

**WALDPORT CITY COUNCIL  
APRIL 14, 2016  
MEETING NOTICE AND AGENDA**

The Waldport City Council will meet at 2:00 p.m. on Thursday, April 14, 2016 in the City Council Meeting Room, 125 Alsea Highway to take up the following agenda:

1. CALL TO ORDER & ROLL CALL
2. MINUTES: *March 10, 2016*
3. PUBLIC COMMENTS/PRESENTATIONS
4. DISCUSSION/ACTION ITEMS
  - A) *Proclamations:*
    - 1) *Sexual Assault Awareness Month*
    - 2) *Food Equity*
  - B) *Highway 34 Scenic Byway - Letter of Support*
  - C) *Audit Engagement for Fiscal Year Ending 06/30/16*
  - D) *Infrastructure Finance Authority Safe Drinking Water Revolving Loan Fund Contract*
  - E) *Other Issues*
5. COUNCIL COMMENTS AND CONCERNS
6. REPORTS
  - City Manager*
  - City Librarian*
  - Public Works Director*
7. EXECUTIVE SESSIONS:
  - A) *Pursuant to ORS 192.660(2)(h): To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.*
  - B) *Pursuant to ORS 192.660(2)(e): To conduct deliberations with persons designated by the governing body to negotiate real property transactions.*
8. ACTIONS, IF ANY, FROM EXECUTIVE SESSION
9. GOOD OF THE ORDER
10. ADJOURNMENT

The City Council Meeting Room is accessible to all individuals. If you will need special accommodations to attend this meeting, please call City Hall, (541)264-7417, during normal office hours.

\* Denotes no material in packet

Notice given this 8<sup>TH</sup> day of April, 2016 - Reda Q. Eckerman, City Recorder

**WALDPOR CITY COUNCIL  
MARCH 10, 2016  
MEETING MINUTES**

1. CALL TO ORDER AND ROLL CALL: Mayor Woodruff called the meeting to order at 2:00 p.m. Mayor Woodruff and Councilors O'Brien, Gates, Christenson, Campbell and Cutter answered the roll. Councilor Holland was excused. A quorum was present.

2. MINUTES: The Council considered the minutes from the February 11, 2016 meeting. Councilor Christenson **moved** to approve the minutes as presented. Councilor Gates **seconded**, and the motion **carried** unanimously on a voice vote.

3. CITIZEN COMMENTS AND CONCERNS: None.

4. DISCUSSION/ACTION ITEMS:

A. Review of Goals: City Manager Kemp noted the goals have been updated to reflect the progress over the previous year. The City will be submitting a TGM grant application for the streetscape plan for Highway 34 to tie in with the Scenic Byway and the Open Space. Economic Development Consultant Rachel Cotton reported on the Housing meeting held in January, noting that there were quite a few participants and the meeting went extremely well, with a lot of good information. Another meeting is scheduled for April, and the group will be looking at Newport and Toledo. One of the drawbacks for Waldport is the lack of city-owned developable property, but the conversation will definitely continue. A RSIA (Regionally Significant Industrial Area) hearing will be scheduled for sometime this month. The meeting with the Industrial Park owners went well, though not many property owners were present. Mayor Woodruff asked about the partners for the Scenic Byway project and Mr. Kemp responded that the Council of Governments will be preparing the Corridor Management Plan, with several counties, cities and agencies involved. Under Community Resiliency, discussion ensued regarding the City's Emergency Operation Center, which is being established at the new Public Works facility. It was explained that this would be for coordinating the City's response to emergencies, with the main storage and officially designated gathering area as Crestview School.

B. Open Space Project Update: Mr. Kemp and Ms. Cotton gave a review of the series of recent evening meetings, and the results of the online parks survey. Councilor Cutter suggested pursuing a feasibility study for sports fields and noted that the study for the amphitheater could be part of an request for proposals process. A lengthy discussion ensued. Councilor Gates **moved** to approved a feasibility and marketing study at a cost not to exceed \$25,000. Councilor Campbell **seconded**, and the motion **carried**, with Mayor Woodruff and Councilors O'Brien, Gates, Christenson and Campbell voting "Aye", Councilor Cutter voting "Nay".

C. Community Center - Senior Meals Program Contract: City Manager Kemp noted that the Council of Governments had approached the City about formalizing a contract for the Meal Site at the Community Center. He felt this might be an opportunity to help alleviate the burden on the General Fund and explored similar contracts that COG held with other entities. The contract had therefore been negotiated with a use fee of \$2700 included, along with language regarding cost-sharing for repairs and maintenance.

Councilor Cutter reported that the Meals on Wheels program was looking at a growing deficit and instituting changes to help close the funding gap. Statistically, the Waldport Meals on Wheels averaged around 200 more meals per month than Newport, indicating a definite need for the service in South County. He suggested that the Council consider waiving the fee and noted that he would then approach similar entities to ask that they follow the City's example. Following discussion, Councilor Cutter **moved** to accept the proposed agreement with the deletion of Item 2(E) "Remuneration". Councilor Campbell **seconded**, and the motion **carried** unanimously.

5. COUNCIL COMMENTS AND CONCERNS: Councilor O'Brien reported on further discussions with Lincoln County Transit regarding service to the new clinic. They indicated that if a bus shelter was built there, they would provide the transportation on a regular basis. Staff will look at potential locations and costs involved and report back. Mayor Woodruff noted that an Open House will be held at the clinic on March 11 from 3:00 - 6:00 p.m. Councilor Campbell asked about the previously proposed idea for using Urban Renewal #1 funds to purchase banners for the downtown area. City Manager Kemp and Public Works Director Andry reviewed potential costs for materials and labor, and noted that this would be part of the upcoming budget discussion. Councilor Christenson talked about Community Emergency Response Teams (CERT) and Councilor O'Brien responded that currently there were only three or four members here. A government sponsor is needed to set up training but the cost will be somewhere around \$1500. He will work with Councilor Christenson on this issue. Councilor Cutter noted that a meeting was held earlier this day with Peak Internet and Pioneer Telephone and he will report on that at the next meeting.

6. REPORTS: The reports from the City Manager and City Librarian were included in the packet materials, and the report from the Code Compliance Officer was distributed at the meeting. City Manager Kemp mentioned that the issue of the Southwest Lincoln Water District's request to become a PUD was approved by the county and will go to the voters in the May election.

Mayor Woodruff noted that Lisa Miller, Linda Ericksen and Ron Remund had volunteered to be on the Budget Committee. It was confirmed that Ms. Miller was a resident, but eligibility for the other two has yet to be determined, and there is at least one more vacancy as well. She encouraged the Council to continue recruitment efforts.

7. EXECUTIVE SESSIONS: At 4:00 p.m. the Council recessed into Executive Session, pursuant to ORS 192.660(2)(h), to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed; and pursuant to ORS 192.660(2)(e), to conduct deliberations with persons designated by the governing body to negotiate real property transactions. The topics of discussion were the water tank rehabilitation project, and the Open Space.

8. ACTIONS, IF ANY FROM EXECUTIVE SESSION: At 4:49 p.m. the Council reconvened into Open Session. No actions were taken.

9. GOOD OF THE ORDER: Nothing further.

10. ADJOURNMENT: At 4:50 p.m., there being no further business to come before the Council, the meeting was adjourned.

Respectfully submitted,

Reda Q. Eckerman, City Recorder

APPROVED by the Waldport City Council this \_\_\_\_ day of \_\_\_\_\_, 2016.

SIGNED by the Mayor this \_\_\_\_day of \_\_\_\_\_, 2016.

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Susan Woodruff, Mayor



# City of Waldport

P.O. Box 1120  
Waldport, Oregon  
Phone: (541) 264-7417 Fax: (541) 264-7418  
TTY: (800)735-2900

## PROCLAMATION

\*\*\*\*\*HEAR YE\*\*\*\*\*HEAR YE\*\*\*\*\*HEAR YE\*\*\*\*\*

**Whereas** Yachats is the “Gem of the Oregon Coast” and Waldport is “Where the Forest Meets the Sea”; and

**Whereas** our cities are places where natural resources are valued and protected and where diversity is celebrated; and

**Whereas** a vibrant economy and sense of community pride create and recreate a living spirit;

**Now therefore be it proclaimed** as follows:

That the City Councils of Yachats and Waldport believe that an important way to enrich our communities is to offer a variety of opportunities and services that are affordable. This includes the cost of food, determined by standard prices at food outlets within a reasonable distance.

That food is a moral and human right. "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food." UN 1948 Article 25. Food is not merely a necessity but a critical human need for all individuals. This includes members of our community and those who pass through and visit. It becomes a moral right when access to and affordability are denied or stifled.

That the cities of Yachats and Waldport care not just for their citizens "basic needs" but also support them in their efforts to excel mentally, physically, artistically and spiritually.

That we are bound together by an enduring sense of togetherness. As we move forward our goal remains to keep a focus on the well-being for our two communities and all people within.

Dated this \_\_\_\_\_ day of April 2016.



\_\_\_\_\_  
Susan Woodruff, Mayor



# City of Waldport

P.O. Box 1120  
Waldport, Oregon  
Phone: (541) 264-7417 Fax: (541) 264-7418  
TTY: (800)735-2900

## PROCLAMATION

\*\*\*\*\*HEAR YE\*\*\*\*\*HEAR YE\*\*\*\*\*HEAR YE\*\*\*\*\*

**WHEREAS**, sexual assault affects Oregonians every day, whether as a victim or survivor, or as a family member, friend, partner, neighbor, employer or co-worker; and

**WHEREAS**, it is estimated that 1 in 4 adult women in Oregon has been the victim of forcible rape and nearly 1 in 71 adult men in have experienced rape or attempted rape in their lifetime; and

**WHEREAS**, sexual violence is preventable; and communities, including campus communities, are strengthened by encouraging healthy, non-violent interactions, relationships and social norms; and

**WHEREAS**, institutions and systems can lead violence prevention by implementing policies that address disparities and promote equity for all people; and

**WHEREAS**, compassionate, courageous, and dedicated individuals and local organizations have provided services and support for victims and survivors, and worked to prevent sexual violence for decades; and

**WHEREAS**, every individual and community in Oregon has the ability and a role to play to help eliminate sexual violence by working together to promote social change.

**NOW, THEREFORE**, I, Susan Woodruff, Mayor of the City of Waldport, Oregon, do hereby proclaim April, 2016 to be "Sexual Assault Awareness Month" and encourage all residents to join in this observance.

Dated this \_\_\_\_\_ day of April 2016.



\_\_\_\_\_  
Susan Woodruff, Mayor

*The City of Waldport is an equal opportunity employer and a drug-free workplace*



# City of Waldport

P.O. Box 1120  
Waldport, Oregon 97394  
Phone: (541) 264-7417 Fax: (541) 264-7418  
TTY: (800)735-2900

March 30, 2016

Pat Moran, Scenic Byways Program Manager  
ODOT- Active Transportation Section  
555 13th St NE, Ste. 2  
Salem, OR 97301-6867

RE: HIGHWAY 34 "MARYS PEAK TO PACIFIC" SCENIC BYWAY - LETTER OF SUPPORT

Dear Mr. Moran,

The City of Waldport would like to express its continuing support for the effort to designate Highway 34 as a Scenic Byway between Tangent and Waldport, including spurs branching out to Marys Peak and Alsea Falls.

The City has the unique distinction of being the western terminus of the route as it adjoins National Highway 101, and approves of the concept of providing a safe and attractive alternative to both in-state and out of state travelers as they explore and enjoy the natural amenities found here on the Central Oregon Coast and along the route to the Willamette Valley. The additional exposure provided by signage and promotional materials such as guides and maps will serve to enhance economic opportunities for not only the local businesses and industries but also those of adjacent communities.

Please accept our endorsement and rest assured that we will remain an active and enthusiastic participant in achieving the designation of the "Mary's Peak to Pacific" Scenic Byway as the project continues to evolve.

Sincerely,

Mayor Susan Woodruff



## ***CITY COUNCIL MEETING AGENDA COVER SHEET FOR DISCUSSION / ACTION***

**TITLE OF ISSUE:** Audit Engagement for fiscal year ending June 30, 2016

**REQUESTED BY:** City Manager

**FOR MEETING DATE:** April 14, 2016

### **SUMMARY OF ISSUE:**

An audit is the examination and verification of an organization's financial statements and records. Audits provide independent and impartial opinion as to whether the information is presented objectively. These reports assist owners and managers to make decisions, and help to show the organization's financial status to stockholders, financial organizations, regulators, and the public.

The audit objective is the expression of opinions as to whether the financial statements are fairly presented, in all material respects, in conformity with GAAP (generally accepted accounting principles). An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements and evaluating the appropriateness of accounting policies to obtain reasonable rather than absolute assurance regarding the financial statements.

The auditor will test internal controls as a means to evaluate risks of material misstatement of the financial statements. Internal control is defined as a process, affected by an organization's structure, work and authority flows, people and information systems, designed to help the organization accomplish specific goals or objectives. Internal control plays an important role in preventing and detecting fraud and protecting the organization's resources.

Management has the overall responsibility for designing and implementing effective internal controls; provides leadership and direction, and reviews the way the operations are controlled. Council's responsibility includes knowledge of the city's activities and environment, providing governance, policy guidance, and policy oversight.

Audit field work (on site) will begin in May with reports issued no later than October 2016. The contract fee for audit services (\$16,575) was established by a competitive process and is the amount stated in the June 2011 request for proposal.

### **STAFF RECOMMENDATION or ACTION REQUESTED:**

Review and acknowledge contract, as part of Council's responsibility for understanding and oversight.

### **ATTACHMENTS:**

Financial Management Policy for Internal Controls  
Audit Engagement Letter

## INTERNAL CONTROLS

**Purpose.** In order for the City of Waldport to assure accountability and manage risk, it should build a framework of internal controls. Management has the responsibility to identify risks, prioritize them, and to design internal controls to manage them.

**Policy.** The city understands that the basic principles of a good internal control framework include segregated duties, design that is simple and practical, design that allows for monitoring and testing, controls that address high priority risks, controls that are written into policies and procedures, consistency, and endorsement from top management. Internal control is the means by which risk can be managed and includes the following controls.

**Internal Controls for Receivables/Revenues.** Cash is receipted for any amount over five dollars. Receipt books shall contain consecutively numbered receipts. All cash shall be locked in a secure location when unattended. Receipts are recorded for checks received, except for utility billing payments and business licenses. Checks shall be endorsed with city's endorsement stamp. As is feasible with limited staffing, duties are assigned in such a manner to segregate batching and processing from reconciling to detect errors or omissions. Leak adjustments to the utility billing subsidiary ledger are reviewed and approved by City Manager.

**Internal Controls for Payables/Expenditures.** Purchases of \$10,000 to \$150,000 require at least three informally solicited competitive price quotes. If three quotes are not reasonably available, it should be documented. Also purchase orders, with notes and documentation attached, are required for purchases of \$10,000 to \$150,000 and shall be submitted to City Manager for approval. Purchase orders are not required for routine purchases and established contract services. Department heads will evaluate quality and pricing of routine purchases periodically. Once goods are received, department head shall approve invoice and designate line item expenditure(s) for payment processing. The City Manager and a Council Member shall review accounts payable invoices and supporting documentation. Checks over \$5,000 require two signatories. Vendor checks shall be mailed directly to the payee. A check number log is maintained to account for completeness, and includes accounts payable, payroll, voided and stale checks. Periodically a list of surplus property shall be submitted for council approval.

**Additional Internal Controls.** Establish sound personnel policies that include well designed job descriptions, background checks, and reference checks. Purchase employee bonding. Monthly bank statements are reconciled in a timely manner, and reviewed and approved by the City Manager. Revenue and expenditure activity, in comparison with budget, is reported to Council monthly. Historical revenue and expenditure activity is prepared for the yearly budget committee and available to the public.

**Amended by City Council motion February 14, 2008**

**Amended by City Council motion October 9, 2014**



**Hough, MacAdam, Wartnik,  
Fisher & Gorman, LLC**

CERTIFIED PUBLIC ACCOUNTANTS

JIM HOUGH, CPA  
SHIRLEY MACADAM, CPA  
JAYSON WARTNIK, CPA  
LAURA FISHER, CPA  
BOB GORMAN, CPA

BRIAN BRAS, CPA  
JOE COLO, CPA  
SALLY JAEGGLI, CPA  
TINA JONES, CPA  
BRYAN WILLIAMS, CPA

April 1, 2016

City Council  
C/O Dona H. Lawson, City Accountant  
City of Waldport  
P. O. Box 1120  
Waldport, OR 97394

We are pleased to confirm our understanding of the services we are to provide the City of Waldport (the City) for the fiscal year ended June 30, 2016. We will audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the City's basic financial statements as of and for the fiscal year ended June 30, 2016.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A) and budgetary comparison information on the General Fund and the Major Special Revenue Funds to supplement the City's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context.

As part of our engagement, we will apply certain limited procedures to the City's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited.

1. Management's Discussion and Analysis.

The budgetary comparison schedules for the General Fund and major special revenue funds is also required by generally accepted accounting principles and will be subjected to the auditing procedures applied in the audit of the basic financial statements, and we will provide an opinion on them in relation to the basic financial statements as a whole.

We have also been engaged to report on supplementary information other than RSI that accompanies the City's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole.

1. Budgetary comparison schedules for non-major funds
2. Combining schedules of individual funds

## **Audit Objectives**

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles (GAAP) and to report on the fairness of the supplementary information referred to above when considered in relation to the basic financial statements taken as a whole.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and the Minimum Standards for Audits of Oregon Municipal Corporations, and will include tests of the accounting records of the City of Waldport and other procedures we consider necessary to enable us to express such opinions. We will issue a written report upon completion of our audit of the City of Waldport's financial statements. Our report will be addressed to management and the governing board of the City of Waldport.

We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or may withdraw from this engagement.

We will also provide a report (that does not include an opinion) on internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, grants agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*. The report on internal control and on compliance and other matters will include a paragraph that states (1) that the purpose of the report is solely to describe the scope of testing of internal control and compliance, and the result of that testing, and not to provide an opinion on the effectiveness of internal control or on compliance, and (2) that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering internal control over compliance. The paragraph will also state that the report is not suitable for any other purpose.

If during our audit we become aware that the City of Waldport is subject to an audit requirement that is not encompassed in the terms of this engagement, we will communicate to management and those charged with governance that an audit in accordance with U.S. generally accepted auditing standards and the standards for financial audits contained in *Government Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

## **Audit Procedures—General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the City or to acts by management or employees acting on behalf of the City. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements.

However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. Our responsibility as auditors is limited to the period covered by our audit and does not extend to later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will also require certain written representations from you about the financial statements; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

#### **Audit Procedures–Internal Control**

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Test of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards and *Government Auditing Standards*.

#### **Audit Procedures–Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with the provisions of applicable laws, regulations, contracts, agreements and grants. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

#### **Other Services**

We will also assist in preparing the financial statements and related notes of the City of Waldport in conformity with U.S. generally accepted accounting principles based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*.

### **Management Responsibilities**

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. As part of the audit, we will assist you with preparation of your financial statements and related notes. You agree to assume all management responsibilities relating to the financial statements and related notes and any other nonaudit services we provide. You agree to oversee the services by designating an individual, preferably from senior management, who possesses suitable skill, knowledge, or experience to oversee and evaluating the adequacy and results of those services and accepting responsibility for them.

You will be required to acknowledge in the written management representation letter our assistance with the preparation of the financial statements and that you have reviewed and approved the financial statements and related notes prior to their issuance and have accepted responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; following laws and regulations; and for ensuring that management is reliable and financial information is reliable and properly recorded. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles, for the preparation and fair presentation of the financial statements in conformity with U.S. generally accepted accounting principles, and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the written representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

As part of our engagement, we may propose standard, adjusting, or correcting journal entries to your financial statements. You are responsible for reviewing the entries and understanding the nature of any proposed entries and the impact they have on the financial statements.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud, or illegal acts affecting the City involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud, or illegal acts affecting the City received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the City complies with applicable laws, regulations, contracts, agreements and grants, and for taking timely and appropriate steps to remedy any fraud, illegal acts, violations of contracts or grant agreements, or abuse that we may report.

You are responsible for the preparation of the supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon.

Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) that you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) that the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits attestation engagements, performance audits or other studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

### **Engagement Administration, Fees, and Other**

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing. We understand that your financial records will be in auditable condition with all requested schedules prepared timely and accurately and will require a minimal number of adjusting entries.

At the conclusion of the engagement, we will assist management by submitting copies of our reports to the City of Waldport, Lincoln County and the State of Oregon Audit Division; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Hough, MacAdam, Wartnik, Fisher & Gorman LLC and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the Oregon Secretary of State, or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Hough, MacAdam, Wartnik, Fisher & Gorman, LLC personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other government agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the Oregon Secretary of State. If we are aware that a federal awarding agency or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin the advance work for our audit in May 2015, with substantive fieldwork expected to begin in July. We plan to issue our reports no later than October 31, 2016. Laura Fisher is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them. Our fee for these services will be \$16,575. Should the City require a Single audit, an additional fee of \$2,800 will be charged. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit.

Our invoices for these services will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 45 days or more overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement, will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fees are based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit.

If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs. It is understood and agreed that either Party may cancel this contract by giving notice in writing to the other Party at least ninety (90) days prior to July 1 of any year.

Our engagement will be highly detailed in nature, and there are inherent difficulties in accurately recalling such details over a long period of time. You therefore agree that, notwithstanding the statutes of limitations established by the laws of the State of Oregon, any suit or counterclaim based on this engagement must be instituted within 12 months after the performance of our services, unless you have previously provided us with written notice specifically calling our attention to the defects in our services which form the basis of such a claim. You agree that our maximum liability to you for any negligent errors or omissions committed by us in the performance of the engagement will be limited to our annual amount of fees for this engagement, except to the extent determined to result from our gross negligence or willful misconduct.

Our fee estimate discussed herein is based on accounting and professional standards that exist and are applicable as of the date of this letter. To the extent that future rule-making activities require modification of our audit approach, procedures, scope of work, etc., we will advise you of such changes and the impact on our fee estimate. If we are unable to agree on the additional fees, if any, that may be required to implement any new accounting and auditing standards that are required to be adopted and applied as part of our engagement, we reserve the right to withdraw from the engagement, regardless of the stage of completion. If we withdraw from the engagement prior to completing our audit procedures, our engagement will be deemed to have been completed, and no report will be issued as a result of our work. In that event, you will be obligated to compensate us for all time incurred through the date of withdrawal.

In the interest of facilitating our services for you, we may communicate by facsimile transmission or send electronic mail over the Internet. Such communications may include information that is confidential to you. Our firm employs measures in the use of facsimile machines and computer technology designed to provide reasonable assurance that data security is maintained. While we use our best efforts to keep such communications secure in accordance with our obligations under applicable laws and professional standards, you recognize and accept that we have no control over the unauthorized interception of these communications once they have been sent. Unless you issue specific instructions to do otherwise, we will assume that you consent to our use of facsimile transmissions to your representatives and other use of these electronic devices during this engagement as we deem appropriate.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

We appreciate the opportunity to be of service to the City of Waldport and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign below, retain a copy for your records, and return this letter to our office in the envelope provided.

Very truly yours,

**HOUGH, MACADAM, WARTNIK, FISHER & GORMAN, LLC.**



Laura Fisher, CPA  
Partner

**RESPONSE:**

This letter correctly sets forth the understanding of the City of Waldport.

By: \_\_\_\_\_

Title: \_\_\_\_\_

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



## **CITY COUNCIL MEETING AGENDA COVER SHEET FOR DISCUSSION / ACTION**

**TITLE OF ISSUE:** Infrastructure Finance Authority Safe Drinking Water Revolving Loan Fund Contract for Water Treatment Plant Improvements

**REQUESTED BY:** City Manager, City Accountant

**FOR MEETING DATE:** April 14, 2016

### **SUMMARY OF ISSUE:**

Backwash water is not being recycled at the correct location of the Water Treatment Plant, which is a deficiency noted by Oregon Health Authority for not returning filter backwash water to the beginning of the plant. The proposed solution is to assess the facility and coordinate with the Oregon Health Authority to resolve the deficiency, provide plans and construct improvements, and update the Water Master Plan, which was completed in 2002.

IFA is offering a loan of \$74,000 at a 1% interest rate and a forgivable loan (grant) of \$111,000 if contract conditions are met. Special security conditions are listed in Exhibit B, page 17 of the contract, and include pledging full faith and credit of the city, pledging net revenues of the water fund, and charging water rates and fees adequate to generate net revenues that are not less than 120% of the maximum annual debt service of the loan for five fiscal years. If contract conditions are not met, loan would not be forgivable and interest rate would be 2.73%.

### **FISCAL IMPACT:**

The fiscal impact will depend upon the OHA approved construction solution and costs, but the early estimate is \$3360 for annual debt service, based upon a 1% loan for 25 years, with \$10,000 of budget matching funds.

### **STAFF RECOMMENDATION or ACTION REQUESTED:**

Approve Resolution authorizing the City Manager to execute the Financing Contract, the Promissory Note, and such other documents as may be required to obtain financial assistance including a loan from the IFA.

**ATTACHMENTS:** Resolution, Contract, Promissory Notes, and Legal Opinion

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF WALDPOROT AUTHORIZING A LOAN FROM THE SAFE DRINKING WATER REVOLVING LOAN FUND BY ENTERING INTO A FINANCING CONTRACT WITH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY**

The City Council (the "Governing Body") of the City of Waldport (the "Recipient") finds:

A. The Recipient is a community water system as defined in Oregon Administrative Rule 123-049-0010.

B. The Safe Drinking Water Act Amendments of 1996, Pub.L. 104-182, as amended (the "Act"), authorize any community or nonprofit non-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.

C. The Recipient 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 Recipient's application for financial assistance from the Safe Drinking Water Revolving Loan Fund.

D. The Recipient is required, as a prerequisite to the receipt of financial assistance from the IFA, to enter into a Financing Contract with the IFA, substantially in the form attached hereto as Exhibit A.

E. Notice relating to the Recipient's consideration of the adoption of this Resolution was published in full accordance with the Recipient's charter and laws for public notification.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the Recipient as follows:

1. **Financing Loan Authorized.** The Governing Body authorizes the City Manager to execute the Financing Contract and the Promissory Note (the "Financing Documents") and such other documents as may be required to obtain financial assistance including a loan from the IFA on the condition that the principal amount of the loan from the IFA to the Recipient is not more than \$185,000 (with \$111,000 eligible for principal forgiveness if contract conditions are met) and the interest rate is not more than 1% if contract conditions are met (and 2.73% if not met). The proceeds of the loan from the IFA must be applied solely to the "Costs of the Project" as such term is defined in the Financing Contract.

2. **Security.** Amounts payable by the Recipient are payable from the sources described in Section 4 of the Financing Contract and the Oregon Revised Statutes Section 285A.213(5) which include:

(a) Net revenue from the water system of the Recipient;

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

(c) The general fund of the Recipient;

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

(e) Any other source.

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

4. **Tax-Exempt Status.** The Recipient covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Recipient pursuant to the Financing Documents not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The [name of officer] of the Recipient may enter into covenants on behalf of the Recipient to protect the tax-exempt status of the interest paid by the Recipient pursuant to the Financing Documents and may execute any Tax Certificate, Internal Revenue Service forms or other documents as may be required by the IFA or their bond counsel to protect the tax-exempt status of such interest.

APPROVED by the Waldport City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

SIGNED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Susan Woodruff, Mayor

ATTEST:

\_\_\_\_\_  
Reda Eckerman, City Recorder

SAFE DRINKING WATER REVOLVING LOAN FUND  
FINANCING CONTRACT

Project Name: Waldport Water Treatment Plant Improvement

Project Number: S16019

This 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 Waldport (“Recipient”) for financing of the project referred to above and described in Exhibit D (“Project”). This 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	Form of Section 2.A. Promissory Note
Exhibit C-1	Form of Forgivable Promissory Note
Exhibit D	Project Description
Exhibit E	Project Budget
Exhibit F	Information Required by 2 CFR § 200.331(a)(1)
Exhibit G	Certification Regarding Lobbying

**SECTION 1 - KEY TERMS**

The following capitalized terms have the meanings assigned below.

“Estimated Project Cost” means \$195,000.

“Forgivable Loan Amount” means \$111,000.

“Loan Amount” means \$74,000.

“Maturity Date” means the 29<sup>th</sup> anniversary of the Repayment Commencement Date.

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

“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 36 months after the date of this Contract.

“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 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. Note 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 and the Note in accordance with their 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 Note 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 or the Note.
  - (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. Subject to satisfaction by Recipient of any special conditions in Exhibit B, 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 Note. The Forgivable Loan Amount and any interest forgiven remain subject to the requirements of OAR 123-049-0050, which survive payment of the Loan.

Notwithstanding the preceding paragraph, if, starting at the Project Completion Date 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 \$39.86 per 7,500 gallons, \$92,500 of the Forgivable Note will not be forgiven. Further, the Section 2.A.Note and the Forgivable Note shall, at IFA's discretion and after notice to Recipient, be modified as follows:

(1) Interest shall accrue at the rate of Two and 73/100 percent (2.73%) per annum.

(2) The annual payments shall be adjusted to an amount to fully amortize the then outstanding balance of each Loan by the 19<sup>th</sup> anniversary of the Repayment Commencement Date, on which date any amounts outstanding under each Loan shall be due and payable in full; or if the 19<sup>th</sup> anniversary of the Repayment Commencement Date has passed, any amounts outstanding on the Section 2.A. Note and the Forgivable Note will be due and payable in full upon demand.

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 and replacement Notes.

## 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) The Section 2.A. Note and the Forgivable Note duly signed by an authorized officer of Recipient.
  - (3) 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, the Note and the other Financing Documents.
  - (4) An opinion of Recipient's Counsel.
  - (5) 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 D and according to the budget in Exhibit E. 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 D.
- 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, the Note 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, the Note 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, the Note 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, the Note 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, the Note 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, the Note 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:
- (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 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 D, 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, the Note 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 Note 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.



- 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 WALDPOR**

By: \_\_\_\_\_  
Robert Ault, Manager  
Program Services Division

By: \_\_\_\_\_  
Kerry Kemp, City Manager

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

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

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

\_\_\_\_\_  
/s/ Lynn T. Nagasako as per email dated 11 March 2016  
Lynn Nagasako, Sr. 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 2 March 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 (including but not limited to all promissory notes) executed pursuant to or in connection with IFA’s financing of the Project.

“Financing Proceeds” means the proceeds of the Loan (described in section 2.A.) and the forgivable Loan.

“Forgivable Note” means the promissory note evidencing the forgivable Loan.

“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(8).

“Note” means, collectively and individually without distinction, the Section 2.A. Note and the Forgivable Note, as amended, extended or renewed from time to time.

“ORS” means the Oregon Revised Statutes.

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

“Section 2.A. Note” means the promissory note evidencing the Loan described in section 2.A. of this Contract.

“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 and the Note. This Contract and the Note are payable from all legally available funds of Recipient.

B. Pledge of Net Revenues of the System

Capitalized terms used in this sub-section 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 Loan Agreement and Note.

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 Loan Agreement and Note 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 - FORM OF SECTION 2.A. PROMISSORY NOTE**

**City of Waldport  
PROMISSORY NOTE**

Dated XXXXXXXXXXXXXXXXXX, XXXX  
Waldport, Oregon

FOR VALUE RECEIVED, the City of Waldport, PO BOX 1120, Waldport OR 97394-1120 (“Recipient”), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY (“IFA”), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of Seventy-Four Thousand Dollars (\$74,000) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of One and 00/100 percent (1.00%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number S16019, between IFA and Recipient (as amended from time to time, the “Contract”). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

The Recipient shall make level installment payments of principal and interest, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount 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. Notwithstanding the above, the first such installment payment will be adjusted to include actual unpaid interest that accrued to the Repayment Commencement Date. On the Maturity Date, the entire outstanding principal balance and all accrued unpaid interest will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment; Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. The Recipient authorizes IFA to record the date and amount of each such disbursement, the date and amount of each payment and prepayment by Recipient, and the amount of interest accrued and paid. Absent manifest error, such notations will be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of this Note (including principal, interest and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note 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. Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA in the collection of Loan payments.

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 Note, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

**Notice to Recipient: Do not sign this Note before you read it.**

CITY OF WALDPOR

By: \_\_\_\_\_XXXXXXXXXXXXXXXXXXXX

Title: \_\_\_\_\_XXXXXXXXXXXXXXXXXXXX

SAMPLE

**EXHIBIT C-1 - FORM OF FORGIVABLE PROMISSORY NOTE**

**City of Waldport**

**FORGIVABLE PROMISSORY NOTE**

Dated XXXXXXXXXXXXXXXX, XXXX

Waldport, Oregon

FOR VALUE RECEIVED, the City of Waldport, PO BOX 1120, Waldport OR 97394-1120 (“Recipient”), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY (“IFA”), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of One Hundred and Eleven Thousand Dollars (\$111,000) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of One and 00/100 percent (1.00%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number S16019, between IFA and Recipient (as amended from time to time; the “Contract”). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

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To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note 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.

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THIS NOTE IS SUBJECT TO FORGIVENESS, IN WHOLE OR IN PART, PURSUANT TO SECTION 4.F. OF THE CONTRACT.

**Notice to Recipient: Do not sign this Note before you read it.**

CITY OF WALDPOR

By: \_\_\_\_\_

XXXXXXXXXXXXXXXXXXXXXXXXXX

Title: \_\_\_\_\_

XXXXXXXXXXXXXXXXXXXXXXXXXX

SAMPLE

**EXHIBIT D - PROJECT DESCRIPTION**

Recipient, with the assistance of an Oregon-licensed professional engineer, shall complete improvements to its water treatment plant in three phases. The first phase will assess the existing water treatment facility and propose solutions to all deficiencies, with a focus on resolving the deficiency identified during the Oregon Health Authority water system survey. The second phase is design engineering and construction of the adopted solutions chosen in phase one. Phase three is an update to Recipient's Water Master Plan (2002), including the solution(s) from phases one and two.

**Exhibit E: Project Budget**

	<b>IFA Funds</b>	<b>Other / Matching Funds</b>
Activity	Approved Budget	Approved Budget
Planning	\$65,000	\$10,000
Design / Engineering	20,000	
Treatment	100,000	
<b>Total</b>	<b>\$185,000</b>	<b>\$10,000</b>

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

Federal Award Identification:

- (i) Subrecipient\* name (which must match registered name in DUNS): Waldport City of
- (ii) Subrecipient's DUNS number: 09-567-6826
- (iii) Federal Award Identification Number (FAIN): 98009015
- (iv) Federal Award Date: 9 Sep 2015
- (v) Sub-award Period of Performance Start and End Date: 36 months from Contract execution.
- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$185,000
- (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement in the federal program year 2016: \$185,000
- (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity in federal program year 2016: \$185,000
- (ix) Federal award project description: Oregon's Drinking Water State Revolving Fund: Appropriation for FFY-2015. This grant increases the capacity of Oregon to ensure that their 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 projection initiatives, including acquiring and 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: Robert Ault, Program Services Division Manager, 503-551-0917
- (xi) CFDA Number and Name: 66.468 Safe Drinking Water State Revolving Fund  
Amount: \$185,000
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: N/A

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

**EXHIBIT G - CERTIFICATION REGARDING LOBBYING**

(Awards in excess of \$100,000)

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 \_\_\_\_\_

**City of Waldport**  
**PROMISSORY NOTE**

Dated \_\_\_\_\_, \_\_\_\_\_

Waldport, Oregon

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**Notice to Recipient: Do not sign this Note before you read it.**

**CITY OF WALDPOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**City of Waldport**  
**FORGIVABLE PROMISSORY NOTE**

Dated \_\_\_\_\_, \_\_\_\_\_

Waldport, Oregon

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**Notice to Recipient: Do not sign this Note before you read it.**

**CITY OF WALDPOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_

# Macpherson, Gintner & Diaz

## LAWYERS

423 North Coast Highway  
P.O. Box 1270  
Newport, Oregon 97365  
(541) 265-8881 \ (800) 829-8881  
FAX (541) 265-3571  
email: [gintner@mggdlaw.com](mailto:gintner@mggdlaw.com)

### Peter Gintner

Also admitted in Alaska

April 6, 2016

Oregon Infrastructure Finance Authority  
775 Summer Street NE, Suite 200  
Salem, Oregon 97301-1280

Re: Legal Opinion

Ladies and Gentlemen:

I have acted as counsel to the City of Waldport (the "Recipient"), which has entered into a financing contract (as hereinafter defined) with the Oregon Infrastructure Finance Authority (the "IFA" or the "State"), and have acted as such in connection with the authorization, execution and delivery by the Recipient of such contract. Capitalized terms not otherwise defined in this letter shall have the meanings assigned to them by the Contract.

In so acting I have examined the Constitution and laws of the State of Oregon and the Recipient's Charter, if any. I have also examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

A. The S16019 Safe Drinking Water Revolving Loan Fund Financing Contract by and between the IFA and the Recipient, signed by Recipient on \_\_\_\_\_, 20\_\_; and the Section 2.A.Promissory Note signed by Recipient on \_\_\_\_\_, 20\_\_, in the principal loan amount of \$74,000; and the Forgivable Promissory Note signed by Recipient on \_\_\_\_\_, 20\_\_, in the principal forgiveness loan amount of \$111,000.

B. Proceedings of the governing body of the Recipient relating to the approval of the Contract and the execution, issuance and delivery thereof on behalf of the Recipient, and the authorization of the undertaking and completion of the Project as defined in the Contract.

C. All outstanding instruments relating to bonds, notes or other indebtedness of or relating to the Recipient.

I have also examined and relied upon originals, or copies certified or otherwise authenticated to my satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in my judgment I have deemed necessary or appropriate to enable me to render the opinions expressed below.

Based upon the foregoing, I am of the opinion that:

1. The Recipient is a duly formed and operating municipality with the legal right to own and operate a publically owned drinking water system.
2. The Recipient has full legal right and authority to execute and deliver the Contract and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project.
3. Amounts due to the IFA pursuant to the Contract and the Promissory Notes are payable from the sources of payment described in the Contract.
4. A Resolution for the Contract (the "Resolution") of the Recipient, approving the Contract and authorizing its execution, issuance and delivery on behalf of the Recipient, and authorizing the Recipient to undertake and complete the Project have been duly and lawfully adopted and authorized in accordance with the Recipient's Charter, if any, the Act and other applicable Oregon law, and the Resolution was adopted at a meeting or meetings which were duly called with public notice and held in accordance with the Recipient's Charter, if any, and applicable Oregon law, and at which quorums were present and acting throughout.
5. The Contract has been duly authorized, executed and delivered by the authorized officers of the Recipient and constitutes the legal, valid and binding obligation of the Recipient enforceable in accordance with its terms; subject, however, to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights or remedies generally ("Creditor's Rights Limitations") heretofore or hereafter enacted and the application of equitable principles.
6. To the best of my knowledge, after such investigation as I have deemed appropriate, the authorization, execution and delivery of the Contract by the Recipient, the observation and performance by the Recipient of its duties, covenants, obligations and agreements there under and the consummation of the transactions contemplated therein and the undertaking and completion of Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Recipient or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, resolution, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Recipient is a party or by which it, the Project, or its property or assets is bound.
7. To the best of my knowledge, after such investigation as I have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Recipient in connection with the authorization, execution, delivery and performance of the Contract and the undertaking and completion of the Project have been obtained or made.
8. To the best of my knowledge, after such investigation as I have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Recipient or of the validity, legality or enforceability of the Contract or the undertaking or completion of the Project. This opinion is rendered on the basis of the laws of the State of Oregon,

as enacted and construed on the date hereof. I express no opinion as to any matter not set forth in the numbered paragraphs herein.

Sincerely,

Peter Gintner  
PG/trw

cc: Client

## **CITY COUNCIL MEETING – April 14, 2016**

### **CITY MANAGER REPORT**

#### **1. Budget**

Budget packets are out to the Budget Committee, and our meeting is scheduled for **April 26<sup>th</sup>, from 1:30 p.m. to 5 p.m.** in Council Chambers.

#### **2. Cascadia Subduction Zone Earthquake Presentation – Mark Your Calendars!**

Lincoln County is co-sponsoring presentations with Dahl Disposal and other service providers regarding preparing for a possible earthquake and resultant tsunami. Ours is being scheduled for Saturday **May 14, 2016, from 1 p.m. until about 3 p.m.** at the Community Center. The presentation is 90 minutes plus Q&A.

#### **3. Open Space**

After the City Council authorized a feasibility study for the amphitheater, I contacted FEMA and the State Office of Emergency Management, as I did not want us to spend dollars on a study before clearance of the use by FEMA and the State. After having a preliminary meeting in Salem, it turns out there are some potential issues, generally in the areas of flood plain management, earthquake impact, and life safety/tsunami evacuation. Hence, I prepared and submitted a reuse proposal to the relevant agencies, covering not just an amphitheater use but other contemplated uses as well, be they ballfields, picnic areas, playgrounds, etc.

#### **4. Industrial Park**

The feasibility study will be wrapping up this month or early May, and we should be receiving the grant agreement soon from the State Department of Land Conservation and Development.

I attended a meeting in Salem of the Economic Recovery Review Council to hear about Lincoln County's Regionally Significant Industrial Area application and talk about Waldport. Some on the Council voiced concerns about apparent non-industrial zoning of certain areas (not Waldport), and they understood my concern to not hold us back due to issues elsewhere. The Council proceeded to conditionally approved the application, presumably allowing areas to move forward independently of each other as conditions are satisfied. I will provide more information about the approval and conditions when I receive the final report or findings from the State or County.

#### **5. Marijuana**

We are advised that there are grow facilities in town, one in old town and one up in the industrial park. Code Compliance is working with Lincoln County Sheriff on the first one, and the second one is submitting an application for a Conditional Use Permit to operate in an industrial zone.

The State has also issued draft rules dated March 24<sup>th</sup>, 2016. Staff is reviewing these, as well as other materials, and will be preparing draft regulations for consideration by the Council.

The City has yet to receive any tax revenues, which will be based on population through June 2017.

#### **6. General Economic Development**

We are all excited that a remodeled motel is under construction downtown on Highway 101. I understand they hope to open in May, just in time for peak tourist season. This should provide another lodging options and should be a boost for our downtown businesses, as well as transient lodging tax for the City.

**Waldport Public Library**  
**Monthly Circulation FY 2015-16**

Patron Category	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	TOTAL
LCLD-Adult	2,738	2,663	2,501	2,567	2,229	2,877	2,912	2,861	3,113				24,461
LCLD-Youth	158	131	87	126	98	71	106	52	70				899
Waldport Adult	1,995	2,308	2,279	2,173	1,892	1,998	2,182	2,043	1,950				18,820
Waldport Youth	190	246	103	95	153	113	66	39	50				1,055
CITIES (Adult & Juv)	41	61	45	45	38	49	53	43	35				410
Temporary 1 yr	26	55	64	68	115	94	63	59	60				604
Temporary	79	87	24	38	1	2	16	19	90				356
OCCC	0	0	4	5	3	17	15	5	1				29
Oregon Passport	101	113	45	47	92	92	82	62	51				685
Interlibrary loan out	<u>63</u>	<u>60</u>	<u>50</u>	<u>67</u>	<u>45</u>	<u>55</u>	<u>72</u>	<u>60</u>	<u>69</u>				<u>541</u>
Chinook Circ	5,391	5,724	5,202	5,231	4,666	5,368	5,567	5,243	5,489				47,881
% circ in public lib	45%	49%	47.60%	45.60%	46.60%	49.20%	46.78%	47.90%	58.70%				48.49%
Non-cataloged	814	745	814	572	607	539	712	628	645				6,076
Library2Go *	<u>174</u>	<u>144</u>	<u>145</u>	<u>145</u>	<u>183</u>	<u>190</u>	<u>208</u>	<u>155</u>	<u>199</u>				<u>1,543</u>
	988	889	959	717	790	729	920	783	844				7,619
<b>GRAND TOTAL</b>	<b>6,379</b>	<b>6,613</b>	<b>6,016</b>	<b>5,948</b>	<b>5,456</b>	<b>6,097</b>	<b>6,487</b>	<b>6,026</b>	<b>6,333</b>				<b>55,355</b>
<i>Last Year</i>	<b>6,718</b>	<b>6,675</b>	<b>5,495</b>	<b>6,139</b>	<b>5,606</b>	<b>5,909</b>	<b>5,783</b>	<b>5,410</b>	<b>6,078</b>	<b>5,647</b>	<b>5,434</b>	<b>5,930</b>	<b>70,824</b>
Interlibrary loan In	39	57	68	62	51	50	103	36	49				515
Computers	1,348	1,202	1,189	1,271	939	943	950	958	1,284				10,084
WiFi	295	301	252	272	248	260	248	324	262				1,368
Patrons added	29	41	33	40	20	33	29	26	31				282
Program attendance	651	396	159	277	105	412	164	173	144				2481

**Waldport Public Library  
Board of Trustees  
Minutes of Regular Meeting February 9, 2016**

**Members Present:**

Shirley Hanes, Chairman  
Jan Hansen, Vice Chairman  
Gary Hodges  
Barbara Smith-Huggins  
Brian Fodness

**Others Present:**

Jill Tierce, Director

**Call to Order:** Ms. Hanes called the meeting to order at 9:30 a.m.

**Minutes:** The minutes for the regular meeting January 12 were approved with corrections.

**Financial Report:** Revenues for January were \$15,037 from Lincoln County Library District (LCLD) and \$620 in contributions and fees. Materials and Services expenses were \$5,248 and included \$1,344 costs for the December volunteer party and \$1,709 for the quarterly fees to Chinook Consortium for our integrated library system and databases. Library expenses totaled \$17,443 for the month.

**Committee Reports:** Friends of the Library met January 14. The group approved their 2016 budget. They have decided to meet every other month and they have described a couple of projects for the spring. They hope to initiate a seed exchange using the old card catalog case. They intend to sponsor adult programs with authors. They agreed to co-sponsor an author's event for Shirley Plummer on February 20. Additionally, they will help with the Lego Story Structure Competition February 25 and will sponsor the Young Writers' Competition.

Ms. Hanes asked whether the Friends were intending to install the picture rails proposed last year. Ms. Tierce is sure the Friends will pay for the project, once she gets the product and a contractor lined up. She needs to follow through with this project and with getting the Moore Room painted.

**Director's Report:** In January, the Library circulated 6,487 items to patrons. Twenty-nine new patrons were registered. 950 public computer sessions and 248 Wi-Fi sessions were logged. Program attendance totaled 164.

Publicity for the Young Writers' Competition has begun with articles in both local papers. The prompt for the competition is a quote from J.R.R. Tolkien: "Not all those who wander are lost." We intend to use this quote on a plaque for Vic Bucy's memorial globe.

Postings have been sent about the upcoming poet's event. Shirley Plummer has been a member of Tuesday a Writer's Group and a patron of this library for a number of years. This event notes the publication of her first book, *The Task of Falling Rain*. Lego Story Structure competition will be held Thursday, February 25 at 5 p.m. Any board member willing to act as a judge might arrive shortly before that time.

The library directors have yet to decide which new databases they will offer from the Chinook Catalog page. "Manga", a language instruction program, looks promising and may be a good addition as our

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local school does not have a Spanish teacher. It is also reportedly effective for those wanting to learn English as a second language. Mandarin is becoming a popular language for American schools.

**Old Business: Bucy Memorial** The local plaque maker has been on vacation. Ms. Tierce needs to resume work with her for a proof of the proposed plaque. She has not found anyone interested in designing the dictionary stand. She will contact a local cabinet maker about the project. She would like to have these last elements of the reference room for a reveal in March or April.

**Budget 2016-17** Diedre Conkling of LCLD has proposed the reimbursements to libraries for next year. Waldport's share drops from \$180,432 this year to \$165,585 next year. This is primarily from the drop in circulation. With the healthy beginning balance from this year and cuts in materials and services, the director will plot next year's budget. Comparing wages of libraries of similar size and staff in county libraries doing comparable tasks, it is clear most of our clerks are due wage increases. New job titles are appropriate in some cases.

**New Business: Goals** The City administration is re-examining goals established in 2015. The director has fleshed out some basic goals to be included in that plan. The Board asked to review these and discuss them at the March meeting.

**Board members concerns:** none

**Actions or recommendations to the City Council:** none

**Public Comment:** none

**Announcements:** The Library is closed for Presidents' Day, Monday, February 15;  
Shirley Plummer's Book Release, Saturday, February 20, 2 p.m., Community Center;  
Lego Story Structure Competition, Thursday, February 25, 5:00 p.m.

**Next Regular Meeting:** Tuesday, March 8, at 9:30 a.m.

**Adjournment:** The meeting adjourned 11:00 a.m.

**Approved as here corrected on March 8, 2016, in the regular meeting of the Library Board of Directors.**

## Public Works Department Report for the month of March/April 2016

### Water Treatment Plant

Plant Production:	<u>TBD</u>	MG
Rainfall:	<u>10.2/12.4</u>	inches

### Wastewater Treatment Facility

Effluent Flow:	<u>8.7/10.1</u>	MG
Rainfall:	<u>10.3/12.4</u>	Inches

### Public Works Dept.

Alarm call outs:	<u>3/4</u>
Locates:	<u>16/14</u>
Sewer plugs:	<u>1/1</u>
Water service installations:	<u>0/1</u>
Sewer connections:	<u>0/1</u>
Water Leaks:	<u>2/2</u>

### Department General Overview

The City of Waldport Public Works Department has been very productive in the last two months. We spent February and March working on a diverse project list that ensures clean water, maintained equipment, and up kept streets. We reacted to several water main line breaks with minimal impact to services. We also replaced a hydrant on Norwood that was out of service due to a collision last October. Our collection system has had minimal issues lately though we continue to spend many hours to ensure that it maintains a great serviceable condition.

The plant operators are doing an exceptional job operating and maintaining the city's water treatment facilities. Both plants are continuing to do a great job processing great standards in water quality. The DEQ is currently writing a new NPDES permit for the wastewater plant.

Administratively, Mike and I have been working very hard planning our future and direction as a successfully operating department. Other projects that we are working on include the first phase of the Water Plant study, continuing to update our operational Beehive mapping software, and evaluating some of the deficiencies in our infrastructure.