

Agenda No. 308

ORDINANCE NO.

*Authorize Intergovernmental Agreement with the Urban Flood Safety and Water Quality District not to exceed \$6 million to develop an organizational structure and a method to fund operations of the district (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The Multnomah County Drainage District No. 1 ("MCDD"), Peninsula Drainage District No. 1 ("PEN 1"), Peninsula Drainage District No. 2 ("PEN 2"), and Sandy Drainage Improvement Company ("SDIC") (collectively, the "Drainage Districts") each manage a portion of the Columbia River levee system and stormwater management system (the "System") in Multnomah County within their respective jurisdictional boundaries. The System has been managed as a single system through IGAs in which MCDD provides administration and staffing for PEN 1, PEN 2, and SDIC.
2. Levee Ready Columbia is a partnership of over twenty public, private, nonprofit, and community-based organizations, including the City, committed to reducing the risk of flooding for an area critical to the region's future and supporting the environment and recreational value of the lands along the Columbia River in the Portland metro region. The Drainage Districts and Levee Ready Columbia partners recognize that the existing Drainage District structure would not adequately provide for the long-term capital and operational needs of the

Introduced by

Mayor Ted Wheeler &
Commissioner Mapps

Bureau

Environmental Services,
Revenue & Financial
Services

Prepared by

Matt Gierach

Date Prepared

April 26, 2021

Requested Council Date

May 5, 2021

Requested Agenda Type

Regular 10 minutes

Date Filed with Clerk

April 27, 2021

System. Accordingly, they proposed, and the 2019 legislature enacted, ORS Chapter 550, creating the Urban Flood Safety and Water Quality District (the "UFSWQD"). ORS 550.190 creates an initial UFSWQD board of directors tasked with organizing the new district and with developing and approving, or seeking approval from the electors, of a method or methods of funding the operations of the new district (the "Organization Phase"). ORS 550.360 provides that once the UFSWQD has funding in place sufficient to assume operations of the Drainage Districts, the Drainage Districts will be dissolved and merged into the UFSWQD, and the Organization Phase will end.

3. In order to successfully complete the Organization Phase, the UFSWQD needs a stable and reliable interim source of operational funding until it can put its own funding mechanisms in place and begin to generate revenue. Given the substantial public safety, environmental, and economic importance to the Portland metropolitan region of providing for the long-term health of the System, the City is willing to lend funds to the UFSWQD for this purpose.
4. The Bureau of Environmental Services ("BES") coordinates with the Drainage Districts to provide funding and services related to stormwater management and has a stake in ensuring the successful completion of the Operational Phase.
5. BES has sufficient financial resources over the next ten years, and has agreed to lend monies to the UFSWQD through a non-revolving drawdown loan (the "Loan") in an amount not to exceed \$6,000,000 to be drawn until June 1, 2026, at which time the Organization Phase is expected to be complete and the UFSWQD will have a dedicated revenue stream to support its operations and repay the Loan by June 1, 2031.
6. The City and UFSWQD wish to enter into an intergovernmental agreement to effectuate the terms of the Loan.

NOW, THEREFORE, the Council directs:

- A. The Director of the Bureau of Environmental Services or designee is authorized to execute an intergovernmental agreement in a form substantially similar to the draft agreement attached as Exhibit A.

Section 2. The Council declares that an emergency exists because a delay in approving the agreement would interfere with the timelines established for receipt of Loan proceeds and payment of costs related to establishing a long-term organizational and funding structure; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by Council:

MARY HULL CABALLERO

Auditor of the City of Portland

Action Taken:

By

Deputy

Commissioners voted as follows (Yea or Nay)

Rubio -

Ryan -

Hardesty -

Mapps -

Wheeler -

Exhibit A

**INTERGOVERNMENTAL AGREEMENT (“IGA”)
ORGANIZATIONAL LOAN FROM THE CITY OF PORTLAND TO THE URBAN
FLOOD SAFETY AND WATER QUALITY DISTRICT**

No. UFSWQ-2104-005-IGA

DRAFT AS OF 2021-04-20

This INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is authorized by ORS 190.010, by the City of Portland (the “City”), an Oregon municipal corporation, by and through its Bureau of Environmental Services, and the Urban Flood Safety and Water Quality District (the “UFSWQD”), a special district organized under ORS Chapter 550 (each a “Party” and, collectively, the “Parties”).

RECITALS

- A. The Multnomah County Drainage District No. 1 (“MCDD”), Peninsula Drainage District No. 1 (“PEN 1”), Peninsula Drainage District No. 2 (“PEN 2”), and Sandy Drainage Improvement Company (“SDIC”) (collectively, the “Drainage Districts”) each manage a portion of the Columbia River levee system and stormwater management system (the “System”) in Multnomah County within their respective jurisdictional boundaries. These territories are contiguous and are located along the Columbia River, east of the Willamette River and west of the Sandy River. The System has been managed as a single system through IGAs in which MCDD provides administration and staffing for PEN 1, PEN 2, and SDIC.
- B. The Drainage Districts and their partners in Levee Ready Columbia, including the City, recognized that this structure would not adequately provide for the long-term capital and operational needs of the System. Accordingly, they proposed, and the 2019 legislature enacted, ORS Chapter 550, creating the UFSWQD. ORS 550.190 creates an initial UFSWQD board of directors tasked with organizing the new district and with developing and approving, or seeking approval from the electors, of a method or methods of funding the operations of the new district (the “Organization Phase”). ORS 550.360 provides that once the UFSWQD has funding in place sufficient to assume operations of the Drainage Districts, the Drainage Districts will be dissolved and merged into the UFSWQD, and the Organization Phase will end.
- C. In order to successfully complete the Organization Phase, the UFSWQD needs a stable and reliable source of operational funding until it can put its own funding mechanisms in place and begin to generate revenue. Given the substantial public safety, environmental, and economic importance to the Portland metropolitan region of providing for the long-term health of the System, the City is willing to lend funds to the UFSWQD for this purpose.

TERMS

The Parties agree as follows:

1. **Loan.** The City will provide the UFSWQD with a non-revolving drawdown loan in an amount not to exceed \$6,000,000 (the “Loan”).
2. **Loan Drawdown.**
 - a. Drawdown Period. The UFSWQD may make Loan draws from July 1, 2021, through June 1, 2026 (the “Drawdown Period”).
 - b. Draw Limits. The UFSWQD may make up to two (2) draws totaling no more than \$1,200,000 each fiscal year during the Drawdown Period. The \$1,200,000 annual draw limit shall be reduced in any given fiscal year by funds received or expected to be received from the State of Oregon during that respective fiscal year unless otherwise jointly agreed to in writing by the City’s Directors of the Bureau of Environmental Services and the Bureau of Revenue and Financial Services. For the purposes of this Agreement, “fiscal year” means July 1 to June 30.
 - c. Draw Process. The UFSWQD shall notify the City at least fifteen (15) business days prior to a requested draw date. Draw requests shall be addressed to the City Treasurer and Debt Manager. Prior to a funds transfer, the Chief Financial Officer of the City and the Director of the City’s Bureau of Environmental Services must approve any draw request, which will not be unreasonably denied.
3. **Principal and Interest.**
 - a. Interest Rate. Interest shall be charged and accrue daily on the outstanding Loan balance at a rate of three percent (3%) per annum, calculated on a 30/360-day basis, until the Loan is fully repaid.
 - b. Principal. Accrued interest shall be added to the outstanding principal balance each June 1 during the Drawdown Period. On June 2, 2026, Loan draws and accrued interest shall cease to be added to the principal balance, thereby establishing the Final Principal Amount. The City shall provide an annual accounting to the UFSWQD related to the amount accrued in each fiscal year period. Within 10 business days after June 2, 2026, the City shall provide a final accounting of the principal amount due and the annual amortization schedule for the remaining duration of the Loan.
4. **Loan Repayment.**
 - a. Loan Maturity Date. The loan will mature on June 30, 2031.
 - b. Payment Schedule. The UFSWQD will repay the Loan in approximately equal annual installments on each June 1, commencing on June 1, 2027. Payment shall

consist of accrued interest and the respective principal requirement, as set forth in the following repayment schedule.

Principal Amortization Schedule	
Annual Repayment Date	Annual Principal Amount Due (as a percentage of Final Principal Amount)
6/1/2027	18.83%
6/1/2028	19.40%
6/1/2029	19.99%
6/1/2030	20.58%
6/1/2031	21.20%
Total	100.00%

- c. Prepayment. The UFSWQD may prepay all or part of the outstanding balance of the Loan without penalty on any day except a Saturday, Sunday, legal holiday, or day that banking institutions in Oregon are closed. Any prepayment shall be applied first to the latest scheduled principal payment under the Principal Amortization Schedule.
 - d. Reporting Requirements. The UFSWQD shall provide the City with an annual budget document demonstrating required Loan repayments have been included in UFSWQD’s adopted budget in each year beginning in fiscal year 2026-2027 until full repayment of the Loan.
5. **Loan Security.** The UFSWQD pledges to repay the Loan from service and user charges enacted under ORS 550.330 and from any other legally available funds of the UFSWQD.
6. **Use of Loan Proceeds.** The UFSWQD will use the proceeds of the Loan solely for costs relating to organizing the district and establishing a final long-term governance and funding structure for the district that will ensure that the System can be operated, maintained, and improved into the future, as authorize in ORS Chapter 550. Organization Phase costs that can be funded from the Loan include without limitation staffing costs, legal costs, administrative costs, consultant costs, communications costs, and purchase of equipment and supplies.
7. **Default.**
- a. Delinquent Payment. The UFSWQD will be in default of this Agreement if it fails to make any Loan payment when due. If the UFSWQD fails to remedy any delinquent Loan payment within 60 days of the required payment date, the Interest Rate under the Loan will increase from 3 percent to 6 percent per annum.
 - b. Default on Other Obligations. The UFSWQD will be in default of this Agreement if it fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bond, as that term is defined by ORS

287A.001(3), and cannot remedy such default under the applicable remedy period under that indebtedness.

c. Waiver of an Event of Default. Upon conditions satisfactory to the City, the City reserves the right to waive an event of default. Such waiver, however, will not remove UFSWQD's obligation to make full repayment of the Final Principal Amount and all accrued interest under the Loan. The amounts due under the Loan will not be eligible for forgiveness.

8. Indemnification. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, each Party will defend, indemnify, and hold harmless the other Party, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorney fees and expenses at trial and on appeal, relating to or resulting from the Party's performance of its responsibilities under this Agreement.

9. Applicable Laws/Venue. The laws of the State of Oregon will govern this Agreement, and the Parties will submit to the jurisdiction of the courts of the State of Oregon.

10. Amendments. This Agreement may be amended at any time by mutual written agreement of the Parties.

11. No Assignment. Except as otherwise provided herein, the Parties may not assign any of their rights or responsibilities under this Agreement.

12. Notices. All notices, communications, invoices, and payments required or permitted under this Agreement must be addressed as follows. If a Party's personnel as listed below changes, notification of such change shall be provided.

To the City: City of Portland
 Treasurer:
 Brigid O'Callaghan
 brigid.ocallaghan@portlandoregon.gov

 Debt Manager:
 Matt Gierach
 matthew.gierach@portlandoregon.gov

Office of Management and Finance
1120 S.W. Fifth Avenue, Room 1040
Portland, Oregon 97204-1988
503.823.4222

To UFSWQD: Urban Flood Safety and Water Quality District
 Executive Director:

Peggidy Coffman Yates
pyates@mcd.org

1880 N.E. Elrod Drive
Portland, Oregon 97211
503.281.5675

- 13. **Severability.** If any covenant or provision of this Agreement is adjudged void, such adjudication will not affect the validity, obligation, or performance of any other covenant or provision,
- 14. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the matters discussed herein. No waiver, consent, modification, or change of terms of this Agreement will bind the Parties unless in writing and signed by each Party.
- 15. **Execution.** This Agreement may be executed in counterparts. Delivery of this executed Agreement by facsimile or e-mail will be sufficient to form a binding agreement.
- 16. **Effective Date.** This Agreement becomes effective on the date of the last signature below.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF PORTLAND

Approved as to form:

By: _____

Deputy City Attorney

Title: _____

Date: _____

URBAN FLOOD SAFETY AND WATER
QUALITY DISTRICT

By: _____

Title: Executive Director

Date: _____

IMPACT STATEMENT

Legislation title: *Authorize Intergovernmental Agreement with the Urban Flood Safety and Water Quality District not to exceed \$6 million to develop an organizational structure and a method to fund operations of the district (Ordinance)

Contact name: Mike Jordan, Director, Bureau of Environmental Services

Contact phone: 503-823-7769

Presenter name: Mike Jordan, Director, Bureau of Environmental Services (x37769)
Matt Gierach, Debt Manager (x36822)

Purpose of proposed legislation and background information:

The purpose of this legislation is authorize an intergovernmental agreement (“IGA”) between the City and the Urban Flood Safety and Water Quality District (the “UFSWQD”) whereby the City agrees to provide a loan to fund activities related to the initial organization of and development of methods of sustainably funding the operations of UFSWQD. The loan amount will not exceed \$6,000,000. Terms of the loan are outlined in the IGA.

In 2019, the Oregon legislature enacted, ORS Chapter 550, creating the UFSWQD. ORS 550.190 creates an initial UFSWQD board of directors tasked with organizing the new district and with developing and approving a method of funding the operations of the new district (the “Organization Phase”). In order to successfully complete the Organization Phase, the UFSWQD needs a reliable source of interim operational funding until it can put its own funding mechanisms in place and begin to generate revenue. At that point, the UFSWQD will assume all operations of the Columbia River levee system and stormwater management system and the four existing drainage districts that currently manage these services will be dissolved.

The Bureau of Environmental Resources (“BES”) has sufficient financial resources over the next ten years and has agreed to lend monies to the UFSWQD through a non-revolving drawdown loan (the “Loan”) in an amount not to exceed \$6,000,000 to be drawn until June 1, 2026, at which time the Organization Phase is expected to be complete and the UFSWQD will have a dedicated revenue stream to support its operations and repay the loan by June 1, 2031.

Repayment by the UFSWQD commences on June 1, 2027. The final maturity of the loan is June 1, 2031. The UFSWQD would repay the Loan, with interest, from service and user charges enacted under ORS 550.330 and from any other legally available funds of the UFSWQD.

Financial and budgetary impacts:

Financial Impact:

The IGA would obligate the City, through the BES, to provide up to two draws not to exceed \$1.2 million annually beginning July 1, 2021, through June 1, 2026 (the “Drawdown Period”).

The UFSWQD will repay the Loan in approximately equal annual installments on each June 1, commencing on June 1, 2027. The annual repayments received by the City will include current

interest and principal payments (including accrued interest capitalized to the Loan principal balance during the Drawdown Period), as set forth in the following repayment schedule.

Principal Amortization Schedule	
Annual Repayment Date	Annual Principal Amount Due (as a % of Final Principal Amount)
6/1/2027	18.83%
6/1/2028	19.40%
6/1/2029	19.99%
6/1/2030	20.58%
6/1/2031	21.20%
Total	100.00%

Interest on the Loan will be charged and accrue daily on the outstanding Loan balance at a rate of three percent (3%) per annum, calculated on a 30/360-day basis, until the Loan is fully repaid.

Budgetary Impact:

If the ordinance is approved by the Council, \$1.2 million will be included in the Mayor’s Proposed Budget for FY 2021-22.

Community impacts and community involvement:

No direct community impact or involvement is anticipated.

100% Renewable Goal:

Not applicable.

Budgetary Impact Worksheet

Does this action change appropriations?

- YES:** Please complete the information below.
- NO:** Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount