



**COUNCIL RESOLUTION No. 78-2022**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING FINANCING FOR TRANSPORTATION PROJECTS AND URBAN RENEWAL PROJECTS AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS** the City of Milwaukie, Oregon (the “City”) is authorized by Oregon Revised Statutes (“ORS”) Section 271.390 to enter into financing agreements to finance real or personal property which the City Council determines is needed; and

**WHEREAS** the estimated weighted average life of a financing agreement may not exceed the estimated dollar weighted average life of the real or personal property to be financed by such financing agreement; and

**WHEREAS** it is desirable to obtain up to \$20 million to finance certain transportation projects (the “Transportation Projects”); and

**WHEREAS** it is also desirable to obtain up to \$5.5 million to finance certain capital projects described in the Milwaukie Urban Renewal Plan, as it has been and may be amended (the “Urban Renewal Projects,” and together with the Transportation Projects, the “Projects”); and

**WHEREAS** the Milwaukie Redevelopment Commission (the “Agency”) is projected to have sufficient tax increment revenues from the Milwaukie Urban Renewal Area to pay the amounts due from the City in connection with the financing of the Urban Renewal Projects, and will enter into an intergovernmental agreement with the City to use tax increment revenues to pay those amounts; and

**WHEREAS** the City or the Agency may incur expenditures (the “Expenditures”) to pay costs of the Projects prior to the issuance of the financing agreement and the City wishes to declare its official intent to reimburse itself or the Agency for any Expenditures the City or the Agency may make from its own funds on the Projects from the proceeds of the 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”).

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon as follows:

**Section 1. Financing Authorized.** The City Council authorizes the City to enter into one or more financing agreements to obtain up to an aggregate principal amount of \$20 million for the Transportation Projects, up to an aggregate principal amount of \$5.5 million for the Urban Renewal Projects, and to pay costs related to the financing. The financing agreements authorized by this Section shall be executed

and sold pursuant to ORS 271.390, ORS 287A.315, and the other relevant provisions of ORS Chapter 287A, and as provided in this Resolution.

**Section 2. Determination of Need.** Pursuant to ORS 271.390, the City Council has determined that the Projects are needed.

**Section 3. Delegation.** The City manager, assistant city manager, or the person designated by the city manager or the assistant city manager to act on behalf of the City under this resolution (the “City Official”) is authorized, on behalf of the City and without further action by the City Council, to:

- 3.1 Negotiate, execute, and deliver one or more financing agreements (the “Financing Agreements”) to accomplish the financing authorized in this Resolution. Subject to the limitations of this Resolution, the Financing Agreements may be in such form and contain such terms as the City Official may approve.
- 3.2 Negotiate, execute and deliver one or more escrow agreements or similar documents (the “Escrow Agreements”) that provide for the issuance of one or more series of full faith and credit obligations (the “Obligations”) that represent ownership interests in the principal and interest payments due from the City under the Financing Agreements. Subject to the limitations of this Resolution, the Escrow Agreements and each series of Obligations may be in such form and contain such terms as the City Official may approve.
- 3.3 Authorize the preparation and distribution of a disclosure document for each series of Obligations.
- 3.4 Undertake to provide continuing disclosure for each series of Obligations in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission.
- 3.5 Apply for ratings for each series of Obligations, determine whether to purchase municipal bond insurance or obtain other forms of credit enhancements for each series of Obligations, enter into agreements with the providers of credit enhancement, and execute and deliver related documents.
- 3.6 Enter into covenants which the City Official determines are desirable to obtain favorable terms for the Financing Agreements.
- 3.7 Appoint and enter into agreements with service providers whose services are desirable for the financing.
- 3.8 Determine the final principal amount, interest rates, prepayment rights, and other terms of each Financing Agreement and each series of Obligations.
- 3.9 Solicit competitive bids for the purchase of the Obligations and award the sale to the bidders offering the most favorable terms to the City, select underwriters to purchase the Obligations and negotiate the terms of the sale of those Obligations

with the underwriters, or place any Financing Agreement directly with a commercial bank or other lender.

- 3.10 Issue any qualifying Financing Agreement as a “tax-exempt bond” bearing interest that is excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”) and enter into covenants to maintain the excludability of interest on those Financing Agreements from gross income under the Code.
- 3.11 Issue any Financing Agreement as a “taxable bond” bearing interest that is includable in gross income under the Code.
- 3.12 Execute and deliver any other certificates or documents and take any other actions that the City Official determines are desirable to carry out this Resolution.

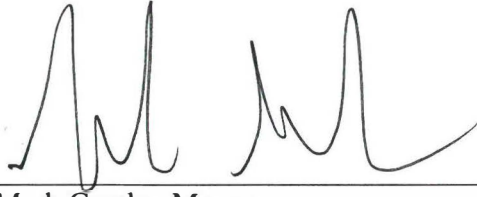
**Section 4. Security.** Pursuant to ORS 287A.315, the Financing Agreements may constitute unconditional obligations of the City, which are payable from all legally available funds of the City. The City Official may pledge the City’s full faith and credit and taxing power within the limitations of Sections 11 and 11b of Article XI of the Oregon Constitution to pay the amounts due under the Financing Agreements. The City is not authorized to levy additional taxes to pay the amounts due under the Financing Agreements.

**Section 5. Payments from Tax Increment Revenues.** The City Official is authorized to enter into an intergovernmental agreement (the “IGA”) with the Agency, under which the Agency agrees to provide tax increment revenues from the Milwaukie Urban Renewal Area in sufficient amounts to pay all amounts due from the City under the portion of the Financing Agreements related to Urban Renewal Projects. The IGA shall be in substantially the form attached to this resolution as Exhibit A, but with any changes the City Official may approve.

**Section 6. Reimbursement Declaration.** The City hereby declares its official intent to reimburse itself or the Agency with the proceeds of the Financing Agreements for any of the Expenditures incurred prior to the issuance of the Financing Agreements. This Resolution is adopted as official action of the City in order to comply with Treasury Regulation Section 1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification for reimbursement of Expenditures of the City or Agency incurred prior to the date of issue of the Financing Agreement. The City Manager is hereby authorized to make future declarations of intent to reimburse under Section 1.150-2 of the federal Income Tax Regulations, on behalf of the City and Agency and without further action by the City Council. All such future declarations shall be in writing and the original or a certified copy of each declaration shall be maintained in the public records of the City.

**Section 7. Effective Date.** This Resolution will take effect upon passage.

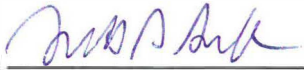
This resolution was approved and adopted by the City Council on **December 6, 2022.**



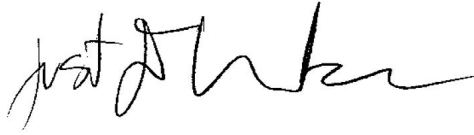
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder



Justin D. Gericke, City Attorney

Exhibit A

FORM OF INTERGOVERNMENTAL AGREEMENT

**INTERGOVERNMENTAL AGREEMENT**

to make financing payments  
by and between the

**Milwaukie Redevelopment Commission**

and the

**City of Milwaukie, Oregon**

Dated as of [Dated Date], 2022

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## INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement is dated as of [Dated Date], 2022, and is entered into by and between the Milwaukie Redevelopment Commission, Oregon (the “Agency”) and the City of Milwaukie, Oregon (the “City”) in connection with the Milwaukie Urban Renewal Area (the “Area”). The parties hereby agree as follows:

### Section 1. Definitions and Recitals.

#### (1) Definitions.

Unless the context clearly requires otherwise, capitalized terms used in this Intergovernmental Agreement which are defined in this Section 1(1) shall have the following meanings:

“Financing Agreement” means the Financing Agreement, Series 2022 between the City and [Escrow Agent] which is dated as of [Dated Date], 2022.

“Financing Payments” means the principal and interest payments the City is required to make under the Financing Agreement that are attributable to the Urban Renewal Projects, which payments are provided in Exhibit A hereto.

“IGA Amount” means \$[Principal Amount], the principal amount of the Financing Agreement that is attributable to the Urban Renewal Projects.

“Plan” means the Milwaukie Urban Renewal Plan adopted by the City August 25, 2016 under Ordinance No. 2130, as that plan has been and may in the future be, amended in accordance with its terms.

“Resolutions” means Resolution No. \_\_\_\_\_ adopted by the City Council on [December 6, 2022] and Agency Resolution No. \_\_\_\_\_ adopted by the Agency Board on [December 6, 2022].

“Tax Increment Revenues” means all revenues which the Agency collects for the Area under the provisions of Article IX, Section 1c of the Oregon Constitution and ORS Chapter 457.

“Urban Renewal Projects” means the Urban Renewal Projects as described in the Resolutions.

#### (2) Findings.

- (A) This Agreement is authorized by the Resolutions.
- (B) The City has entered into the Financing Agreement in part to finance the Urban Renewal Projects.
- (C) The Urban Renewal Projects are or will be properly described as urban renewal projects in the Plan and located in the Area when proceeds of this Intergovernmental Agreement are spent on such Urban Renewal Projects.



- (D) So long as the Financing Agreement is outstanding, the Agency and City agree the Urban Renewal Projects will remain owned by the City, Agency or another governmental entity.
- (E) The Agency is authorized to spend Tax Increment Revenues to pay for the costs of the Urban Renewal Projects.
- (F) The Urban Renewal Projects will assist the Agency in carrying out its Plan.
- (G) By entering into this Intergovernmental Agreement, the Agency is issuing debt in the IGA Amount which counts against the Agency's maximum indebtedness limit.
- (H) The Agency's maximum indebtedness limit is \$ 92,500,000; the Agency has made \$ \_\_\_ of expenditures that count against that limit, and therefore has \$ \_\_\_ of unused maximum indebtedness available prior to executing this Intergovernmental Agreement. The Agency certifies that by entering into this Intergovernmental Agreement it will not exceed its maximum indebtedness limit for the Plan.

## **Section 2. The Financing Payments.**

- (1) The Financing Payments.

The Agency hereby agrees to pay to the City, not less than three business days prior to the dates on which the Financing Payments are due, amounts that are equal to the Financing Payments. The amounts and dates of the Financing Payments are shown in Exhibit A.

- (2) Security for the Obligation of the Agency to Pay the Financing Payments.

This Intergovernmental Agreement shall constitute indebtedness of the Agency in a principal amount that is equal to the IGA Amount. The Agency is obligated to make the payments due under this Intergovernmental Agreement solely from the Tax Increment Revenues. Pursuant to ORS 287A.310, the Agency pledges the Tax Increment Revenues to pay the amounts described in Section 2(1) of this Intergovernmental Agreement. The pledge that secures this Intergovernmental Agreement shall be superior to all other pledges or commitments of Tax Increment Revenues that the Agency makes, unless the City agrees in writing to subordinate its claim against the Tax Increment Revenues or to allow the Agency to grant a lien on the Tax Increment Revenues on parity with the lien that secures this Intergovernmental Agreement.

## **Section 3. Prepayment.**

If the City exercises its option to prepay the Financing Payments in whole or in part, unless the Agency consents in advance and in writing, the Agency shall not be obligated to prepay the amounts due from it under this Intergovernmental Agreement.

## **Section 4. Estoppel.**

The Agency 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 Intergovernmental Agreement to

exist, to have happened and to have been performed precedent to and in the execution and the delivery of this Intergovernmental Agreement, do exist, have happened and have been performed in due time, form and manner, as required by law, and that this Intergovernmental Agreement is a valid and binding obligation of the Agency which is enforceable against the Agency in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws or judicial decisions or principles of equity relating to or affecting the enforcement of creditors' rights or contractual obligations generally.

#### **Section 5. Title.**

This Intergovernmental Agreement does not grant the City or the investors in the Financing Agreement a lien on, or security interest in the Urban Renewal Projects.

#### **Section 6. Miscellaneous.**

(1) Binding Effect.

This Intergovernmental Agreement shall inure to the benefit of and shall be binding upon the Agency and the City and their respective successors and assigns.

(2) Severability.

In the event any provisions of this Intergovernmental Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

(3) Amendments.

This Intergovernmental Agreement may be amended only by a writing signed by both parties.

(4) Execution in Counterparts.

This Intergovernmental Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute the same instrument.

(5) Applicable Law.

This Intergovernmental Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any action regarding this Intergovernmental Agreement or the transactions contemplated hereby shall be brought in an appropriate court of the State of Oregon in Clackamas County, Oregon.

(6) Rules of Construction.

References to section numbers in documents which do not specify the document in which the section is located shall be construed as references to section numbers in this Intergovernmental Agreement.

(7) Headings.

The headings, titles and table of contents in this Intergovernmental Agreement are provided for convenience and shall not affect the meaning, construction or effect of this Intergovernmental Agreement.

IN WITNESS WHEREOF, the City and the Agency have executed this Intergovernmental Agreement as of [Dated Date], 2022.

**For the Milwaukie Redevelopment Commission**

\_\_\_\_\_  
Agency Official

**For the City of Milwaukie, Oregon**

\_\_\_\_\_  
City Official

**EXHIBIT A**

**FINANCING PAYMENTS SCHEDULE**

The Financing Payments are payable semi-annually as outlined in the following table:

[To be provided after the Obligations are sold and pricing is known]