



**City of Sutherlin  
Regular & Workshop Council Meeting  
Tuesday, November 12, 2019  
Civic Auditorium – 7:00 p.m.  
AGENDA**

**Mayor Todd McKnight**  
Council President Boggs  
Councilors Stone, Tomlinson, Vincent, Sumner and Wattles

- 1. CALL TO ORDER / FLAG SALUTE**
- 2. ROLL CALL**
- 3. INTRODUCTION OF MEDIA**
- 4. PUBLIC COMMENT**

[The purpose of citizen comment is to allow citizens to present information regarding agenda items only. A time limit of three minutes per citizen shall apply.]

**5. CONSENT AGENDA**

- a. October 14, 2019 Minutes – Regular Meeting
- b. October 28, 2019 Minutes – Workshop

**6. COUNCIL BUSINESS**

- a. Ordinance 1072 – Second Hand Dealers (second reading & adoption)
- b. Contract Award – Ford’s Pond Community Park & Trail Improvement – Design & Construction Management
- c. Resolution 2019.20 – Supplemental Budget Adjustment
- d. Resolution 2019.21 – DEQ Loan Agreement

**7. REPORTS**

- a. Beecroft to Quail Run Sidewalk Project

**8. STRATEGIC PLAN UPDATE (Reports in Council Packet)**

- a. Speed Zone Requests
  - Ft McKay to West of Intersection of Ft McKay and Church Rd
  - Intersection of Church Rd and Hwy 138 to Ft McKay
- b. Nonpareil WTP Disinfection System Improvement

**9. CITY COUNCIL COMMENT**

**10. PUBLIC COMMENT**

[The purpose of citizen comment is to allow citizens to present information regarding items off the agenda. A time limit of three minutes per citizen shall apply.]

**11. ADJOURN**

*Members of the audience who wish to address the Council will be invited to do so. Speakers must use the microphone stating their name and address prior to addressing the Council.*

*If you have a disability that requires special materials, service, or assistance, please call 541.459.2856 at least 48 hours prior to the meeting to arrange for accommodations*



# **Call to Order & Flag Salute**





# ROLL CALL





# Introduction Of Media





# **PUBLIC COMMENT**

## **Agenda Items only**





# Consent Agenda



**CITY OF SUTHERLIN**  
**Regular City Council Meeting**  
**Sutherlin Civic Auditorium**  
**Monday, October 14, 2019 – 7:00pm**

**COUNCIL MEMBERS:**

Tom Boggs, Forrest Stone, Michelle Sumner, Travis Tomlinson, Seth Vincent and Becky Wattles

**MAYOR:** Todd McKnight

**CITY STAFF:** City Manager, Jerry Gillham

Finance Director/Assistant City Manager, Dan Wilson

City Recorder, Diane Harris

Deputy City Recorder, Melanie Masterfield

Community Development Director, Brian Elliott

Public Works Director, Aaron Swan

Police Chief, Troy Mills

Fire Chief, Mike Lane

Library Director, Pat Lynch

Emergency Operations Manager, Dennis Riggs

City Attorney, Chad Jacobs (via Skype)

**Audience:** Kayla Johnson, Tami Trowbridge, Pam Cameron, Jim & Beth Houseman, Chuck & Peggy Brummel, Terry Prestianni, Duane Waller, Gail Lund, Tom & Peg Schaub, Emily Blakely

Meeting called to order by Mayor McKnight at 7:00pm.

**Flag Salute:**

**Roll Call:** All Present

**Introduction of Media:** None

**PUBLIC COMMENT** (agenda items only)

- Pam Cameron voiced concern that if the Community Center Rates were raised, many groups using it to help the community would not be able to continue and if non - profit organizations were charged a fee, they wouldn't be able to continue the work they do for the citizens. Another concern is having the City Manager's discretion on deciding what groups will be charged leaves the possibility or appearance of favoritism or abuse. She expressed strong concerns and feels it should be the same for everyone across the board.
- Duane Waller with Blackberry Festival, appreciates the need to raise fees to maintain the building. He wants to know if the city will reimburse blackberry for maintaining city owned property. He feels if rates are going to be raised then he wants reimbursement for the last 22 years of maintenance to the festival grounds.
- Emily Blakely with Woofstock, stated the changes would be prohibitive and the group wouldn't be able to continue. Woofstock has always been branded with Sutherlin's logo and funds raised are used to support needs in our community and veterans.

**PRESENTATIONS**

- **Library Update**

Library Director, Pat Lynch reported on new things that have happened since May 2019.

- Added their 5,000<sup>th</sup> title to the library since April. The Library currently has 25,000 titles.
- Added commercial library shelving valued at almost \$5,000 at no cost to the city.
- Launched an electronic books library through OLDC, a free service to all Sutherlin card holders, so they can have access to 50,000 electronic books and almost 30,000 audio books.

- Held the most attended and fun summer program for children. Over 300 children attended.
- Hosted a Sutherlin Area Chamber of Commerce Mixer.
- Began an association with childcare providers by delivering small libraries to their facilities on a monthly basis.
- 6,500 books have been checked out in the last 4 months.
- Added over 300 new card holders since May.

Lynch stated that none of the Library’s success would be possible without the help of its volunteers. Asked for Council’s help to establish a Sutherlin Library Endowment Fund with the goal of providing a permanent income stream to ensure basic library services in the community for the future.

- **Sutherlin Schools Update**

Sutherlin School District Superintendent, Terry Prestianni updated Council. The district is working really hard to improve attendance. Signs are available and placed around town with a new campaign “We are Sutherlin, We are Here”. Jon Martz, principal of Sutherlin Middle School, has created a Makers Space complete with two 3D printers and a vinyl machine. Robotics assembly tables have also been incorporated by using grant funding. The idea is to engage students and staff. The legislature passed the Student Success Act last spring. They are attempting to stabilize funding for schools and bring many districts that are lacking in funding up where they need to be for daily operations. We’ll be looking at increasing instructional time, increasing student health/safety, increasing adults, decreasing class size and expanding well rounded learning opportunities. Two engagement meetings will be held, one this Wednesday at 7 p.m. at the Sutherlin Middle School Activity Center and one next Wednesday at 5 p.m. at Sutherlin East Primary School Library.

**CONSENT AGENDA**

- **September 9, 2019 Minutes – Regular Meeting**

**MOTION** made by Councilor Stone to approve Consent Agenda as presented; second by Councilor Tomlinson.

Discussion: None

In Favor: Councilors Wattles, Tomlinson, Boggs, Sumner, Vincent, Stone and Mayor McKnight.

Opposed: None

Motion carried unanimously.

**COUNCIL BUSINESS**

- **Resolution 2019.16 – Nonpareil Water Treatment Plant (NWTP) Improvement Funding Package**

Staff Report – Community Development Director, Brian Elliott asked Council for approval to authorize a loan from the Safe Water Revolving Loan Fund and give the City Manager authority to execute the financing contract documents. An application was submitted March 2019 for funding opportunities for the NWTP improvements. In July of 2019, the City was notified by Business Oregon that they were awarded the loan in the amount of \$3,937,773 with a term of 30 years.

**MOTION** made by Councilor Stone to approve Resolution 2019.16 – Nonpareil Water Treatment Plant Improvement Funding Package as presented; second by Councilor Tomlinson.

Discussion:

- Councilor Stone – What’s the forgiveness part of the loan? *Elliott – If contract conditions are met, we are eligible for a \$380,000 principle forgiveness. Finance Director, Dan Wilson added that at the end of construction, if all requirements are met for the loan, we will be eligible for the forgiveness.*

In Favor: Councilors Wattles, Tomlinson, Boggs, Sumner, Vincent, Stone and Mayor McKnight.

Opposed: None

Motion carried unanimously.

- **Resolution 2019.17 – Emergency Management Plan**

Staff Report – Emergency Operations Manager, Dennis Riggs asked Council to review and adopt the revised Emergency Operations Procedures Plan Manual. The manual was last updated in 2012 and many changes have been made to the city’s infrastructure since then. Riggs also introduced his volunteer intern, Kayla



Johnson. Sutherlin was awarded a FEMA grant for \$30,000 to get a new 20KB generator/trailer, a Spire grant for a 500 gallon diesel storage tank/trailer and we're in the process of getting reimbursed for Snowmageddon.

Gillham expressed appreciation on how hard Riggs has worked to get the Emergency Operations Center (EOC) up and going. He explained that in order to receive the reimbursement, FEMA checks to see if an Emergency Operations Plan is in place and current.

**MOTION** made by Councilor Sumner to approve Resolution 2019.17 – Emergency Management Plan as presented; second by Councilor Vincent.

Discussion:

- Councilor Boggs asked if Riggs was hosting any meetings. ***Riggs – Had one at the beginning of September that was well attended.***
- Councilor Stone – What is happening with phone service for the next disaster? ***Gillham – We're working with AT&T and Verizon to get guaranteed service and accessibility. Riggs – We are looking at First Net. They can offer high priority band width for the city.***

In Favor: Councilors Wattles, Tomlinson, Boggs, Sumner, Vincent, Stone and Mayor McKnight

Opposed: None

Motion carried unanimously.

- **Resolution 2019.18 – Recreational Trails Program (RTP) Grant Agreement**

Staff Report – Elliott asked Council for approval to authorize a RTP grant from the Oregon Parks and Recreation Department (ORPD) and give signing authority to the City Manager for the Contract Agreement. The City partnered with Friends of Ford's Pond to submit an application to ORPD for the RTP. In July of 2019, the City was notified of funding approval in the amount of \$234,555. The funds will be used for Project 1 of the Ford's Pond Master Plan and will cover ADA accessibility for 0.8 of a mile of path around Ford's Pond. Also will include parking, Wetland Delineation and Mitigation Plan, path signage, bonds, insurance and contractor fees.

**MOTION** made by Councilor Vincent to approve Resolution 2019.18 – Recreational Trails Program Grant Agreement as presented; second by Councilor Sumner.

Discussion:

- Councilor Stone - Who's the contractor? ***Elliott - Have to advertise the RFP first, then one will be hired. Is this a standard construction loan? Wilson – It's a grant, the city will pay up front and the grant will reimburse us.***
- Councilor Boggs – What kind of surface is being used for the path if \$243,555 won't cover the entire walkway? ***Elliott - There's another grant that was received that will cover more.***
- Councilor Stone – Are the utilities being installed for a bathroom or is one getting built too? ***Elliott – The infrastructure will go in first and then hoping for enough funds to build a restroom.***

In Favor: Councilors Wattles, Tomlinson, Boggs, Sumner, Vincent, Stone and Mayor McKnight.

Opposed: None

Motion carried unanimously.

- **Resolution 2019.19 – Local Government Grant Program (LGGP) Agreement**

Staff Report – Elliott asked Council for approval to authorize a Local Government Grant from the ORPD and give signing authority to the City Manager for the Contract Agreement. The City partnered with Friends of Ford's Pond to submit an application to the ORPD for an LGGP in June of 2019. In September of 2019, the City was notified of funding approval in the amount of \$388,531.00. Funds will be used for Project 2, Phase 1 and will include ADA accessible parking, signage, picnic tables, benches and site utilities. A 900' path from the parking landing to the perimeter path trail will be included.

**MOTION** made by Councilor Wattles to approve Resolution 2019.19 – Local Government Grant Program as presented; second by Councilor Tomlinson.

Discussion: None

In Favor: Councilors Wattles, Tomlinson, Boggs, Sumner, Vincent, Stone and Mayor McKnight.

Opposed: None

Motion carried unanimously.

- **Ford's Pond Wetland Delineation Contract Proposal Agreement**

Staff Report – Elliott asked Council to award the proposal agreement to Wetlands and Wildlife LLC in the amount of \$29,335.00 for Ford's Pond Wetlands and Mitigation Services. Ford's Pond Community Park Project 1 identified 0.7 acres of wetlands that need to be delineated for the walking path on the south side of Ford's Pond. Funding will come from the above approved RTP and will cover data collection, Wetland Delineation Report, Wetland Delineation Concurrence, Permit Application and a Mitigation Site Plan.

**MOTION** made by Councilor Stone to approve Ford's Pond Wetland Delineation Contract as presented; second by Councilor Tomlinson.

Discussion:

- Councilor Stone – This contract will tell us where to mitigate? Are we mitigating on our own land? *Elliott – Yes and yes. First will be the Wetland Delineation on the dyke, we'll survey out exactly where the trail will be and identify the impacted area. The estimate is 0.5 – 0.7 acres. Once identified, a mitigation plan will be done on site.*
- Councilor Sumner – Does a normal permit application cost \$10,000? Will this have to be submitted more than once since this is part 1? *The Delineation and Mitigation will each be submitted once. This fee includes an annual review for five years and that comes with the Mitigation process.*

In Favor: Councilors Wattles, Tomlinson, Boggs, Sumner, Vincent, Stone and Mayor McKnight.

Opposed: None

Motion carried unanimously.

## **REPORTS**

- **Second Hand Dealers – Ordinance Proposal**

Staff Report – Police Chief, Troy Mills presented the Second Hand Dealers ordinance for discussion. Language has been changed in the current ordinance to keep better track of second hand stores in town and to track items that are being pawned at pawn shops. An electronic program will be in place to track theft and help with stolen property recovery.

- Councilor Stone: Are the business owners registering their activity? *Mills – They're supposed to be documenting but this will provide an electronic means of tracking items. This electronic program is more for pawning and potentially stolen items.* Expressed that he didn't like this ordinance, that it was causing more work for business owners and potentially prying into their business.
- Councilor Wattles: Isn't this ordinance already in place? *Yes. The only change is that instead of filling out paperwork for items, it will be done electronically. Every pawn shop in Douglas County already uses this system. Many stolen items have already been recovered.*

Council majority agreed for staff to bring the ordinance back for approval at the next meeting.

## **STRATEGIC PLAN UPDATE**

- **Central Park Holiday Lighting Display**

Staff Report – City Manager, Jerry Gillham updated Council on the lighting display to be unveiled on December 1, 2019. The team of Sutherlin Downtown Development (SDDI), Sutherlin Area Chamber of Commerce and the City of Sutherlin have raised almost \$20,000 to install a 70' mechanical tree and dozens of gift displays. A seasonal meme was created of "Experience the Presence of Sutherlin". However, due to lack of inventory of bulbs, the display will now consist of a three – tree mechanical display with gifts that will feature 30', 20' and 15' trees. In 2020 the 70' tree will be added for an even grander display. The city received a \$5,000 grant from Pacific Power for the display.

- Councilor Wattles expressed excitement to have the holiday lighting display at Central Park so more people will be able to come.

- **Community Center Discussion**

Staff Report – Deputy City Recorder, Melanie Masterfield brought information back to Council for discussion. Council is being asked to examine the criteria for a qualifying fee waiver applicant and decide if they'll be charged a half rate price or continue to be waived upon Councils request. Information was provided regarding Local and Non-Local fee waiver groups using the facility. Gillham suggested the City/Council change its outlook, keeping in mind the Community Center provides a service for these groups

which in turn provide services for citizens. Masterfield read the City's Municipal Code section 12.37.110 – Waiver of rental fees for Council, Staff and audience. After listening to and considering public input followed by open discussion, by consensus, the Council decided the following:

- All local; historically vetted and pre-approved not-for-profit organizations will not be charged for use of the Community Center (except for kitchen use fee) and they will provide a yearly deposit to only be used in circumstances where damage or uncleanliness is the result of use. Otherwise, the City will return the deposit to the not-for-profit at the end of the year.
- All other not-for-profit (local and non-local) will first prove their nonprofit status, complete the use application and provide a check for deposit to include a kitchen use fee if applicable. Determination of any waiver of fees shall continue to be determined by the standards described in existing ordinance.
- Staff will review periods of highest use of local not-for-profits and make clearance in the calendar where use is lower by local not-for-profits, so that other Sutherlin citizens may have use of the center at full charge as determined by policies.
- Staff shall establish new internal policies that reflect the wishes of City Council from this meeting.

● **System Development Charge (SDC) Update**

Staff Report – Wilson discussed updates on the SDC Methodology review process. In July of 2019, Council approved the contract with Donovan Enterprises Inc. to perform an SDC review for the City of Sutherlin. The process will begin on October 17, 2019 with a meeting at 6 p.m. City staff and the Council Finance Committee will meet and discuss the current SDC structure, compare it with other like size cities and look at moving forward.

● **Fire Department Update**

Staff Report – Fire Chief, Mike Lane presented Council with an update. Still waiting for ISO rating from September, the Calapooia Fire Station still needs to be graded. At the last meeting, Council approved the purchase of a new fire engine, Chief passed around an image of the engine, and estimated delivery is June of 2020. Sutherlin Fire Department currently has 6 UCC Fire Science/Paramedic students and 18 active volunteer Firefighters (including city staff). This is the biggest response force since 2015 when the station went back to being Sutherlin Fire Department from being contracted with Fire District 2.

**CITY COUNCIL COMMENTS**

**Councilor Wattles**

- Impressed with the Fire Department and response time to her neighbor's home fire.
- Thanked Jim and Beth Houseman for all the hard work being done with Ford's Pond.

**Councilor Tomlinson**

- Nothing

**Councilor Boggs**

- Nothing

**Councilor Sumner**

- Thanked Public Works and Community Development for getting Valentine Ave done.

**Councilor Vincent**

- Congratulated the Library and the volunteers, the Fire Dept. and Police Dept. for all their hard work.
- Receiving phone calls about needing a traffic signal on Central coming off the freeway west of town and he told them to get petitions and go to ODOT.

**Councilor Stone**

- Thanked Public Works for getting the pot hole by the Sutherlin maintenance shop fixed.
- He met with ODOT and they gave 3 options for a traffic signal west of town by the freeway. The City could pay 30% of the cost for it (\$225,000); a temporary light could be installed until the interchange was completed or it becomes a safety issue. The estimated cost of a traffic signal is \$750,000.

**Mayor McKnight**

- Participated in a ribbon cutting ceremony for a business named Reflexology with Tami Marie, located behind State Farm Insurance.
- Thanked the Lion's Club for putting out flags for Columbus Day.

**PUBLIC COMMENT**

- Tom Schaub introduced himself and is new to the area. He has seen a lot of construction and is concerned about the infrastructure. With all the homes potentially moving in, the egress and ingress will be compromised from Scardi to Dovetail. He asked what the town’s plans are to accommodate potentially 200 homes. ***Elliott is aware and understands the concerns as well and is working on it.*** Asked about traffic signals at Ft McKay. ***None have been discussed. The Transportation System Plan (TSP) is working on Dovetail to address the egress and ingress issue to accommodate more homes.***
- Pam Cameron thanked Council for showing appreciation for volunteers in the community and for what they do. She expressed that Sutherlin would be a different town without them.
- Duane Waller thanked Council for their insight and invited them to the light parade on December 21<sup>st</sup>.

**ADJOURNMENT**

With no further business meeting adjourned at 8:16 p.m.

Approved:

\_\_\_\_\_  
Jerry Gillham, City Manager

Respectfully submitted by,

\_\_\_\_\_  
Melanie Masterfield, Deputy City Recorder

\_\_\_\_\_  
Todd McKnight, Mayor

**CITY OF SUTHERLIN**  
**City Council Workshop Meeting**  
**Sutherlin Civic Auditorium**  
**Monday, October 28, 2019 – 7:00pm**

**COUNCIL MEMBERS:**

Tom Boggs, Forrest Stone, Michelle Sumner, Travis Tomlinson, Seth Vincent and Becky Wattles

**MAYOR:** Todd McKnight

**CITY STAFF:** City Manager, Jerry Gillham  
City Recorder, Diane Harris  
Deputy City Recorder, Melanie Masterfield  
Public Works Director, Aaron Swan  
Police Chief, Troy Mills  
Deputy Fire Chief, Scott McKnight  
City Attorney, Chad Jacobs (via Skype)

**Audience:** Terry Brock, Dan Bartram, Chuck & Peggy Brummel, Silvia Monas, Tom & Peg Schaub

Meeting called to order by Mayor, Todd McKnight at 7:00 p.m.

**Flag Salute:**

**Roll Call:** All present

**Media:** None

**AGENDA CONFIRMATION**

- November 12, 2019 Agenda

City Manager, Jerry Gillham reminded Council that there is only one meeting in November so there will be several agenda items.

**COUNCIL PRIORITY PROGRESS REPORT**

- None

**COUNCIL COMMENTS**

**Councilor Wattles**

- None

**Councilor Tomlinson**

- None

**Councilor Boggs**

- The Wilbur overpass at exit 135 needs work. *Public Works Director, Aaron Swan – Will get ahold of ODOT.*

**Councilor Sumner**

- When will the railroad crossing on 99 be fixed? *Swan – Will check with ODOT.*

**Councilor Vincent**

- Thanked the downtown businesses for the trick-or-treating event on Saturday.

**Councilor Stone**

- Are grants available to get a trail alongside Church road at Ford's Pond? There's no shoulder and people are walking in the street. *Gillham – Yes, we're working on it. Grants have already been received. We're still in the planning phase.*
- Knife River spilled concrete on the road at the end of Dovetail. *Swan – Will check it out.*
- Is the City logo getting changed? *Gillham, yes.* What's the cost to get that changed? *Gillham – The new logo will be a gradual change. Public Safety will remain the same. Eventually there will be new logos on the Public Works vehicles.*

**Mayor McKnight**

- Thanked the downtown businesses for a great trick-or-treating event.

- Lions Club did a great job with their Annual Halloween Carnival at West Intermediate School.

## COUNCIL BUSINESS

- **Parks Advisory Committee Appointment**

Staff Report – City Recorder, Diane Harris presented a recommendation for new appointment. There are currently two vacancies on the Parks Advisory Committee, both with terms ending December 31, 2020.

Mayor offered the appointee a chance to speak. She declined.

**MOTION** made by Councilor Stone to approve appointment of Silvia Monas to the Parks Advisory Committee, term ending December 31, 2020 as presented; second by Councilor Sumner.

Discussion: None

In Favor: Councilors Tomlinson, Boggs, Sumner, Vincent, Stone, Wattles and Mayor McKnight.

Opposed: None

Motion carried unanimously.

- **Ordinance – Second Hand Dealers (first reading, title only)**

City Recorder, Diane Harris read the Ordinance by title only: “An Ordinance repealing and replacing Sutherlin Municipal Code chapter 5.24 – Used Merchandise Dealers with a new chapter 5.24 regulating second hand property dealers.”

Staff Report – Police Chief, Troy Mills asked Council to approve the first reading. The new ordinance requires secondhand dealers, within city limits, to subscribe to an electronic secondhand reporting system. The system is free to use and includes free onsite training for employees. Sutherlin Police Department has this system already implemented. The purpose is to regulate certain business activities that present a higher risk of being used by criminals to dispose of stolen property.

**MOTION** made by Councilor Vincent to approve Ordinance – Repealing and Replacing Sutherlin Municipal Code Chapter 5.24 – Used Merchandise Dealers as presented; second by Councilor Tomlinson.

Discussion:

- Councilor Sumner – Does the seven day hold also apply to items under \$100? *Mills - The requirement is seven days but if it's from an estate sale for example, it doesn't apply.* Does it apply to the thrift stores? *No, this only pertains to pawn shops.*
- Councilor Stone – The title says secondhand stores, does it apply to St. Vincent De Paul and the other thrift stores? *No, only pawn shops.*
- Councilor Wattles - Verbiage in the ordinance states that stores with a 501-C3 were exempt.

In Favor: Councilors Tomlinson, Boggs, Sumner, Vincent, Stone, Wattles and Mayor McKnight.

Opposed: None

Motion carried unanimously.

## WORKSHOP

- **Fire Department Backfill Relief Position**

Staff Report – Deputy Fire Chief, Scott McKnight asked Council to consider budgeting for a paid relief staff member. Sutherlin Fire Department provides full emergency services to Sutherlin residents which includes Fire, Emergency, Medical and Public Assists.

Gillham added – Creating a new position will provide the administrative and records support that's needed and be fully qualified to respond to emergency situations at a level comparable to our Battalion Chief's abilities.

- Councilor Boggs asked for clarification of Fire Staff rankings. *McKnight – There is one Fire Chief, one Deputy Fire Chief and three Battalion Chiefs. The new person would be a Lieutenant.*

- **10 Year Non-Compliant ADA Replacement Ramp Plan**

Public Works Director, Aaron Swan informed Council about four non-compliant ramps at the park that are being worked on and a few on Central that didn't get done with the Central Ave. project. In the

following years, the outer lying streets will get done. Some on Umpqua St. and Everett St. to name a couple.

- Councilor Stone – Which ramps didn't get done on Central Ave.? *Swan – On the south side of Central Ave. from Beecroft out east of town, the ramps aren't ADA compliant.*

## STRATEGIC PLAN UPDATE

- **Community Center and Library Building Painting Projects**

Staff Report – Swan explained that funds were budgeted this fiscal year but due to weather, bids were put on hold. Collecting bids now and projects will take place this next spring as weather permits.

- **Police Recruitment and Retention**

Staff Report – Police Chief, Troy Mills and Gillham explained what the next steps are. The Police Department is fully staffed and operating at 100% for the first time in about four years. We're looking at innovation, technology and organizational leadership structure. We'll continue to keep Council informed.

- Councilor Sumner – Updates on the K9 program? *Mills – We're fully staffed but not every officer is on the road yet, two are in training. It will take time to find an officer that is willing to take on a K-9 project, but we're still working on it.*

- **System Development Charges (SDC) Update**

Gillham updated Council. After speaking with consultants and the Transportation System Plan (TSP) group, the TSP won't be done soon enough to develop SDC calculations. Capital projects need to be put in the system first so SDC updates will be delayed until the TSP is done and adopted by Council. Next April we should be able to proceed.

## REPORTS

- **Urban Renewal Progress Update**

Gillham informed Council of the economic data received from the economists and potential revenues. The tax increment revenues that could be generated from a period of 25 to 30 years is \$31 - \$89 million for possible economic development projects. Discussion continued.

## PUBLIC COMMENT

- The Body Shop owner, Terry Brock spoke of potential projects. With the amount of development taking place west of town, nothing is taking place east of town. The streets are great but the buildings are in need of repair and traffic doesn't stop at those businesses. Asked the City and Council for consideration of building potential on the east side of town.
  - Councilor Stone – Are all the downtown businesses a part of SDDI? *Gillham – Not all but many are involved. Met with every business/property owner on the block from the liquor store to the old bank. They're all on board with the Urban Renewal project.*
  - Brock – Business owners are different than tenants and both need to be in agreement. Concerned that some will not be a part of the improvements. With the help of the City, Council, rules and regulations we can help make downtown better.
  - Councilor Tomlinson clarified that Urban Renewal is to bring in new business and development, SDDI and Main Street are to revamp old buildings. Discussion continued.

## ADJOURN

With no further business, Mayor adjourned meeting at 7:38 p.m.

Approved:

\_\_\_\_\_  
Jerry Gillham, City Manager

Respectfully submitted by,

\_\_\_\_\_  
Melanie Masterfield, Deputy City Recorder

\_\_\_\_\_  
Todd McKnight, Mayor



# COUNCIL BUSINESS







## City of Sutherlin

STAFF REPORT					
<b>Re: Ordinance 1072 – Second Hand Dealers</b>				Meeting Date:	11/12/2019
<b>Purpose:</b>	Action Item <input checked="" type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion	Update <input type="checkbox"/>
<b>Submitted By: Troy A. Mills, Chief of Police</b>				City Manager Review	<input checked="" type="checkbox"/>
<b>Attachments:</b>	Notice of Enactment and Revision of Chapter 5.24 Second Hand Dealers Ordinance (formally “Used Merchandise Dealer”)				

### WHAT IS BEING ASKED OF COUNCIL?

Consider approving the second reading and adoption of the new revision to Chapter 5.24 – Second Hand Property Dealers.

### EXPLANATION

In response to City Council’s request at the October 14, 2019 meeting, staff has been requested to provide the City Council with an ordinance amending Chapter 5.24 Second Hand Dealers Ordinance (formally “Used Merchandise Dealer”).

The Sutherlin Police Department and the City Attorney have been working on updating an ordinance which relates to the sales of second hand property. Chapter 5.24 – Used Merchandise Dealers will be replaced and re-titled “Secondhand Property Dealers”.

The new ordinance titled “Second Hand Property Dealers” consolidates and updates the current (Used Merchandise Dealers) ordinance. It also requires secondhand dealers, within the city limits of Sutherlin, to subscribe to an electronic secondhand property reporting system. The Sutherlin Police Department, as well as Police Departments across the country, are using a national reporting system. The system is entirely free for secondhand businesses and includes free onsite training to its employees.

The purpose of the ordinance update is to regulate certain business activities that present an extraordinary risk of being used by criminals to dispose of stolen property. Despite the best efforts of legitimate secondhand dealer businesses, this risk is present because these businesses process large volumes of goods and materials that can be the subject of theft. This chapter is intended to reduce this type of criminal activity by providing timely police awareness of such property transactions and by regulating the conduct of persons engaged in this business activity. These regulations are necessary and the need for the regulations outweighs the regulatory effect that may result from their adoption.

<b>OPTIONS</b>
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Approve the second reading and adoption of the Ordinance 1072 as presented.

<b>SUGGESTED MOTION(S)</b>
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1. To approve the second reading & adoption of revised Ordinance 1072 - Regulating Second Hand Property Dealers in the City of Sutherlin as presented; or,
2. To approve the second reading & adoption of revised Ordinance 1072 - Regulating Second Hand Property Dealers in the City of Sutherlin with amendments; or,
3. To not approve the second reading & adoption of Ordinance 1072 – Regulating Second Hand Property Dealers in the City of Sutherlin as presented.

If you have any questions contact Troy A. Mills at [t.mills@ci.sutherlin.or.us](mailto:t.mills@ci.sutherlin.or.us) or (541) 459-2211.



# NOTICE OF ORDINANCE ENACTMENT

## ORDINANCE NO. 1072

**AN ORDINANCE REPEALING AND REPLACING SUTHERLIN  
MUNICIPAL CODE CHAPTER 5.24 – USED MERCHANDISE DEALERS  
WITH A NEW CHAPTER 5.24 REGULATING SECONDHAND  
PROPERTY DEALERS**

**THIS ORDINANCE WILL BE CONSIDERED BY COUNCIL AT THE COUNCIL  
WORKSHOP MEETING OF:**

**FIRST READING: MONDAY, OCTOBER 28, 2019 @ 7PM  
SECOND READING (if first reading approved): TUESDAY,  
NOVEMBER 12, 2019 @ 7PM  
CIVIC AUDITORIUM - 175 E. EVERETT AVENUE**

**Questions or copies of this Ordinance may be viewed by interested persons at the office of City Recorder, 126 E. Central Avenue, Sutherlin, Oregon, between the hours of 9:00 a.m. and 5:00 p.m., weekdays. A copy of this Ordinance may be purchased by interested persons for a sum determined to cover the City's expense for providing the copy.**

**Pursuant to Section 30 (b) (c) of the Sutherlin City Charter, this notice has been posted at the following locations: Sutherlin City Hall; Sutherlin Post Office; Sutherlin Visitor's Center and the City's website ([www.cityofsutherlin.com](http://www.cityofsutherlin.com)).**

Posted this day, October 21, 2019  
By Diane Harris  
City Recorder

**ORDINANCE NO. 1072**

**AN ORDINANCE REPEALING AND REPLACING SUTHERLIN MUNICIPAL CODE  
CHAPTER 5.24 – USED MERCHANDISE DEALERS WITH A NEW CHAPTER 5.24  
REGULATING SECONDHAND PROPERTY DEALERS**

**SECTION 1.** Chapter 5.24 of the Sutherlin Municipal Code is hereby repealed and replaced, entitled *Secondhand Property Dealers* as follows:

**CHAPTER 5.24 - SECONDHAND PROPERTY DEALERS**

**Sections:**

5.24.010	Definitions.
5.24.020	Purpose.
5.24.030	Permit Required.
5.24.040	Business Registration Required.
5.24.050	Location and Hours of Business.
5.24.060	Record Keeping Requirements.
5.24.070	Restriction on Certain Sales.
5.24.080	Prohibited Purchases.
5.24.090	Violation - Penalty.

**5.24.010 Definitions.** For the purpose of this Chapter, the following words and phrases are defined as follows:

**“Peace officer”** means a law enforcement official as defined in Oregon Revised Statutes 133.005.

**“Personal identification”** means an identification card or document issued by a recognized governmental agency which bears the full name, signature, photograph, date of birth, and physical description of the issued person.

**“Non-valuable metals”** are limited to metals not regulated by state law, such as dental gold, unrefined metal ore, gold or silver coins, or bullion in any form.

**“Secondhand property”** means merchandise which was previously owned by a private individual.

**“Secondhand property dealer”** means a person, or employee of any person, who operates, conducts, manages, or engages in any business which, as part or all of the business, purchases or sells secondhand property, and/or lends money on security of regulated property. Second hand dealer, Second hand property dealer, and used merchandise dealer shall be used interchangeably.

**“Secondhand store”** means a place of business which buys and/or sells secondhand property.

**5.24.020 Purpose.**

**A.** The intent of this Chapter is to regulate the buying and selling of secondhand property by businesses located within the City of Sutherlin. Nothing within this Chapter is intended to supplant the

State of Oregon's Pawnbrokers Act contained in Chapter 726 of the Oregon Revised Statutes (ORS), which relates to pawnbrokers licensed by the state to loan upon the security of secondhand property, nor the Precious Metals Act enacted within ORS Chapter 646A applying to gold of eight karats or higher, silver, platinum, and palladium.

**B.** Nothing in this Chapter applies to charitable, non-profit organizations or to persons or businesses dealing exclusively in automobiles, farm implements and machinery, used books or audiobooks, secondhand clothing, or commercial and industrial scrap metal recycling.

**5.24.030 Permit Required.**

A. No person shall engage in a second hand property business without obtaining a second hand dealer's permit from the city. Agents and employees who engage in the purchase of used merchandise must also obtain a permit from the city and are subject to all requirements of this chapter.

B. The Council shall set the annual fee for a second hand dealer's permit by resolution.

C. Application for a used merchandise dealer's permit must be submitted on a form prescribed by the city. An application must be submitted at least thirty (30) days prior to the date the permit is requested to be effective. (Ord. 947 § 1 (part), 2003)

**5.24.040 Business Registration Required.** No person may operate as a second hand property dealer within the City of Sutherlin without first completing and filing a Business Registration Application with the City pursuant to Section 5.02.020 of the Sutherlin Municipal Code.

**5.24.050 Location and Hours of Operation.** Secondhand property dealers must operate out of an established storefront located at the address enumerated upon their business registration, conduct all sales under that business name, and maintain business hours that fall between the time(s) of 5:00 AM and 9:00 PM.

**5.24.060 Record Keeping Requirements.**

**A.** Secondhand property dealers shall require, inspect and record the personal identification of all persons from whom they purchase secondhand property except for that purchased from and upon the premises of a privately held yard sale, estate sale, auction, or charitable event. Such records shall include the seller's full name, date of birth, address, type of personal identification used and signature. Such identification shall not be required if the customer's identity was previously recorded by the dealer from prior patronage or the customer is unequivocally known to the dealer as a personal friend or family member, provided such personal knowledge is documented in each individual transaction.

**B.** Secondhand property dealers shall inspect and document all items of secondhand property purchased and keep a record of each purchase with the following identifiers, at a minimum for each item:

1. The identity of the seller as required in the above Subsection A;
2. Date of purchase;
3. Property type;
4. Make and model;
5. Color;

6. Owner-applied number(s) or identifiers;
7. Serial number(s);
8. For jewelry: the weight, color, number of stones, setting and precious metal type;
9. For collectible coins and stamps: a description of the amount and type;
10. For non-valuable metals not covered by the Precious Metals Act: a description of the type, weight, and color of the metal(s);
11. For all items: the purchase price of the secondhand property transaction; and
12. The name of the representative of the secondhand property dealer who purchased the property.

Photographs may serve as a basic description of the property so long as identifying numbers are documented in addition to the basic description, and records may be kept electronically rather than in writing provided the record contains all the required information.

**C.** The records required in the above Subsections A and B shall be created and maintained in chronological order by the date of purchase, retained upon the business premises of the secondhand property dealer for a minimum of one (1) year from the date the property was purchased and be made available for inspection upon request by a peace officer during the operating hours of the secondhand property dealer.

**D.** In the event the City utilizes an electronic secondhand property reporting system, written notice shall be given to all secondhand property dealers. Within 90 days of the date of such notice, all secondhand property dealers must maintain their secondhand property records in a digital or electronic format compatible with the system utilized by the City. Such form of documentation must comply with all requirements set forth in this Subsection 5.24.060 and the secondhand property dealer must submit such records electronically to the system utilized by the City within 72 hours of each individual purchase of secondhand property in addition to maintaining purchase records as described in (C), above.

**E.** Items of secondhand property which are high in volume and low in value such as secondhand clothing, used paperback books, non-valuable metals, vinyl albums, and cassette tapes may be entered into the purchase record more generally so long as the identity of the seller and volume and/or number of items are documented.

#### **5.24.070 Restriction on Certain Sales.**

**A.** Secondhand property dealers are prohibited from selling any secondhand property item for a period of seven (7) days for property valued less than \$100.00 and a twenty day (20) period for property with a value of over \$100.00 after the purchase of such item. During such time, the secondhand property shall be maintained in the same form as purchased, kept on the business premises for potential inspection by peace officers and segregated from other merchandise for sale.

1. Exceptions to the waiting period of seven (7) days prior to selling the secondhand property may be made so long as the purchase record(s) as described in 5.24.060 includes photographs of the secondhand property and that property has a value less than \$100.00.
2. Other exceptions to this waiting period may be made under the following circumstances and items of secondhand property:

- a. Large items such as appliances, furniture, and bicycles need not be segregated during the holding period due to storage limitations which would not allow segregation to be possible.
- b. High-volume items of secondhand music such as compact discs, cassette tapes, and vinyl albums need not be subjected to a holding period so long as their purchase record contains details on the album name & artist.
- c. Secondhand property purchased from yard sales, estate sales, auctions or charitable events need not be subject to this holding period.

**B.** Secondhand property dealers shall refrain from selling any secondhand property item for a period of thirty (30) days upon specific request by a peace officer based upon reasonable suspicion that the item of secondhand property may have been stolen and/or illegally sold.

**5.24.080 Prohibited Purchases.** Secondhand property dealers may not purchase secondhand property under any of the following circumstances:

- 1. The seller is clearly under the influence of intoxicants or illicit drugs;
- 2. The purchaser has reason to believe the seller is not the legal owner of the secondhand property; or
- 3. The secondhand property contains any serial numbers or owner-applied identifiers which have been altered or obliterated.
- 4. Any gift cards, in-store credit cards, or activated phone cards.
- 5. Purchase from a person under the age of eighteen (18) years unaccompanied by a parent or guardian

**5.24.090 Penalties.** Any person who fails to comply with the requirements of this chapter commits a civil violation. Each day that a violation continues to exist constitutes a separate violation. Violation of this chapter is punishable by a fine not to exceed five hundred dollars (\$500.00). The remedies provided in this Section are not exclusive and shall not prevent the City from exercising any other remedy available under law, either simultaneously or otherwise, including but not limited to seeking penalties as provided in Title 1 of the Sutherlin Municipal Code.

**SECTION 2.** This ordinance shall take effect 30 days after it is approved by the Mayor.

**ADOPTED BY THE SUTHERLIN CITY COUNCIL ON THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2019.**

**APPROVED BY THE MAYOR ON THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2019.**

\_\_\_\_\_  
Todd McKnight, Mayor

**ATTEST:**

\_\_\_\_\_  
Diane Harris, City Recorder



126 E. Central Avenue  
 Sutherlin, OR 97479  
 541-459-2856  
 Fax: 541-459-9363  
[www.cityofsutherlin.com](http://www.cityofsutherlin.com)

# City of Sutherlin

STAFF REPORT					
<b>Re: Engineering and Landscape Architect Services for Design, Bidding and Construction Management for Ford's Pond Community Park and Trail Improvements</b>				Meeting Date:	11-12-2019
<b>Purpose:</b>	Action Item <input checked="" type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion <input type="checkbox"/>	Update <input type="checkbox"/>
<b>Submitted By: Brian Elliott, Community Development Director</b>				City Manager Review	<input checked="" type="checkbox"/>
<b>Attachments:</b> The Dyer Partnership Engineers and Planners Inc. Contract					

## WHAT IS BEING ASKED OF COUNCIL?

Council is being asked to award the contract to The Dyer Partnership Engineers & Planners, Inc. in the amount of and not to exceed \$115,000.00 for the Engineering and Landscape Architect Services for Ford's Pond Community Park and Trail Improvements.

## EXPLANATION

The City of Sutherlin received two grants from Oregon Parks and Recreation Department for the Ford's Pond Community Park and Trail Improvements. The Local Government Grant \$ 388,531 and the Recreational Trails Program \$243,555. These funds, along with other donations and in-kind match fund, will finance the improvements for Project 1 and Project 2A (Phase 1).

Services will include design, bidding and construction management. Improvements will include ADA accessibility for approximately 0.8 miles of the existing 1.7 mile shared-use trail, including trailhead parking, Wetland Mitigation, Wayfinding pathway signage, bonds, insurance, contractor fees, ADA parking, signage, picnic tables, benches, site utilities and create 900 feet of paved access to the pond perimeter path.

The City received three Requests for Proposals (RFP) for engineering and architectural services for design, bidding and construction management. Szoba Landscape Architecture, Cameron McCarthy Landscape Architecture & Planning and The Dyer Partnership Engineers and Planners Inc.

In conclusion, all three firms were interviewed and it was the consensus of the interview team to recommend awarding the contract for the engineering and architectural services for design, bidding and construction management to The Dyer Partnership Engineers and Planners Inc., in the amount of and not to exceed \$115,000.00



<b>OPTIONS</b>
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Award the contract to The Dyer Partnership Engineers and Planners Inc. in the amount of and not to exceed \$115,000.00 for engineering and landscape architectural services for design, bidding and construction management.

Not award the contract to The Dyer Partnership Engineers and Planners Inc. in the amount of and not exceed \$115,000.00 for engineering and landscape architectural services for design, bidding and construction management.

<b>SUGGESTED MOTION(S)</b>
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1. Motion to award engineering and landscape architectural services for design, bidding and construction management for the Ford's Pond Community Park and Trial Improvements to The Dyer Partnership Engineers and Planners Inc. in the amount of and not to exceed \$115,000.00.
2. Motion to not award the engineering and landscape architectural services for design, bidding and construction management for the Ford's Pond Community Park and Trial Improvements to The Dyer Partnership Engineers and Planners Inc. in the amount of and not to exceed \$115,000.00.

# CITY OF SUTHERLIN

## FORD'S POND COMMUNITY PARK AND TRAIL IMPROVEMENTS

### SCOPE OF ENGINEERING SERVICES

#### **BACKGROUND**

This Scope of Engineering Services summarizes work related to Project 1 and Project 2A (Phase 1) in accordance with the Ford's Pond Community Park Master Plan (2017). The work tasks itemized below describe the major tasks related to the scope of work. The Dyer Partnership Engineers and Planners, Inc. (Engineer) has teamed with DLA, Inc. (Landscape Architect) to provide the services to execute the scope of work.

Project 1 consists of designing the entire pond perimeter path (approximately 1.7 miles) and construction of at least 0.8 miles of an ADA-accessible, 10-foot wide path. The design may include a 10-foot wide area cleared on each side of the path, to remove invasive, non-native plants, and wayfinding signage. The final goal for this path is to surface it with pervious asphalt.

Project 2A (Phase 1) will design and construct ADA-accessible parking; add lighting, signage, picnic tables, benches, waste receptacles; water, sewer, and electric utilities; and create an ADA-accessible connection path accessing the 1.7-mile pond perimeter path that is approximately 45 feet in elevation below the parking area. Development will require site preparation, removal of invasive species, construction of an entrance drive from Church Road, and earthwork. Utilities installed will prepare the site for future construction of permanent restrooms and picnic pavilions. In the interim, the City will provide ADA-accessible temporary restrooms at the park, at no cost to this project.

It is anticipated that many design decisions will be required to firmly define the project based on the available budget. DLA, Inc. will lead design efforts for the park and trail improvements. After the design concept is established, the Dyer Partnership will develop plans, specifications, bidding documents, and perform construction management services.

#### **SCOPE OF WORK**

The following tasks are the major work items required to complete this project:

##### ***Task 1 - Preliminary Services***

- A. Kick-off Meeting.
- B. DLA, Inc. design meeting.
- C. With the expected presence of wetlands, the project will likely require extensive permitting. Identify any regulatory permits and/or approvals required. Coordination with the City's contracted wetlands consultant.
- D. Provide a detailed site survey to identify existing utilities, property boundaries, and elevations.

##### ***Task 2 - Coordination***

- A. Coordinate with City staff, FOFP, regulatory agencies, and Oregon Parks and Recreation Department (OPRD), Sutherlin High School's CTE Program, affected property owners, and affected utilities.

- B. Conduct design review meetings with City staff and FOFP. Arrive at concurrence on such things as items requiring correction, sequence of work, and materials to be used for construction.
- C. Provide regular progress reports to City staff throughout the process.
- D. Coordinate with Landscape Architect, DLA, Inc., for the park and open space design.

**Task 3 – Cost Estimate**

- A. Prepare a detailed cost estimate including contingency and soft costs. If the cost estimate is not within the project budget, modify and prioritize the scope of the work prior to completing this design phase. Identify any cost saving items that could be performed by City maintenance personnel and/or volunteers.

**Task 4 – Income Generation**

- A. To fund maintenance activities, the project will incorporate donor recognition features into the design and establish donation opportunities.
- B. Development of standard bench model, other furnishings, and donor recognition plaques.
- C. Development of a Park Physical Improvement Donation Policy to facilitate fundraising during the construction phase.

**Task 5 – Design**

- A. Project 1 – Pond Perimeter Path. Design the entire pond perimeter path (approximately 1.7 miles). Determine log dump’s structural stability. Potential removal of invasive species on path’s route within a width of 10 feet on each side of the path. Design of pedestrian access from the Church Road/Westlake Avenue intersection.
- B. Project 2A – Phase 1 for facilities on Tier 1. Design will include an ADA-accessible parking lot, including vehicle barriers to future Tier 2 facilities. Design of utilities to serve Tier 1-3 areas. Design of ADA-accessible connection path, and development of native species planting guide, including beaver and deer protection methodologies.
- C. Identify tree/shrub species and locations consistent with the Master Plan.
- D. Design will, to the largest extent possible, and with cost considerations, employ durable products and materials all to minimize long term maintenance costs and requirements.
- E. Provide stormwater permit and bioswale design.
- F. Design of signage for information, direction, and park entrance in coordination with Sutherlin High School’s CTE Program.
- G. Provide an architectural rendering depicting public use, 4-foot x 2½-foot, including high resolution digital format, to be used on the construction documents and for FOFP’s fundraising efforts.
- I. Prepare construction documents to include Drawings and Specifications.
- J. Recommend locally available construction materials when appropriate to decrease construction costs.
- K. Submit final design documents to OPRD for review and approval.

**Task 6 – Bidding and Contracts**

After development of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents, the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written approval and authorization by City and FOFP to proceed, Engineer shall:

- A. Assist City in advertising for and obtaining bids or proposals for the Work, assist City in issuing assembled design, contract, and bidding-related documents to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
- B. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
  - 1. Provide information or assistance needed by City in the course of any review of proposals or negotiations with prospective contractors.
  - 2. Consult with City as to the qualifications of prospective contractors.
  - 3. Consult with City as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the work as to which review of qualifications is required by the issued documents.
  - 4. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related prior to award of contracts for the work.
  - 5. Attend the bid opening, prepare bid tabulation sheets to meet City's schedule, and assist City in evaluating bids or proposals, assembling final contracts for the work for execution by City and Contractor, and in issuing notices of award of such contracts.
  - 6. If City engages in negotiations with bidders or proposers, assist City with respect to technical and engineering issues that arise during the negotiations.
  - 7. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.
- C. Prepare bidding documents including bidding requirements and contract documents. Submit bidding documents to City and OPRD for review and approval prior to bid. Prepare advertisement for bids and send to newspaper(s) (City to pay advertising expense).
- D. Reproduce bidding documents and distribute to plan exchanges and interested bidders.
- E. Respond to bidder questions and prepare addendum, if needed. Conduct a pre-bid meeting with potential bidders.
- F. Attend bid opening, review bids and recommend contract award.
- G. Prepare construction contracts for execution. Issue Notice of Intent to Award, Notice of Award and Notice to Proceed.

***Task 7 – Construction Management***

- A. Conduct pre-construction conference. Administer construction contract. Provide construction staking of proposed improvements. Tabulate payment quantities and recommend payments to the contractor.
- B. Certify project completion and compliance with construction documents.
- C. Design Engineer will make periodic site inspection. Conduct substantial completion inspection with City, FOFP, and OPRD.

***Task 8 – Observation Services***

- A. Provide part-time resident project representative to observe construction. Resident project representative shall be on-site when the contractor is performing meaningful work. Coordinate anticipated work with the City, FOFP, and OPRD. Prepare inspection reports for City. Photo-document the construction.

**Task 9 – Final Closeout**

- A. Conduct final inspection with City, FOFP, and OPRD, punch list and back-check of corrective work. Prepare final pay request and review with City. Provide “As-Built” Drawings based on contractor’s mark-ups. Four paper copies and one electronic copy of the Drawings shall be provided.

**WORK PRODUCT**

All required Construction Plans and Technical Specifications documents for the Ford’s Pond Community Park and Trail Improvements project.

**SCHEDULE**

<b>START DATE:</b>	November 13, 2019
<b>COMPLETE DESIGN:</b>	February 14, 2020
<b>BID PROCESS:</b>	March 2020
<b>AWARD CONTRACT:</b>	April 14, 2020
<b>START CONSTRUCTION:</b>	May 2020
<b>COMPLETE CONSTRUCTION:</b>	August 31, 2020
<b>FINAL CLOSEOUT:</b>	September 2020

**FEE**

**CONTRACTOR’S CONSIDERATION:** Not to exceed maximum of \$115,000 per Attached Estimate of Man Hours and Costs

**PAYMENT METHOD:** Monthly Progress Payments Based on Work Completed

CLIENT: City of Sutherlin

ENGINEER: The Dyer Partnership  
Engineers & Planners, Inc.

\_\_\_\_\_  
Jerry Gillham, City Manager

\_\_\_\_\_  
Steve Major, President

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

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



## City of Sutherlin

STAFF REPORT					
<b>Re: Supplemental budget adjustment for fiscal year 2019-20</b>				Meeting Date:	11/12/19
<b>Purpose:</b>	Action Item <input checked="" type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion <input type="checkbox"/>	Update <input type="checkbox"/>
<b>Submitted By: Dan Wilson, Finance Director</b>				City Manager Review	<input checked="" type="checkbox"/>
<b>Attachments:</b> Staff Report and Resolution					

### WHAT IS BEING ASKED OF COUNCIL?

Consider approving Resolution 2019.20 to adopt the Supplemental Budget for fiscal year 2019-20 as described herein.

### EXPLANATION

Three Capital Outlay projects/purchases have come up since the time the budget was adopted in May 2019. The details are described below.

#### Fire Reserve Fund

1. At the August 26, 2019 City Council meeting, the purchase of a new fire engine was requested and approved. The cost is approximately \$433,270 plus \$35,000 for equipment. This purchase was not anticipated at the time the budget was adopted and therefore an adjustment is needed - \$470,000.

#### Tourism-Motel Tax Fund

1. At the May 13, 2019 City Council meeting a presentation was made by the Sutherlin FFA laying out a conceptual idea for a new downtown park. A budget was prepared by City staff per Council's direction. This expense was not anticipated at the time the budget was adopted therefore an adjustment is needed - \$55,000.
2. An amount of \$50,000 was adopted during the 2019-20 budget process for matching funds for a Fords Pond park grant. This grant was received and accepted by City Council at the October 14, 2019 meeting. Funds for this project will be expensed in the Parks Construction fund therefore an adjustment is needed to move the expense from Materials & Services to Transfer Out-Parks Construction Fund - \$50,000.

**Parks Construction Fund**

1. Two grants were received and accepted by City Council at the October 14, 2019 meeting for the purpose of improving the park at Fords Pond. The cost of the two projects, less in-kind donations, is \$682,086. This includes the \$50,000 transfer discussed above. This expense, along with the City Park also discussed above, were not anticipated at the time the budget was adopted therefore an adjustment is needed- \$737,086.

**OPTIONS**

Approve Resolution 2019.20

Not approve Resolution 2019.20

**SUGGESTED MOTION(S)**

Move that Resolution 2019.20 be adopted as presented.

## RESOLUTION NO. 2019.20

### A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET, AMENDING THE 2019-2020 BUDGET AND AMENDING RESOLUTION 2019.10.

#### The City Council of Sutherlin finds that:

- A. That ORS 294.473 provides the procedures for public governing bodies to adopt supplemental budgets when estimated expenditures differ by more than ten percent from the expenditures in the budget as most recently amended prior to the supplemental budget.
- B. The procedure includes the municipal corporation providing notice of a supplemental budget hearing and holding a public hearing on the supplemental budget prior to adopting a resolution to change the budget by more than ten percent.
- C. Public notice and a public hearing related to the supplemental budget have been provided as required by ORS 294.473.
- D. Due to unforeseen events at the time of adoption of the fiscal year 2019-20 budget including but not limited to the following:
  - a. Fire Reserve Fund
    - i. At the August 26, 2019 City Council meeting, the purchase of a new fire engine was approved. The cost is approximately \$433,270 plus \$35,000 for equipment. This purchase was not anticipated at the time the budget was adopted and therefore an adjustment is needed - \$470,000.
  - b. Tourism-Motel Tax Fund
    - i. At the May 13, 2019 City Council meeting a presentation was made by the Sutherlin FFA laying out a conceptual idea for a new downtown park. A budget was prepared by City staff per Council's direction. This expense was not anticipated at the time the budget was adopted therefore an adjustment is needed - \$55,000.
    - ii. An amount of \$50,000 was adopted during the 2019-20 budget process for matching funds for a Fords Pond park grant. This grant was received and accepted by City Council at the October 14, 2019 meeting. Funds for this project will be expensed in the Parks Construction fund therefore an adjustment is needed to move the expense from Materials & Services to Transfer Out-Parks Construction Fund - \$50,000.
  - c. Parks Construction Fund
    - i. Two grants were received and accepted by City Council at the October 14,



2019 meeting for the purpose of improving the park at Fords Pond. The cost of the two projects, less in-kind donations, is \$682,086. This includes the \$50,000 transfer discussed above. This expense, along with the City Park also discussed above, were not anticipated at the time the budget was adopted therefore an adjustment is needed- \$737,086.

**NOW, THEREFORE, based upon the above findings,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUTHERLIN, a municipal Corporation of the State of Oregon, as follows:**

Section 1. That the budget for the City of Sutherlin for the fiscal year 2019 - 2020, which was adopted by the City Council on May 28, 2019 and is now on file in the office of the City Recorder of the City of Sutherlin, be hereby amended as follows:

<u>Fire Reserve Fund</u>	<u>Adjustment</u>	<u>As Amended</u>
Appropriations		
Capital Outlay	\$470,000	\$470,000
Contingency	<u>(\$470,000)</u>	\$327,000
	<u>\$0</u>	
<u>Tourism-Motel Tax Fund</u>	<u>Adjustment</u>	<u>As Amended</u>
Appropriations		
Transfers Out	\$105,000	\$105,000
Materials & Services	(\$50,000)	\$154,200
Contingency	<u>(\$55,000)</u>	\$132,660
	<u>\$0</u>	
<u>Parks Construction Fund</u>	<u>Adjustment</u>	<u>As Amended</u>
Resources		
Intergovernmental	\$632,086	\$639,586
Transfers In	<u>\$105,000</u>	\$125,000
	<u>\$737,086</u>	
Appropriations		
Capital Outlay	<u>\$737,086</u>	\$762,086
	<u>\$737,086</u>	

**PASSED BY THE CITY COUNCIL, ON THIS 12<sup>th</sup> DAY OF NOVEMBER, 2019**

**APPROVED BY THE MAYOR ON THIS 12<sup>th</sup> DAY OF NOVEMBER, 2019**

\_\_\_\_\_  
Todd McKnight, Mayor

**ATTEST:**

\_\_\_\_\_  
Diane Harris, City Recorder

DRAFT



126 E. Central Avenue  
 Sutherlin, OR 97479  
 541-459-2856  
 Fax: 541-459-9363  
[www.ci.sutherlin.or.us](http://www.ci.sutherlin.or.us)

## City of Sutherlin

STAFF REPORT					
<b>Re: Authorization to Execute Loan Agreement</b>				Meeting Date:	11/12/19
<b>Purpose:</b>	Action Item <input checked="" type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion <input type="checkbox"/>	Update <input type="checkbox"/>
<b>Submitted By: Dan Wilson, Finance Director</b>				City Manager Review	<input checked="" type="checkbox"/>
<b>Attachments:</b> Staff Report, Resolution, and Loan Agreement					

### WHAT IS BEING ASKED OF COUNCIL?

Consider authorizing City Manager to execute Loan Agreement R89541 in the amount of \$1,750,000 from the Clean Water State Revolving Fund.

### EXPLANATION

The initial loan from the Clean Water State Revolving Fund (DEQ) in the amount of \$18,500,000 was executed in August 2015. Actual construction of the Wastewater Treatment Plant began in May 2018. Due to increasing costs with the passage of time it was determined that an additional \$1,750,000 was needed to complete construction. This issue was discussed at the July 8, 2019 City Council meeting. During that meeting the additional amount was approved. This Resolution is to accept and approve the loan agreement from DEQ and authorizing the City Manager to execute the document.

### OPTIONS

Approve Resolution 2019.21

Not approve Resolution 2019.21

### SUGGESTED MOTION(S)

Move that Resolution 2019.21 be adopted as presented.

**RESOLUTION NO. 2019.21**

**A RESOLUTION AUTHORIZING THE CITY OF SUTHERLIN TO ACCEPT AND APPROVE LOAN AGREEMENT NO. R89541 IN THE AMOUNT OF \$1,750,000 FROM THE CLEAN WATER STATE REVOLVING FUND AND AUTHORIZING THE CITY MANAGER TO EXECUTE THIS AGREEMENT.**

**The City Council of Sutherlin finds that:**

- A. City staff has determined that an additional amount of \$1,750,000 is needed to complete the construction of the City's wastewater treatment plant.
- B. City Council approved this additional amount at the July 8, 2019 meeting.
- C. City staff requested an additional loan amount from the Department of Environmental Quality and was approved.

**NOW, THEREFORE, based upon the above findings,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUTHERLIN, a municipal Corporation of the State of Oregon, as follows:**

Authorizes the City Manager to accept and sign Loan Agreement R89541 between the Clean Water State Revolving Fund (Department of Environmental Quality) and the City of Sutherlin in the amount of \$1,750,000.

**PASSED BY THE CITY COUNCIL, ON THIS 12<sup>th</sup> DAY OF NOVEMBER, 2019**

**APPROVED BY THE MAYOR ON THIS 12<sup>th</sup> DAY OF NOVEMBER, 2019**

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Todd McKnight, Mayor

**ATTEST:**

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Diane Harris, City Recorder

**CLEAN WATER STATE REVOLVING FUND  
LOAN AGREEMENT  
No. R89541**

**BETWEEN**

**THE STATE OF OREGON  
ACTING BY AND THROUGH ITS  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**AND**

**CITY OF SUTHERLIN**

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**THIS LOAN AGREEMENT (“Agreement”)** is made and entered into as of the date (“**Effective Date**”) it is fully executed by both parties (and in the case of the State, approved by the Attorney General's Office, if required) and is by and between the **State of Oregon, acting by and through its Department of Environmental Quality (“DEQ”)**, and the **Borrower** (as defined below). Unless the context requires otherwise, capitalized terms not defined below shall have the meanings assigned to them by ARTICLE 9 of this Loan Agreement. The reference number for the Loan made pursuant to this Loan Agreement is Loan No. R89541.

DEQ agrees to make, and Borrower agrees to accept, the Loan on the terms and subject to the conditions set forth below.

#### **ARTICLE 1: THE LOAN - SPECIFIC TERMS**

DEQ agrees to make the Loan on the following terms and conditions:

- (A) **BORROWER:** City of Sutherlin.
- (B) **BORROWER'S ADDRESS:** 126 East Central Ave  
Sutherlin, OR 97479
- (C) **LOAN AMOUNT:** \$1,750,000.
- (D) **TYPE AND PURPOSE OF LOAN.** The Loan is a "Revenue Secured Loan" made by DEQ pursuant to OAR Section 340-054-0065(2) for the purpose of financing the Project.
- (E) **PROJECT TITLE:** Wastewater Treatment Plant
- (F) **DESCRIPTION OF THE PROJECT:** This project upgrades the new headworks, influent pump station and tertiary filters.
- (G) **INTEREST RATE:** One and 27/100 (1.27%) per annum. Calculation of interest is also discussed in ARTICLE 2(E) and in ARTICLE 2(F)(4) of this Agreement.

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**(H) REPAYMENT PERIOD:** Ending no later than (a) thirty (30) years after the Completion Date or (b) thirty (30) years after the estimated Completion Date set forth in ARTICLE 3(A)(10), whichever date is earlier.

**(I) TERMS OF REPAYMENT:** An interest-only payment within six months after the estimated Project Completion Date set forth in ARTICLE 3(A)(10) and thereafter semi-annual payments of principal and interest in accordance with APPENDIX A and ARTICLE 2(F) of this Agreement.

**(J) PLEDGE:** The Borrower hereby grants DEQ a security interest in and irrevocably pledges its Net Revenues to secure payment of and to pay the amounts due under this Loan Agreement. The Net Revenues so pledged and hereafter received by the Borrower 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, to the fullest extent permitted by ORS 287A.310. The Borrower represents and warrants that the pledge of Net Revenues hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310. The Borrower covenants with DEQ and any assignee of this Agreement that except as otherwise expressly provided herein, the Borrower shall not issue any other obligations which have a pledge or lien on the Net Revenues superior to or on a parity with the pledge herein granted without the written permission of DEQ. The lien of this pledge is on a parity with the liens securing all other CWSRF loans between DEQ and the Borrower; provided, however, that this provision shall not affect the priority that prior CWSRF loans are entitled to in relation to any loans between Borrower and any third parties

**(K) ANNUAL FEE:** An annual fee of 0.5% of the Outstanding Loan Amount (as determined prior to the posting of the payment due on that date) is due during the Repayment Period commencing with the second payment date hereunder and annually thereafter.

## **ARTICLE 2: GENERAL LOAN PROVISIONS**

**(A) AGREEMENT OF DEQ TO LOAN.** DEQ agrees to loan the Borrower an amount not to exceed the Loan Amount, subject to the terms and conditions of this Loan Agreement, but solely from funds available to DEQ in the Water Pollution Control Revolving Fund for its Clean Water State Revolving Fund program. This Loan Agreement is given as evidence of a Loan to the Borrower made by DEQ pursuant to ORS Chapters 190, 286A, 287A, and 468, and OAR Chapter 340, all as amended from time to time, consistent with the express provisions hereof.

**(B) AVAILABILITY OF FUNDS.** DEQ's obligation to make the Loan described in this Agreement is subject to the availability of funds in the Water Pollution Control Revolving Fund for its CWSRF program, and DEQ shall have no liability to the Borrower or any other party if such funds are not available or are not available in amounts sufficient to fund the entire Loan described herein, as determined by DEQ in the reasonable exercise of its administrative discretion. Funds may not be available ahead of the estimated schedule of disbursements submitted by the Borrower, which is attached as APPENDIX B. This schedule may be revised from time to time by the parties without the necessity of an amendment by replacing the then current APPENDIX B with an updated APPENDIX B which is dated and signed by both parties. Furthermore, DEQ's obligation to make any disbursement hereunder shall terminate on October 31, 2020.



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**(C) DISBURSEMENT OF LOAN PROCEEDS.**

**(1) Project Account(s).** Loan proceeds (as and when disbursed by DEQ to the Borrower) shall be deposited in a Project account(s). The Borrower shall maintain Project account(s) as segregated account(s). Funds in the Project account(s) shall only be used to pay for Project costs, and all earnings on the Project account(s) shall be credited to the account(s).

**(2) Documentation of Expenditures.** The Borrower shall provide DEQ with written evidence of materials and labor furnished to and performed upon the Project and such receipts for the payment of the same, releases, satisfactions and other signed statements and forms as DEQ may reasonably require. DEQ will disburse funds to pay Project costs only after the Borrower has provided documentation satisfactory to DEQ that such Project costs have been incurred and qualify for reimbursement hereunder.

**(3) Adjustments and Corrections.** DEQ may at any time review and audit requests for disbursement and make adjustments for, among other things, ineligible expenditures, mathematical errors, items not built or bought, unacceptable work and other discrepancies. Nothing in this Agreement requires DEQ to pay any amount for labor or materials unless DEQ is satisfied that the claim therefor is reasonable and that the Borrower actually expended and used such labor or materials in the Project. In addition, DEQ shall not be required to make any disbursement which would cause the total of all disbursements made hereunder (including the requested disbursement) to be greater than the total estimated cost of the work completed at the time of the disbursement, as determined by DEQ.

**(4) Contract Retainage Disbursement.** DEQ will not disburse Loan proceeds to cover contractor retainage unless the Borrower is disbursing retainage to an escrow account and provides proof of the deposit, or until the Borrower provides proof that it paid retained funds to the contractor.

**(D) AGREEMENT OF BORROWER TO REPAY.** The Borrower agrees to repay all amounts owed on this Loan as described in ARTICLE 1(I) and ARTICLE 2(F) in U.S. Dollars in immediately available funds at the place listed for DEQ in ARTICLE 10(A). In any case, the Borrower agrees to repay all amounts owed on this Loan within the Repayment Period.

**(E) INTEREST.** Interest will accrue at the rate specified in ARTICLE 1(G) from the date that a disbursement hereunder is mailed or delivered to the Borrower or deposited into an account of the Borrower. Interest will accrue using a 365/366 day year and actual days elapsed.

**(F) LOAN REPAYMENT.**

**(1) Preliminary Repayment Schedule; Interim Payments.** The attached APPENDIX A is a preliminary repayment schedule based on the estimated date of the first disbursement hereunder and Loan Amount. Until the final repayment schedule is effective, the Borrower shall make the payments set forth in the preliminary repayment schedule.

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(2) Final Repayment Schedule. After the Borrower has submitted its final request for Loan proceeds and DEQ has made all required disbursements hereunder, DEQ will determine the Final Loan Amount and prepare a final payment schedule that provides for level semi-annual installment payments of principal and interest (commencing on the next semi-annual payment date), each in an amount sufficient to pay accrued interest to the date of payment and to pay so much of the principal balance as to fully amortize the then Outstanding Loan Amount over the remaining Repayment Period.

(3) Crediting of Scheduled 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. Scheduled payments will be applied first to fees due, if any, and then to interest, according to the applicable repayment schedule, and then to principal.

(4) Crediting of Unscheduled Payments. All unscheduled payments, including any prepayments and partial payments, will be applied first to fees due, if any, and then to accrued unpaid interest (which will be computed as otherwise provided in this Agreement, except that interest from the last payment date will be calculated using a 365/366 day year and actual days elapsed), and then to principal. In the case of a Loan prepayment that does not prepay all of the principal of the Loan, DEQ will determine, in its sole discretion, how it will apply such Loan prepayment to the Outstanding Loan Amount. After a partial payment, DEQ may, in its sole and absolute discretion, reamortize the Outstanding Loan Amount at the same interest rate for the same number of payments to decrease the Loan payment amount; provided, however, that nothing in this Agreement requires DEQ to accept any partial payment, except as otherwise expressly provided herein, or to reamortize the Outstanding Loan Amount if it accepts a partial payment.

(5) Final Payment. The Outstanding Loan Amount, all accrued and unpaid interest, and all unpaid fees and charges due hereunder are due and payable no later than (a) thirty (30) years after the Completion Date or (b) thirty (30) years after the estimated Completion Date set forth in ARTICLE 3(A)(10), whichever date is earlier.

**(G) PREPAYMENT.**

(1) Optional Prepayment. The Borrower may prepay any amount owed on this Loan without penalty on any business day upon 30 days prior written notice. Any prepayment made hereunder will be applied in accordance with ARTICLE 2(F)(4).

(2) Refinancing of Loan by the Borrower. If the Borrower refinances the portion of the Project financed by this Loan or obtains an additional grant or loan that is intended to finance the portion of the Project financed by this Loan, it will prepay the portion of the Loan being refinanced by the additional grant or loan. Any mandatory prepayment under this ARTICLE 2(G)(2) will be applied in accordance with ARTICLE 2(F)(4).

(3) Ineligible Uses of the Project. If the Borrower uses the Project for uses that are other than those described in ARTICLE 1(F) ("ineligible uses"), the Borrower shall, upon demand by DEQ, prepay an amount equal to the Outstanding Loan Amount multiplied by the percentage (as determined by DEQ) of ineligible use of the Project.

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Such prepayment shall be applied against the most remotely maturing principal installments and shall not postpone the due date of any payment(s) hereunder.

**(H) LATE PAYMENT FEE.** The Borrower agrees to pay immediately upon DEQ's demand a late fee equal to five percent (5%) of any payment (including any loan fee) that is not received by DEQ on or before the tenth (10<sup>th</sup>) calendar day after such payment is due hereunder.

**(I) TERMINATION OF LOAN AGREEMENT.** Upon performance by the Borrower of all of its obligations under this Loan Agreement, including payment in full of the Final Loan Amount, all accrued interest and all fees, charges and other amounts due hereunder, this Loan Agreement will terminate, and DEQ will release its interest in any collateral given as security under this Loan Agreement.

### **ARTICLE 3: GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS**

**(A) REPRESENTATIONS AND WARRANTIES OF THE BORROWER.** The Borrower represents and warrants to DEQ that:

**(1)** It is a duly formed and existing public agency (as defined in ORS 468.423(2)) and has full power and authority to enter into this Loan Agreement.

**(2)** This Agreement has been duly authorized and executed and delivered by an authorized officer of the Borrower and constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms.

**(3)** All acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Agreement have existed, have happened, and have been performed in due time, form and manner as required by law.

**(4)** Neither the execution of this Loan Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with any of the terms and conditions of this Loan Agreement will violate any provision of law, or any order of any court or other agency of government, or any agreement or other instrument to which the Borrower is now a party or by which the Borrower or any of its properties or assets is bound. Nor will this Loan Agreement be in conflict with, result in a breach of, or constitute a default under, any such agreement or other instrument, or, except as provided hereunder, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

**(5)** This Loan Agreement does not create any unconstitutional indebtedness. The Loan Amount together with all of the Borrower's other obligations does not, and will not, exceed any limits prescribed by the Constitution, any of the statutes of the State of Oregon, the Borrower's charter, or any other authority.

**(6)** The Project is a project which the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

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(7) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Facility and the Project, other than licenses and permits relating to the Facility or the Project which the Borrower expects to and shall receive in the ordinary course of business, to carry on its activities relating thereto, to execute and deliver this Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Agreement.

(8) The information contained herein which was provided by the Borrower is true and accurate in all respects, and there is no material adverse information relating to the Project or the Loan, known to the Borrower, that has not been disclosed in writing to DEQ.

(9) No litigation exists or has been threatened that would cast doubt on the enforceability of the Borrower's obligations under this Loan Agreement.

(10) The estimated Completion Date of the Project is December 31, 2019. The Borrower agrees to complete the Project by the estimated Completion Date.

(11) The estimated total Costs of the Project are \$19,992,250.

(12) The Borrower is in compliance with all laws, ordinances, and governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or the Project.

**(B) CONTINUING REPRESENTATIONS OF THE BORROWER.** The representations of the Borrower contained herein shall be true on the closing date for the Loan and at all times during the term of this Agreement.

**(C) REPRESENTATIONS AND WARRANTIES OF DEQ.** DEQ represents and warrants that the Director has power under ORS Chapter 468 and OAR Chapter 340, Division 54, to enter into the transactions contemplated by this Loan Agreement and to carry out DEQ's obligations thereunder and that the Director is authorized to execute and deliver this Loan Agreement and to make the Loan as contemplated hereby.

#### **ARTICLE 4: CONDITIONS TO LOAN**

**(A) CONDITIONS TO CLOSING.** DEQ's obligations hereunder are subject to the condition that on or prior to November 30, 2019, the Borrower will duly execute and deliver to DEQ the following items, each in form and substance satisfactory to DEQ and its counsel:

(1) this Agreement duly executed and delivered by an authorized officer of the Borrower;

(2) a copy of the ordinance, order or resolution of the governing body of the Borrower authorizing the execution and delivery of this Agreement, certified by an authorized officer of the Borrower;

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(3) Certification Regarding Lobbying, substantially in the form of APPENDIX G, duly executed and delivered by an authorized officer of the Borrower;

(4) an opinion of the legal counsel to the Borrower to the effect that:

(a) The Borrower has the power and authority to execute and deliver and perform its obligations under this Loan Agreement;

(b) This Loan Agreement has been duly executed and acknowledged where necessary by the Borrower's authorized representative(s), all required approvals have been obtained, and all other necessary actions have been taken, so that this Loan Agreement is valid, binding, and enforceable against the Borrower in accordance with its terms, except as such enforcement is affected by bankruptcy, insolvency, moratorium, or other laws affecting creditors rights generally;

(c) To such counsel's knowledge, this Loan Agreement does not violate any other agreement, statute, court order, or law to which the Borrower is a party or by which it or any of its property or assets is bound; and

(d) The Gross Revenues from which the Net Revenues are derived and that are used as security for the Loan will not constitute taxes that are limited by Section 11b, Article XI of the Oregon Constitution; and

(5) such other documents, certificates, opinions and information as DEQ or its counsel may reasonably require.

**(B) CONDITIONS TO DISBURSEMENTS.** Notwithstanding anything in this Agreement to the contrary, DEQ shall have no obligation to make any disbursement to the Borrower under this Agreement unless:

(1) No Event of Default and no event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both has occurred and is continuing;

(2) All of the Borrower's representations and warranties in this Agreement are true and correct on the date of disbursement with the same effect as if made on such date; and

(3) The Borrower submits a disbursement request to DEQ that complies with the requirements of ARTICLE 2(C);

provided, however, DEQ shall be under no obligation to make any disbursement if:

(x) DEQ determines, in the reasonable exercise of its administrative discretion, there is insufficient money available in the SRF and CWSRF Program for the Project; or

(y) there has been a change in any applicable state or federal law, statute, rule or regulation so that the Project is no longer eligible for the Loan.

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## **ARTICLE 5: COVENANTS OF BORROWER**

**(A) GENERAL COVENANTS OF THE BORROWER.** Until the Loan is paid in full, the Borrower covenants with DEQ that:

(1) The Borrower shall use the Loan funds only for payment or reimbursement of the Costs of the Project in accordance with this Loan Agreement. The Borrower acknowledges and agrees that the Costs of the Project do NOT include any Lobbying costs or expenses incurred by Borrower or any person on behalf of Borrower and that Borrower will not request payment or reimbursement for Lobbying costs and expenses.

(2) If the Loan proceeds are insufficient to pay for the Costs of the Project in full, the Borrower shall pay from its own funds and without any right of reimbursement from DEQ all such Costs of the Project in excess of the Loan proceeds.

(3) The Borrower is and will be the owner of the Facility and the Project and shall defend them against the claims and demands of all other persons at any time claiming the same or any interest therein.

(4) The Borrower shall not sell, lease, transfer, or encumber or enter into any management agreement or special use agreement with respect to the Facility or any financial or fixed asset of the utility system that produces the Net Revenues without DEQ's prior written approval, which approval may be withheld for any reason. Upon sale, transfer or encumbrance of the Facility or the Project, in whole or in part, to a private person or entity, this Loan shall be immediately due and payable in full.

(5) Concurrent with the execution and delivery of this Loan Agreement, or as soon thereafter as practicable, the Borrower shall take all steps necessary to cause the Project to be completed in a timely manner in accordance with all applicable DEQ requirements.

(6) The Borrower shall take no action that would adversely affect the eligibility of the Project as a CWSRF project or cause a violation of any Loan covenant in this Agreement.

(7) The Borrower shall undertake the Project, request disbursements under this Loan Agreement, and use the Loan proceeds in full compliance with all applicable laws and regulations of the State of Oregon, including but not limited to ORS Chapter 468 and Oregon Administrative Rules Sections 340-054-0005 to 340-054-0065, as they may be amended from time to time, and all applicable federal authorities and laws and regulations of the United States, including but not limited to Title VI of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4, the federal cross-cutters listed at APPENDIX D, the equal employment opportunity provisions in APPENDIX F, and the regulations of the U.S. Environmental Protection Agency, all as they may be amended from time to time.

(8) The Borrower shall keep the Facility in good repair and working order at all times and operate the Facility in an efficient and economical manner. The Borrower shall provide the necessary resources for adequate operation, maintenance and replacement of the Project and retain sufficient personnel to operate the Facility.

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(9) Interest paid on this Loan Agreement is *not* excludable from gross income under Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"). However, DEQ may have funded this Loan with the proceeds of State bonds that bear interest that is excludable from gross income under Section 103(a) of the Code. Section 141 of the Code requires that the State not allow the proceeds of the State bonds to be used by private entities (including the federal government) in such a way that the State bonds would become "private activity bonds" as defined in Section 141 of the Code. To protect the State bonds the Borrower agrees that it shall not use the Loan proceeds or lease, transfer or otherwise permit the use of the Project by any private person or entity in any way that that would cause this Loan Agreement or the State bonds to be treated as "private activity bonds" under Section 141 of the Code and the regulations promulgated under that Section of the Code.

**(B) DEBT SERVICE COVERAGE REQUIREMENT; WASTEWATER RATE COVENANT; REPORTING.**

(1) Debt Service Coverage Requirement. The Borrower shall maintain wastewater rates and charge fees in connection with the operation of the Facility that are adequate to generate Net Revenues in each fiscal year sufficient to pay (i) all debt service (excluding debt service on the Loan), (ii) all other financial obligations imposed in connection with prior lien obligations of the Borrower, and (iii) an amount equal to the debt service coverage factor of 105% multiplied by the debt service payments due under this Loan Agreement in that fiscal year.

(2) Wastewater Rate Adjustments. The Borrower shall review its wastewater rates and fees at least annually. If, in any fiscal year, the Borrower fails to collect fees sufficient to meet the debt service coverage requirement described in ARTICLE 5(B)(1), the Borrower shall promptly adjust its wastewater rates and fees to assure future compliance with such coverage requirement. The Borrower's adjustment of the wastewater rates and fees does not constitute a cure of any default by the Borrower of the debt service coverage requirement set forth in ARTICLE 5(B)(1). The Borrower's failure to adjust rates shall not, at the discretion of DEQ, constitute a default if the Borrower transfers to the fund that holds the Net Revenues unencumbered resources in an amount equal to the revenue deficiency from the Facility that produces the Net Revenues.

(3) Reporting Requirement. By December 31 of each year the Borrower shall provide DEQ with a report that demonstrates the Borrower's compliance with the requirements of this ARTICLE 5(B). If the audit report described in ARTICLE 5(F) identifies the Net Revenues and contains a calculation demonstrating the Borrower's satisfaction of the requirements of this ARTICLE 5(B), that audit will satisfy the requirements of this ARTICLE 5(B)(3).

**(C) LOAN RESERVE REQUIREMENT; LOAN RESERVE ACCOUNT.**

(1) Loan Reserve Requirement. The Loan reserve requirement equals one-half of the average annual debt service based on the final Payment Schedule. Until the Final Loan Amount is calculated, the Loan reserve requirement is \$35,487. The Borrower shall

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deposit the Loan reserve requirement amount into the Loan Reserve Account no later than the date the first payment is due hereunder.

(2) **Loan Reserve Account.** The Borrower shall create a segregated Loan Reserve Account that shall be held in trust for the benefit of DEQ. The Borrower hereby grants DEQ a security interest in and irrevocably pledges amounts in the Loan Reserve Account to pay the amounts due under this Loan Agreement. The funds in Loan Reserve Account so pledged and hereafter received by the Borrower 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, to the fullest extent permitted by ORS 287A.310. The Borrower represents and warrants that the pledge of the Loan Reserve Account hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310. The Borrower shall use the funds in the Loan Reserve Account solely to pay amounts due hereunder until the principal, interest, fees, and any other amounts due hereunder have been fully paid.

(3) **Additional Deposits.** If the balance in the Loan Reserve Account falls below the Loan reserve requirement, the Borrower shall promptly deposit from the first Net Revenues available after payment of the amounts due hereunder (unless the Borrower has previously made such deposit from other money of the Borrower) an amount sufficient to restore the balance up to the Loan reserve requirement.

(D) **INSURANCE.** At its own expense, the Borrower shall, during the term of this Agreement, procure and maintain insurance coverage (including, but not limited to, hazard, flood and general liability insurance) adequate to protect DEQ's interest and in such amounts and against such risks as are usually insurable in connection with similar projects and as is usually carried by entities operating similar facilities. The insurance shall be with an entity which is acceptable to DEQ. The Borrower shall provide evidence of such insurance to DEQ. Self-insurance maintained pursuant to a recognized municipal program of self-insurance will satisfy this requirement.

(E) **INDEMNIFICATION.** *The Borrower shall, to the extent permitted by law and the Oregon Constitution, indemnify, save and hold the State, its officers, agents and employees harmless from and (subject to ORS Chapter 180) defend each of them against any and all claims, suits, actions, losses, damages, liabilities, cost and expenses of any nature whatsoever resulting from, arising out of or relating to the acts or omissions of the Borrower or its officers, employees, subcontractors or agents in regard to this Agreement or the Project.*

(F) **THE BORROWER'S FINANCIAL RECORDS; FINANCIAL REPORTING REQUIREMENTS.**

(1) **Financial Records.** The Borrower shall keep proper and complete books of record and account and maintain all fiscal records related to this Agreement, the Project, and the Facility in accordance with generally accepted accounting principles, generally accepted government accounting standards, the requirements of the Governmental Accounting Standards Board, and state minimum standards for audits of municipal corporations. The Borrower must maintain separate Project accounts in accordance with generally accepted government accounting standards promulgated by the Governmental Accounting Standards Board. The Borrower will permit DEQ and the Oregon Secretary of State and their representatives to inspect its properties, and all work



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done, labor performed and materials furnished in and about the Project, and DEQ, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have access to the Borrower's fiscal records and other books, documents, papers, plans and writings that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts and take copies.

(2) Record Retention Period. The Borrower shall retain and keep accessible files and records relating to the Project for at least six (6) years (or such longer period as may be required by applicable law) after Project completion as determined by DEQ and financial files and records until all amounts due under this Loan Agreement are fully repaid, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

(3) Accounting for Costs of the Project. Borrower shall provide to DEQ, as soon as possible, but in no event later than six (6) months following the Project Completion Date, a full and complete accounting of the Costs of the Project, including but not limited to documentation to support each cost element and a summary of the Costs of the Project and the sources of funding.

(4) Single Audit Requirements. The CWSRF Program receives capitalization grants through the Catalog of Federal Domestic Assistance ("CFDA") No. 66.458: Capitalization Grants for State Revolving Funds and is subject to the regulations of the U.S. Environmental Protection Agency ("EPA"). Borrower is a sub-recipient.

(a) Subrecipients receiving federal funds in excess of \$750,000 in the subrecipient's fiscal year are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. The Borrower, if subject to this requirement, shall at its own expense submit to DEQ a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted to DEQ the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of the Borrower responsible for the financial management of funds received under this Agreement.

(b) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If the Borrower 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 Agreement.

(c) The Borrower shall save, protect and hold harmless DEQ 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 Agreement. The Borrower acknowledges and agrees that any audit costs incurred by the Borrower as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between the Borrower and the State of Oregon.

(G) **DBE GOOD FAITH EFFORT.** Pursuant to the good faith efforts described in APPENDIX C, the Borrower shall make a good faith effort to promote fair share awards to

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Minority Business Enterprises (“MBE”), Women's Business Enterprises (“WBE”), and Small Businesses in Rural Areas (“SBRA”) on all contracts and subcontracts awarded as part of the Project. The Borrower agrees to include, in its contract(s) with its prime contractor(s), the following language, which must not be altered in any way:

“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.”

The Borrower also agrees to include, in its contract(s) with its prime contractor(s), and shall cause each contract awarded by its prime contractor(s) to include, language to the following effect (the exact language may vary):

- (1) A prime contractor must pay its subcontractor(s) no more than 30 days from the prime contractor’s receipt of payment from the Borrower.
- (2) The Borrower must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.
- (3) If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the Six Good Faith Efforts as described in 40 C.F.R. 33.301 if soliciting a replacement subcontractor.
- (4) A prime contractor must employ the Six Good Faith Efforts even if the prime contractor has achieved its Fair Share Objectives under Subpart D of 40 C.F.R. Part 33.

**(H) CONTRACT LANGUAGE.** The Borrower shall include in all contracts (unless exempt) with its prime contractor(s) the language set forth in APPENDIX F. Further, the Borrower agrees to fully comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532 regarding debarment and suspension and agrees to include or cause to be included in any contract at any tier the requirement that a contractor comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532 if the contract is expected to equal or exceed \$25,000.

**(I) PROJECT ASSURANCES.** Nothing in this Loan Agreement prohibits the Borrower from requiring more assurances, guarantees, indemnity or other contractual requirements from any party performing Project work.

## **ARTICLE 6: REPRESENTATIONS, WARRANTIES, COVENANTS AND CONDITIONS RELATING TO CONSTRUCTION PROJECTS ONLY**

**(A) THE BORROWER’S REPRESENTATION AND WARRANTY REGARDING COSTS ALREADY INCURRED.**

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(1) The Borrower represents and warrants to DEQ that, as of the date of this Loan Agreement, the Costs of the Project actually incurred by the Borrower do not exceed -zero-.

(2) The Borrower acknowledges that DEQ is relying upon the Borrower's representation regarding the amount of Costs of the Project incurred by the Borrower for construction prior to the date of this Loan Agreement as set forth in ARTICLE 6(A)(1) above to determine what portion of the Loan qualifies as a "refinancing" under the EPA's Clean Water State Revolving Fund regulations, 40 C.F.R. Part 35, that may be disbursed on a reimbursement basis.

**(B) CONDITION TO DISBURSEMENTS.** DEQ's obligation to make disbursements hereunder is further conditioned on the following:

(1) The Borrower's plans, specifications and related documents for the Project shall be reviewed and approved by DEQ, as required by OAR Chapter 340, Division 054.

(2) The Borrower has submitted documentation satisfactory to DEQ that the disbursement is for work that complies with plans, specifications, change orders and addenda approved by DEQ, in accordance with OAR Chapter 340, Division 054.

(3) The Borrower has submitted a copy of the awarded contract and bid documents (including a tabulation of all bids received) to DEQ for the portion of the Project costs that will be funded with the disbursement.

**(C) GENERAL PROVISIONS.** The Borrower covenants with DEQ that:

(1) Construction Manual. Unless stated otherwise in this Agreement, the Borrower shall comply with the requirements set forth in the Manual as in effect from time to time. DEQ will provide the Borrower with a copy of the Manual upon request.

(2) Plans and Specifications. The Borrower shall obtain DEQ's review and approval of the Borrower's plans, specifications, and related documents for the Project, as required by OAR Chapter 340, Division 054, prior to any disbursement of Loan proceeds hereunder.

(3) Change Orders. The Borrower shall submit all change orders to DEQ. The Borrower must submit prior to its execution any change order that exceeds \$100,000 or will alter Project performance. The Borrower shall not use any Loan proceeds to pay for costs of any change order that DEQ has not approved in writing. This ARTICLE 6(C)(3) shall not prevent the Borrower from using funds other than Loan proceeds to pay for a change order before DEQ approves it, but the Borrower bears the risk that DEQ will not approve the change order.

(4) Inspections; Reports. The Borrower shall provide inspection reports during the construction of the Project as required by DEQ to ensure that the Project complies with approved plans and specifications. Qualified inspectors shall conduct these inspections under the direction of a registered civil, mechanical or electrical

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engineer, whichever is appropriate. DEQ or its representative(s) may enter property owned or controlled by the Borrower to conduct interim inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with the Loan Agreement, as appropriate.

(5) Asbestos and Other Hazardous Materials. The Borrower shall ensure that only persons trained and qualified for removal of asbestos or other Hazardous Materials will remove any asbestos or Hazardous Materials, respectively, which may be part of this Project.

(6) Operation and Maintenance Manual. The Borrower shall submit to DEQ a draft Facility operation and maintenance manual before the Project is fifty percent (50%) complete. The Borrower shall submit to DEQ a final Facility operation and maintenance manual that meets DEQ's approval before the Project is ninety percent (90%) complete.

(7) Project Performance Certification. The Borrower shall submit to DEQ draft performance standards before the Project is fifty percent (50%) complete. The Borrower shall submit to DEQ final performance standards that meet DEQ's approval before the Project is ninety percent (90%) complete. The Borrower shall submit to DEQ the following done in accordance with the Manual: (i) no later than 10.5 months after the Initiation of Operation (as that term is defined in OAR 340-054-0010(26)), a performance evaluation report based on the approved performance standards; (ii) within one year after the Project's Initiation of Operation, Project performance certification statement; and (iii) within two (2) months of submission of such Project performance certification statement, a corrective action plan for any Project deficiencies noted in said statement.

(8) Alterations After Completion. The Borrower shall not materially alter the design or structural character of the Project after completing the Project without DEQ's written approval.

(9) Project Initiation of Operations.

(a) The Borrower shall notify DEQ of the Initiation of Operation no more than thirty (30) days after the actual Project Completion Date.

(b) If the Project is completed, or is completed except for minor items, and the Project is operable, but DEQ has not received a notice of Initiation of Operation from the Borrower, DEQ may assign an Initiation of Operation date.

**(D) PROVISION APPLICABLE TO CONTRACTS AND SUBCONTRACTS AWARDED FOR THE PROJECT**

(1) Davis-Bacon Requirements. All contracts and subcontracts awarded as part of the Project shall comply with (1) the wage requirements of the Davis-Bacon Act, as amended, 40 U.S.C. §§3141 to 3144, 3146 and 3147 (2002), and (2) the requirements of the *Prevailing Wage Rates for Public Works Projects in Oregon* established under ORS 279C.800 through 279C.870 and OAR 839-025-0000 through 839-025-0540. The Borrower agrees that it will insert into any contract in excess of \$2,000 for construction,

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and will cause its subcontractors to insert in any sub-contract in excess of \$2,000 for construction, the Davis-Bacon language set forth in Part 1 of APPENDIX E and Part 2 of APPENDIX E as applicable.

(2) Retainage. The Borrower shall require a five percent (5%) retainage in all of its contracts related to the Project for an amount greater than One Hundred Thousand Dollars (\$100,000).

**(E) AMERICAN IRON AND STEEL**

The Borrower shall:

(1) Comply with all federal requirements applicable to the Loan (including those imposed by the Consolidated Appropriations Act, 2014, P.L. 113-76 (“CAA”), and related CWSRF Policy Guidelines) which the Borrower understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Borrower has requested and obtained a waiver from the EPA pertaining to the Project or (ii) DEQ has otherwise advised the Borrower in writing that the American Iron and Steel Requirement is not applicable to the Project.

(2) Comply with all record keeping and reporting requirements under the Clean Water Act, 33 U.S.C. 1251 *et seq.* (1972) (“Clean Water Act”), including any reports required by a Federal agency or DEQ such as performance indicators of program deliverables, information on costs and Project progress. The Borrower understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity thereof and/or other remedial actions.

(3) Include in all contracts for the Project the language set forth in APPENDIX H. All contracts and subcontracts of Borrower for the Project must have a provision requiring compliance with the American Iron and Steel Requirement. APPENDIX H is an example provided by the EPA of what could be included in all contracts in projects that use CWSRF funds. Neither the EPA nor DEQ makes any claims regarding the legality of this clause with respect to state or local law.

**ARTICLE 7: DISCLAIMERS BY DEQ; LIMITATION OF DEQ’S LIABILITY**

**(A) DISCLAIMER OF ANY WARRANTY.** DEQ EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE PROJECT, THE QUALITY OF MATERIALS SUPPLIED TO AND THAT BECOME A PART OF THE PROJECT, THE QUALITY OF THE WORKMANSHIP PERFORMED UPON THE PROJECT, OR THE EXTENT AND STAGE OF COMPLETION OF THE PROJECT. No such warranty or guarantee shall be implied by virtue of any inspection or disbursement made by DEQ. Any inspection done by DEQ shall be for its sole benefit.

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**(B) DISCLAIMER OF LIABILITY OF DEQ.** DEQ EXPRESSLY DISCLAIMS LIABILITY OF ANY KIND OR CHARACTER WHATSOEVER FOR PAYMENT OF LABOR OR MATERIALS OR OTHERWISE IN CONNECTION WITH THE COMPLETION OF THE PROJECT OR CONTRACTS ENTERED INTO BY THE BORROWER WITH THIRD PARTIES FOR THE COMPLETION OF THE PROJECT. All Project costs of labor, materials and construction, including any indirect costs, shall be the responsibility of and shall be paid by the Borrower.

**(C) NONLIABILITY OF STATE.**

**(1)** The State and its officers, agents and employees shall not be liable to the Borrower or to any other party for any death, injury, damage, or loss that may result to any person or property by or from any cause whatsoever, arising out of any defects in the plans, design drawings and specifications for the Project, any agreements or documents between the Borrower and third parties related to the Project or any activities related to the Project. DEQ shall not be responsible for verifying cost-effectiveness of the Project, doing cost comparisons or reviewing or monitoring compliance by the Borrower or any other party with state procurement laws and regulations.

**(2)** The Borrower hereby expressly releases and discharges DEQ, its officers, agents and employees from all liabilities, obligations and claims arising out of the Project work or under the Loan, subject only to exceptions previously agreed upon in writing by the parties.

**(3)** Any findings by DEQ concerning the Project and any inspections or analyses of the Project by DEQ are for determining eligibility for the Loan and disbursement of Loan proceeds only. Such findings do not constitute an endorsement of the feasibility of the Project or its components or an assurance of any kind for any other purpose.

**(4)** Review and approval of Facilities plans, design drawings and specifications or other documents by or for DEQ does not relieve the Borrower of its responsibility to properly plan, design, build and effectively operate and maintain the Facility as required by law, regulations, permits and good management practices.

**ARTICLE 8: DEFAULT AND REMEDIES**

**(A) EVENTS OF DEFAULT.** The occurrence of one or more of the following events constitutes an event of default (“Event of Default”), whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency:

**(1)** The Borrower fails to make any Loan payment within thirty (30) days after the payment is scheduled to be made according to the repayment schedule;

**(2)** Any representation or warranty made by the Borrower hereunder was untrue in any material respect as of the date it was made;

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(3) The Borrower becomes insolvent or admits in writing an inability to pay its debts as they mature or applies for, consents to, or acquiesces in the appointment of a trustee or receiver for the Borrower or a substantial part of its property; or in the absence of such application, consent, or acquiescence, a trustee or receiver is appointed for the Borrower or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement or moratorium or any dissolution or liquidation proceeding is instituted by or against the Borrower and, if instituted against the Borrower, is consented to or acquiesced in by the Borrower or is not dismissed within twenty (20) days;

(4) As a result of any changes in the United States Constitution or the Oregon Constitution or as a result of any legislative, judicial, or administrative action, any part of this Loan Agreement becomes void, unenforceable or impossible to perform in accordance with the intent and purposes of the parties hereto or is declared unlawful;

(5) The Borrower defaults in the performance or observance of any covenants or agreements contained in any loan documents between itself and any lender or lenders, and the default remains uncured upon the expiration of any cure period provided by said loan documents; or

(6) The Borrower fails to cure non-compliance in any material respect with any other covenant, condition, or agreement of the Borrower hereunder, other than as set forth in (1) through (5) above within a period of thirty (30) days after DEQ provides notice of the noncompliance.

**(B) REMEDIES.** If DEQ determines that an Event of Default has occurred, DEQ may, without further notice:

(1) Declare the Outstanding Loan Amount plus any unpaid accrued interest, fees and any other amounts due hereunder immediately due and payable;

(2) Cease making disbursement of Loan proceeds or make some disbursements of Loan proceeds and withhold or refuse to make other disbursements;

(3) Appoint a receiver, at the Borrower's expense, to operate the Facility that produces the Net Revenues and collect the Gross Revenues;

(4) Set and collect utility rates and charges;

(5) Pay, compromise or settle any liens on the Facility or the Project or pay other sums required to be paid by the Borrower in connection with the Project, at DEQ's discretion, using the Loan proceeds and such additional money as may be required. If DEQ pays any encumbrance, lien, claim, or demand, it shall be subrogated, to the extent of the amount of such payment, to all the rights, powers, privileges, and remedies of the holder of the encumbrance, lien, claim, or demand, as the case may be. Any such subrogation rights shall be additional cumulative security for the amounts due under this Loan Agreement;

(6) Direct the State Treasurer to withhold any amounts otherwise due to the Borrower from the State of Oregon and, to the extent permitted by law, direct that such

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funds be applied to the amounts due DEQ under this Loan Agreement and be deposited into the SRF; and

- (7) Pursue any other legal or equitable remedy it may have.

#### **ARTICLE 9: DEFINITIONS**

(A) **“BORROWER”** means the public agency (as defined in ORS 468.423(2)) shown as the “Borrower” in Article 1(A) of this Agreement.

(B) **“COMPLETION DATE”** means the date on which the Project is completed. If the Project is a planning project, the Completion Date is the date on which DEQ accepts the planning project. If the Project is a design project, the Completion Date is the date on which the design project is ready for the contractor bid process. If the Project is a construction project, the Completion Date is the date on which the construction project is substantially complete and ready for Initiation of Operation.

(C) **“COSTS OF THE PROJECT”** means expenditures approved by DEQ that are necessary to complete the Project in compliance with DEQ’s requirements and may include but are not limited to the following items:

- (1) Cost of labor and materials and all costs the Borrower is required to pay under the terms of any contract for the design, acquisition, construction or installation of the Project;
- (2) Engineering fees for the design and construction of the Project.
- (3) The costs of surety bonds and insurance of all kinds that may be required or necessary during the course of completion of the Project;
- (4) The legal, financing and administrative costs of obtaining the Loan and completing the Project; and
- (5) Any other costs approved in writing by DEQ.

(D) **“CWSRF PROGRAM” or “CWSRF”** means the Clean Water State Revolving Fund Loan Program, a loan program administered by DEQ under ORS 468.423 to 468.440.

(E) **“DEQ”** means the Oregon Department of Environmental Quality.

(F) **“DIRECTOR”** means the Director of DEQ or the Director's authorized representative.

(G) **“FACILITY”** means all property owned or used by the Borrower to provide wastewater collection, treatment and disposal services, of which the Project is a part.

(H) **“FINAL LOAN AMOUNT”** means the total of all Loan proceeds disbursed to the Borrower under the Loan Agreement, determined on the date on which the Borrower indicates that



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no further Loan funds will be requested, all eligible expenditures have been reimbursed from the Loan proceeds, or all Loan proceeds have been disbursed hereunder, whichever occurs first.

**(I) “GROSS REVENUES”** means all fees and charges resulting from operation of the Facility and any interest earnings thereon; provided however, Gross Revenues does not include: the proceeds of any grants; the proceeds of any borrowings for capital improvements; the proceeds of any liability insurance; or the proceeds of any casualty insurance which the Borrower intends to and does utilize for repair or replacement of the Facility or a part thereof.

**(J) “HAZARDOUS MATERIALS”** means and includes flammable explosives, radioactive materials, asbestos and substances defined as hazardous materials, hazardous substances or hazardous wastes in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), and regulations promulgated thereunder.

**(K) “LOAN”** means the loan made pursuant to this Loan Agreement.

**(L) “LOAN AGREEMENT”** or **“AGREEMENT”** means this loan agreement and its exhibits, appendices, schedules and attachments (which are by this reference incorporated herein), and any amendments thereto.

**(M) “LOAN AMOUNT”** means the maximum amount DEQ agrees to loan the Borrower hereunder.

**(N) “LOAN RESERVE ACCOUNT”** means the account described in ARTICLE 5(c)(2).

**(O) “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.

**(P) “MANUAL”** means the CWSRF Manual for Construction Projects.

**(Q) “NET REVENUES”** means the Gross Revenues less the Operating Expenses for the Facility.

**(R) “OPERATING EXPENSES”** means all direct and indirect expenses incurred for operation, maintenance and repair of the Facility, including but is not limited to administrative expenses, legal, financial and accounting expenses, insurance premiums, claims (to the extent that monies are not available from insurance proceeds), taxes, engineering expenses relating to operation and maintenance, payments and reserves for pension, retirement, health, hospitalization, and sick leave benefits, and any other similar expenses to be paid to the extent properly and directly attributable to operations of the Facility. Operating expenses include an appropriate amount for reserves for repair and replacement of the Facility based on the expected life of the collection, treatment and disposal facilities.

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(S) “**OUTSTANDING LOAN AMOUNT**” means, as of any date, the sum of all disbursements to the Borrower hereunder less the sum of all Loan principal payments received by DEQ.

(T) “**PROJECT**” means the facilities, activities or documents described in ARTICLE 1(E) and (F).

(U) “**REPAYMENT PERIOD**” means the repayment period ending on the date specified in ARTICLE 1(H) which date shall not in any event be later than thirty (30) years after the Completion Date.

(V) “**SRF**” means the Water Pollution Control Revolving Fund established under ORS 468.427, also known as the State Revolving Fund.

(W) “**STATE**” means the State of Oregon.

#### **ARTICLE 10: MISCELLANEOUS**

(A) **NOTICES.** All notices, payments, statements, demands, requests or other communications under this Loan Agreement by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered by personal delivery, by certified mail, return receipt requested, or by facsimile transmission, and, if to the Borrower, delivered, addressed or transmitted to the location or number listed in ARTICLE 1(B), and if to DEQ, delivered, addressed or transmitted to:

Clean Water State Revolving Fund Loan Program  
Water Quality Division  
Department of Environmental Quality  
700 NE Multnomah St., #600  
Portland, Oregon 97235  
Fax (503) 229-6037

or to such other addresses or numbers as the parties may from time to time designate. Any notice or other communication so addressed and mailed shall be deemed to be given five (5) days after mailing. Any notice or other communication delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against DEQ, such facsimile transmission must be confirmed by telephone notice to DEQ’s CWSRF Program Coordinator. Any notice or other communication by personal delivery shall be deemed to be given when actually delivered.

(B) **WAIVERS AND RESERVATION OF RIGHTS.**

(1) DEQ’s waiver of any breach by the Borrower of any term, covenant or condition of this Loan Agreement shall not operate as a waiver of any subsequent breach of the same or breach of any other term, covenant, or condition of this Loan Agreement. DEQ may pursue any of its remedies hereunder concurrently or consecutively without being deemed to have waived its right to pursue any other remedy.

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(2) Nothing in this Loan Agreement affects DEQ's right to take remedial action, including, but not limited to, administrative enforcement action and action for breach of contract against the Borrower, if the Borrower fails to carry out its obligations under this Loan Agreement.

(C) **TIME IS OF THE ESSENCE.** The Borrower agrees that time is of the essence under this Loan Agreement.

(D) **RELATIONSHIP OF PARTIES.** The parties agree and acknowledge that their relationship is that of independent contracting parties, and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Loan Agreement.

(E) **NO THIRD PARTY BENEFICIARIES.** DEQ and the Borrower are the only parties to this Loan Agreement and are the only parties entitled to enforce the terms of this Loan Agreement. Nothing in this Loan Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Loan Agreement. Any inspections, audits, reports or other assurances done or obtained, or approvals or consents given, by DEQ are for its benefit only for the purposes of administering this Loan and the CWSRF Program.

(F) **ASSIGNMENT.** DEQ shall have the right to transfer the Loan or any part thereof, or assign any or all of its rights under this Loan Agreement, at any time after execution of this Loan Agreement upon written notice to the Borrower. Provisions of this Loan Agreement shall inure to the benefit of DEQ's successors and assigns. This Loan Agreement or any interest therein may be assigned or transferred by the Borrower only with DEQ's prior written approval (which consent may be withheld for any reason), and any assignment or transfer by the Borrower in contravention of this ARTICLE 10(F) shall be null and void.

(G) **DEQ NOT REQUIRED TO ACT.** Nothing contained in this Loan Agreement requires DEQ to incur any expense or to take any action hereunder in regards to the Project.

(H) **FURTHER ASSURANCES.** The Borrower and DEQ agree to execute and deliver any written instruments necessary to carry out any agreement, term, condition or assurance in this Loan Agreement whenever a party makes a reasonable request to the other party for such instruments.

(I) **VALIDITY AND SEVERABILITY; SURVIVAL.** If any part, term, or provision of this Loan Agreement or of any other Loan document shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by either party, the validity of the remaining portions, terms and provisions shall not be affected, and all such remaining portions, terms and provisions shall remain in full force and effect. Any provision of this Agreement which by its nature or terms is intended to survive termination, including but not limited to ARTICLE 5(E), shall survive termination of this Agreement.

(J) **NO CONSTRUCTION AGAINST DRAFTER.** Both parties acknowledge that they are each represented by and have sought the advice of counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan

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Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

**(K) HEADINGS.** All headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Loan Agreement.

**(L) ATTORNEYS' FEES AND EXPENSES.** In any action or suit to enforce any right or remedy under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, to the extent permitted by law.

**(M) CHOICE OF LAW; DESIGNATION OF FORUM; FEDERAL FORUM.**

(1) 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 Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(2) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement 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.

(3) Notwithstanding ARTICLE 10(M)(2), 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 ARTICLE 10(M)(3) 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 ARTICLE 10(M)(3) 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.

**(N) COUNTERPARTS.** This Loan Agreement may be executed in any number of counterparts, each of which is deemed to be an original, but all together constitute but one and the same instrument.

**(O) ENTIRE AGREEMENT; AMENDMENTS.** This Loan Agreement, including all appendices and attachments that are by this reference incorporated herein, constitutes the entire agreement between the Borrower and DEQ on the subject matter hereof, and it shall be binding on the parties thereto when executed by all the parties and when all approvals required to be obtained by DEQ have been obtained. This Loan Agreement, including all related Loan documents and instruments, may not be amended, changed, modified, or altered without the written consent of the parties.

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**CITY OF SUTHERLIN**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Authorized Officer

Typed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF OREGON ACTING BY AND THROUGH ITS  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Justin Green, Administrator  
Water Quality Division

**APPENDIX A: PRELIMINARY REPAYMENT SCHEDULE**

Due Date	Pmt#	PAYMENT				Principal Balance
		Principal	Interest	Fees	Total	
2/1/2020	1	0	25,480	0	25,480	1,750,000
8/1/2020	2	24,543	11,113	8,750	44,406	1,725,457
2/1/2021	3	24,699	10,957	0	35,656	1,700,758
8/1/2021	4	24,856	10,800	8,504	44,160	1,675,902
2/1/2022	5	25,014	10,642	0	35,656	1,650,888
8/1/2022	6	25,173	10,483	8,254	43,910	1,625,715
2/1/2023	7	25,333	10,323	0	35,656	1,600,382
8/1/2023	8	25,494	10,162	8,002	43,658	1,574,888
2/1/2024	9	25,655	10,001	0	35,656	1,549,233
8/1/2024	10	25,818	9,838	7,746	43,402	1,523,415
2/1/2025	11	25,982	9,674	0	35,656	1,497,433
8/1/2025	12	26,147	9,509	7,487	43,143	1,471,286
2/1/2026	13	26,313	9,343	0	35,656	1,444,973
8/1/2026	14	26,480	9,176	7,225	42,881	1,418,493
2/1/2027	15	26,649	9,007	0	35,656	1,391,844
8/1/2027	16	26,818	8,838	6,959	42,615	1,365,026
2/1/2028	17	26,988	8,668	0	35,656	1,338,038
8/1/2028	18	27,159	8,497	6,690	42,346	1,310,879
2/1/2029	19	27,332	8,324	0	35,656	1,283,547
8/1/2029	20	27,505	8,151	6,418	42,074	1,256,042
2/1/2030	21	27,680	7,976	0	35,656	1,228,362
8/1/2030	22	27,856	7,800	6,142	41,798	1,200,506
2/1/2031	23	28,033	7,623	0	35,656	1,172,473
8/1/2031	24	28,211	7,445	5,862	41,518	1,144,262
2/1/2032	25	28,390	7,266	0	35,656	1,115,872
8/1/2032	26	28,570	7,086	5,579	41,235	1,087,302
2/1/2033	27	28,752	6,904	0	35,656	1,058,550
8/1/2033	28	28,934	6,722	5,293	40,949	1,029,616
2/1/2034	29	29,118	6,538	0	35,656	1,000,498
8/1/2034	30	29,303	6,353	5,002	40,658	971,195
2/1/2035	31	29,489	6,167	0	35,656	941,706
8/1/2035	32	29,676	5,980	4,709	40,365	912,030
2/1/2036	33	29,865	5,791	0	35,656	882,165
8/1/2036	34	30,054	5,602	4,411	40,067	852,111
2/1/2037	35	30,245	5,411	0	35,656	821,866
8/1/2037	36	30,437	5,219	4,109	39,765	791,429
2/1/2038	37	30,630	5,026	0	35,656	760,799
8/1/2038	38	30,825	4,831	3,804	39,460	729,974
2/1/2039	39	31,021	4,635	0	35,656	698,953
8/1/2039	40	31,218	4,438	3,495	39,151	667,735
2/1/2040	41	31,416	4,240	0	35,656	636,319
8/1/2040	42	31,615	4,041	3,182	38,838	604,704
2/1/2041	43	31,816	3,840	0	35,656	572,888
8/1/2041	44	32,018	3,638	2,864	38,520	540,870
2/1/2042	45	32,221	3,435	0	35,656	508,649
8/1/2042	46	32,426	3,230	2,543	38,199	476,223
2/1/2043	47	32,632	3,024	0	35,656	443,591
8/1/2043	48	32,839	2,817	2,218	37,874	410,752
2/1/2044	49	33,048	2,608	0	35,656	377,704
8/1/2044	50	33,258	2,398	1,889	37,545	344,446
2/1/2045	51	33,469	2,187	0	35,656	310,977
8/1/2045	52	33,681	1,975	1,555	37,211	277,296
2/1/2046	53	33,895	1,761	0	35,656	243,401
8/1/2046	54	34,110	1,546	1,217	36,873	209,291
2/1/2047	55	34,327	1,329	0	35,656	174,964
8/1/2047	56	34,545	1,111	875	36,531	140,419
2/1/2048	57	34,764	892	0	35,656	105,655
8/1/2048	58	34,985	671	528	36,184	70,670
2/1/2049	59	35,207	449	0	35,656	35,463
8/1/2049	60	35,463	225	177	35,865	0
<b>TOTALS</b>		<b>1,750,000</b>	<b>379,216</b>	<b>141,489</b>	<b>2,270,705</b>	

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**APPENDIX B: *ESTIMATED* CWSRF LOAN DISBURSEMENT SCHEDULE**

Loan funds are expected to be available based on the following Project schedule:

<b>Disb. Number</b>	<b>Disb. Amount</b>	<b>Disb. Date</b>
1	583,333.00	12/1/2019
2	583,333.00	1/1/2020
3	583,334.00	2/1/2020

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## APPENDIX C: DBE GOOD FAITH EFFORTS

At a minimum the Borrower or its prime contractor must take six affirmative steps (which apply to any procurement of construction, supplies, equipment or services) to demonstrate good faith effort to utilize minority (MBE), women-owned (WBE) and small (SBE) businesses. The six steps are:

- 1) To include qualified small, minority and women's businesses on solicitation lists;
- 2) To assure that small, minority and women's businesses are solicited whenever they are potential sources;
- 3) To divide total requirements, whenever economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority or women's businesses;
- 4) To establish delivery schedules whenever the requirements of the work permit, which will encourage participation by small, minority and women's businesses;
- 5) To use the services and assistance of the Small Business Administration (<http://pro-net.sba.gov>) and the Office of Minority Business Enterprise of the U.S. Department of Commerce (<http://www.mbda.gov>) to identify appropriate small, minority and women businesses; and
- 6) To require subcontractors to take all of the affirmative action steps described above and set forth in 40 CFR 35.3145(d) in any contract awards or procurements.

The Borrower shall, and shall cause its contractors to, document compliance with the above requirements on forms found at Tab 6 of the Manual for Construction Projects.

Additional resources available to recipients and contractors include the following:

EPA Office of Small and Disadvantaged Business Utilization:

Phone: 206 – 553 – 2931

Web Site: [www.epa.gov/osdbu](http://www.epa.gov/osdbu)

Oregon Office of Minority, Women and Emerging Small Business

350 Winter Street N.E., Room 300

Salem, OR 97301-3878

Phone: 503 – 947 – 7922

Web Site: [www.cbs.state.or.us/omwesb](http://www.cbs.state.or.us/omwesb)



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## APPENDIX D: APPLICABLE FEDERAL AUTHORITIES AND LAWS (“CROSS-CUTTERS”)

### ENVIRONMENTAL LEGISLATION:

Archaeological and Historic Preservation Act of 1974, PL 93-291.  
Clean Air Act, 42 U.S.C. 7506(c).  
Coastal Barrier Resources Act, 16 U.S.C. 3501, et seq.  
Coastal Zone Management Act of 1972, PL 92-583, as amended.  
Endangered Species Act 16 U.S.C. 1531, et seq.  
Executive Order 11593, Protection and Enhancement of the Cultural Environment.  
Executive Order 11988, Floodplain Management.  
Executive Order 11990, Protection of Wetlands.  
Farmland Protection Policy Act, 7 U.S.C. 4201, et seq.  
Fish and Wildlife Coordination Act, PL 85-624, as amended.  
National Historic Preservation Act of 1966, PL 89-665, as amended.  
Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended.  
Wild and Scenic Rivers Act, PL 90-542, as amended.  
Federal Water Pollution Control Act Amendments of 1972, PL 92-500.  
Migratory Bird Conservation Act, 16 U.S.C. 715, et seq.  
Magnuson-Stevens Act – Essential Fish Habitat, 16 U.S.C. 1851, et seq.

### ECONOMIC LEGISLATION:

Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended.  
Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including  
Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution  
Control Act with Respect to Federal Contracts, Grants or Loans.

### SOCIAL LEGISLATION:

The Age Discrimination Act of 1975, Pub. L. No. 94-135, 89 Stat. 713, 42 U.S.C. §6102 (1994).  
Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 252, 42 U.S.C. §2000d (1988).  
Section 13 of PL 92-500; Prohibition against Sex Discrimination under the Federal Water Pollution  
Control Act.  
Rehabilitation Act of 1973, Pub. L. No. 93-1123, 87 Stat. 355, 29 U.S.C. §794 (1988), including  
Executive Orders 11914 and 11250).  
Executive Order 12898, Environmental Justice in Minority Populations  
Exec. Order No. 11,246, 30 F.R. 12319 (1965), *as amended by* Exec. Order No. 11,375, 32 F.R.  
14303 (1967), *reprinted in* 42 U.S.C. §2000e (1994), and its regulations at 41 C.F.R. §§60-  
1.1 to 60-999.1.

### MISCELLANEOUS AUTHORITY:

Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 92-646.  
Executive Order 12549 and 40 CFR Part 32, Debarment and Suspension.  
Disclosure of Lobbying Activities, Section 1352, Title 31, U.S. Code.

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## APPENDIX E: DAVIS-BACON PROVISION

### Part 1

#### (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required

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by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

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(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be

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greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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Part 2  
**Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient upon the request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve



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them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Oregon Department of Environmental Quality and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

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(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/local/>.

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**APPENDIX F**  
**EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and

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remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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**APPENDIX G: CERTIFICATION REGARDING LOBBYING  
(Contracts in Excess of \$100,000.00)**

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 Borrower, 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 \_\_\_\_\_

Recipient \_\_\_\_\_

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## APPENDIX H: AMERICAN IRON AND STEEL (“AIS”) REQUIREMENT

The Contractor acknowledges to and for the benefit of the City of Sutherlin (“Purchaser”) and the State of Oregon, acting by and through the Department of Environmental Quality Clean Water State Revolving Fund (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

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**APPENDIX I**

**Information required by 2 CFR § 200.331(a)(1)**

Federal Award Identification:

- (i) Subrecipient name (which must match registered name in DUNS): \_\_\_\_\_
- (ii) Subrecipient's DUNS number: \_\_\_\_\_
- (iii) Federal Award Identification Number (FAIN): \_\_\_\_\_
- (iv) Federal award date: \_\_\_\_\_
- (v) Sub-award period of performance, start and end date: from \_\_\_\_\_ to \_\_\_\_\_
- (vi) Total Amount of Federal funds obligated by this Agreement: \$ \_\_\_\_\_
- (vii) Total Amount of Federal funds obligated by this initial Agreement and any amendments: \$ \_\_\_\_\_
- (viii) Total amount of Federal award committed to the Subrecipient by the pass-through entity: \$ \_\_\_\_\_
- (ix) Federal award project description: \_\_\_\_\_
- (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: \_\_\_\_\_
  - (b) Name of pass-through entity: Oregon Department of Environmental Quality
  - (c) Contact information for awarding official of the pass-through entity: \_\_\_\_\_
- (xi) CFDA number and name: \_\_\_\_\_  
Amount: \_\_\_\_\_
- (xii) Is award R&D? \_\_\_\_\_
- (xiii) Indirect cost rate for the Federal award: \_\_\_\_%



# REPORTS





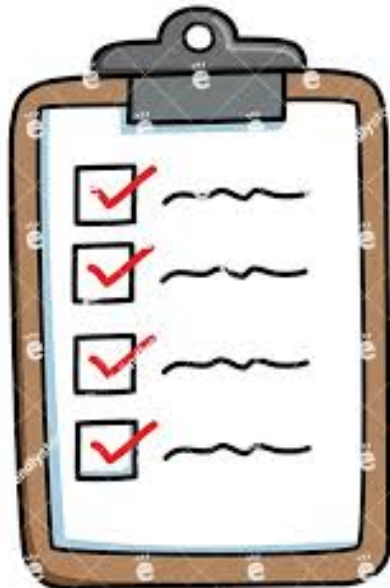


# **Sidewalk Project Beecroft to Quail Run (verbal)**





# STRATEGIC PLAN UPDATE





## City of Sutherlin

STAFF REPORT					
<b>Re: Speed Zone Request Update</b>				Meeting Date:	11-12-2019
<b>Purpose:</b>	Action Item <input type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion <input type="checkbox"/>	Update <input checked="" type="checkbox"/>
<b>Submitted By: Brian Elliott, Community Development Director</b>				City Manager Review	<input checked="" type="checkbox"/>
<b>Attachments:</b>					

### WHAT IS BEING ASKED OF COUNCIL?

This staff report is to provide City Council an update regarding two speed zone requests that have been submitted to ODOT for review.

### EXPLANATION

City of Sutherlin has received several requests to lower the speed on Ft McKay Road and Church Road. Now that UGB exchange is complete and the City received two grants for Ford's Pond Community Park improvement, the timing is perfect to move forward with speed zone analysis. Both roads are narrow with only fog lines, no shoulders and steep embankments. Pedestrians and bicyclists don't have a safe place to traverse.

On September 5, 2019, City of Sutherlin submitted two Speed Zone Requests for Ft McKay Road and Church Road. On September 11, 2019 City of Sutherlin was notified that ODOT recently has gone to a new speed zoning investigation system and that the City would need to resubmit both speed zone requests.

October 17, 2019, City of Sutherlin re-submitted both speed zone requests using the new ODOT format. On October 21, 2019 City of Sutherlin was notified that one of ODOT's Field Engineers was assigned to investigate the City's request and the City will be notified when completed.

### OPTIONS

Not Applicable

### SUGGESTED MOTION(S)

Not Applicable



## City of Sutherlin

STAFF REPORT					
<b>Re: Nonpareil WTP Disinfection System Improvement</b>				Meeting Date:	11-12-19
<b>Purpose:</b>	Action Item <input type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion <input type="checkbox"/>	Update <input checked="" type="checkbox"/>
<b>Submitted By: Brian Elliott, Community Development Director</b>				City Manager Review	<input checked="" type="checkbox"/>
<b>Attachments:</b>					

### WHAT IS BEING ASKED OF COUNCIL?

This staff report is to provide Council an update on the Nonpareil WTP Disinfection System Improvement.

### EXPLANATION

The Nonpareil WTP currently uses chlorine gas to disinfect the facility's potable water. Due to the hazardous nature of chlorine gas, Council identified as a high priority to switch from chlorine gas to liquid sodium hypochlorite for a disinfectant.

On May 9, 2019 City of Sutherlin received three (3) bids from Prime Contractors. Stettler Supply Company submitted the lowest bid and is qualified to construct the Nonpareil WTP Disinfection System Improvement. On May 13, 2019 Council awarded the contract to Settler Supply Company in the amount of \$179,305.00.

Scope of work consists of demolition and removal of the existing chlorine gas disinfection system. The new disinfection system will consist of one 2,500 gallon double walled chemical storage tank with ultrasonic level transducer, one dual diaphragm chemical feed pump skid and miscellaneous electrical, piping, piping supports, valves and fittings.

Construction completion date was originally October 25, 2019, but because of permit delays, the completion date has been extended to November 29, 2019.

Construction to date: Removal of the one ton chlorine tanks, storage cradles, scales, removal of plywood in chemical storage building and replaced with Fire Rated Sheetrock, upgraded the roof to meet Fire Code, removed window and replaced with Fire Rated Sheetrock, leveled concrete slab and installed new door to access the attic above the office and chlorination room.

### OPTIONS

N/A

### SUGGESTED MOTION(S)

N/A



# **COUNCIL COMMENTS**





# **PUBLIC COMMENT**





# ADJOURNMENT





# **FOR YOUR INFORMATION**





Reply Reply All Forward




Tue 11/5/2019 11:24 AM

Melanie Masterfield

**City of Sutherlin Council meeting agenda**

To Ashley (ashley@bciradio.com); DC Commisioners (commissioners@co.douglas.or.us); Erica Welch; KUGN (news@kugn.com); Kyle-KQEN (KYLE@BCIRADIO.COM); News Desk (newsdesk@nrtoday.com); Register Guard (rgnews@registerguard.com); Roseburg Beacon (info@roseburgbeacon.com)

 CC AGENDA NOV 12.19 REG & WS MTG.agenda.pdf  
235 KB

Good morning. Please see the attached agenda for the Sutherlin City Council meeting on Tuesday, November 12, 2019



Melanie Masterfield  
Deputy City Recorder  
City of Sutherlin  
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Sutherlin, OR 97479  
541-459-2856  
[m.masterfield@ci.sutherlin.or.us](mailto:m.masterfield@ci.sutherlin.or.us)