

# Council Business Meeting

June 7, 2022

<b>Agenda Item</b>	A Resolution Authorizing a Decrease in the Loan Amount From the Safe Drinking Water Revolving Loan Fund by Entering into a Financing Contract with the Oregon Infrastructure Finance Authority	
<b>From</b>	Scott Fleury, PE Kevin Caldwell, PMP	Public Works Director Senior Project Manager
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## **SUMMARY**

Before Council is a request to approve a resolution and amended the existing contract with the Oregon Infrastructure Finance Authority (IFA), authorizing a loan decrease from \$14,811,865 to \$4,700,759 for the Water Treatment Plant Project. This resolution and associated contract amendment is structured to only fund the design phase of the new Water Treatment Plant project. This amendment has been requested by IFA due to the City receiving approval from the Environmental Protection Agency (EPA) to apply for Water Infrastructure Innovation Act (WIFIA) Funding for the project.

## **POLICIES, PLANS & GOALS SUPPORTED**

### **City Council Goals:**

- Prioritize Essential Services: Water
- Enhance Value Services: Emergency Preparedness, Economic Development, Water Conservation
- Develop current and long-term budgetary resiliency

### **Department Goals:**

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects
- Maintain and improve infrastructure that enhances the economic vitality of the community
- Evaluate all city infrastructure regarding planning management and financial resources

## **PREVIOUS COUNCIL ACTION**

- June 7, 2016 Business Meeting, Council approved a \$14,811,865 loan with the Oregon Infrastructure Finance Authority for the design and construction of a new Water Treatment Plant.
- October 1, 2019 Business Meeting, Council approved a \$3,662,659 contract with HDR Engineering for the final design of the new Water Treatment Plant.

## **BACKGROUND AND ADDITIONAL INFORMATION**

The City currently has a \$14,811,865 loan from the Oregon Infrastructure Finance Authority for the design and construction of a new Water Treatment Plant. Due to changes in the project scope and schedule, the City and the IFA wish to decrease the loan amount to \$4,700,759 and amend the contract to only finance the design of the new Water Treatment Plant, not construction. The revised loan will include \$975,101 in principle forgiveness and an interest rate of 1% if contract conditions are met.

After submitting a letter of intent, the City has been selected by the EPA to apply for Water Infrastructure Finance and Innovation Act (WIFIA) funding for the construction phase of the Water Treatment Plant project. The City is currently working with the Finance Department and the City's Financial Advisor to develop the necessary application materials required of the WIFA program. The WIFIA program will fund up to 80% of the construction

project total. The City is also currently working with the IFA on funding options for the remaining 20% through their safe water drinking fund program and cleanup of the existing loan will facilitate this process.

**WIFIA Background:**

The WIFIA program offers federal loans with low, fixed interest rates and flexible financial terms. Borrowers and their customers benefit from significant cost savings. A single fixed interest rate is established at closing. A borrower may receive multiple disbursements over several years at the same fixed interest rate. Interest rate is equal to the US Treasury rate of a similar maturity. The WIFIA program sets its interest rate based on the U.S. Treasury rate on the date of loan closing. The rate is calculated using the weighted average (WAL) life of the loan rather than the loan maturity date. The WAL is generally shorter than the loan’s actual length resulting in a lower interest rate. Interest rate is not impacted by the borrower’s credit or loan structure. All borrowers benefit from the AAA Treasury rate, regardless of whether they are rated AA or BBB. The WIFIA program does not charge a higher rate for flexible financial terms.

Borrowers from the WIFIA program can customize their repayments to match their anticipated revenues and expenses for the life of the loan. This flexibility provides borrowers with the time they may need to phase in rate increases to generate revenue to repay the loan. WIFIA loans may have a length of up to 35 years after substantial completion, allowing payment amounts to be smaller throughout the life of the loan.

Payments may be deferred up to 5 years after the project’s substantial completion. WIFIA loans can be combined with various funding sources. WIFIA loans can be combined with private equity, revenue bonds, corporate debt, grants, and State Revolving Fund (SRF) loans.

**FISCAL IMPACTS**

Funds are appropriated in the current budget for the project.

**STAFF RECOMMENDATION**

Staff recommends approval of the resolution and authorizing the City Manager to execute the amended contract with the Oregon Infrastructure Finance Authority.

**ACTIONS, OPTIONS & POTENTIAL MOTIONS**

I move to approve “A Resolution Authorizing a Decrease in the Loan Amount From the Safe Drinking Water Revolving Loan Fund by Entering into a Financing Contract with the Oregon Infrastructure Finance Authority” and further authorize the City Manager to execute the amended contract with the Oregon Infrastructure Finance Authority.

**REFERENCES & ATTACHMENTS**

Attachment #1: Resolution No. 2022-04

Attachment #2: Safe Drinking Water Revolving Loan Fund Amended and Restated Financing Contract

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**RESOLUTION NO. 2022-04**

**A RESOLUTION AUTHORIZING A DECREASE IN THE LOAN AMOUNT FROM  
THE SAFE DRINKING WATER REVOLVING LOAN FUND BY ENTERING INTO A  
FINANCING CONTRACT WITH  
THE OREGON INFRASTRUCTURE FINANCE AUTHORITY**

**RECITALS:**

A. The City of Ashland currently has a \$14,811,865 loan from the Oregon Infrastructure Finance Authority for the design and construction of a new water treatment plant; and

B. The City of Ashland wishes to decrease the amount of this loan to \$4,700,759 with \$975,101 eligible for principal forgiveness if contract conditions are met; and

C. This revised loan will cover the costs associated with the design of a new water treatment plant; however the revised loan will not cover the cost of construction; and

D. The recipient of the loan is a community water system as defined in Oregon Administrative Rule 123-049-0010; and

E. The Safe Drinking Water Act Amendments of 1996, Pub. L. 104-182, as amended (the "Act"), authorize any community water system to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department (the "IFA") to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund; and

F. The City of Ashland has filed an application with the IFA to obtain financial assistance for a "safe drinking water project" within the meaning of the Act, and the IFA has approved the City of Ashland's application for financial assistance; and

G. The City of Ashland is required, as a prerequisite to the receipt of financial assistance from the IFA, to enter into a Financing Contract with the IFA, number S16021, substantially in the form attached hereto as "Exhibit 1." The project is described in Exhibit C to that Financing Contract (the "Project"); and

H. Notice relating to the City's consideration of the adoption of this resolution was published in full accordance with the City of Ashland's charter and the laws for public notification.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ASHLAND, OREGON,  
RESOLVES AS FOLLOWS:**

SECTION 1. Financing Loan Authorized. The City Council of the City of Ashland hereby authorizes the City Manager to execute the Financing Contract which is attached hereto as "Exhibit 1" and incorporated herein by this reference, a promissory note, and such other documents as may

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1 be required to obtain financial assistance, including a loan from the IFA, on the condition that the  
2 principal amount of the loan from the IFA to the City of Ashland is not more than \$4,700,759  
3 (with \$975,101 eligible for principal forgiveness if contract conditions are met) and the interest  
4 rate is not more than 1.00% if contract conditions are met (and 1.98% if not met). The proceeds of  
5 the loan from the IFA must be applied solely to the "Costs of the Project" as such term is defined  
6 in the Financing Contract.

7 SECTION 2. Sources of Repayment. Amounts payable by the City of Ashland are payable from  
8 the sources described in Section 4 of the Financing Contract and the Oregon Revised Statutes  
9 Section 285A.213(5) which include:

10 (a) Revenue from any water system project of the Recipient, including special assessment  
11 revenue;

12 (b) Amounts withheld under subsection 285A.213(6);

13 (c) The general fund of the Recipient;

14 (d) Any combination of sources listed in paragraphs (a) to (c) of this subsection; or

15 (e) Any other source.

16 SECTION 3. Additional Documents. The City Manager of the City of Ashland is hereby  
17 authorized to enter into any agreements and to execute any documents or certificates which may  
18 be required to obtain financial assistance from the IFA for the Project pursuant to the Financing  
19 Documents.

20 SECTION 4. Tax-Exempt Status. The City of Ashland covenants not to take any action or omit  
21 to take any action if the taking or omission would cause interest paid by the City of Ashland  
22 pursuant to the Financing Documents not to qualify for the exclusion from gross income provided  
23 by Section 103(a) of the Internal Revenue Code of 1986, as amended. The City Manager of the  
24 City of Ashland may enter into covenants on behalf of the City to protect the tax-exempt status of  
25 the interest paid by the City pursuant to the Financing Documents and may execute any tax  
26 certificate, Internal Revenue Service forms, or other documents as may be required by the IFA or  
27 its bond counsel to protect the tax-exempt status of such interest.

28 SECTION 5. This resolution is effective upon adoption.

ADOPTED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

\_\_\_\_\_  
Melissa Huhtala, City Recorder

Reviewed as to form:

\_\_\_\_\_  
Katrina L. Brown, City Attorney

# EXHIBIT 1

## SAFE DRINKING WATER REVOLVING LOAN FUND AMENDED AND RESTATED FINANCING CONTRACT

Project Name: Final Design and Engineering for a 7.0-Million-Gallon Water Treatment Plant

Project Number: S16021

This amended and restated financing contract ("Contract"), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority ("IFA"), and the City of Ashland ("Recipient") for financing of the project referred to above and described in Exhibit C ("Project").

### RECITALS

WHEREAS, IFA and Recipient executed Safe Drinking Water Revolving Loan Fund Financing Contract number S16021 for a project referred to as the New Ashland 2.5-Million-Gallon Water Treatment Plant ("Project") on 13 July 2016.

WHEREAS, the Contract required IFA to provide the following to Recipient for the Project: 1) a Section 2A Loan in the amount of \$13,781,865; and 2) a Section 2B Forgivable Loan in the amount of \$1,030,000.

WHEREAS, Recipient has made a Disbursement Request, and OBDD has disbursed \$1,574,490 of the Loan Financing Proceeds for the Section 2A Loan for the Project, and OBDD has disbursed \$975,101 of the Loan Financing Proceeds for the Section 2B Forgivable Loan for the Project.

WHEREAS, the Recipient requests that the project description be changed to no longer include construction activity, thereby reducing the total estimated project costs to \$4,700,759 (original estimated project cost was \$14,811,865).

WHEREAS, IFA and Recipient desire to restate the Contract in its entirety as of the date that this Amended and Restated Financing Contract becomes effective to extend its effectiveness through 31 December 2022, reduce the previously awarded loan amounts, update the project description and project budget, revise the maturity date and revise the interest rate, as set forth herein.

NOW, THEREFORE, in consideration of the promises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to amend and replace the financing contract executed on 13 July 2016 in its entirety as follows:

This Amended and Restated Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Security
Exhibit C	Project Description
Exhibit D	Project Budget
Exhibit E	Information Required by 2 CFR § 200.331(a)(1)
Exhibit F	Certification Regarding Lobbying

## SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

“Estimated Project Cost” means \$4,700,759.

“Forgivable Loan Amount” means \$975,101.

“Section 2A. Loan Amount” means \$3,725,658.

“Interest Rate” means 1.00% per annum, computed on the basis of a 360-day year, consisting of twelve 30-day months.

“Maturity Date” means the 9<sup>th</sup> anniversary of the Repayment Commencement Date.

“Payment Date” means December 1.

“Project Closeout Deadline” means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

“Project Completion Deadline” means 31 December 2022.

“Repayment Commencement Date” means the first Payment Date to occur after the Project Closeout Deadline.

## SECTION 2 - FINANCIAL ASSISTANCE

The IFA shall provide Recipient, and Recipient shall accept from IFA, financing for the Project specified below:

- A. A non-revolving loan in an aggregate principal amount not to exceed the Section 2.A. Loan Amount.
- B. A non-revolving loan in an aggregate principal amount not to exceed the Forgivable Loan Amount.

“Loan” means, collectively and individually without distinction, as the context requires, the loans described in this section 2.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract shall not exceed the Costs of the Project. If the Project is completed for less than the amount of the Estimated Project Cost, the availability under the Section 2.A. Loan will be reduced accordingly.

## SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds shall be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an IFA-provided or IFA-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. The IFA’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.
- C. Payment to Contractors. The IFA, in its sole discretion, may make direct payment to suppliers, contractors and subcontractors and others for sums due them in connection with construction of the Project, instead of reimbursing Recipient for those sums.

D. Order of Disbursement. Recipient authorizes IFA to determine whether disbursements will be drawn from the Loan Amount or the Forgivable Loan Amount, and record the date and amount of each such disbursement. Absent manifest error, such notations will be conclusive evidence for determining accrual of interest on the principal balance of the Loan and the remaining Loan Amount and Forgivable Loan Amount available for disbursement.

**SECTION 4 - LOAN PAYMENT; PREPAYMENT; FORGIVENESS**

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with its terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of IFA to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against IFA or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues at the Interest Rate on each disbursement from the date of disbursement until the Loan is fully paid. All unpaid interest accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date.
- C. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal and interest, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.
- D. Loan Prepayments.
- (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract.
  - (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.
- E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of IFA, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, IFA will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.

F. Forgiveness. (1) Subject to satisfaction by Recipient of any special conditions in Exhibit C, if Recipient completes the Project by the Project Completion Deadline in accordance with the terms of this Contract, and provided that no Event of Default has occurred, IFA shall, 90 days after the Project Completion Date, forgive repayment of the Forgivable Loan Amount and any interest accrued thereon and cancel the Forgivable Loan. The Forgivable Loan Amount and any interest forgiven remain subject to the requirements of OAR 123-049-0050, which survive payment of the Loan.

(2) Notwithstanding the preceding paragraph, if, at the Project Completion Date or at any time thereafter and continuing until the Loan is repaid, the average monthly residential water rates for the water supplied by the System are not at or above the affordability rate of \$45.31 per 7,500 gallons, \$500,000 of the amount due under the Forgivable Loan will not be forgiven. Further, the Section 2.A. Loan and the portion of the Forgivable Loan that is not forgiven under section 4.F.(1) shall, at IFA's discretion and after notice to Recipient, be modified as follows:

Interest shall accrue at the rate of One and 98/100 percent (1.98%) per annum.

The above-described modification shall be effective without the necessity of executing any further documents. However, at IFA's request, Recipient shall execute and deliver to IFA such additional agreements, instruments and documents as IFA deems necessary to reflect such modification, including but not limited to an amendment to the Contract.

#### **SECTION 5 - CONDITIONS PRECEDENT**

A. Conditions Precedent to IFA's Obligations. The IFA's obligations are subject to the receipt of the following items, in form and substance satisfactory to IFA and its Counsel:

- (1) This Contract duly signed by an authorized officer of Recipient.
- (2) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract and the other Financing Documents.
- (3) An opinion of Recipient's Counsel.
- (4) Such other certificates, documents, opinions and information as IFA may reasonably require.

B. Conditions to Disbursements. As to any disbursement, IFA has no obligation to disburse funds unless all following conditions are met:

- (1) There is no Default or Event of Default.
- (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
- (3) The IFA, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
- (4) The IFA (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as IFA may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.

- (5) The Recipient has delivered documentation satisfactory to IFA that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
- (6) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

#### **SECTION 6 - USE OF FINANCIAL ASSISTANCE**

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit D. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of IFA.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit C.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

#### **SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT**

The Recipient represents and warrants to IFA:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
  - (1) The Recipient (a) is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon, and (b) owns a community water system, as defined in the Act and OAR 123-049-0010.
  - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
  - (3) This Contract and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
  - (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by IFA, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to IFA all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.

- D. Pending Litigation. The Recipient has disclosed in writing to IFA all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.
- E. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
  - (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.
- G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and the other Financing Documents, for the financing or refinancing and undertaking and completion of the Project.

## SECTION 8 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify IFA of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, the Project and the operation of the System of which the Project is a component. In particular, but without limitation, Recipient shall comply with the following, as applicable and as they may be amended from time to time:
- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
  - (2) State labor standards and wage rates found in ORS chapter 279C, and federal prevailing wage provisions in accordance with the federal Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 to 3144, 3146 and 3147 (2002).
  - (3) The Recipient is required to place a sign at construction sites supported under this Loan displaying the U.S. Environmental Protection Agency (“EPA”) logo in a manner that informs

the public that the Project is funded in part or wholly by the EPA. The sign must be placed in a visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period. Recipient is required to comply with EPA signage requirements at: [http://www2.epa.gov/sites/production/files/2015-01/documents/signage\\_required\\_tc.pdf](http://www2.epa.gov/sites/production/files/2015-01/documents/signage_required_tc.pdf)[http://www2.epa.gov/sites/production/files/2015-01/documents/signage\\_required\\_tc.pdf](http://www2.epa.gov/sites/production/files/2015-01/documents/signage_required_tc.pdf)

- (4) **SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant's Handbook** for the Federally Funded Safe Drinking Water Revolving Fund & Drinking Water Protection Loan Fund (May 2015), as amended from time to time ("Safe Drinking Water Handbook"), including but not limited to the Federal Crosscutting Requirements described in the Safe Drinking Water Handbook.
- (5) **Lobbying.** The Recipient acknowledges and agrees that the Costs of the Project will not include any Lobbying costs or expenses incurred by Recipient or any person on behalf of Recipient, and that Recipient will comply with federal restrictions on lobbying at 40 C.F.R. Part 34 and will not request payment or reimbursement for Lobbying costs and expenses. "Lobbying" means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above. The Recipient shall submit to IFA a Certification Regarding Lobbying, the form of which is attached as Exhibit F, and any applicable quarterly disclosure statement of covered lobbying activity. The Recipient will cause any entity, firm or person receiving a contract or subcontract utilizing Loan proceeds in excess of \$100,000 to complete the same certification and any applicable disclosure statement, and submit them to Recipient. The Recipient shall retain such certifications and make them available for inspection and audit by IFA, the federal government or their representatives. The Recipient shall forward any disclosure statements to IFA.
- (6) **Federal Audit Requirements.** The Loan is federal financial assistance, and the Catalog of Federal Domestic Assistance ("CFDA") number and title is "66.468, Capitalization Grants for Drinking Water State Revolving Funds." Recipient is a sub-recipient.
  - (a) If Recipient receives federal funds in excess of \$750,000 in the Recipient's fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to IFA a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to IFA the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.
  - (b) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Contract.
  - (c) Recipient shall save, protect and hold harmless IFA from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.

- (7) Disadvantaged Business Enterprises. The Recipient will implement the good faith efforts for solicitation and contracting with Disadvantaged Business Enterprises (“DBE”) described in the Safe Drinking Water Handbook. This applies to all solicitation and contracting for construction, equipment, supplies, engineering or other services that constitute the Project financed by this Contract. The Recipient will maintain documentation in a Project file and submit the required forms, as described in the Safe Drinking Water Handbook. The Recipient will ensure that all prime contractors implement the good faith efforts for solicitation and contracting, and comply with all DBE procurement forms, statements, and reporting requirements. The Recipient agrees to apply the current regional fair share objectives.

The Recipient will ensure that each procurement contract includes the following term and condition:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”

- (8) Property Standards. Recipient shall comply with 2 CFR 200.313 which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
- (9) Contract Provisions. The contract provisions listed in 2 CFR Part 200, Appendix II are obligations of Recipient, as applicable, and must be included, as applicable, by Recipient in its contracts related to the Project.
- (10) Iron and Steel Products. Pursuant to the 2014 Congressional appropriations bill and 2015 Continuing Resolution for the Safe Drinking Water programs, none of the Financing Proceeds may be used for any part of the Project unless all of the iron and steel products used in the project are produced in the United States. “Iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- (11) Incorporation by Reference. The above state and federal laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. The Recipient shall:

- (1) When procuring professional consulting services, provide IFA with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
- (2) Provide IFA with copies of all plans and specifications relating to the Project, and a timeline for the construction bidding/award process, at least ten (10) days before advertising for bids.
- (3) Provide a copy of the bid tabulation and notice of award to IFA within ten (10) days after selecting a construction contractor.
- (4) Complete an environmental review in accordance with the state environmental review process and in compliance with state and federal environmental laws prior to any construction work on the Project.
- (5) Permit IFA to conduct field engineering and inspection of the Project at any time.

- (6) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (7) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by IFA in writing.
- (8) No later than the Project Closeout Deadline, provide IFA with a final project completion report on a form provided by IFA, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, IFA will be the final judge of the Project's completion.
- (9) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.
- (10) Meters. Prior to final disbursement of the Loan, Recipient shall,
  - (i) In the case of construction projects, install necessary source meters and service meters on all connections throughout the System.
  - (ii) In the case of planning, preliminary engineering and final design and specification projects, adopt a plan for the installation of necessary source meters and service meters on all connections throughout the System.

D. Ownership of Project. During the term of the Loan, the Project is and will continue to be owned by Recipient. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient. Any such management contract or operating agreement will be structured as a "qualified management contract" as described in IRS Revenue Procedure 97-13, as amended or supplemented.

E. Operation and Maintenance of the Project. The Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements during term of the Loan. On or before the Project Closeout Deadline, Recipient shall adopt a plan acceptable to IFA for the on-going operation and maintenance of the Project without reliance on IFA financing and furnish IFA, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.

F. Insurance, Damage. The Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from exerting a defense against any party other than IFA, including a defense of immunity. If the Project or any portion is destroyed, any insurance proceeds will be paid to IFA and applied to prepay the outstanding balance on the Loan in accordance with section 4.D.(1), unless IFA agrees in writing that the insurance proceeds may be used to rebuild the Project.

G. Sales, Leases and Encumbrances. Except as specifically described in Exhibit C, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project or any system that provides revenues for payment or is security for the Loan, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, IFA may consent to such disposition if it has received 90 days' prior written notice from Recipient. Such consent may require assumption by transferee of all of Recipient's obligations under the Financing Documents and payment of IFA's costs related to such assumption, and receipt by IFA of an opinion of Bond Counsel to the effect that such disposition

complies with applicable law and will not adversely affect the exclusion of interest on any Lottery Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. The term “Bond Counsel” means a law firm determined by IFA to have knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds. In the case of sale, exchange, transfer or other similar disposition, Recipient shall, within 30 days of receipt of any proceeds from such disposition, prepay the entire outstanding balance on the Loan in accordance with section 4.D.(1) unless IFA agrees otherwise in writing. If Recipient abandons the Project, Recipient shall prepay the entire outstanding balance of the Loan immediately upon demand by IFA.

- H. Condemnation Proceeds. If the Project or any portion is condemned, any condemnation proceeds will be paid to IFA and applied to prepay the outstanding balance of the Loan in accordance with section 4.D.(1).
- I. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.
- J. Inspections; Information. The Recipient shall permit IFA, and any party designated by IFA, the Oregon Secretary of State’s Office, the federal government and their duly authorized representatives: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as IFA may reasonably require. In addition, Recipient shall, upon request, provide IFA with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.
- K. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds until the date that is three years following the later of the final maturity of the Lottery Bonds or the final maturity or redemption date of any obligation, or series of obligations, that refinanced the Lottery Bonds, or such longer period as may be required by other provisions of this Contract or applicable law. Such documentation includes, but may not be limited to, all documentation necessary to establish the uses and investment of the Loan proceeds, all construction contracts and invoices detailing the costs paid from Loan proceeds, and all contracts related to the uses of the Project, including leases, management contracts, and service contracts that relate to the use of the Project.
- L. Economic Benefit Data. The IFA may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by IFA.
- M. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for the design and construction of the Project. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. The Recipient shall follow standard construction

practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.

- N. Notice of Default. The Recipient shall give IFA prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- O. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless IFA and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- P. Further Assurances. The Recipient shall, at the request of IFA, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.
- Q. Exclusion of Interest from Federal Gross Income and Compliance with Code.
- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. IFA may decline to disburse the Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.
  - (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be "private activity bonds" within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of IFA, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be "disproportionate related business use" or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of IFA, Recipient shall not directly or indirectly use any of the Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
  - (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.
  - (4) The Recipient shall not cause any Lottery Bonds to be treated as "federally guaranteed" for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to "federally guaranteed" obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as "federally guaranteed" if: (a) all or any portion of the

principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.

- (5) The Recipient shall assist IFA to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to IFA such amounts as may be directed by IFA to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Financing Proceeds or other amounts held in a reserve fund. The Recipient further shall reimburse IFA for the portion of any expenses it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.
- (6) Upon IFA's request, Recipient shall furnish written information regarding its investments and use of the Financing Proceeds, and of any facilities financed or refinanced therewith, including providing IFA with any information and documentation that IFA reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.
- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the payment of the Loan and the Lottery Bonds, and the interest thereon, including the application of any unexpended Financing Proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.
- (8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. §1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Loan.

## SECTION 9 - DEFAULTS

Any of the following constitutes an "Event of Default":

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.
- C. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project or in regard to compliance with the requirements of section 103 and sections 141 through 150 of the Code.
- D. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;

- (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
  - (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
  - (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
  - (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by IFA. The IFA may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

#### SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, IFA may pursue any or all remedies in this Contract or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
- (1) Terminating IFA's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
  - (2) Declaring all payments under the Contract and all other amounts due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
  - (3) Barring Recipient from applying for future awards.
  - (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, pursuant to ORS 285A.213(6) and OAR 123-049-0040.
  - (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.
  - (6) Exercising any remedy listed in OAR 123-049-0040.
- B. Application of Moneys. Any moneys collected by IFA pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by IFA; next, to pay interest due on the Loan; next, to pay principal due on the Loan, and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to IFA is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents shall preclude any other or further exercise thereof or the exercise of any other such right, power or

privilege. The IFA is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.

- D. Default by IFA. In the event IFA defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of IFA's obligations.

## SECTION 11 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.

- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.

- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
- (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
- (3) This Contract will be binding upon and inure to the benefit of IFA, Recipient, and their respective successors and permitted assigns.
- (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of IFA. The IFA may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to IFA, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of IFA's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of IFA beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.
- (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that IFA deems to be necessary.

- C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:

- (1) The IFA makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
- (2) In no event are IFA or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

- D. Notices. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or OBDD at the addresses set forth below, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email

system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

If to IFA: Assistant Director, Economic Development  
Oregon Business Development Department  
775 Summer Street NE Suite 200  
Salem OR 97301-1280

If to Recipient: Public Works Director  
City of Ashland  
20 E Main Street  
Ashland OR 97520-1850

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments, Waivers. This Contract may not be amended without the prior written consent of IFA (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to IFA by its attorneys. The Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA in the collection of Loan payments.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



**STATE OF OREGON**  
acting by and through the  
Oregon Infrastructure Finance Authority



**CITY OF  
ASHLAND**

**CITY OF ASHLAND**

By: \_\_\_\_\_  
Chris Cummings, Assistant Director  
Economic Development

By: \_\_\_\_\_  
The Honorable Julie Akins  
Mayor of Ashland

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

\_\_\_\_\_  
/s/ Wendy Johnson per email dated 03 January 2022  
Wendy Johnson, Senior Assistant Attorney General

## EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means the Safe Drinking Water Act Amendments of 1996, Public Law 104-182, as amended.

“Award” means the award of financial assistance to Recipient by IFA dated 14 April 2016.

“C.F.R.” means the Code of Federal Regulations.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, IFA or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates executed pursuant to or in connection with IFA’s financing of the Project.

“Financing Proceeds” means the proceeds of the Section 2.A. Loan and the Forgivable Loan.

“Forgivable Loan” means the forgivable Loan described in section 2.B.

“Section 2.A. Loan” means the Loan described in section 2.A. of this Contract.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon, payable from unobligated net lottery proceeds, the interest on which is exempt from federal income taxation, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

“Municipality” means any entity described in ORS 285B.410(9).

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

“System” means Recipient’s drinking water system, which includes the Project or components of the Project, as it may be modified or expanded from time to time.

## EXHIBIT B - SECURITY

A. General Fund Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract. This Contract is payable from all legally available funds of Recipient.

B. Pledge of Net Revenues of the System

Capitalized terms used in this Section B shall have the following meaning:

“Adjusted Net Revenues” means the Net Revenues, adjusted for purposes of Section B.3.C.(ii) as provided in Section B.3.E.

“Base Period” means the alternative selected by Recipient from the following two options: (a) any twelve consecutive months selected by Recipient out of the most recent eighteen months preceding the delivery of a series of Parity Obligations; or (b) the most recently completed fiscal year for which audited financial statements are available.

“Net Revenues” means System revenues after deduction for payment of the System’s operating and maintenance costs.

1. The principal of and interest on the Loan shall be payable from the Net Revenues of Recipient’s System. The Recipient hereby grants to IFA a security interest in and irrevocably pledges its Net Revenues to pay all of the obligations owed by Recipient to IFA under the Contract.

2. The Recipient shall not incur any obligation payable from or secured by a lien on and pledge of the Net Revenues that is superior to the Loan without the prior written consent of IFA.

3. The Recipient may issue obligations payable from and secured by a lien on and pledge of the Net Revenues on a parity with the Loan (“Parity Obligations”), but only if:

A. No Event of Default under the Contract has occurred and is continuing; and,

B. The Recipient obtains the prior written consent of IFA, which consent shall not be unreasonably withheld; and,

C. There shall have been filed with IFA either:

(i) A certificate of an official of Recipient stating that the Net Revenues (adjusted as provided in Section B.3.D. below) for the Base Period were not less than one hundred twenty percent (120%) of the maximum annual debt service on the Loan, outstanding senior lien obligations, and all outstanding Parity Obligations, with the proposed Parity Obligations treated as outstanding, or

(ii) A certificate of an official of Recipient:

(a) Stating the amount of the Adjusted Net Revenues for each of the five fiscal years after the last fiscal year for which interest on the proposed Parity Obligations is, or is expected to be, capitalized, or, if interest will not be capitalized, for each of the five fiscal years after the proposed Parity Obligations are issued; and

(b) Concluding that the amount of Adjusted Net Revenues in each of the first four fiscal years described in Section B.3.C.(ii)(a) above are at least equal to one hundred twenty percent (120%) of the annual debt service for each of those respective fiscal years on the Loan, all outstanding senior lien obligations and all outstanding Parity Obligations, with the proposed Parity Obligations treated as outstanding; and

(c) Concluding that the amount of Adjusted Net Revenues in the fifth fiscal year described in Section B.3.C.(ii)(a) is at least equal to one hundred twenty percent (120%) of the maximum annual debt service on the Loan, all outstanding senior lien obligations, and all outstanding Parity Obligations, with the proposed Parity Obligations treated as outstanding.

D. The Recipient may adjust Net Revenues for purposes of Section B.3.C.(i) by adding any Net Revenues that Recipient calculated it would have had during the Base Period because of increases in the System rates, fees and charges which have been adopted by Recipient and are in effect on or before the date the Parity Obligations are issued.

E. The Recipient may adjust the Net Revenues for purposes of Section B.3.C.(ii):

(i) to reflect any changes in the rates and charges which have been adopted by Recipient and which are scheduled to take effect during the period described in Section B.3.C.(ii)(a), or which increase rates and charges for inflation at a level which Recipient determines is reasonable;

(ii) to reflect any changes in customers of the System that occurred after the beginning of the Base Period and prior to the date of Recipient's certificate; and

(iii) to reflect any changes to Net Revenues not included in the preceding subparagraphs that are projected to result from the completion and operation of additions and extensions to the System that were under construction at the beginning of the Base Period, or commenced construction after the beginning of the Base Period.

4. The Recipient may issue Parity Obligations to refund Parity Obligations without complying with Section 3 if the refunded Parity Obligations are defeased on the date of delivery of the refunding Parity Obligations and if the annual debt service on the refunding Parity Obligations does not exceed the annual debt service on the refunded Parity Obligations in any fiscal year by more than \$5,000. The Recipient shall notify IFA of its intent to issue such refunding Parity Obligations pursuant to this Section B.4. not later than 5 Business Days prior to the proposed closing date of the refunding Parity Obligations.

5. Notwithstanding the requirements of Section 3 above, loans previously made by IFA from the Special Public Works Fund, Water Fund, or Safe Drinking Water Fund to Recipient that are secured by the Net Revenues may have a lien on such Net Revenues on parity with the Loan; provided that nothing in this paragraph will adversely affect the priority of any of IFA's liens on such Net Revenues in relation to the lien(s) of any third party(ies).

6. The Recipient shall charge rates and fees in connection with the operation of the System which, when combined with other gross revenues, are adequate to generate Net Revenues each fiscal year at least equal to one hundred twenty percent (120%) of the annual debt service due in the fiscal year on the Loan, any outstanding senior lien obligations, and any outstanding Parity Obligations.

7. The Recipient may establish a debt service reserve fund to secure repayment of Parity Obligations, provided that such debt service reserve fund is not required to be pledged to the payment of the debt service on such obligations unless the Net Revenues of the System are deposited into such debt service reserve fund only after provision is made for the payment of debt service on the Loan during the current fiscal year. IFA reserves the right to require that such debt service reserve fund is pledged to the payment of the Loan.

8. The Net Revenues pledged pursuant to paragraph 1 above and hereafter received by Recipient shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, except as provided in Sections B.2. and B.3., to the fullest extent permitted by ORS 287A.310. The Recipient hereby represents and warrants that the pledge of Net Revenues hereby made by Recipient complies with, and shall be valid and binding from the date hereof as described in, ORS 287A.310.

**EXHIBIT C - PROJECT DESCRIPTION**

The Recipient will procure and retain the services of a professional engineering firm to prepare final design plans, which will include specifications and construction documents that must be approved by the Oregon Health Authority – Drinking Water Services and submitted to Business Oregon. The plans and specifications will be for construction of a new 7.0 millions of gallons per day, expandable to 9.0 millions of gallons per day, water treatment plant.

**EXHIBIT D - PROJECT BUDGET**

	<b>OBDD Funds</b>	<b>Other Funds</b>
Activity	Approved Budget	Approved Budget
Design / Engineering	\$4,700,759	\$0
Total	\$4,700,759	\$0

**EXHIBIT E - INFORMATION REQUIRED BY 2 CFR § 200.331(A)(1)**

Federal Award Identification:

- (i) Subrecipient\* name (which must match registered name in DUNS): ASHLAND, CITY OF
- (ii) Subrecipient's DUNS number: 07-639-5508
- (iii) Federal Award Identification Number (FAIN): 98009015
- (iv) Federal Award Date: 9 Sep 2015
- (v) Sub-award Period of Performance Start and End Date: 13 July 2016 through 31 December 2022
- (vi) Total Amount of Federal Funds Obligated by this Contract: \$4,700,759
- (vii) Total Amount of Federal Funds Obligated by this initial Contract and any amendments: \$4,700,759
- (viii) Total Amount of Federal Award to the pass-through entity: \$12,480,000
- (ix) Federal award project description: Oregon's Drinking Water State Revolving Fund: This Fund increases the capacity of Oregon to ensure that its public water systems continue to provide safe drinking water. This is done by (1) continuing loan financing to public water systems and support for newly proposed priority projects, (2) providing grant support for covering administrative expenses, small public water system technical assistance, State program management and local assistance, and (3) continuation of the loan fund to finance source water protection project initiatives, including acquiring conservation easements.
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
  - (a) Name of Federal awarding agency: U.S. Environmental Protection Agency
  - (b) Name of pass-through entity: Oregon Infrastructure Finance Authority
  - (c) Contact information for awarding official of the pass-through entity: Ed Tabor, Programs & Incentives Manager, 503-949-3523
- (xi) CFDA Number and Name: 66.468 Safe Drinking Water State Revolving Fund  
Amount: \$4,700,759
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: N/A

\*For the purposes of this Exhibit E, "Subrecipient" refers to Recipient and "pass-through entity" refers to IFA.

**EXHIBIT F - CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_