

RESOLUTION NO. 2215

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING A \$5 MILLION LINE OF CREDIT TO FINANCE SEWER SYSTEM IMPROVEMENTS.

WHEREAS, \$5 million is needed to finance the preliminary planning and execution of the request for proposals related to the already council approved design build operate (DBO) procurement process; and

WHEREAS, Bank of America, N.A. has submitted a proposal to provide the \$5 million of financing on favorable terms to the City; and,

WHEREAS, the proposed terms for the \$5 million of financing from the Bank of America is described in Attachment A.

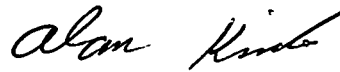
NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. Accepts the proposal of Bank of America, N.A. to provide an additional \$5 million of variable rate financing for capital improvements to the City's sewer system on the terms provided in Attachment A, but with such changes as the Finance Director may approve.
2. Authorizes the Finance Director, or the Finance Director's designee (each of whom is described in this resolution as a "City Official") to:
 - (A) Negotiate the terms of, execute and deliver a single advance non-revolving line of credit or similar instrument (the "Credit Facility") pursuant to ORS 287A.180 with Bank of America, N.A. (the "Bank") for the purposes described in this resolution. The City Official may pledge to pay the amounts due under the Credit Facility from: all or any portion of the net revenues of the sanitary sewer system (the "Sewer System") and any related funds, and the proceeds of any long term financing for the projects financed with the Credit Facility. The City Official may agree that the City will raise and maintain Sewer System rates that are sufficient to pay the operation and maintenance expenses of the sewer system and other lawful charges against the sewer system revenues. The City Official may also agree that the City will not issue additional obligations that are secured by the revenues and funds that are pledged to pay the Credit Facility while the Credit Facility is outstanding. Subject to the limitations of this resolution, the Credit Facility may be in such form and contain such terms as the City Official may approve.
 - (B) Covenant to comply with the applicable provisions of the Internal Revenue Code of 1986, as amended, (the "Code") so that interest on the Credit Facility is

excludable from gross income under the Code, and designate the Credit Facility as a "qualified tax-exempt obligation" under Section 265(b) of the Code.

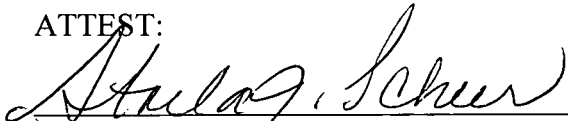
- (C) Amend the Credit Facility to extend its maturity date, subject to the Bank's written consent, if the City has not arranged to refinance the Credit Facility prior to its maturity date, and make any changes requested by the Bank in connection with that extension that are approved by the City Official.
- (D) Execute and deliver any other certificates or documents and take any other actions which the City Official determines are desirable to carry out this resolution.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 7th day of December, 2009 and filed with Wilsonville City Recorder this same date.



Alan Kirk, City Council President

ATTEST:




Starla J. Schur, CMC, Deputy City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Excused
Council President Kirk	Yes
Councilor Ripple	Yes
Councilor Núñez	Yes
Councilor Hurst	Yes

ATTACHMENT A
[insert bank proposal or summary of its terms]

Bank of America 
Merrill Lynch

Bank of America, N.A.
Government Banking
OR1-129-17-15
121 SW Morrison Street
Suite 1700
Portland, OR 97204-3117

Douglas Bowsby
Senior Vice President
Tel 503.795.6459
Fax 206-585-9223
douglas.b.bowsby@
bankofamerica.com

October 16, 2009

Gary Wallis
Finance Director
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070

Re: Interim Financing - \$5,000,000 Sewer System Project

Dear Gary:

We enclose a term sheet outlining the proposed terms under which Bank of America, N.A. ("Bank") may extend credit to the City of Wilsonville, Oregon ("Borrower"). This term sheet is not a commitment to lend by Bank.

Please call me at (503) 795-6459, or Sharon Capizzo at (503) 795-6395, to discuss this proposal. We look forward to working with you.

Very truly yours,

BANK OF AMERICA, N.A.



Douglas Bowsby
Senior Vice President



Sharon Capizzo
Senior Vice President

Cc: Merlean Locke, Bank of America

**TERM SHEET PROPOSAL
CITY OF WILSONVILLE, OREGON
October 16, 2009**

This Term Sheet Proposal is presented for discussion purposes only. It is not a commitment to lend by Bank of America or any of its affiliates. Bank of America may withdraw or amend it at any time in its sole discretion. If Bank of America does extend a loan commitment, the actual terms and conditions (including pricing and financial covenants) will be subject to completion of due diligence, Bank of America's credit and documentation standards, necessary credit approval, market conditions and other considerations determined by Bank of America in its sole discretion.

BORROWER: City of Wilsonville, Oregon (the "Borrower").

LENDER: Bank of America, N.A. ("Bank of America").

CREDIT FACILITY: \$5,000,000 tax-exempt bond anticipation note in the form of a single-advance non-revolving credit facility (the "Credit Facility").

PURPOSE: The proceeds of the Credit Facility shall be used for interim financing for capital expenditures for Borrower's Sewer System project, and for costs of issuance and financing.

INTEREST RATE: The following interest rate options will be available to Borrower, based upon the pledged Security:

(A) Full Faith and Credit Obligation of Borrower:

BBA LIBOR Daily Floating Rate: A rate per year equal to 63.5% of the BBA LIBOR Daily Floating Rate, plus 0.90%. The BBA LIBOR Daily Floating Rate will be rounded upwards to the nearest 1/100th of one percent, and will be subject to an all-in floor of 1.40%.

LIBOR Fixed Rate: A rate per year equal to 63.5% of the LIBOR Fixed Rate, plus 0.90%. The LIBOR Fixed Rate will be rounded upwards to the nearest 1/100th of one percent, and will be subject to an all-in floor of 1.40%. LIBOR Fixed Rate advances with interest periods of 1 to 12 months will be available, not to exceed the expiration/maturity date of the Credit Facility. Minimum LIBOR Fixed Rate advance is \$100,000.

(B) Revenue Obligation of Borrower's Sewer System:

BBA LIBOR Daily Floating Rate: A rate per year equal to 63.5% of the BBA LIBOR Daily Floating Rate, plus 1.10%. The BBA LIBOR Daily Floating Rate will be rounded upwards to the nearest 1/100th of one percent, and will be subject to an all-in floor of 1.60%.

LIBOR Fixed Rate: A rate per year equal to 63.5% of the LIBOR Fixed Rate, plus 1.10%. The LIBOR Fixed Rate will be rounded upwards to the nearest 1/100th of one percent, and will be subject to an all-in floor of 1.60%. LIBOR Fixed Rate advances with interest periods of 1 to 12 months will be available, not to exceed the expiration/maturity date of the Credit Facility. Minimum LIBOR Fixed Rate advance is \$100,000.

INTEREST RATE:

The BBA LIBOR Daily Floating Rate is a fluctuating rate of interest which can change on each banking day. The rate will be adjusted on each banking day to equal the British Bankers Association LIBOR Rate ("BBA LIBOR") for U.S. Dollar deposits for delivery on the date in question for a one month term beginning on that date. The Bank will use the BBA LIBOR Rate as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by the Bank from time to time) as determined at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, as adjusted from time to time in the Bank's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate will be determined by such alternate method as reasonably selected by the Bank. A "London Banking Day" is a day on which banks in London are open for business and dealing in offshore dollars.

"LIBOR" means, for any applicable interest period, the rate per annum equal to the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by the Bank from time to time) at approximately 11:00 a.m. London time two (2) London Banking Days before the commencement of the interest period, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a term equivalent to such interest period. If such rate is not available at such time for any reason, then the rate for that interest period will be determined by such alternate method as reasonably selected by the Bank. A "London Banking Day" is a day on which banks in London are open for business and dealing in offshore dollars.

INTEREST CALCULATION

All calculations of interest and fees shall be made on the basis of actual number of days elapsed in a 360-day year.

ORIGINATION FEE:

(A) Full Faith and Credit Obligation of Borrower:

10 bps (\$5,000) payable at closing.

(B) Revenue Obligation of Borrower's Sewer System:

20 bps (\$10,000) payable at closing.

REPAYMENT/MATURITY:

The Credit Facility shall be repaid in quarterly payments of accrued interest, with the entire outstanding principal balance payable at Maturity.

The Credit Facility shall terminate and all amounts outstanding thereunder shall be due and payable in full two (2) years after closing.

SECURITY:

Borrower to pledge the following security for repayment of all outstanding principal, interest and fees due on the Credit Facility:

(A) Full Faith and Credit Obligation of Borrower:

- Pledge of Borrower's full faith and credit, not subject to appropriation.
- Pledge of proceeds of refunding bonds to be issued to repay the Credit Facility.

Additional debt with a lien on the proceeds of such refunding bonds will not be permitted without the prior written consent of Bank of America.

SECURITY:

Although revenues of Borrower's Sewer System (the "Sewer System") will not be pledged for repayment of the Credit Facility, Borrower's resolution/ordinance is to authorize the use of such Sewer System revenues to repay the Credit Facility. Borrower may not issue additional obligations secured by the revenues of its Sewer System while the Credit Facility is outstanding.

(B) Revenue Obligation of Borrower's Sewer System:

- Pledge of revenues of Borrower's Sewer System, including all earning, revenue and money received by the Borrower from or on account of the operation of the Sewer System, including income from investments of money, and including federal, state or municipal reimbursements of operating expenses to the extent such expenses are part of the cost of maintenance and operation of the Sewer System. The pledge of Sewer System revenues shall be subject to the prior lien of costs of maintenance and operation of the Sewer System and payments due on any senior lien Sewer System revenue bonds.
- Pledge of proceeds of refunding bonds to be issued to repay the Credit Facility.

Additional debt with a lien on the Sewer System revenues senior to or on parity with the Credit Facility will not be permitted without the prior written consent of Bank of America.

Additional debt with a lien on the proceeds of such refunding bonds will not be permitted without the prior written consent of Bank of America.

PREPAYMENTS:

The Borrower may prepay any variable rate loan under the Credit Facility in whole or in part at any time without fee, except for reimbursement of Bank of America's breakage and redeployment costs in the case of prepayment of LIBOR based borrowings (does not apply to the BBA LIBOR Daily Floating Rate).

REPRESENTATIONS AND WARRANTIES:

Usual and customary for transactions of this type.

COVENANTS:

Usual and customary for transactions of this type, to include without limitation:

- On or before the Maturity date, Borrower agrees to issue debt obligations in an amount sufficient to generate net proceeds, together with other available resources of Borrower, to payoff the Credit Facility in full.

If Borrower elects (B) as the pledged Security, the following additional covenants will apply:

- Borrower covenants that it will at all times maintain, preserve and keep, or cause to be maintained, preserved and kept, the properties of the Sewer System and all additions and betterments thereto and expansions of, and every part and parcel of, the Sewer System in good repair, working order and condition.
- Borrower not to sell or dispose of the Sewer System.

COVENANTS:

- Borrower shall establish, maintain and collect rates or charges in each fiscal year which shall be adequate to provide gross revenues sufficient for the payment in such fiscal year of all costs of maintenance and operation of the Sewer System, and all necessary repairs, replacements and renewals of the Sewer System, the working capital necessary for the operation thereof, for the payment of all obligations with a lien on net revenues of the Sewer System, and for the payment of any and all amounts which Borrower may now or hereafter become obligated to pay from net revenues of the Sewer System.
- Debt reserve is not required.

LEGAL OPINION:

Borrower to provide a legal opinion of nationally recognized bond counsel, in form and substance acceptable to Bank and its legal counsel, that (i) the resolution and all documents related to the Credit Facility have been properly adopted, authorized and executed; (ii) the resolution and all documents related to the Credit Facility constitute a legally binding obligation of the Borrower, payable from the Security and enforceable according to their terms (subject to standard exceptions); (iii) interest payable on the Credit Facility is excludable from net income for purposes of federal and state income taxes; and (iv) Borrower has designated the Credit Facility as a "qualified tax-exempt obligation".

REPORTING REQUIREMENTS:

Financial Information from Borrower. Borrower to provide financial information and statements in form and content acceptable to Bank of America indicated below:

- Within 210 days of fiscal year end, or upon receipt from the State Auditor, the Borrower's audited annual financial statement.
- Within 45 days of adoption, the Borrower's annual budget.
- Such other financial information as may be reasonably requested by Bank of America from time to time.

EVENTS OF DEFAULT:

Usual and customary in transactions of this type.

In addition to other legal remedies, if an event of default occurs due to (i) nonpayment of principal, interest, fees or other amounts when due, or (ii) failure to maintain the tax exempt status of the Credit Facility, then Bank of America may increase the interest rate spread by three percent (3.0%).

GOVERNING LAW/ARBITRATION:

State of Oregon. Any dispute arising out of or related to this letter or the final loan documentation shall be determined by binding arbitration in accordance with the Federal Arbitration Act. All arbitration proceedings shall be conducted through the American Arbitration Association (an independent, alternative dispute resolution service).

EXPENSES:

Borrower will pay all reasonable costs and expenses associated with the preparation, due diligence, administration and enforcement of all documentation executed in connection with the Credit Facility, including Bank of America's attorneys' fees. Bank of America's attorneys' fees for initial review and approval of documentation are subject to a cap of \$600.

EXPIRATION OF PROPOSAL:

The terms proposed herein lapse if Bank of America is not selected as the Lender by October 30, 2009, or if the subject transaction is not closed by December 31, 2009, unless extended by mutual agreement.

This Term Sheet Proposal contains confidential and proprietary loan structuring and pricing information. Except for disclosure on a confidential basis to your accountants, attorneys and other professional advisors retained by you in connection with the credit facilities contained in this Term Sheet Proposal or as may be required by law, the contents of the Term Sheet Proposal may not be disclosed in whole or in part to any other person or entity without our prior written consent, provided that nothing herein shall restrict disclosure of information relating to the tax structure or tax treatment of the proposed credit facilities.

Under Oregon law, most agreements, promises and commitments made by Lender 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.



FINANCE DEPARTMENT
STAFF REPORT

Date: December 7, 2009

To: Honorable Mayor and City Council

From: Gary S. Wallis, Finance Director

Subject: \$5M Sewer Debt Issuance

In preparation for the upgrades to the wastewater treatment plant the City has hired an owner's representative and has requested proposals for a Design-Build-Operate firm. These preliminary costs plus staff time to administer the project are estimated to cost no more than \$5 million. The financial plan is to cover these costs from a short-term debt and to look to system development charges only if required. The accompanying Resolution authorizes the issuance of the short-term debt.

Bank of America provided borrowing terms (Attachment A to the Resolution) for the requested debt. This will be an interest only debt. Interest is computed based on 63.5% of the London InterBank Offered Rate (LIBOR) plus 1.10% with a floor of 1.60%. Recently, a one-year LIBOR was 1.01%, so the effective rate for the City would be about 1.75%. Interest has been budgeted and would be paid from sewer operating funds. Security for this debt comes from the assets of the Sewer System. The City will not be pledging its General Fund to this debt.

The principal will be repaid when the City issues long-term bonds for the construction phase. This short-term issue anticipates the repayment within two years. If needed, the repayment date can be extended for a fee. The issuance costs paid to the bank for the original loan will be \$10,000, or 2/10th of one percent.

The accompanying Resolution has been prepared by the attorney firm of K&L Gates, the City's bond counsel. If approved, the legal papers would be signed on December 18th.