



ADMINISTRATIVE SERVICES COMMITTEE

Agenda

Wednesday, August 8, 2012

4:00 pm

Madison Avenue Meeting Room
500 SW Madison

- | | |
|----------------------------|--|
| Discussion/Possible Action | I. Water/Wastewater Loan Refunding
(Attachment) |
| Information | II. Other Business |

Next Scheduled Meeting

Wednesday, August 22, 2012 at 4:00 pm

Madison Avenue Meeting Room, 500 SW Madison Ave

Agenda

Comcast Franchise Renewal Update

MEMORANDUM

July 27, 2012

TO: Administrative Services Committee

FROM: Nancy Brewer, Finance Director 

SUBJECT: Resolution Relating to the Issuance of Refunding Bonds

I. Issue

To issue refunding bonds for several outstanding debt issues.

II. Background

The City borrows money from time-to-time to fund capital projects. Borrowings can be through voter-approved general obligation bonds, limited tax/full faith and credit bonds, revenue bonds, or loans. The City maintains a relatively low debt position, significantly lower than State law allows, and more often than not attempts to pay cash for projects. Borrowing is usually done only when the project is so large the City cannot build cash reserves to fund the project.

The opportunity to refund some existing debt (similar to the concept of re-financing a mortgage) has been proposed to the City by various bond underwriters over the last several years as a way to reduce costs. As opportunities arose, the City has refunded outstanding debt issues, including the 2000A Revenue Bonds for the Combined Sewer overflow project (refunded in 2006) and the Riverfront (1999) and Open Space Bonds (2001) (combined into a single refunding in 2009).

The current extremely low interest rate environment provides an opportunity for significant savings for the City by refunding the low-interest Combined Sewer Overflow (CSO) loan from the Department of Environmental Quality (DEQ) as well as the two Oregon Economic and Community Development Department (OECDD – now renamed Oregon Business Development Department and going by OBDD) loans taken out in the late 1990s to upgrade and expand the Taylor Water Treatment Plant.

The total refunding is anticipated to be sized at approximately \$14 million. To meet Oregon State Treasury requirements, a refunding issue must achieve at least a 3% net present value (NPV) savings. The City's Financial Advisor currently estimates an NPV savings in excess of 8% for each of the three loans, representing a total of over \$1.4 million in debt service reduction over the life of the three previous debt schedules; actual savings will depend on pricing on the day of sale.

III. Discussion

To complete a refunding, there are a number of issues that have to be addressed, and decisions that have to be made. Finance Department staff members have been working with the City's Financial Advisor and Bond Counsel to develop a plan for the refunding. Highlights of decisions made by staff that impact this refunding, and some information about these decisions are:

- Competitive sale – bonds can be sold competitively via an on-line auction or in a negotiated sale where there would be a competitive process to select an underwriter who would then sell the bonds. Since this is a fairly “vanilla” issue, staff is opting to do a competitive sale which is the preferred method and matches Council’s Financial Policies.
- Full Faith and Credit (FFC) Obligations – an FFC pledges the City’s General Fund revenues to re-pay the debt, though the City will re-pay the bonds using Water and Wastewater revenues. Traditionally, a revenue bond would be the most likely refunding instrument. However, in the current market, revenue bonds are not pricing as well as FFC obligations. In addition, by issuing as an FFC there is no requirement to hold a debt service reserve; as the Council, is aware, the Adopted Budget assumes this refunding is expected to free up the existing debt service reserve to provide resources to fund the Total Maximum Daily Load (TMDL) pre-design work.
- Water and Wastewater Fund Loans – as noted above, in the extremely low interest rate environment currently available for municipal borrowers, the City is able to refund low interest loans previously issued by the DEQ for the CSO project. This was the original plan, but as the rate environment was discussed, the City’s Financial Advisor indicated that rolling in the two OBDD loans held in the Water Fund could be done easily, and would save the Water Fund monies similar to the savings identified in the Wastewater Fund. As a result, this refunding includes all three loans.
- Debt Service Structure – when refunding debt, staff always examines the structure of the debt. The normal course of business is to issue bonds so that there are level annual payments. However, from time-to-time some alternative structure may be more beneficial. In the case of the Wastewater portion of the debt, staff’s plan is to structure the debt to slightly front-end load the principal. In other words, the debt is structured to have the annual payments be around the same amount as the DEQ loan for FY 12-13 and FY 13-14, then drop in FY 14-15 to make room for the expected \$15 million borrowing necessary for the TMDL project. The Water Funded portion of the refunding structure will be established at close to level annual repayments achieving roughly similar savings in each of the three and five remaining years of each respective loan. There is no currently known need to build in capacity for future borrowings in this time frame for coming Water Fund projects.
- New money – with the pending additional costs associated with the TMDL project, staff considered whether or not to include new money for the design and engineering work for the TMDL project as part of this borrowing. Ultimately, we decided to not pursue new money because the pre-design is not complete and a more final budget/cost estimate for design and engineering work is still unavailable. However, since the City may begin to incur design costs during FY 12-13 that would be eligible for reimbursement from future bond proceeds, staff has included a reimbursement resolution with this staff report so that costs advanced now can be re-paid from future bond proceeds.
- Airport OBDD loan – staff looked at whether this loan should also be refunded (along with the Water loans). While inclusion of refunding this additional loan would also provide savings to the City, the small amount outstanding could be reasonably paid-off from the Airport Fund balance. Finance Department staff consulted with Public Works staff and agree the best alternative is to appropriate and pay the remaining principal of \$109,044 in FY 13-14, thereby saving remaining future interest costs (totaling approximately \$9,617). Council approval of such a prepayment will be sought through the FY 13-14 budget process.

The first attached resolution addresses these decisions and gives the Finance Director the authority to move forward or cancel the sale if market factors change, and authorizes the Finance Director to sign all of the official documents required to complete the refunding. The second resolution is the reimbursement resolution.

At the present time, the plan is to complete the Moody's rating around the second week of August. This will be an important part of this deal and hopefully the action taken by the City Council to build General Fund Reserves will serve the City well. The bond sale is tentatively scheduled for September 11, with closing September 27. These dates may move depending on completing all tasks and market conditions.

IV. Council Policy

The City Council's Financial Policies include statements on debt issuance. The complete policy language is included as Attachment A. With this re-funding, most of the debt policies will be met. However, policy language of concern is in section 10.06.040.D:

D. Limited Tax General Obligation Bonds -- The outstanding principal debt for Limited Tax General Obligation Bonds (LTGO), non-self-supporting leases, and full faith and credit lease purchases, is limited to 1% of the true cash value of the taxable property in the City. *Furthermore, annual debt payments shall not exceed 5% of the combined operating and capital budgets in the Governmental Funds.*

Even with this refunding issue, the annual payments for all LTGO debt will be well under the 1% TCV limit. However, annual payments for limited tax debt (including full faith and credit obligations) will exceed 5% of the combined operating and capital budgets in the Governmental Funds. The City currently has three LTGO debt issues to which this limit applies – the 2002 and 2005 Pension Obligation Bonds (POB) and the 2010 Bank Loan. The bank loan is being fully re-paid as a General Fund obligation. However, the POBs are both partially re-paid from non-General Fund resources (around 18.5% of the annual payment is from non-tax resources), and this new refunding will be fully re-paid from non-General Fund resources. Staff believes that amending the Council Policy language very slightly would allow this refunding to be completed within policy guidelines. Staff recommends revising the policy language to read as follows:

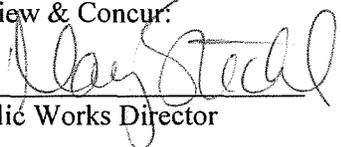
D. Limited Tax General Obligation Bonds -- The outstanding principal debt for Limited Tax General Obligation Bonds (LTGO), non-self-supporting leases, and full faith and credit lease purchases, is limited to 1% of the true cash value of the taxable property in the City. Furthermore, annual debt payments for property tax supported LTGO debt shall not exceed 5% of the combined operating and capital budgets in the Governmental Funds.

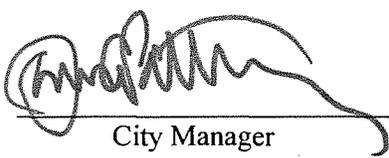
IV. Requested Action

Staff requests ASC consider the following motions:

1. I move to recommend the City Council adopt an amendment to the City Council's Financial Policy language in section 10.06.040.D as recommended by staff.
2. I move to recommend the City Council adopt a resolution authorizing refunding the Wastewater Fund CSO loan with the DEQ and the two Water Fund loans with the Oregon Business Development Department, to be read by the City Attorney.
3. I move to recommend the City Council adopt a reimbursement resolution to allow the City to repay cash advances for work initiated on the TMDL project in advance of the receipt of future bond proceeds, to be read by the City Attorney.

Review & Concur:


Public Works Director


City Manager

10.06 Debt

10.06.010 Purpose

To proactively manage the City's existing and future debt issues in compliance with state and federal laws to maintain the City's capacity for future debt issues that may be required for infrastructure investment.

10.06.020 Background

The City of Corvallis operates on a pay-as-you go basis for most capital investment, matching resources with appropriate uses. Systems Development Charge revenue is used to fund capital investments that are required to increase the capacity of the City's infrastructure. Operating monies are used to pay for maintenance of existing infrastructure, and as leverage for grant monies to fund projects that may otherwise be unattainable. If necessary for some projects, reserves are built over time, or grants are sought to fund some capital investments. From time-to-time the City plans for a capital improvement project or a significant long-term operating expenditure (such as pension obligations) which is too expensive to finance with cash reserves or which needs to be completed before reserves can be developed. When this occurs, the City borrows monies. The City is conservative in its borrowing practices, and strives to maintain low debt-per-capita ratios when compared to similar sized cities.

10.06.030 Use of Debt Financing

- A. Long-term Debt -- The City of Corvallis shall only use long-term debt for capital projects that cannot be financed out of current revenues within the Revenue Policy guidelines for rate increases. Debt financing shall generally be limited to one-time capital improvement projects or to leverage a future significant cost the City must bear (such as pension obligations) and only under the following circumstances:
 1. when the project's useful life is greater than or equal to the term of the financing;
 2. when project revenue or specific resources will be sufficient to service the debt; and,
 3. when analysis demonstrates that the debt will smooth or reduce costs over multiple years or the project is expected to benefit the citizens of Corvallis.
- B. Use of Debt Financing -- Debt financing shall not be considered appropriate for:
 1. Current operating and maintenance expenses (except for issuing short-term instruments such as revenue anticipation notes or tax anticipation notes); and
 2. Any recurring purpose (except as indicated above).
- C. Tax/Revenue/Bond Anticipation Notes -- Tax and revenue anticipation debt will be retired within the fiscal year issued, and bond anticipation notes will be retired no later than six months after the completion of the project.
- D. Short-term Debt -- Debt issued with a final maturity of one year or less from the time of issuance, which is outstanding at the end of the year, will not exceed 5% of net operating revenues (including tax anticipation notes but excluding bond anticipation notes.)

10.06.040 Limits on Debt Issuance

- A. Vote to Issue General Obligation Debt -- General obligation bonds require an affirmative vote prior to issuance. Constitutional limitations require a simple majority of votes for May and November elections; for all other elections, a simple majority of registered voters must vote in the election, and of those voting a simple majority must vote affirmatively.
- B. Statutory General Obligation Bond Debt Limits -- Oregon Revised Statutes chapters 287 and 288 limit the outstanding general obligation principal indebtedness of the City other than bonds issued for water, sanitary or storm sewers to 3% of the true cash value of the taxable property within the City.
- C. Council Imposed Debt Limits -- The annual general obligation debt service for long-term issues (greater than five years), where the debt service is paid from property tax sources, shall not exceed 15% of the combined operating and capital budgets in the Governmental funds.

- D. Limited Tax General Obligation Bonds -- The outstanding principal debt for Limited Tax General Obligation Bonds (LTGO), non-self-supporting leases, and full faith and credit lease purchases, is limited to 1% of the true cash value of the taxable property in the City. Furthermore, annual debt payments shall not exceed 5% of the combined operating and capital budgets in the Governmental Funds.
- E. Revenue Bonds -- Revenue secured debt obligations will be undertaken only after a study of the projected operating, maintenance, debt service and coverage requirements and the impact of these requirements on user rates has been completed. The outcome of the study will be shared with the City Council prior to issuing the debt.

10.06.050 Debt Issuance

- A. Timing of Debt Issuance -- The timing for each debt issue in association with the construction schedule will be carefully considered, using the following criteria:
 1. Projected cash flow requirements for the capital project;
 2. Cash reserves on hand to temporarily fund preliminary project expenses;
 3. Spend down schedules identified by the IRS to meet arbitrage limitations; and
 4. Market conditions.
- B. Competitive Sale -- All bonds will be sold at competitive sale unless it is in the City's best interest to sell at a negotiated sale. The City reserves the right to reject any and all bids at a competitive sale and sell the bonds at a negotiated sale if it is in the best interest of the City of Corvallis to do so.
- C. Refunding Bonds -- Refunding or advanced refunding bonds may be authorized by the City Council providing the issuance complies with the rules adopted by the State Treasurer and outlined in Oregon Revised Statutes.
- D. Annual Debt Payment Limits -- To maintain the City's credit rating and expenditure flexibility, the annual debt service payments the City must make on net direct long-term general obligation debt shall not exceed 10% of operating revenue. To achieve this goal, on a per issue basis, the City will structure its debt to pay no less than 33% of the principal on bonds sold during the first half of the repayment term.
- E. Overlapping Debt -- City staff shall endeavor to notify the City Council of the debt issuance plans of the City's overlapping taxing jurisdictions and the possible impact such debt plans may have on the City's debt capacity.
- F. Investment of Bond Proceeds -- Receipt of bond proceeds will be timed to occur in conjunction with construction. However, it is acknowledged that in most cases bond proceeds will not be fully expended as soon as they are received. The City shall invest the proceeds from debt issuance in the legally authorized investment instruments for local governments in Oregon to maximize interest earnings available for the capital project. Prior to choosing an investment instrument, staff will take into consideration projected cash flow of the project and the likelihood that Internal Revenue Service (IRS) spend down targets will be met or exceeded. The investment instrument(s) shall be chosen to maximize interest earnings and minimize any arbitrage penalties which may accrue within the established IRS regulations.

10.06.060 Leasing

Lease purchase financing shall be considered only when the useful life of the item is equal to or greater than the length of the lease, and a lease purchase is the most economical method of purchasing available. If the item may become technologically obsolete or is likely to require major repair during the lease purchase period, then the item should be either purchased with cash or placed on an operating lease.

10.06.070 Rating Agency Relationship

- A. Reporting -- The City shall maintain good communication with bond rating agencies about its financial condition. The City will follow a policy of full disclosure on every financial report and bond prospectus.
- B. Compliance with SEC Rules -- The City will comply with all aspects of the Securities and Exchange Commission rule 15c2-12 pertaining to secondary market disclosure.

10.06.080 Debt Management Plan

A. Debt Management Plan -- A Debt Management Plan shall be developed and updated prior to the issuance of any additional debt. The Debt Management Plan shall encompass all debt of the City which draws on the same financial resources, including, but not limited to:

1. detail of the sources of funding for all debt;
2. current and future debt capacity analysis;
3. issues to be addressed for sound debt management;
4. a contingency debt plan should any of the funding sources become unavailable in the foreseeable future; and
5. reporting as to the City's compliance with its debt policies.

Review -- The Administrative Services Committee shall review the Debt Management Plan prior to the issuance of new debt and any recommendations made therein.

RESOLUTION NO. 2012 –

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FULL FAITH AND CREDIT FINANCING AGREEMENT TO CURRENTLY REFUND OUTSTANDING LOANS WITH THE STATE OF OREGON AND RELATED MATTERS.

Minutes of the Meeting of August 20, 2012 continued.

A resolution submitted by Councilor _____.

WHEREAS, the City Council of the City of Corvallis, Oregon (the “City”) finds:

A. The City is authorized pursuant to the Constitution and laws of the State of Oregon, specifically Oregon Revised Statutes Sections 271.390, 287A.315 and 287A.360 (collectively, the “Act”) to (1) enter into a financing agreement to refinance outstanding bonds, (2) pledge its full faith and credit, and (3) pay the costs of issuance of such financing agreements.

B. The Charter of the City does not (1) prohibit the City from entering into a financing agreement and pledging its full faith and credit as security for the financing agreement, nor (2) require a non-appropriation clause to be included in the financing agreement.

C. Interest rates have declined sufficiently that it is desirable to currently refund all or a portion of the following outstanding loans of the City:

(i) State of Oregon, Oregon Economic Development Department, Special Public Works Fund Loan Agreement No. B97001 dated as of September 6, 1996, as amended as of August 7, 1998, with the Oregon Business Development Department (formerly Oregon Economic Development Department) (the “1996 Loan”);

(ii) State of Oregon, Department of Environmental Quality, Clean Water State Revolving Fund Loan Agreement No. R24481 dated as of September 1, 1997, as amended as of January 10, 1999, and October 29, 1999, with the Oregon Department of Environmental Quality (the “1997 Loan”);

(iii) State of Oregon, Oregon Economic Development Department, Water/Wastewater Financing Program Loan Agreement No. G95003 dated as of November 2, 1994, as amended as of November 13, 1998, with the Oregon Business Development Department (the “1998 Loan”).

The 1996 Loan, the 1997 Loan and the 1998 Loan, are collectively referred to herein as the “Loans”.

E. The 1996 Loan is in the final loan amount of \$2,107,000. The State has agreed to waive the 1996 Loan prepayment requirements and provide its consent to the prepayment. The outstanding balance of the 1996 Loan is \$759,960. The proceeds of the 1996 Loan were expended for the construction of certain improvements to the Taylor Water Treatment Plant.

D. The 1997 Loan is in the final amended loan amount of \$21,263,693. The 1997 Loan is subject to prepayment in whole or in part on any business day upon 24 hours prior written notice. The outstanding balance of the 1997 Loan is \$11,141,546. The proceeds of the 1997 Loan were expended for the combined wastewater overflow remediation and compliance project, including new combined wastewater storage, pumping, conveyance and treatment facilities.

F. The 1998 Loan is in the final amended loan amount of \$9,703,048. The State has agreed to waive the 1998 Loan prepayment requirements and provide its consent to the prepayment. The outstanding balance of the 1998 Loan is \$2,281,645. The proceeds of the 1998 Loan were expended for the construction of certain improvements to the Taylor Water Treatment Plant.

G. It is advantageous for the City to authorize and enter into a financing agreement (the "Agreement") to refund all or a portion of the Loans (the "Project") and to pay the costs incidental thereto. In addition, the City will enter into an escrow agreement which will authorize the escrow agent to issue full faith and credit obligations evidencing undivided proportionate interests in the amounts payable by the City under the financing agreement.

H. The proceeds of the Agreement will be for the purpose of providing funds sufficient to (1) currently refund all or a portion of the Loans, and (2) pay the costs of issuance of the Series 2012 Obligations. The Agreement and the Series 2012 Obligations will be issued as full faith and credit obligations of the City, secured by the general, non-restricted revenues of the City and other funds which may be available for that purpose, including taxes levied within the restrictions of Sections 11 and 11b, Article XI of the Constitution of the State of Oregon.

I. The 1997 Loan was payable from Net Revenues of the Wastewater System. Although the Financing Payments (as defined herein) will not have a lien on, or be secured by, the Net Revenues of the Wastewater System, it is expected that the portion of the Financing Payments attributable to the refunding of the 1997 Loan will be paid from the Net Revenues of the Wastewater System.

J. The 1996 Loan and the 1998 Loan were payable from the net revenues of the City's water system. Although the Financing Payments (as defined herein) will not have a lien on, or be secured by, the net revenues of the water system, it is expected that the portion of the Financing Payments attributable to the refunding of the 1996 Loan and the 1998 Loan will be paid from the net revenues of the water system.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CORVALLIS, OREGON RESOLVES as follows:

1. **Definitions.** Unless the context requires otherwise, capitalized terms used in this resolution shall have the meanings defined in this Section. Capitalized terms used, but not defined herein, shall have the meaning assigned to them in the City's Sewer System Revenue Bond Trust Indenture, dated as of May 1, 2000, as amended.
 - a. "1996 Loan" means the City's State of Oregon, Oregon Economic Development Department, Special Public Works Fund Loan Agreement No. B97001 dated as of September 6, 1996, as amended as of August 7, 1998, with the Oregon Business Development Department (formerly Oregon Economic Development Department) in the final loan amount of \$2,107,000.
 - b. "1997 Loan" means the City's State of Oregon, Department of Environmental Quality, Clean Water State Revolving Fund Loan Agreement No. R24481 dated as of September 1, 1997, as amended as of January 10, 1999, and October 29, 1999, with the Oregon Department of Environmental Quality in the final amended loan amount of \$21,263,693.
 - c. "1998 Loan" means the City's State of Oregon, Oregon Economic Development Department, Water/Wastewater Financing Program Loan Agreement No. G95003 dated as of November 2, 1994, as amended as of November 13, 1998, with the Oregon Business Development Department in the final amended loan amount of \$9,703,048.
 - d. "City" means the City of Corvallis, Oregon
 - e. "Loans" means collectively, the 1996 Loan, the 1997 Loan and the 1998 Loan.
 - f. "OBDD" means the State of Oregon, acting by and through the Oregon Business Development Department.
 - g. "DEQ" means the State of Oregon, acting by and through the Director of the Oregon Department of Environmental Quality or the Director's authorized representative.
2. **Authorization.** The Council hereby authorizes:
 - a. **Issuance and Sale of Series 2012 Obligations.** The City authorizes the issuance and sale of Full Faith and Credit Obligations, Series 2012 (the "Series 2012 Obligations") of the City which shall be issued by the escrow agent, for and on behalf of the City, in an amount not greater than the amount necessary to (1) refund all or a portion of the outstanding Loans, and (2) pay costs of issuance of the Series 2012 Obligations. The Series 2012 Obligations shall be issued at a true interest cost not to exceed two and three-quarters of a percent (2.75%) per annum and shall mature on a date set by the

Authorized Representative (as defined below).

- b. Financing Agreement. The City authorizes the execution and delivery of a financing agreement (the “Financing Agreement”) to finance the Project, in a form satisfactory to the Authorized Representative, as defined below.
 - c. Escrow Agreement. The City authorizes the execution and delivery of an escrow agreement between the City and the escrow agent (the “Escrow Agreement”), in a form satisfactory to the Authorized Representative, pursuant to which the escrow agent shall execute the Series 2012 Obligations representing the principal amount payable under the Financing Agreement, and evidencing the right of the escrow agent to receive the City’s Financing Payments under the Financing Agreement.
3. **Financing Payments**. The Financing Payments due under the Agreement shall be full faith and credit obligations of the City payable from the lawfully available, non-restricted funds of the City 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 within the limits of Article XI, sections 11 and 11b. Although the Financing Payments will not have a lien on, nor be secured by, the Net Revenues of the Wastewater System, it is expected the Financing Payments attributable to the refunding of the 1997 Loan will be paid from the Net Revenues of the Wastewater System. Although the Financing Payments will not have a lien on, nor be secured by, the net revenues of the water system, it is expected the Financing Payments attributable to the refunding of the 1996 Loan and 1998 Loan will be paid from the net revenues of the water system.
 4. **Designation of Authorized Representative**. Pursuant to ORS 287A.300(4), the City hereby authorizes the City Manager or the Finance Director (the “Authorized Representative”) to act on behalf of the City and determine the remaining terms of the Agreement as specified in Section 6.
 5. **Sale of Series 2012 Obligations**. The Series 2012 Obligations may be sold by competitive sale or negotiated sale pursuant to ORS 287A.300 as determined by the Authorized Representative. The Authorized Representative shall determine the requirements for the sale of the Series 2012 Obligations, subject to the provisions of this Resolution that provide the most advantageous terms to the City. If sold at a competitive sale, the Authorized Representative is authorized to prepare the terms of and publish a notice of sale and act upon the bids received. If sold at a negotiated sale, the Authorized Representative is authorized to appoint an underwriter and negotiate and execute a purchase agreement setting forth the terms of the sale of the Series 2012 Obligations.
 6. **Delegation of Final Terms and Sale of Series 2012 Obligations and Additional Documents**. The Authorized Representative is authorized, on behalf of the City, to:

- a. approve of and authorize the distribution of the preliminary and final Official Statements to prospective purchasers of the Series 2012 Obligations;
- b. determine the method of sale, determine the provisions of the notice of sale if sold at a competitive sale and act upon the bids received, negotiate the terms of, and execute and deliver a Purchase Agreement if sold at a negotiated sale;
- c. establish the maturity and interest payment dates, dated date, principal amounts, capitalized interest (if any), optional and/or mandatory redemption provisions, interest rates, denominations, and all other terms under which the Series 2012 Obligations shall be issued, sold, executed, and delivered;
- d. determine if all, none or a portion of the Loans will be refunded with the Series 2012 Obligation proceeds;
- e. appoint an escrow agent for the Series 2012 Obligations;
- f. negotiate the terms and approve of the Financing Agreement and the Escrow Agreement as the Authorized Representative determines to be in the best interest of the City, and to execute and deliver the Financing Agreement and the Escrow Agreement and appoint an escrow agent;
- g. determine whether the Series 2012 Obligations shall be Book-Entry certificates and to take such actions as are necessary to qualify the Series 2012 Obligations for the Book-Entry System of DTC, including the execution of a Blanket Issuer Letter of Representations;
- h. seek to obtain a rating on the Series 2012 Obligations, if determined by the Authorized Representative to be in the best interest of the City;
- i. apply for municipal bond insurance for the Series 2012 Obligations, and expend proceeds to pay the insurance premium, if determined by the Authorized Representative to be in the best interest of the City;
- j. designate the Financing Agreement and the Series 2012 Obligations as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code so long as the City and all subordinate entities do not reasonably expect to issue more than \$10,000,000 of tax-exempt obligations during the calendar year in which the Series 2012 Obligations are issued;
- k. approve, execute and deliver a Tax Certificate; and execute and deliver a Certificate specifying the action taken pursuant to this Resolution, and any other

documents, agreements or certificates that the Authorized Representative determines are necessary and desirable to issue, sell and deliver the Series 2012 Obligations in accordance with this Resolution; and

l. approve, execute and deliver a continuing disclosure certificate pursuant to SEC Rule 15c2-12, as amended (17 CFR Part 240, § 240.15c2-12) for the Series 2012 Obligations.

7. **Maintenance of Tax-Exempt Status.** The City hereby covenants for the benefit of the owners of the Series 2012 Obligations to use the Agreement proceeds, and to otherwise comply with all provisions of the Internal Revenue Code of 1986, as amended (the "Code") which are required for the interest component of the payments payable under the Agreement to be excluded from gross income for federal income tax purposes, as provided in the Agreement. The City makes the following specific covenants with respect to the Code:

- i. The City will not take any action or omit any action if it would cause the Agreement to become an arbitrage bond under Section 148 of the Code.
- ii. The City shall operate the facilities refinanced with the Agreement so that the Agreement does not become a private activity bond within the meaning of Section 141 of the Code.
- iii. The City shall comply with appropriate reporting requirements.
- iv. The City shall pay, when due, all rebates and penalties with respect to the Agreement which are required by Section 148(f) of the Code.

The covenants contained in this Section 7 and any covenants in the closing documents for the Agreement shall constitute contracts with the lender, and shall be enforceable by them. The Authorized Representative may enter into covenants on behalf of the City to protect the tax-exempt status of the Agreement.

8. **Appointment of Special Counsel.** The City hereby appoints Mersereau Shannon LLP as special counsel for the execution of the Agreement.

9. **Continuing Disclosure.** The City covenants and agrees to comply with and carry out all of the provisions of the Continuing Disclosure Agreement to be negotiated with the underwriter. Notwithstanding any other provision of this Resolution, failure by the City to comply with the Continuing Disclosure Agreement will not constitute an event of default; however, any Registered Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause

the City to comply with its obligations under this Section and the Continuing Disclosure Certificate.

10. **Preliminary and Final Official Statement.** The City shall prepare or cause to be prepared a preliminary official statement for the Series 2012 Obligations which shall be available for distribution to prospective purchaser(s). In addition, an official statement shall be prepared and ready for delivery to the purchasers of the Series 2012 Obligations no later than the seventh (7th) business day after the sale of the Series 2012 Obligations. When the City determines that the final official statement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained in the official statement not misleading in the light of the circumstances under which they are made, the Authorized Representative is authorized to certify the accuracy of the official statement on behalf of the City.
11. **Closing of the Sale and Delivery of the Series 2012 Obligations.** If sold at a competitive sale, the Authorized Representative is authorized to prepare the terms of and publish a notice of sale and act upon the bids received. If sold at a negotiated sale, the Authorized Representative is authorized to negotiate with the underwriter as to the terms and conditions of a Bond Purchase Agreement providing for the private negotiated sale of the Series 2012 Obligations. The Authorized Representative is authorized to execute the Bond Purchase Agreement for and on behalf of the City and to execute such additional documents, including a Tax Certificate, and to perform any and all other things or acts necessary for the sale and delivery of the Series 2012 Obligations and redemption of the Loans as herein authorized. Such acts of the Authorized Representative are for and on behalf of and are authorized by the Council of the City.
12. **Resolution to Constitute Contract.** In consideration of the purchase and acceptance of any or all of the Series 2012 Obligations by those who shall own the same from time to time (the "Owners"), the provisions of this Resolution shall be part of the contract of the City with the Owners and shall be deemed to be and shall constitute a contract between the City and the Owners. The covenants, pledges, representations and warranties contained in this Resolution or in the closing documents executed in connection with the Series 2012 Obligations, including without limitation the City's covenants and pledges contained in Section 2 hereof, and the other covenants and agreements herein set forth to be performed by or on behalf of the City shall be contracts for the equal benefit, protection and security of the Owners, all of which shall be of equal rank without preference, priority or distinction of any of such Series 2012 Obligations over any other thereof, except as expressly provided in or pursuant to this Resolution.

This resolution shall take effect immediately upon its adoption by the Council.

Upon motion duly made and seconded, the foregoing resolution was adopted and the Mayor thereupon declared said resolution to be adopted.

Attest:

City Recorder

RESOLUTION NO. 2012 -

A RESOLUTION OF THE CITY OF CORVALLIS, OREGON ADOPTING
A STATEMENT OF OFFICIAL INTENT TO REIMBURSE CAPITAL
EXPENDITURES FROM THE PROCEEDS OF A BORROWING
REASONABLY EXPECTED TO BE ENTERED INTO BY THE CITY

Minutes of the Meeting of August 20, 2012 continued.

A resolution submitted by Councilor _____.

WHEREAS, the City Council of the City of Corvallis, Oregon (the "City") finds:

A. The City is currently planning Wastewater System improvements related to State regulations for the total amount of a particular constituent that can be present in the wastewater discharged to the Willamette River. This threshold amount, or Total Maximum Daily Load (TMDL), is designed to improve the aquatic habitat, particularly for threatened or endangered species. The City has been issued a National Pollution Discharge Elimination System permit that contains a TMDL for the temperature of the City's wastewater effluent. During the summer months, when the Willamette River levels are low, the temperature from the City's effluent contributes to the situation where the receiving waters exceed the TMDL threshold. The City is mandated to mitigate for these temperature impacts, and is currently planning wastewater system improvements in connection with this mandate, and related capital projects (collectively, the "Project"); and

WHEREAS, the City has already incurred, or intends to incur expenditures relating to the Project, all within the meaning of Treasury Regulations §1.150-2(f)(2), and the City Council desires to declare its intent to finance the Project with the proceeds of tax-exempt obligations (the "Obligations"), the interest on which shall be excluded from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and to reimburse the City for any expenditures relating to the Project incurred by the City prior to the issuance of the Obligations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CORVALLIS, OREGON RESOLVES as follows:

Section 1. Reimbursement Resolution. The City Council adopts this Resolution as its official intent to allocate from the proceeds of a proposed borrowing reasonably expected to be entered into by the City, capital expenditures made not more than sixty (60) days prior to and following the adoption of this Resolution, up to and including the date of the proposed borrowing. Preliminary expenditures in an amount not exceeding 20% of the Obligation proceeds or expenditures which do not exceed the lesser of \$100,000 or 5% of the Obligation proceeds are not subject to the 60 day limitation stated above. Preliminary expenditures include architectural, engineering, surveying, soil testing and similar costs incurred prior to commencement of acquisition,

construction or rehabilitation of the Project, other than land acquisition, site preparation and similar costs incident to commencement of construction.

Section 2. Reimbursement Period. The City shall make the reimbursement allocation from the proceeds of the borrowing to the respective fund or accounts of the City from which the capital expenditures have been made no later than eighteen (18) months after the later of the date of the expenditure or the date that the Project is placed in service, but in no event more than three (3) years after the date of the expenditure. The City acknowledges that such reimbursement from bond proceeds may be made only to the extent that all other applicable requirements of Treasury Regulations §1.150-2 are met with respect to the tax-exempt borrowing, and hereby directs all City officials and personnel to take such lawful actions as may be necessary or appropriate in order to ensure that such expenditures may be reimbursed from bond proceeds to the fullest extent permitted by law.

Section 3. Description of Project. The Project consists of improvements to the City's Wastewater System and related capital projects.

Section 4. Project Cost. It is anticipated that the cost of the Project, including costs incidental thereto, will not exceed \$40,000,000.

Section 5. Further Action. The City Manager or the Finance Director is hereby authorized to take such further action as is necessary to carry out the intent and purposes hereof in compliance with the applicable provisions of law.

This resolution shall take effect immediately upon its adoption by the Council.

Upon motion duly made and seconded, the foregoing resolution was adopted and the Mayor thereupon declared said resolution to be adopted.

Attest:

City Recorder

Attachment 1

MEMORANDUM

August 13, 2012

TO: Administrative Services Committee
FROM: Nancy Brewer, Finance Director
SUBJECT: **Bond Sale Delay**

Friday morning, in a conference call with the City's Financial Advisor, we decided to delay the bond sale for the Water and Wastewater loan refunding until late October. The primary factor in making this decision is that the City's current financial statements (June 30, 2011) are 14 months old. The City's Financial Advisor believes Moody's will want to see financial statements for June 30, 2012 before making a rating; current statements will be more critical than usual due to the City's negative outlook status from last year.

Accounting staff are in the midst of closing the fiscal year, and though we can provide current financial status for the individual funds (General, Water and Wastewater), we will not have the combined statements of net assets in even a draft unaudited version until mid-September.

During the conference call, we discussed possible risks, which include the possibility of an uptick in interest rates; neither the City's Financial Advisor nor the City's Investment Advisor sees any significant uptick in interest rates between now and the end of October.

This staff decision will not affect the motions and resolutions included in the ASC report – all three actions are still needed. It only changes the time line of the Moody's rating and bond sale.

Please let me know if you have any questions.