

RESOLUTION NO. 22-891-12

A RESOLUTION OF THE CITY OF JOHN DAY APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE JOHN DAY URBAN RENEWAL AGENCY AND AUTHORIZING A LOAN FROM THE INFRASTRUCTURE FINANCE AUTHORITY SPECIAL PUBLIC WORKS FUND

WHEREAS, the City of John Day (the “City”) is authorized by Oregon Revised Statutes Section 190.010 to enter into a written agreement with any other unit or units of local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform; and

WHEREAS, the City Council has identified a need to finance certain public works improvements on behalf of the John Day Urban Renewal Agency (the “Agency”); and

WHEREAS, these improvements consist of water, sewer, stormwater, reclaimed water, broadband, streets and other publicly-owned infrastructure to serve the Holmstrom Heights, Ironwood Estates – Phase 2, and The Ridge – Phase 1 additions to the City of John Day (collectively, the “Project Improvements”); and

WHEREAS, the Project Improvements will ultimately be deeded to the City of John Day upon recording of the final plat for each addition; and

WHEREAS, the City is authorized by Oregon Revised Statutes Section 271.390 to enter into financing agreements to finance real or personal property which the City Council of the City (the “City Council”) determines is needed so long as the estimated weighted average life of the financing agreement does not exceed the estimated dollar weighted average life of the property that is financed; and

WHEREAS, the City Council hereby determines that the Project Improvements are needed, and that it is desirable to finance the Project pursuant to ORS 271.390; and

WHEREAS, the City may make expenditures on the Project (the “Expenditures”) before the City borrows to finance the Project, and the rules of the United States Internal Revenue Service require the City to declare its official intent to reimburse itself for amounts that the City will spend before it borrows, in order for the City to reimburse itself for those Expenditures from the proceeds of a tax-exempt borrowing;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF JOHN DAY, GRANT COUNTY, OREGON HEREBY RESOLVES:

SECTION 1. Financing Agreement Authorized. The City is hereby authorized to enter into one or more financing agreements (collectively, the “Financing Agreement”) with the Oregon Business Development Department’s Infrastructure Finance Authority Special Public Works Fund pursuant to ORS 271.390 in a combined principal amount sufficient to provide up to \$1,850,000 for the Project Improvements. Proceeds of the Financing Agreement shall be used to pay costs of the Project and costs associated with the Financing Agreement. The Mayor or City Manager or the person designated by the Mayor or City Manager (each of whom is referred to herein as a “City

Official”) are hereby authorized, on behalf of the City and without further action by the City Council, to:

- A. Determine the final principal amount, interest rate, payment dates, prepayment rights and all other terms of the financing;
- B. Negotiate the final terms of, and execute and deliver the Financing Agreement, which may be in the form of a draw down borrowing or fully amortizing loan, and any related documents;
- C. Enter into covenants which the City Official determines are desirable to obtain more favorable terms for the Financing Agreement, including pledging proceeds of grants the City may receive for the Project to secure the Financing Agreement;
- D. Covenant for the benefit of the lender to comply with all provisions of the Internal Revenue Code of 1986, as amended (the “Code”) which are required for the interest paid under the Financing Agreement to be excluded from gross income for federal income tax purposes;
- E. Designate the borrowing as a “qualified tax-exempt obligation” pursuant to Section 265(b)(3) of the Code, if applicable;
- F. Appoint and enter into agreements with bond counsel, financial advisor and other service providers for the Financing Agreement; and
- G. 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.

SECTION 2. Security. Pursuant to ORS 287A.315, the City is authorized to pledge its 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 Agreement. The City is not authorized to levy additional taxes to pay the amounts due under the Financing Agreement.

SECTION 3. Declaration of Intent to Reimburse. The City hereby declares its official intent pursuant to Section 1.150-2 of the Treasury Regulations to reimburse itself with the proceeds of the Financing Agreement for any Expenditures paid before the Financing Agreement is issued.

SECTION 4. Intergovernmental Agreement Approved. The City Officials are authorized to sign and effect an intergovernmental agreement with the Agency to receive tax increment revenues from the Agency, substantially in the form shown in Exhibit A.

SECTION 5. Effective Date. This resolution is effective immediately upon adoption.

ADOPTED by the City Council of the City of John Day, Grant County, Oregon this 24th day of May, 2022.

**CITY OF JOHN DAY
GRANT COUNTY, OREGON**

Ron Lundborn, Mayor

ATTEST:

Nicholas Green, City Manager

Exhibit A. Intergovernmental Agreement

[Enclosed]

**Intergovernmental Agreement to Transfer Tax Increment Revenues
of the John Day Urban Renewal Area
to the City of John Day to pay a Special Public Works Fund Loan**

This Intergovernmental Agreement (the “Intergovernmental Agreement”) is dated as of May 24, 2022, and is entered into by and between the John Day Urban Renewal Agency (the “Agency”) and the City of John Day, Oregon (the “City”). 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 that are defined in this Section 1(1) shall have the following meanings:

“Area” means the John Day Urban Renewal Area described in the Plan.

“IFA Contract” means the contract with the Oregon Infrastructure Finance Authority under which the City obtains a loan in the amount of not more than \$1,850,000 from the Special Public Works Fund to finance the Projects.

“Plan” means the Agency’s John Day Housing Incentives Plan approved by City Ordinance No. 18-173-03, adopted on June 12, 2018, as that plan has been, and may in the future be, amended.

“Project(s)” means projects described in the Plan and its subsequent amendments, including the New Home Incentive Program, Existing Home Remodel Program, Land Development Incentive Program, and Infrastructure Investment Program.

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

(2) Findings.

(A) The City has entered into the IFA Contract to finance costs of the Projects.

(B) The Agency is authorized to spend Tax Increment Revenues to pay for the costs of the Projects.

(C) This process enables significant cost savings, through reduced interest rates and fees, for the Agency by having the City as applicant.

(D) The Projects will assist the Agency in carrying out its Plan.

- (E) The Agency will only spend the proceeds of the IFA Contract on Projects if the Projects are described in the Plan, located in the Area, and owned by the City or the Agency.
- (F) The Agency will appropriate funding needed for payments in each years' budget.
- (G) The Agency has \$4,305,162 of unused maximum indebtedness available prior to executing this Intergovernmental Agreement.

Section 2. Payments.

- (1) The payments due from the City under the IFA Contract are shown in the attached Exhibit A.
- (2) The Agency hereby agrees to pay to the City the amount of each payment due from the City under the IFA Contract, not less than one business day prior to the date each payment is due.
- (3) This Intergovernmental Agreement shall constitute indebtedness of the Agency. The Agency is obligated to make the payments due under this Intergovernmental Agreement solely from the Tax Increment Revenues. Pursuant to Oregon Revised Statutes Section 287A.310, the Agency pledges the Tax Increment Revenues to pay the amounts described in Section 2.2 of this Intergovernmental Agreement. This pledge shall be subordinate to the tax increment indebtedness of the Agency that are outstanding on the date this Intergovernmental Agreement is executed, but shall be superior to all other obligations of the Agency except to the extent that the City subsequently agrees in writing to subordinate this pledge.

Section 3. 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 that 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 4. 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 Linn County, Oregon.

(6) Rules of Construction.

References to section numbers in documents that 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 Agency and the City have executed this Intergovernmental Agreement as of the date indicated above.

For the John Day Urban Renewal Agency

Nicholas Green, Executive Director

For the City of John Day, Oregon

Ron Lundbom, Mayor

Exhibit A. IFA Agreement

[Enclosed]