

**RESOLUTION NO. 09-20**

**A RESOLUTION AFFIRMING THE CITY'S AUTHORITY TO REFINANCE THE LOAN FOR THE CONNELLY PROPERTY PURCHASE (A.K.A. SCAPPOOSE VETERANS PARK) WITH U.S. BANK**

**WHEREAS**, the City of Scappoose adopted Resolution No. 04-15 authorizing staff to refinance the Connelly Property Purchase (a.k.a. Scappoose Veterans Park) with a loan from U.S. Bank; and,

**WHEREAS**, City of Scappoose desires to refinance the loan balance of \$396,770.68 until October 1, 2014 with U.S. Bank National Association; and

**WHEREAS**, it is in the best interest of the City to execute the "Loan Documents" (as described on Exhibit "A" attached hereto and by this reference incorporated herein) in favor of U.S. Bank National Association to carry out the purposes set forth above; and

**WHEREAS**, Resolution No. 04-15 is silent on the authority of the City Manager to enter into a refinance agreement on behalf of the City of Scappoose;

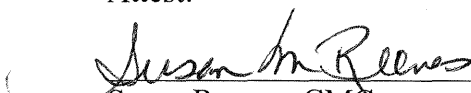
**NOW, THEREFORE**, the City Council hereby resolves:

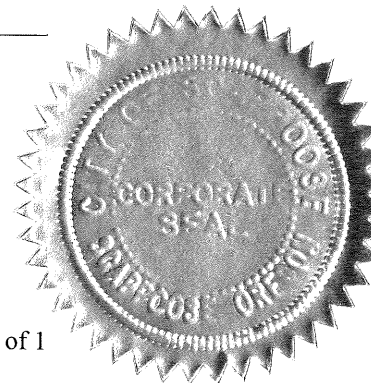
1. Resolution 04-15 was intended to give the City Manager the authority to refinance the Scappoose Veterans Park Loan, on behalf of the City, upon the loan's maturity.
2. That the City shall execute any and all notes, financing agreements, certificates, and other instruments or documents necessary to borrow the sum of \$396,770.68 from U.S. Bank National Association for the purpose of refinancing the Connelly Property (a.k.a. Scappoose Veterans Park).
3. That Jon Hanken, City Manager of City of Scappoose, is hereby authorized and directed to execute the aforementioned documents on behalf of the City, together with each and every other document necessary to carry out the purposes set forth in these resolutions.
4. Passed and adopted by the Scappoose City Council and signed by me and the City Recorder in authentication of this passage this 5<sup>th</sup> day of October, 2009.

**CITY OF SCAPPOOSE, OREGON**

  
\_\_\_\_\_  
Scott Burge, Mayor

Attest:

  
\_\_\_\_\_  
Susan Reeves, CMC  
City Recorder



**CITY OF SCAPPOOSE  
COLUMBIA COUNTY, OREGON  
FULL FAITH AND CREDIT  
FINANCING AGREEMENT NOTE, SERIES 2009**

City of Scappoose, Columbia County, Oregon (the "City"), for value received acknowledges itself indebted and hereby promises to pay to the order of U.S. Bank National Association (the "Bank"), the principal amount of THREE HUNDRED NINETY SIX THOUSAND SEVEN HUNDRED SEVENTY AND SIXTY EIGHT ONE HUNDREDTH DOLLARS (\$396,770.68) together with interest thereon from the date hereof at the rate of interest described herein, as provided in the Financing Agreement between the City and the Bank which is dated September 30, 2009 (the "Agreement"). All principal and interest on this Note are due and payable as set forth below, unless accelerated in accordance with the terms of the Agreement:

<u>Payment Date</u>	<u>Principal Payment</u>	<u>Interest Rate</u>	<u>Interest Payment</u>	<u>Total Payment</u>
April 1, 2010	\$9,973.29	3.7500%	\$7,480.78	\$17,454.07
October 1, 2010	\$10,160.29	3.7500%	\$7,252.45	\$17,412.74
April 1, 2011	\$10,350.80	3.7500%	\$7,061.95	\$17,412.75
October 1, 2011	\$10,544.87	3.7500%	\$6,867.87	\$17,412.74
April 1, 2012	\$10,742.59	3.7500%	\$6,670.15	\$17,412.74
October 1, 2012	\$10,944.01	3.7500%	\$6,468.73	\$17,412.74
April 1, 2013	\$11,149.21	3.7500%	\$6,263.53	\$17,412.74
October 1, 2013	\$11,358.26	3.7500%	\$6,054.48	\$17,412.74
April 1, 2014	\$11,571.23	3.7500%	\$5,841.51	\$17,412.74
October 1, 2014	\$299,976.13	3.7500%	\$5,624.55	\$305,600.68

This Note has been executed pursuant to the terms of the Agreement which, together with the Resolution, is incorporated herein by reference. Capitalized terms used but not defined herein have the meanings assigned to such terms in the Agreement.

Payments due under this Note and the Agreement shall be full faith and credit obligations of the City payable from non-restricted revenues and shall not be subject to annual appropriation. The City shall use all taxing power available to it under current law to generate funds sufficient to permit the City to make the payments due under the Agreement. The City hereby covenants to annually appropriate in its general fund an amount in the debt service category sufficient to make payments as provided in the Agreement.

If an Event of Default occurs, the Bank may exercise the remedies provided in the Agreement.

If legal action is taken by the holder of this Note to enforce the provisions of this Note, the Resolution, or the Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs, including fees and costs at trial, on appeal or otherwise.

This Note is executed by the City in full and strict accordance and compliance with all of the provisions of the Constitution and Statutes of the State of Oregon.


The outstanding principal balance of this Note may be prepaid as provided in the Agreement.

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all conditions, acts, and things required to exist, to happen, and to be performed precedent to and in the issuance of this Note have existed, have happened, and have been performed in due time, form, and manner as required by the Constitution and Statutes of the State of Oregon; and that this Note and all other obligations of such City, are within every debt limitation and other limit prescribed by such Constitution and Statutes.

IN WITNESS WHEREOF, the City has caused this Note to be signed on its behalf by its duly authorized officer, this 30<sup>th</sup> day of September, 2009.

CITY OF SCAPPOOSE  
COLUMBIA COUNTY, OREGON

By:



Authorized Official

## FINANCING AGREEMENT

U.S. Bank, National Association and the City of Scappoose, Columbia County, Oregon enter into this Financing Agreement upon the terms and conditions described below.

### 1. Definitions

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

"Agreement" means this Financing Agreement.

"Authorized Representative" means the Mayor or the City Manager or the designee of either of them.

"Bank" means U.S. Bank, National Association or its successors.

"Business Day" means any day of the week other than a Saturday, Sunday, or a day on which the Bank is not open for normal business transactions.

"City" means the City of Scappoose, Columbia County, Oregon.

"Code" means the Internal Revenue Code of 1986, as amended.

"Event of Default" means the declaration by the Bank of an event of default as a result of a determination by the Bank that there has been: (i) a failure to pay principal or interest on the Note when due, as provided in the Note and this Agreement; or (ii) a failure by the City to comply with any of its obligations, or to perform any of its duties, under this Agreement, the Resolution or the Note, which failure continues, and is not cured, for a period of more than 30 days after the Bank has made written demand on the City to cure such failure; or, (iii) a material misrepresentation by the City in this Agreement or the Note. Failure of the City to appropriate funds shall not be an Event of Default and no acceleration or deficiency shall be allowed.

"Note" means the City of Scappoose Financing Agreement Note, Series 2009, evidencing the amount owed under this Agreement.

"Note Counsel" means an attorney-at-law or firm of attorneys (other than an employee of the City, but including any law firm serving as counsel to the City). "Prime Rate" means the rate of interest publicly announced from time to time by the Bank as its Prime Rate. The Prime Rate is set by the Bank based on various factors, including the Bank's cost and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans. The Bank may price loans to its customers at, above, or below the Prime Rate. Any change in the Prime Rate shall take effect at the opening of business on the day specified in the public announcement of a change in the Bank's Prime Rate.

"Project" means the current refinancing of certain obligations of the City to be funded with the proceeds of the Note.

"Resolution" means the City's Resolution adopted November 15, 2004, authorizing the issuance of the Agreement and the Note.

All other capitalized terms used in this Agreement and not otherwise defined herein will have the respective meanings set forth in the Resolution.

## **2. Recitals**

The Bank has expressed interest in purchasing the Note. The City has adopted the Resolution, which is acceptable to the Bank. The Resolution authorizes execution and delivery of this Agreement and the Note.

## **3. Agreement**

- 3.1 The principal amount of the Note shall be \$ 396,770.68.
- 3.2 The Bank hereby agrees to purchase the Note at a price of 100% of par, subject to the terms and conditions contained in this Agreement.
- 3.3 The City hereby agrees to pay the Bank, its successor or assigns the annual Payments with principal and interest components when due, in accordance with the Payment Schedule attached hereto as Exhibit A and made a part hereof. Each Payment shall be paid in immediately available funds, in lawful money of the United States of America, on or before its due date. The interest component of the Payment shall be computed on the basis of a 360-day year composed of twelve 30 day months.

## **4. Prepayment**

Prepayment of the Note is permitted without penalty with five days advance written notice.

## **5. Security for Agreement**

Pursuant to and in accordance with the authority conferred by ORS 271.390(1)(b), the obligation of the City to pay financing payments as provided in the Financing Agreement and Note shall be an absolute obligation of the City payable from all lawfully available funds of the City, including but not limited to moneys credited to the City's general fund and any taxes authorized to be levied by the City within and subject to the limitations of Article XI, Sections 11 and 11b of the Oregon Constitution.

## **6. Closing**

The Bank shall purchase the Note upon execution of this Agreement and the Note, and upon satisfaction of the conditions specified in Section 13 below.

## **7. Deposit and Use of Note Proceeds**

The proceeds of the Note shall be deposited and shall be expended to pay Project costs in accordance with the Resolution and the tax certificate of the City executed in connection with the issuance of the Note.

## **8. Tax Covenants**

The City shall covenant for the benefit of the owners of the Note to comply with all provisions of the Code which are required for the Note interest to be excluded from gross income for federal income taxation purposes, and shall designate the Note as a "qualified tax-exempt obligation" pursuant to paragraph (3), Section 265(b) of the Code.

## **9. Default**

If an Event of Default occurs, the Bank may exercise any remedy available at law or in equity, and may increase the interest rate on the Note to the Prime Rate, effective as of the date the Event of Default occurs. No remedy shall be exclusive. The Bank may waive any Event of Default, but no such waiver shall extend to a subsequent Event of Default.

## **10. Fees, Costs and Expenses**

- 11.1. **Bank Fees.** The City agrees to pay a \$2000.00 origination fee. The Bank may deduct this fee from the purchase price of the Note.
- 11.2. **Bank Costs of Enforcement.** If the Bank incurs any expenses in connection with enforcing this Agreement or the Note, or if the Bank takes collection action under this Agreement or the Note, the City shall pay to the Bank, on demand, the Bank's reasonable costs and reasonable attorneys' fees, whether at trial, on appeal or otherwise, including any allocated costs of in-house counsel.
- 11.3. **Other Fees and Costs.** The City shall pay the fees and costs of Note Counsel, and any other expenses and costs which the City incurs in connection with this Agreement. The Bank shall pay all of the Bank and Bank Counsel's out-of-pocket expenses, including travel and other expenses.

## **11. Representations, Warranties and Agreements of the City**

By executing this Agreement in the space provided below, the City represents and warrants to, and agrees with the Bank that:

- 11.1. The City is duly created and existing under the laws of the State of Oregon, has all necessary power and authority to enter into this Agreement and perform its duties under the Resolution and this Agreement, and that the Resolution, this Agreement and the Note will constitute legal, valid and binding obligations of the City which are enforceable in accordance with their terms.
- 11.2. The acceptance of this Agreement, the adoption of the Resolution and the execution and delivery of the Note will not conflict in any material respect with, or constitute a material breach of or default under, any law, charter provision, court decree, administrative regulation, resolution, ordinance or other agreement to which the City is a party or by which it is bound.
- 11.3. There is no action, suit, proceeding or investigation at law or in equity before or by any court or government, city or body pending or, to the best of the knowledge of the City, threatened against the City to restrain or enjoin the acceptance of this Agreement, the adoption of the Resolution or the execution and delivery of the Note, or the collection and application of the funds as contemplated by the Resolution and this Agreement, which, in the reasonable judgement of the City, would have a material and adverse effect on the ability of the City to pay the amounts due under this Agreement.

- 11.4. To the extent permitted by law, the City agrees to indemnify and hold harmless the Bank and all of its agents and employees against any and all losses, claims, damages, liabilities and expenses arising out of any statement made by the City to the Bank, its agents or employees, which relates to this Agreement or the Note, and which is untrue or incorrect in any material respect.
- 11.5. The City has designated the Note as a "qualified tax-exempt obligation" under Section 265(b)(3)(B) of the Code.

### **12. Financial Statements; Notice of Adverse Developments; Budgets**

- 12.1. Within 270 days after the end of each of its Fiscal Years, the City shall provide the Bank with a copy of each of the City's final, annual audited financial statements while any amounts remain outstanding under the Note.
- 12.2. The City shall notify the Bank promptly of any development that is likely to have a material, adverse effect on the financial condition of the City.
- 12.3. The City shall provide the Bank with each final, proposed budget which is prepared, and each budget which is adopted, within 45 days after proposal or adoption, while any amounts remain outstanding under the Note.
- 12.4. The City shall give prompt notice to the Bank of (i) any litigation or proceeding in which it is a party if an adverse decision would require it to pay more than \$100,000.00, or deliver assets the value of which exceeds \$100,000.00, in excess of the amount that the claim is considered to be covered by insurance; and (ii) the existence of any substantial dispute with any governmental authority or law enforcement authority.

### **13. Conditions to the Obligations of the Bank**

The Bank may refuse to advance funds under this Agreement and the Note unless, on or prior to the date of Closing, the Bank shall have received:

- 13.1 a copy of the duly authorized Resolution, and a signed original copy of this Agreement and the Note;
- 13.2 an opinion of Note Counsel to the effect that:
  - (a) the City has duly authorized the execution and delivery of the Agreement and the issuance and sale of the Note and the performance by the City of its obligations under and with respect to the Agreement and the Note, all in accordance with the laws and Constitution of the State of Oregon, the Agreement and the Resolution,
  - (b) the Resolution, the Agreement and the Note constitute valid and legal obligations of the City enforceable in accordance with their respective terms,
  - (c) assuming continuing compliance by the City with its covenants (the "Tax Covenants") relating to the federal tax-exempt status of the interest due under the Note, under Section 103 of the Code, the interest due under the Note will not be includable for federal income tax purposes in the gross income of the owner thereof,
  - (d) the Note is not a "private activity bond" within the meaning of Section 141 of the Code,

- (e) the City has designated the Note and the Agreement as a “qualified tax exempt obligation” under Section 265(b) of the Code, and therefore a deduction will be allowed for a portion of the interest expense of financial institutions (within the meaning of Section 265(b)(5) of the Code) incurred to carry the Note, and
  - (f) interest on the Note is exempt from present personal income taxes imposed by the State of Oregon;
- 13.3 the certificate of a duly authorized officer of the City to the effect that:
- (a) there is no action, suit, proceeding or investigation at law or in equity before or by any court or government, city or body pending or, to the best of the knowledge of the City, threatened against the City to restrain or enjoin the adoption of the Resolution or the execution and delivery of this Agreement and the Note, or the collection and application of funds as contemplated by this Agreement or the Note, which, in the reasonable judgment of the City, would have a material and adverse effect on the ability of the City to pay the amounts due under the Note, and
  - (b) the adoption of the Resolution and the execution and delivery of this Agreement and the Note does not and will not conflict in any material respect with or constitute on the part of the City a breach of or default under any law, court decree, administrative regulation, resolution, ordinance or other agreement or instrument to which the City is a party or by which it is bound;
- 13.4 a copy of the City’s audited financial statements for the past three years and its adopted budget for the current year; and
- 13.5 such additional legal opinions, certificates, proceedings, instruments or other documents as the Bank, its counsel or the City’s Note Counsel may reasonably request to evidence compliance by the City with the legal requirements for execution and delivery of this Agreement and the Note and the due performance or satisfaction by the City of all agreements then to be performed and all conditions then to be satisfied by the City.

#### **14. Waiver of Trial by Jury**

- 14.1. This Agreement shall be deemed to be a contract under, and for all purposes shall be governed by, and construed and interpreted in accordance with, the laws of the State of Oregon and applicable Federal law without regard to choice of law rules.
- 14.2 To the extent permitted by law, the City and the Bank each waive their respective rights to a trial by jury of any claim or cause of action based upon or arising out of or related to this Agreement, any other document delivered in connection herewith, or the transactions contemplated hereby or in any action, proceeding or other litigation of any type brought by any of the parties against any other party or any related person, participant or assignee, whether with respect to contract claims, tort claims, or otherwise. To the full extent permitted by law, the City and the Bank each further agree that any such claim or cause of action shall be tried by a court without jury and waive trial by jury in any action respecting this Agreement or any of the related documents. Without limiting the foregoing, to the extent permitted by law, the parties further agree that their respective



right to a trial by jury is waived by operation of this section as to any action, counterclaim or other proceeding which seeks, in whole or in part, to challenge the validity or enforceability of this Agreement or any other document delivered in connection herewith or any provision hereof or thereof. This waiver shall apply to any subsequent amendments, renewals, supplements or modifications to this agreement and to any other documents delivered in connections therewith.

#### 15. Notices

Any notices required to be given pursuant to this commitment letter or this Agreement shall be given to the following addresses:

City: City of Scappoose, Columbia County, Oregon  
P.O. Drawer "P"  
Scappoose, Oregon 97056  
Attention: City Manager

Bank: U.S. Bank, National Association  
111 SW Fifth Avenue, Suite 550  
Portland, Oregon 97204  
Attention: Government & Nonprofits Banking (PD-OR-T5G)

#### 16. Assignment; Survival; Agreement Constitutes Contract

This Agreement may not be assigned by the City. All representations, warranties and agreements contained in this Agreement shall survive the execution, delivery and payment of the Note. This Agreement and the Note shall constitute a contract between the City and the Bank. The Bank's extension of credit hereunder is expressly made in reliance on such contract.

#### 17. Applicable Law

This Agreement shall be governed and interpreted in accordance with the laws of the State of Oregon.

#### 18. Severability and Waivers

If any part of this Agreement is not enforceable, the rest of the Agreement may be enforced. The Bank retains all rights, even if it makes a loan after default. If the Bank waives a default, it may enforce a later default. Any consent or waiver under this Agreement must be in writing.

#### 19. Counterparts

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

**Under Oregon law, most agreements, promises and commitments made by the Bank after October 3, 1989, concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by the borrower's residence must be in writing, express consideration and be signed by us to be enforceable.**

DATED as of this 30<sup>th</sup> day of September, 2009.

U.S. BANK NATIONAL ASSOCIATION

By:  V.P.  
Authorized Officer

CITY OF SCAPPOOSE,  
COLUMBIA COUNTY, OREGON

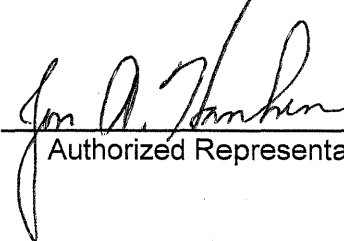
By:   
Authorized Representative

EXHIBIT A

PAYMENT SCHEDULE

The Payments, including the due dates, the principal amount, the interest rate, the interest amount and total debt service are included on the payment schedule below:

<u>Payment Date</u>	<u>Principal</u>	<u>Interest Rate</u>	<u>Interest</u>	<u>Total Debt Service</u>
April 1, 2010	\$9,973.29	3.7500%	\$7,480.78	\$17,454.07
October 1, 2010	\$10,160.29	3.7500%	\$7,252.45	\$17,412.74
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