valid signatures of not less than 5% of the City's qualified electors, are received within the time indicated in the Notice, the question of issuing such Notes shall be placed on the ballot at the next legally available election date. If sufficient petitions are received, no amount of Notes may be sold until this Resolution and the question of whether to issue such Notes is approved by a majority of the electors living within the boundaries of the City who vote on that question. Any petitions will be subject to ORS 287A.150.

(e) If petitions described in Section 2(d) of this Resolution are not received within the time indicated in the Notice, the City may proceed to issue the Notes pursuant to this Resolution without further authorization by the City Council.

SECTION 3: Security for the Notes. Principal of and interest on the Notes may be paid 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 and fees, 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 an inconsistent expenditure or use. The City pledges its full faith and credit and taxing powers to the repayment of the Notes as contemplated by ORS 287A.315, or any successor statute

The Notes do not constitute general obligation bonds as defined in ORS 287A.001(10) or exempt bonded indebtedness of the City, as defined in ORS 310.140, that is secured by a commitment to levy ad valorem taxes outside the limits of sections 11 and 11b, Article XI, of the Oregon Constitution.

SECTION 4: Tax-Exempt Status and Covenant as to Arbitrage. The City covenants to use the proceeds of the Notes and the Project financed with the proceeds of the Notes, and to otherwise comply with the provisions of the Internal Revenue Code of 1986 (the "Code"), so that the interest on the Tax-Exempt Notes will not be includable in gross income of the Owners of such Tax-Exempt Notes for federal income tax purposes. The City specifically covenants:

(a) To comply with "arbitrage" provisions of Section 148 of the Code, and to pay any required rebates and penalties with respect to the Tax-Exempt Notes;

(b) To operate the facilities financed or refinanced with the proceeds of the Tax-Exempt Notes so that the Tax-Exempt Notes are not “private activity Notes” under Section 141 of the Code; and

(c) To comply with all reporting requirements.

The Authorized Representative is authorized and directed to enter into covenants and execute a tax certificate on behalf of the City to protect the tax-exempt status of the interest components of the Tax-Exempt Notes.

SECTION 5: Delegation for Establishment of Terms of the Notes. Each Authorized Representative, acting singly, is authorized and directed, on behalf of the City without further approval of the City Council to:

(a) Establish the principal and interest dates, principal amount, optional prepayment provisions, if any, interest amount, premium and/or discount, if any, maturity dates, and all other terms and conditions relating to the issuance, sale, execution and delivery of the Notes and the Financing Documents;

(b) Make any covenants necessary or desirable to obtain desirable financing terms;

(c) Negotiate and approve the terms and form of, and execute and deliver the Financing Documents and any amendments thereto subject to the terms and conditions of this Resolution;

(d) Approve the form of the Notes;

(e) Approve, execute and deliver closing documents and certificates relating to the issuance, sale, execution and delivery of the Notes and the Financing Documents;

(f) Enter into covenants regarding the use of the proceeds of the Notes received by the City and the use of the Project to maintain the tax-exempt status of the Tax-Exempt Notes, including the execution and delivery of a tax certificate; and

(g) Execute and deliver a certificate, if necessary, specifying the actions taken pursuant to this Section 5, and any other certificates, documents or agreements that an Authorized Representative determines are desirable to issue the Notes in accordance with this Resolution.

SECTION 6: Appointment of Note Counsel and Municipal Advisor. In connection with the Notes, the City confirms its prior appointment of Orrick, Herrington & Sutcliffe LLP, as note counsel (“Note Counsel”) for the Notes, and PFM Financial Advisors LLC, as municipal advisor to the City (the “Municipal Advisor”) for the Notes. The fees and expenses of Note Counsel and the Municipal Advisor shall be payable out of the proceeds of the Notes.

SECTION 7: Resolution To Constitute Contract. In consideration of the purchase and acceptance of the Notes by the Lender, the provisions of this Resolution shall constitute a contract of the City with the Lender pursuant to ORS 287A.315 and ORS 287A.325, or any successor statute. The covenants, pledges, representations and warranties contained in this Resolution, or in the closing documents executed in connection with the Notes, including without limitation the City's covenants and pledges contained in Section 4, and the other covenants and agreements to be performed by or on behalf of the City shall be contracts for the benefit, protection and security of the Lender.

SECTION 8: Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption by the City Council.

Adopted by the Bend City Council on February 7, 2018.

YES: Casey Roats, Mayor NO: none
Sally Russell
Bill Moseley
Bruce Abernethy
Nathan Boddie
Justin Livingston
Barb Campbell



Casey Roats, Mayor

ATTEST:



Robyn Christie, City Recorder

APPROVED AS TO FORM:



Mary A. Winters, City Attorney

EXHIBIT A

(FORM OF NOTICE OF NOTE AUTHORIZATION)

NOTICE IS GIVEN that the City Council of the City of Bend, Oregon (the "City"), adopted Resolution No. ___ on February 7, 2018, authorizing the issuance of full faith and credit notes (the "Notes"). The Notes will be issued to finance the costs of licensing and installation of enterprise resource planning (ERP) software and related training and implementation costs, and all equipment and appurtenances necessary, useful or convenient thereto (the "Project") and to fund costs of issuance.

The City Council has delegated to City Manager, the Finance Director or their designee, each an Authorized Representative, the authority to determine certain terms, conditions and covenants regarding the Notes and the revenues which are necessary or desirable to effect the issuance of the Notes.

The City estimates that the Notes will be issued in a principal amount of not to exceed \$7,000,000, which would be sufficient to produce net proceeds of up to \$7,000,000 for costs of the Project, plus amounts sufficient to fund costs of issuance. Principal of and interest on the Notes may be paid 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 and fees, 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 an inconsistent expenditure or use. The City pledges its full faith and credit and taxing powers to the repayment of the Notes as contemplated by ORS 287A.315, or any successor statute. The Notes do not constitute general obligation bonds as defined in ORS 287A.001(10) or exempt bonded indebtedness of the City, as defined in ORS 310.140, that is secured by a commitment to levy ad valorem taxes outside the limits of sections 11 and 11b, Article XI, of the Oregon Constitution.

If written petitions, signed by not less than five percent (5%) of the City's qualified electors, are filed at the Office of the City Recorder on or before April ___, 2018 (the 61st day after the date of publication of the notice), the question of issuing the Notes in an estimated principal amount of not to exceed \$7,000,000 shall be placed on the ballot at the next legally available election date. Any such petition shall be subject to ORS 287A.150.

The Office of the City Recorder is located at 710 NW Wall Street, Bend, Oregon 97703. Information on procedures for filing petitions may also be obtained at such address or by telephone at (541) 388-5505.

The Resolution authorizing the Notes is available for inspection at the Office of the City Recorder.

The Notes will be issued pursuant to Oregon Revised Statutes 287A.150 and ORS 287A.300; this Notice is published pursuant to ORS 287A.150.

BY ORDER OF THE CITY COUNCIL: February 7, 2018.

Published: February __, 2018.