

ATTACHMENT B

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF GRESHAM AND THE GRESHAM REDEVELOPMENT COMMISSION RELATING TO A CREDIT FACILITY AGREEMENT

This Credit Facility Agreement (this “**Agreement**”), made effective on the later of either July 1, 2023 or the date of the last signature hereto (“**Effective Date**”), by and between the City of Gresham (“**Lender**” or “**City**”), an Oregon Municipal Corporation, and the Gresham Redevelopment Commission (“**Borrower**” or “**Agency**”), an Oregon quasi-municipal corporation and the urban renewal agency for the City, created pursuant to ORS 457.035 through 477.460.

RECITALS

A. The City established the urban renewal agency for the City by Gresham Revised Code (“**GRC**”) Article 2.24 and pursuant to ORS 457.055 and appointed itself as the governing Board of the Agency.

B. The Agency is a public body, corporate ad politic, duly activated by the City, exercising its powers to engage in urban renewal activity as authorized by ORS Chapter 475.

C. The Agency has developed an Urban Renewal Plan (“**Plan**”), as defined by ORS 457.010(16), which has been approved by the City, pursuant to ORS 457.095 and the Charter of the City, and has engaged in, and will be in engaging in, redevelopment activities to carry out the Plan.

D. ORS 190.010 and ORS 457.320 authorize the City and the Agency to enter into an IGA whereby the City provides administrative and development services to the Agency.

E. The City has experience in the provision of the administrative services for local governments and in planning and constructing public improvements, and desires, pursuant to ORS 457.320, to assist the Agency in the planning and carrying out of the Plan by providing credit facility services.

F. The City and Agency wish to establish the terms of a credit facility, subject to the terms and conditions set forth below, and in reliance upon the representations and warranties and the covenants and undertakings of Agency, City wishes to extend such line of credit to Agency, the proceeds of which shall be used solely and exclusively in furtherance of Agency’s Rockwood-West Gresham Urban Renewal Plan and the projects identified therein.

G. In consideration of the foregoing and of the mutual covenants and undertakings set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties, intending to be legally bound, agree:

AGREEMENT

ARTICLE 1 DEFINITIONS AND RULES OF CONSTRUCTION

1.1 **Definitions.** In addition to terms defined elsewhere in this Agreement, the following terms as used in this Agreement shall have the meanings specified below (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

(a) **Agreement,** means this Intergovernmental Agreement, as the same may be amended, modified, or supplemented from time to time.

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(b) **Business Day**, means any day that is not a Saturday, Sunday or public holiday under the laws of the State of Oregon and the City of Gresham.

(c) **Debt Capacity**, means the maximum amount of indebtedness that may be issued or incurred under the Plan, as amended.

(d) **Draw**, means the proceeds of the Draw Request that Lender disburses from time to time for the account of Borrower in the form of separate disbursements

(e) **Draw Amount**, means the total loan amount requested.

(f) **Event of Default**, has the meaning given to that term in **Error! Reference source not found.**

(g) **Loan Documents**, means this Agreement and any other agreements or documents now or in the future executed or delivered to Lender by Borrower in connection with this Agreement or the making of the Loan.

1.2 **Accounting Terms.** All accounting terms not specifically defined in this Agreement shall be construed, and all calculations with respect to accounting or financial matters shall be computed, in accordance with generally accepted accounting principles, consistently applied.

1.3 **Incorporation by Reference.** All provisions of the other Loan Documents, as may be amended, modified, or supplemented from time to time, are incorporated by reference in this Agreement with the same effect as though fully set forth in this Agreement. In the event of any inconsistency between the provisions of this Agreement and the provisions of the other Loan Documents, the provisions of this Agreement or of such other Loan Documents as Lender shall designate in its discretion shall control.

ARTICLE 2 THE LOAN

2.1 **Agreement to Lend.** Subject to the terms and conditions in this Agreement, Lender agrees to lend to Borrower such amounts as Borrower may request Subject to this Agreement.

2.2 **Draw Amount.** The Draw amount shall not exceed the amount of tax increment revenue that is immediately available to the Agency and has not been otherwise obligated by the Agency in its debt service fund at the time of a Draw.

2.3 **Draw Request and Lender Approval.**

(a) **Draw Request.** To initiate the Draw, Borrower shall provide Lender with written documentation of the following: (i) proposed draw amount, (ii) date of proposed draw, and which shall be consistent with the form attached as Exhibit A ("**Draw Request**"). The date of a Draw shall not fall on a Friday, the day before a banking holiday, or any other day for which the next calendar day is not a business day for the City.

(b) **Lender Approval.** The Lender shall approve a Draw Request that is consistent with the terms of this Agreement. Within five (5) business days following the Lender's receipt of a Draw Request, the Lender will provide Borrower with written confirmation of the approval or denial of that Draw Request. If the Draw cannot be funded in one draw request, the Lender shall provide documentation to

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Borrower on dates additional funding will be disbursed. All Draws shall be disbursed from the funds of the City consistent with budgeted appropriations.

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2.4 **Draw Disbursements.** Lender shall issue Draws, in accordance with the procedures and subject to the conditions set forth in this Agreement. Unless waived by Lender, no Draw shall be in an amount less than \$500,000.00. All Draws shall be disbursed from City funds in amounts and from sources consistent with all City budget appropriations.

2.5 **Repayment.** Borrower will repay the full Draw amount on the first calendar day subsequent to a Draw. All repayment of Draws shall be paid from the Agency's debt service fund.

ARTICLE 3 PURPOSE AND USE OF LOAN PROCEEDS

The purpose of the Loan is to provide financing that will enable Borrower to further the Rockwood-West Gresham Urban Renewal Plan and the projects identified therein. Borrower represents and warrants that no intention or agreement exists or is contemplated to use the proceeds of the Loan for any purpose other than the purpose stated above, or to designate such proceeds for any entities or organizations other than Borrower. Borrower understands and agrees that the proceeds of the Loan may not under any circumstance serve as security for any other present or future indebtedness of Borrower or be used for any purpose other than the purpose stated above.

ARTICLE 4

TERM

This Agreement will terminate upon the dissolution of the Agency, at the time the Debt Capacity is reached, or as mutually agreed upon in writing by both parties.

ARTICLE 5 CONDITIONS TO LENDER'S OBLIGATIONS

The obligation of Lender under this Agreement to fund the Loan is subject to the following conditions precedent, all of which shall be fulfilled to Lender's satisfaction on or prior to the Draw:

(a) No Default or Event of Default shall have occurred and be continuing or shall result from the funding of the Draw.

(b) No failure by the Borrower to comply with any of its non-payment obligations or to perform any of its duties under this Agreement resulting in an Event of Default as defined below.

(c) No material misrepresentation by the Borrower.

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ARTICLE 6 COVENANTS

Borrower covenants and agrees that, while this Agreement is in effect, unless Lender otherwise consents in writing:

6.1 **Notices to Lender.** Borrower shall promptly notify Lender of any of the following:

(a) The commencement of any action, suit or proceeding before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which seeks recovery from Borrower in an amount equal to or greater than \$25,000.00;

(b) Any change in the end of the fiscal year of Borrower, which currently is June 30;
and

(c) The occurrence of any Default or Event of Default.

6.2 **Assignment.** Borrower shall not assign any rights or delegate performance of any of its duties or obligations provided in this Agreement or the other Loan Documents.

6.3 **Use of Loan Proceeds.** Borrower shall use the proceeds of the Draws solely for the purposes described in and permitted by this Agreement.

ARTICLE 7 EVENTS OF DEFAULT

7.1 **Events of Default.** The occurrence of any or more of the following events shall constitute an “**Event of Default**” under this Agreement:

(a) Borrower fails to make any payment within ten (10) days after the date on which such payment is due; or

(b) Borrower fails to observe or perform any other term, covenant, undertaking or agreement contained in this Agreement or any other Loan Document, and such failure continues unremedied for a period of fifteen (15) business days after written notice has been given to Borrower by Lender, or, if such failure is not reasonably capable of being remedied within such period of Fifteen (15) business days, Borrower has not commenced remedial action or is not proceeding with diligent efforts to remedy such failure; or

(c) Any representation or warranty made by Borrower in this Agreement or the other Loan Documents, or any statement or representation made in any certificate, report or opinion delivered pursuant to this Agreement or the other Loan Documents, proves to have been false, misleading or incorrect in any material respect when made or deemed made; or

(d) Any material adverse change occurs in the financial condition of the Borrower which Lender in its reasonable judgment believes may materially adversely affect the ability of Borrower to repay the Note or to perform its obligations under this Agreement or the other Loan Documents.

7.2 **Remedies Upon Event of Default.** Upon the occurrence of any one or more Events of Default, Lender may exercise all or any of the following rights and remedies:

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(a) Lender may, by written notice to Borrower, terminate Borrower's rights under this Agreement.

(b) Lender may exercise any and all rights and remedies provided in this Agreement and the other Loan Documents or available at law or in equity.

(c) Lender may protect and enforce its rights and remedies by appropriate judicial proceedings, including, but not limited to an award of specific performance or other legal or equitable remedy in aid of the exercise of the powers granted in or pursuant to this Agreement or the other Loan Documents.

7.3 **Cumulative Rights.** Each right, remedy and power granted to Lender under this Agreement and the other Loan Documents shall be cumulative and in addition to any other right, remedy or power not specifically granted in this Agreement or now or hereafter existing in equity, at law, by virtue of statute or otherwise, may be exercised by Lender from time to time concurrently or independently and as often and in such order as Lender may deem expedient.

ARTICLE 8 MISCELLANEOUS

8.1 **No Waiver; Variance of Procedures.** In the event Lender fails to require, or Borrower fails to fulfill, any condition to a Draw Request or Draw, such failure shall not constitute a waiver of such condition by Lender, nor shall such failure preclude Lender from requiring fulfillment of such condition by Borrower in order for Borrower to receive a future Draw.

8.2 **Continuing Representations and Warranties.** Each Draw Request for a shall constitute, without the necessity of a written statement to such effect, a confirmation by Borrower to Lender that all representations and warranties made by Borrower in this Agreement and the other Loan Documents are true and correct in all material respects as of the date of such request.

8.3 **Indemnification.** Borrower shall indemnify and hold Lender harmless against and in respect of:

(a) Any and all losses, damages or deficiencies of Lender, its employees or its agents, resulting from any material misrepresentation or willful nonfulfillment or breach of any agreement on the part of Borrower under this Agreement or from any material misrepresentation or willful omission from any instrument, agreement or other document furnished or to be furnished to Lender under this Agreement, other than losses, damages or deficiencies in connection with the nonpayment of the Loan, the provisions for which are separately provided for in this Agreement; and

(b) Any and all actions, suits, proceedings, demands, assessments, judgments, costs and reasonable legal and other expenses incident to any of the provisions of this Agreement.

(c) **Notices.** All notices, requests, demands, consents, waivers and other communications given under any of the provisions of this Agreement shall be in writing (or by fax, e-mail, or similar electronic transmission confirmed in writing) and shall be deemed to have been duly given or made (i) when delivered by hand, or (ii) when delivered by recognized overnight delivery service, or (iii) if given by mail, three (3) days after deposited in the mails by certified mail, return receipt requested, sufficient postage prepaid, or (iv) if given by fax, e-mail, or similar electronic transmission, when sent and receipt has been confirmed, addressed as stated below, or to such other address as the addressee may have specified in a notice duly given to the other addressees.

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To Lender: Name: Sharron Monohon
Address: 1333 NW Eastman Parkway
Address: Gresham, OR 97030
Email: sharron.monohon@greshamoregon.gov

To Borrower: Name: Brian Monberg
Address: 1333 NW Eastman Parkway
Address: Gresham, OR 97030
Email: brian.monberg@greshamoregon.gov

8.4 **Entire Agreement.** This Agreement and the other Loan Documents contain the entire agreement of the parties with respect to the transactions contemplated in this Agreement, and supersedes all prior proposals, negotiations, agreements, and understandings relating to such transactions. Borrower acknowledges that, in entering into this Agreement, it is not relying on any statement, representation, warranty, covenant, or undertaking of any kind made by Lender or any employee or agent of Lender, other than the agreements of Lender set forth in this Agreement.

8.5 **Amendments.** No modification or waiver of any provision of this Agreement or the other Loan Documents shall be valid unless in writing, and signed by the party to be bound.

8.6 **No Waiver.** No delay or failure on the part of Lender in exercising any rights under this Agreement or the other Loan Documents and no partial or single exercise of any such rights, shall constitute a waiver of such rights or of any other rights under this Agreement or the other Loan Documents.

8.7 **Liability of Lender.** Borrower agrees that Lender shall have no liability (in contract, in tort, or otherwise) for any lost profits or other consequential damages sustained by Borrower as a result of any act or omission to act by Lender or any of its directors, officers, agents, or employees, in connection with the Loan or the Loan Documents, unless proximately caused by the gross negligence or willful misconduct of Lender.

8.8 **No Joint Venture.** Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, Lender, by making the Loan or by any action pursuant to this Agreement or the other Loan Documents, is not and shall not be deemed to be a partner or joint venturer with Borrower.

8.9 **Other Parties.** Nothing in this Agreement shall be construed as giving any person or entity, other than the parties to this Agreement, any right, remedy or claim under or in respect of this Agreement.

8.10 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon (without regard to the principles of conflicts of law)

8.11 **Survival.** All representations, warranties and agreements in this Agreement shall survive until the expiration of the term of this Agreement, except to the extent that a representation, warranty, or agreement expressly provides otherwise.

8.12 **Severability.** If any provision of this Agreement should, for any reason, be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained in this Agreement.

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8.13 **Successors and Assigns.** This Agreement shall be binding upon and operate for the benefit of the respective successors and assigns of the parties; provided, however, that Borrower shall not have the right to assign any of its rights or delegate the performance of any of its obligations under this Agreement without the prior written consent of Lender.

8.14 **Duplicate Originals.** Two or more duplicate originals of this Agreement may be signed by the parties, each of which shall be an original but all of which together shall constitute one and the same instrument.

8.15 **Titles and Captions.** The titles and captions in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

8.16 **Further Assurances.** At any time upon, and from time to time upon request by Lender, Borrower shall do any acts and execute and deliver any documents as may be reasonably requested by Lender to accomplish the purposes of this Agreement or normally required for similar loans by prudent lenders in accordance with reasonable commercial standards.

[Signature page follows]

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IN WITNESS WHEREOF, the City and the Agency have caused this Agreement to be executed and delivered in their respective names by their duly authorized representatives, and have caused this Agreement to be dated as of the date set forth in the introductory paragraph hereof.

LENDER:

CITY OF GRESHAM,
an Oregon municipal corporation

By:

Name:

Title:

BORROWER:

GRESHAM REDEVELOPMENT COMMISSION,
an Oregon quasi-municipal corporation

By:

Name:

Title:

[SIGNATURE PAGE TO CREDIT FACILITY AGREEMENT]

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EXHIBIT A

DRAW REQUEST

(see attached)

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EXHIBIT A
GRESHAM REDEVELOPMENT COMMISSION
INTERGOVERNMENTAL AGREEMENT

DRAW CERTIFICATE NO. X

TO: City of Gresham

1333 NW Eastman Parkway
Gresham, OR 97030

Tel: (503) 618-2371

Attn: Treasury Analyst

On behalf of the Gresham Redevelopment Commission (the "Commission"), I hereby certify that:

1. I am an Authorized Representative, and I am authorized to request this Draw under the Intergovernmental Agreement which is dated XXXXXX, 20XX (the "Agreement") and to make the representations on behalf of the Commission set forth herein.
2. The amount of this Draw is \$X,X00,000.
3. The requested date of the draw is MM/DD/YYYY.
4. The Draw will be expended for costs of the Project (as defined in the Agreement).
5. The Commission is not in breach of any promise or covenant in the Agreement.
6. As of the date hereof, no Event of Default under the Agreement has occurred and is continuing and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a breach or Event of Default under the Agreement.
Capitalized terms used herein not otherwise defined shall have the meanings given in the Agreement.

Dated this MM/DD/YYYY.

GRESHAM REDEVELOPMENT COMMISSION

By: _____ Authorized Representative