CITY OF OREGON CITY

CITY COMMISSION REGULAR MEETING - REVISED

AGENDA

Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City
Wednesday, June 21, 2023 at 7:00 PM

REGULAR MEETING OF THE CITY COMMISSION

Ways to participate in this public meeting:

- *Attend in person, location listed above*
- *Register to provide electronic testimony (email recorderteam@orcity.org or call 503-496-1509 by 3:00 PM on the day of the meeting to register)*
- *Email recorderteam@orcity.org (deadline to submit written testimony via email is 3:00 PM on the day of the meeting)*
- *Mail to City of Oregon City, Attn: City Recorder, P.O. Box 3040, Oregon City, OR 97045*

1. CONVENE MEETING AND ROLL CALL

2. FLAG SALUTE

3. CEREMONIES AND PROCLAMATIONS

3a. Pride Month Proclamation

4. CITIZEN COMMENTS

Citizens are allowed up to 3 minutes to present information relevant to the City but not listed as an item on the agenda. Prior to speaking, citizens shall complete a comment form and deliver it to the City Recorder. The City Commission does not generally engage in dialog with those making comments but may refer the issue to the City Manager. Complaints shall first be addressed at the department level prior to addressing the City Commission.

5. PRESENTATIONS

5a. Presentation - 2022 Transportation Advisory Committee Annual Report

6. ADOPTION OF THE AGENDA

7. CONSENT AGENDA

This section allows the City Commission to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may only be discussed if it is pulled from the consent agenda.

7a. Resolution No. 23-19, Certifying the Election Results for the May 16, 2023 Special Election

7b. Management, Supervisory and Confidential Employee Salary Cost of Living Adjustment (COLA) FY 2023-24

7c. Professional services agreement with Christine Landers Law LLC for court prosecution services.

7d. Contract Extension with Cumming Group for Project Management Services/Owner Representative for WES Good Neighbor Agreement Funded Projects for FY 2023-2024

7e. Public Improvement Contract with Lee Contractors, LLC for the Beemer Way Stormwater Outfall Improvements (CI 22-007)

7f. Police Information Technology Services Agreement

7g. IT Analysis and Support RFP award to Polar Systems

7h. Minutes of the May 3, 2023 City Commission Special Meeting

7i. Minutes of the March 7, 2023 City Commission Joint Work Session with the Planning Commission

7j. Minutes of the January 7, 2009 City Commission Meeting

7k. Minutes of the October 15, 2008 City Commission Meeting

7l. Minutes of the October 7, 2008 City Commission Meeting

8. PUBLIC HEARINGS

8a. Resolution No. 23-13, Supplemental Budget for the 2021-23 Biennium

9. GENERAL BUSINESS

9a. Resolution No. 23-16, a Resolution of the City of Oregon City, Oregon Authorizing Full Faith Credit Borrowing for Water System Improvements

9b. Second Reading of Ordinance No. 23-1007, Designating the Ermatinger House as a Park Under Oregon City Charter Chapter X

10. COMMUNICATIONS

City Manager

Commissioners

Mayor

11. ADJOURNMENT

ORDINANCE NOTICE

If an ordinance is noticed above in this agenda, the text of the ordinance is available online with the posted agenda packet. In addition, three copies are provided for public review in the Office of the City Recorder upon request.

PUBLIC COMMENT GUIDELINES

Complete a Comment Card prior to the meeting and submit it to the City Recorder. When the Mayor/Chair calls your name, proceed to the speaker table, and state your name and city of residence into the microphone. Each speaker is given three (3) minutes to speak. To assist in tracking your speaking time, refer to the timer on the table.

As a general practice, the City Commission does not engage in discussion with those making comments.

Electronic presentations are permitted but shall be delivered to the City Recorder 48 hours in advance of the meeting.

ADA NOTICE

The location is ADA accessible. Hearing devices may be requested from the City Recorder prior to the meeting. Individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.

Agenda Posted at City Hall, Pioneer Community Center, Library, City Website.

Video Streaming & Broadcasts: The meeting is streamed live on the Oregon City's website at www.orcity.org and available on demand following the meeting. The meeting can be viewed on Willamette Falls Television channel 28 for Oregon City area residents as a rebroadcast. Please contact WFMC at 503-650-0275 for a programming schedule.

PROCLAMATION

PRIDE MONTH

Whereas, all human beings are born free and equal in dignity and rights, and this nation was founded on the principle that every individual has infinite dignity and worth; and

Whereas, members of the Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ+) community have fought bravely to live openly and authentically, and to celebrate who they are and who they love; and

Whereas, because of the acts of courage by the millions who came out and spoke out to demand justice, and by those who quietly toiled and pushed for progress, our country has made great strides in recognizing what those brave individuals long knew to be true in their hearts - that no person should be judged by anything but the content of their character; and

Whereas, the efforts and achievements of the LGBTQ+ community have allowed all to enjoy greater dignity, freedom, justice, and equality; and

Whereas, acknowledgement and education remain essential to help eliminate prejudice wherever it may exist; and

Whereas, the City of Oregon City is unequivocally committed to supporting visibility, dignity, and equality for LGBTQ+ people in our diverse community; and

Whereas, LGBTQ+ individuals have made immeasurable contributions to the cultural, civic, and economic successes of our country; and

Whereas, recognizing, celebrating, and standing with the LGBTQ+ community provides an opportunity for all Oregon City residents to strengthen alliances, build acceptance, advance equal rights, and create a better, more inclusive community.

Now, Therefore, I, Mayor Denyse C. McGriff, hereby proclaim:

June, 2023
as
Pride Month

And, call upon the people of Oregon City to join their fellow citizens across the United States in recognizing and participating in this special observance.

In Witness Whereof, I have hereunto set my hand this 21st day of June, 2023.

____

Denyse C. McGriff, Mayor

CITY OF OREGON CITY

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

To: City Commission **Agenda Date:** 06/21/2023

From: Public Works Director John Lewis, PE

SUBJECT:

Presentation - 2022 Transportation Advisory Committee Annual Report

STAFF RECOMMENDATION:

This is a presentation of the 2022 Transportation Advisory Committee Annual Report which summarizes the Committee's accomplishments and annual goals.

EXECUTIVE SUMMARY:

Committees are required to present an annual report to the City Commission at a regular Commission meeting per the Administrative Policy 2-11.

OREGON CITY

Transportation Advisory Committee

625 Center Street | Oregon City OR 97045
Ph: (971) 204-4600

TO: City Commission of Oregon City

FROM: Transportation Advisory Committee

DATE: June 20, 2023

SUBJECT: **Transportation Advisory Committee Annual Report - 2022**

2022 TAC Membership

Member	Membership Term	Chair Term	Vice Chair Term
Henry Mackenroth	January 2022 to December 2024	January to December	
Cedomir Jesic	January 2020 to December 2022		January to December
Ben Simmons	January 2021 to December 2023		
Ray Atkinson	January 2022 to June 2022		
Miles Tatch	January 2022 to December 2022		
Bruce Fries	January 2022 to December 2024		
Tim Morgan	January 2021 to December 2023		
Petronella Donovan	May 2022 to December 2024		

2022 Meeting Dates (8 meetings were held)

- January 18
- February 15 (canceled)
- March 15
- April 19
- May 17
- June 21
- July (Summer Break)
- August (Summer Break)
- September 20
- October 18 (Canceled)
- November 15
- December 20

2022 Accomplishments

- Mr. Bruce Fries joined the Transportation Advisory Committee on January 18, 2022.
- Ms. Petronella Donovan joined the Transportation Advisory Committee on June 21, 2022.
- Letter of support for the Oregon City – West Linn Pedestrian and Bicycle Bridge Concept Plan was sent to City Commission on January 28, 2022.
- Letter of support for a grant request to update Holcomb Boulevard between Winston and the Serres Farm Subdivision, Safe Routes to Schools Construction Program and was sent to the City Commission on July 6, 2022.
- National Night Out, August 2, 2022 with a focus on youth bicycle trailer and information on shuttle service.
- The Transportation Advisory Committee and Public Works implemented solutions related to high volumes of traffic, speeding vehicles and pedestrian safety on Gaffney Lane and Berta Drive.
- The Transportation Advisory Committee and Public Works collaborated to address resident concerns relating to increased traffic along Barker Avenue during the South End Road Project by installing temporary speed humps and street signs.
- The Transportation Advisory Committee listened to citizen concerns around inconsistent speed limits along Linn Avenue.
- The Transportation Advisory Committee and the Public Works Engineering Department are investigating the possibility of the City becoming a Designated Authority for Speed Zones.
- Received presentations and updates on the following:
    - 2021 Pavement Maintenance Utility Fee Report (Jayson Thornberg, Transportation Operations Manager)
    - ADA Ramps (Dayna Webb, City Engineer)
    - Capacity Standards for Local Streets (Dirk Schlagenhaufer, Chair of Planning Commission and Aquilla Hurd-Ravich, Community Development Director
    - Clackamas County Connects Shuttle Surveys (Dayna Webb, City Engineer)
    - Frontier Parkway traffic and speed concerns (Vance Walker, Assistant Public Works Director)
    - Holcomb Boulevard Safe Routes to School and developments and Grant (Dayna Webb, City Engineer)
    - Speed Limit Reviews: Hwy 213 & Glen Oak Road (Dayna Webb, City Engineer)
    - Molalla Avenue and Survey (Dayna Webb, City Engineer)
    - Oregon City Shuttle (Dayna Webb, City Engineer)
    - Park Place Urbanization Plan (Dayna Webb, City Engineer)
    - Road and Street Safety for Non-Engineers (Mojie Takallou, Professor of Civil Engineering at the University of Portland)
    - South End Road Landslide Repairs (Joel Howie, Clackamas County Capital Projects Supervisor)
    - Street Standards (Dayna Webb, City Engineer)

- Transportation Modeling 101 (Amanda Deering the Transportation Engineering Assistant at DKS Associates)
- Trillium Park Drive Roadway Project (John Lewis, Public Works Director)

2022 TAC Goals

- The Transportation Advisory Committee moved to make the following subjects priority topics of discussion and analysis for 2022:
  - Remain involved in member participation at the National Night Out, with an emphasis on promoting safety as it relates to transportation.
  - Remain involved in larger developments relating to transportation projects, e.g.:
    - Beavercreek Road Concept Plan
    - Landfill Development
    - Willamette Falls Legacy Project Future cove Site – re-development.
    - Park Place (ICON) Development
  - Advise on and provide support for grant opportunities presented to the Transportation Advisory Committee.
  - Continue listening to requests regarding transportation concerns and working with the City of Oregon City Public Works on solutions.

CITY OF OREGON CITY

Staff Report

625 Center Street
Oregon City, OR 97045
503-657-0891

To: City Commission **Agenda Date:** 06/21/2022

From: City Recorder Jakob Wiley

SUBJECT:

Resolution No. 23-19, Certifying the Election Results for the May 16, 2023 Special Election

STAFF RECOMMENDATION:

Staff recommends the City Commission approve Resolution No. 23-19, Certifying the Election Results for the May 16, 2023 Special Election.

EXECUTIVE SUMMARY:

A Special Election was held on May 16, 2023. The certified results were received from Clackamas County – Elections Division on Monday, June 12, 2023. The Commission is now asked to certify those results and make them a part of their proceedings through this resolution.

BACKGROUND:

On May 16, 2023, Oregon City voters cast votes Ballot Measure 3-597. The Oregon City Charter of 1982, Chapter 6, Elections, Section 27, Canvass of Returns, states in part the following:

"...The results of all elections shall be entered into the record of the proceedings of the Commission. The entry shall state the total number of votes cast at the election, the votes cast for each person and for and against each proposition..."

The Canvass of Votes as prepared by the Office of the Clackamas County Clerk - Elections Division and which is on file with the City Recorder. The Canvass shows the following outcome of votes for the ballot measure.

Measure No. 3-597	
Yes	3,038 (42.28%)
No	**4,148 (57.72%)**

OPTIONS:

1. Approve Resolution No. 23-19.
2. Do not approve Resolution No. 23-19 and provide staff direction.

RESOLUTION NO. 23-19

A RESOLUTION CERTIFYING THE RESULTS OF THE MAY 16, 2023 SPECIAL ELECTION FOR THE CITY OF OREGON CITY

WHEREAS, Chapter VI, Section 27 of the Oregon City Charter requires election results to be made a matter of record in the proceedings of the City Commission; and

WHEREAS, the election results from the May 16, 2023 Special Election have been certified by the Office of the Clackamas County Clerk Elections Division.

NOW, THEREFORE, OREGON CITY RESOLVES AS FOLLOWS:

Section 1. The certified election results attached as Exhibit A to this resolution and are made a part of the record of proceedings of the City Commission.

Section 2. This resolution is effective immediately upon adoption by the City Commission.

Approved and adopted at a regular meeting of the City Commission held on the 21st day of June 2023.

DENYSE C. MCGRIFF,
Mayor

Attested to this 21st day of June 2023:

Jakob S. Wiley, City Recorder

Approved as to legal sufficiency:

City Attorney

Attachment:
Exhibit A – Results of the May 16, 2023 Special Election

Catherine McMullen
County Clerk

Elections Division

elections@clackamas.us | 1710 Red Soils Court, Suite 100
503-655-8510 | Oregon City, OR 97045

Sent via email: jwiley@orcity.org

June 12, 2023

City of Oregon City
ATTN: Jakob Wiley, City Recorder
25 Center Street
Oregon City OR 97004

Please find attached the certified abstract of results of the May 16, 2023 Special District Election conducted in Clackamas County. A hard copy can be mailed by request.

Election costs will be finalized and an invoice will be sent by the end of June. Let me know if you have any questions or need any additional information.

Sincerely,

And Burke Jones
Elections Manager

Canvass Results Report

Official Ballots

Run Time 9:00 AM

Run Date 06/12/2023

Clackamas County

May 16, 2023 Special District Election

5/16/2023

Official

Registered Voters

90030 of 307970 = 29.23%

Precincts Reporting

114 of 114 = 100.00%

City of Oregon City Measure 3-597 - Referred to the People by the City Council

Precinct	Yes	No	Cast Votes	Undervotes	Overvotes	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
600	805	840	1,645	57	0	1,702	1,702	6,561	25.94%
602	625	902	1,527	68	0	1,595	1,595	4,757	33.53%
604	943	1,582	2,525	112	0	2,637	2,637	8,107	32.53%
606	286	354	640	28	0	668	668	3,340	20.00%
608	379	470	849	47	0	896	896	3,553	25.22%
Totals	**3,038**	**4,148**	**7,186**	**312**	**0**	**7,498**	**7,498**	**26,318**	**28.49%**

CERTIFIED COPY OF THE ORIGINAL
CATHERINE MCMULLEN, COUNTY CLERK

BY: ______________

625 Center Street
Oregon City, OR 97045
503-657-0891

CITY OF OREGON CITY

Staff Report

To: City Commission **Agenda Date:** 6/21/2023

From: Human Resources Director, Patrick Foiles

SUBJECT:

Management, Supervisory and Confidential Employee Salary Cost of Living Adjustment (COLA) FY 2023-24

STAFF RECOMMENDATION:

Staff recommends the City Commission approve a three percent (3.0%) COLA increase to salary ranges for the City's thirty-four (34) budgeted Management, Supervisory and Confidential positions for fiscal year July 1, 2023 to June 30, 2024.

EXECUTIVE SUMMARY:

Represented employees receive a COLA based increase to salary as a function of their negotiated and Commission approved collective bargaining agreements. Management and non-represented employees require separate Commission notice and approval of salary range adjustments. The recommended COLA adjustment is three percent (3.0%). The total financial impact of a 3.0% COLA for the Management employee group for fiscal year 2023-24 is approximately $130,000 ($173,000 with roll-ups) and is supported by the City’s approved budget.

BACKGROUND:

Represented employees receive a COLA based increase to salary as a function of their negotiated and Commission approved collective bargaining agreements. Management and non-represented employees require separate Commission notice and approval of salary range adjustments.

The City Commission ratified the OCPEA and AFSCME bargaining agreements in early 2023, of which include a four percent (4.0%) COLA for OCPEA and a three percent (3.0%) for AFSCME, FY 2023-24. A three percent (3.0%) Management COLA will prevent additional compression between represented and management employee salaries and is supported by the City’s approved budget.

CPI-W West, Size Class B/C (Consumer Price Index for All Urban Consumers), which reflects the buying habits of urban wage earners and clerical workers and is based on cities with populations of less than 2,500,000 in 13 Western states, increased six and one-half percent (6.5%) for the calendar year of December 2021 to December 2022. The rate was released in April 2023. The annual average for the same index in 2022 was 8.7%. The CPI has been used in the past to guide and provide context to determine an appropriate adjustment to salaries.

OPTIONS:

1. Approve the three percent (3.0%) COLA increase to salary ranges for Management, Supervisory and Confidential positions for FY 2023-24.
2. Discuss and change the percentage of the COLA increase for Management, Supervisory and Confidential positions for FY 2023-24.
3. Deny the three percent (3.0%) COLA increase to salary ranges for Management, Supervisory and Confidential positions for FY 2023-24.

BUDGET IMPACT:

Amount:	Approx. $173,000
FY(s):	2023-24
Funding Source(s):	Multiple funds throughout the budget. The BY 2023-25 budget sufficiently includes this action.

CITY OF OREGON CITY

Staff Report

625 Center Street
Oregon City, OR 97045
503-657-0891

To: City Commission **Agenda Date:** 06/21/2023

From: Finance Director Matt Zook

SUBJECT:

Professional services agreement with Christine Landers Law LLC for court prosecution services.

STAFF RECOMMENDATION:

Approval of the professional services agreement with Christine Landers Law LLC for prosecution services.

EXECUTIVE SUMMARY:

The City maintains a Municipal Court for the prosecution of criminal misdemeanors, traffic violations, and municipal code violations. The City requires the services of a prosecutor for the purposes of screening cases, filing cases, and performing all other functions normally associated with a prosecutor in a municipal court. Christine Landers Law LLC is capable and prepared to provide such services as the City requires, under the terms and conditions set forth in the attached professional services agreement.

BACKGROUND:

The current prosecution services are being provided by a pro-tem Prosecutor. On April 28 and May 1, 2023, staff published notices of a Request for Proposal (RFP) in the Daily Journal of Commerce, as well as on the City's website on April 27, 2023. Two responses were received. Staff reviewed the proposals and conducted interviews with each of the respondents. The City is pleased to move forward with the attached professional services agreement with Christine Landers Law LLC and requests approval from the City Commission.

OPTIONS:

1. Approve the Professional Services Agreement and authorize the City Manager to execute the agreement.

2. Deny the Professional Services Agreement with specific direction back to staff for future action.

BUDGET IMPACT:

Amount:	$206,266.68 over a three-year period as reflected in the agreement
FY(s):	FY 2023-2026
Funding Source(s):	General Fund revenues

CITY OF OREGON
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement is entered into between Christine Landers Law, LLC (hereinafter, "Prosecutor") and the City of Oregon City ("the City") for the limited purpose of retaining Prosecutor to provide legal assistance in Oregon City Municipal Court.

In consideration of the mutual promises contained below, the parties agree as follows:

RECITALS:

A. City maintains a Municipal Court for the prosecution of criminal misdemeanors, traffic violations and municipal code violations.

B. City requires the services of a prosecutor for the purposes of screening cases, filing cases and performing all other functions normally associated with a prosecutor in a municipal court.

C. Prosecutor is capable and prepared to provide such services as City requires, under the terms and conditions set forth below.

AGREEMENT:

In consideration of the mutual promises contained below, the parties agree as follows:

1. **Independent Contractor:** Prosecutor has been engaged by the City to provide certain limited services to the City which shall be referred to in this Agreement as the "Services." The parties recognize and agree that Prosecutor is acting as an independent contractor, and not as an agent or employee of the City. As an independent contractor, Prosecutor is not eligible for, and shall not participate in, workers' compensation, retirement, insurance or other benefits afforded to employees of the City. Prosecutor waives any and all rights that Prosecutor might have under the City's welfare, pension, profitsharing or other benefit plans.

The City shall not withhold or pay any federal, state or local income or payroll tax of any kind on behalf of Prosecutor. Prosecutor acknowledges and agrees that she is solely responsible for the payment of any income or other taxes related to the Agreement and indemnifies and holds the City harmless for its failure to withhold or pay such income or payroll taxes.

Nothing in this Agreement shall create any partnership, joint venture, employment relationship or similar relationship between Prosecutor and the City. Prosecutor will not represent that she is the City's employee or agent nor enter into any agreement on the City's behalf. Neither party can be bound by the other to any contract, arrangement or understanding except with that party's prior written consent.

In the event that Prosecutor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Prosecutor under the terms of this Agreement, to the full extent of any benefits or other remuneration Prosecutor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Prosecutor or to a third party) as a result of said finding.

2. **Scope of Services:** The Services shall consist of those listed in Attachment "A," which by reference are incorporated herein. These Services are to include Community Enforcement issues including prosecution. Prosecutor will provide all equipment and supplies reasonably necessary to perform services. Prosecutor will perform the Services in a professional manner, and Prosecutor is responsible for any deficiencies in his work product or Services. Subject to the conditions of this Agreement, Prosecutor will retain control over the manner in which she performs the Services. Prosecutor will not subcontract any Services and will personally perform all Services except as provided herein.

3. **Compensation:**

a. City agrees to pay Prosecutor a flat rate of $66,000 in the first year to be paid in even monthly payments of $5,500 per month. The city agrees to an annual increase to the compensation effective July 1 of each year noted in the schedule below. The stated compensation includes the cost of providing discovery materials to defense attorneys and/or defendants and set-aside orders.

Effective date	Annual
7/5/2023	$66,000.00
7/1/2024	$69,000.00
7/1/2025	$72,000.00

b. For the purposes of this agreement, the calendar year begins July 1 of one year and runs through June 30 of the following year. The first month compensation shall be pro-rated based on the start date of July 5, 2023 and shall be $4,766.68.

c. City agrees to pay Prosecutor within 30 days after receipt of Prosecutor's itemized statement. Any amounts disputed by City may be withheld pending settlement of the dispute. In the event of disputed amounts, all undisputed amounts will be paid within 30 days of the receipt of Prosecutor's itemized statement.

d. City certifies that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.

4. **Term:** The Term of this Agreement shall be from the July 5, 2023, through June 30, 2025, unless sooner terminated or modified pursuant to provisions set forth below. This term may be extended by mutual written agreement of the parties. Unless otherwise specified, any renewal of this Agreement shall be for one two (2) year duration. If any changes in scope, conditions or compensation are proposed, notice of such changes shall be in writing and shall be provided at least sixty (60) days prior to the expiration of this agreement.

5. **Termination:**

a. This agreement may be terminated without cause prior to the expiration of the agreed upon term by:

(1) Mutual written consent of parties; or

(2) Either party upon 60 days' written notice to the other, delivered by certified mail or in person.

b. Upon written notice of early termination, City shall immediately provide to Prosecutor a written statement regarding cessation of services to be performed under this Agreement.

c. An early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

d. The rights and remedies of City or Prosecutor provided in this Agreement relating to defaults by either party shall not be exclusive and are in addition to any rights and remedies provided by law or contained within this agreement.

6. **Cancellation for Cause:** City may immediately cancel all or any part of this Agreement, effective upon delivery of written notice to Prosecutor by certified mail or in person, if Prosecutor fails to provide services called for by this Agreement within the time specified or any extension thereof; if Prosecutor fails to perform the work of this Agreement in accordance with its terms after receipt of 10 days' written notice from the City; or in the event of any of the following: insolvency of Prosecutor; voluntary or involuntary petition in bankruptcy by or against Prosecutor; appointment of a receiver or trustee for Prosecutor; or an assignment for benefit of creditors of Prosecutor. Damages for breach shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

7. **Assignment:** In the event that the Prosecutor shall be unavailable to perform her duties due to illness, personal leave, unanticipated personal needs or other valid reasons, Prosecutor shall, at her own expense, make arrangements for a *pro tem* prosecutor. A *pro tem* prosecutor shall be selected from a list of qualified individuals provided by Prosecutor and approved by the City Manager.

8. **Conflicts of Interest:** In the event prosecutor cannot handle a particular case because of a conflict of interest, as defined in Oregon Rules of Professional Conduct 1.7-1.10, the prosecutor will make arrangements for a *pro tem* prosecutor to handle the case at the City's expense within the City's budgeted capacity.

9. **Screening of Cases and Prosecution:** City agrees that all potential filed criminal cases shall be screened by Prosecutor prior to filing. City also agrees that all decisions regarding filing a case, not filing a case, plea negotiations, trial procedures and all other policies for prosecution of criminal cases shall be within the sole discretion of Prosecutor. City agrees to file no criminal case without prescreening by Prosecutor.

10. **No Fringe Benefits**: As an independent contractor, Prosecutor is not eligible for, and shall not participate in, workers' compensation, retirement, insurance or other benefits afforded to employees of the City. Prosecutor waives any and all rights that Prosecutor might have under the City's welfare, pension, profitsharing or other benefit plans.

11. **Expenses:** The City shall not be responsible for any expenses paid or incurred by Prosecutor unless otherwise agreed in advance in writing.

12. **Federal, State and Local Taxes**: The City shall not withhold or pay any federal, state or local income or payroll tax of any kind on behalf of Prosecutor. Prosecutor acknowledges and agrees that she is solely responsible for the payment of any income or other taxes related to the Agreement and indemnifies and holds the City harmless for its failure to withhold or pay such income or payroll taxes.

13. **Professional Standards**: Prosecutor shall be responsible to the level of competency presently maintained by others practicing in the same type of work in City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

14. **Compliance With Laws:** Prosecutor will (a) comply with all federal, state and local laws, ordinances, regulations and orders with respect to its performance of the Services, (b) file all reports relating to the Services (including, without limitation, tax returns), (c) pay all filing fees and federal, state and local taxes applicable to Prosecutor's business as the same shall become due, and (d) pay all amounts when due required under local, state and federal law related to Prosecutor's business, including, but not limited to, workers' compensation coverage, unemployment insurance and any other required employee benefits.

15. **Disclaimer:** The City disclaims any responsibility for the safety of Prosecutor's workplace, and Prosecutor agrees to solely assume the risk of, and indemnify the City for, any injury or damage to persons or property arising out of or related to the Services contemplated under this Agreement.

16. **Insurance; Risk of Loss:** Prosecutor will maintain insurance policies (including, without limitation, professional liability insurance and statutory workers' compensation insurance) that are sufficient to protect Prosecutor's business against all applicable risks. Prosecutor will be liable for all loss or damage, other than ordinary wear and tear, to the City's property in Prosecutor's possession or control. In the event of any such loss or damage, Prosecutor will pay the City the full current replacement cost of such equipment or property within 30 days after its loss or damage.

17. **Protection of City Property:** All work performed by Prosecutor under this Agreement shall be the property of City. All records, files, manuals, client lists, forms, materials, supplies, computer programs, and other information or materials furnished to Prosecutor by the City, used on its behalf, or generated or obtained during the course of providing the Services are the property of the City (collectively "City Property"). Prosecutor will use City Property for the sole use and benefit of the City and will take all reasonable precautions to safely secure and preserve such property. Prosecutor, except as necessary for the

benefit of the City and to provide the Services, agrees not to make or cause to be made any copies, duplicates or other reproductions, or abstracts or summaries, of any City Property. Upon termination of this Agreement, and at any other time upon the City's request, or when Prosecutor is unable to continue in the required duties, Prosecutor will immediately deliver to the City or its authorized representative, all of the City Property. The parties agree to comply with all confidentiality provisions required of any applicable LEDS agreement. Prosecutor shall retain no copies of any City Property. The parties agree that Prosecutor's laptop computer, hardware, and software programs are Prosecutor's property and are not City Property.

18. **Right to Inspect/Reports:** City shall be afforded the right to inspect Prosecutor's work and have access to all case files, books, records, correspondence, instructions, receipts, vouchers and documents of every description pertaining in and manner to Services. Prosecutor shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the prosecution of any case, such statements, certificates, approvals and copies of proposed and executed plans and claims and other information relative to the prosecution of a case as may be requested by City. Prosecutor shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as part of the prosecution of a case. Such documents or reports shall become City Property.

19. **City's Responsibility:** City shall furnish Prosecutor with all available information, date and materials pertinent to the execution of this Agreement. City shall cooperate with Prosecutor in carrying out the work herein and shall provide adequate staff for liaison with Prosecutor. City's duties shall include, but not limited to, providing Prosecutor with one copy of all discoverable materials and a single copy of the proposed defendant's criminal history in whatever forms available. City also agrees to be responsible for serving any subpoenas necessary for the prosecution of filed cases.

20. **Indemnification:**

a. Tort Indemnity: In the event of any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission of Prosecutor occurring in the performance of duty, the provision of the Oregon Revised Statues 30.285 and 30.287 shall govern.

b. Other Indemnity: Prosecutor will indemnify, defend and hold the City (and the City's agents and contractors) harmless from all claims, damages, losses, and expenses (including attorneys' fees) arising out of or resulting from any claim, action or other proceeding (including any proceeding by any of Prosecutor's employees, agents or other contractors) that is based upon (a) Prosecutor's breach of this Agreement, (b) a claim that Prosecutor is not an independent contractor, or (c) any negligent act or omission of Prosecutor that is not covered by the provisions of the Oregon Revised Statute 30.285.

c. General Liability Insurance: Prosecutor hereby certifies and warrants that she maintains general office liability insurance. Said insurance shall be maintained throughout the duration of this Agreement. Within ten (10) days after the execution of the Agreement, Prosecutor shall furnish City a certificate evidencing the dates, amounts and types of insurance that has been procured pursuant to this Agreement. Prosecutor will provide for not less than 30 days' written notice to City before the insurance policies may be revised, cancelled or allowed to expire. Prosecutor shall not alter the terms of any policy without prior written authorization from City. The provisions of this subsection apply fully to Prosecutor, her consultants and agents.

d. <u>Professional Liability Insurance:</u> Prosecutor hereby certifies and warrants that she maintains full professional liability coverage as directed by the Oregon State Bar and that said coverage is in effect at all times during the term of this Agreement.

21. **<u>Waiver:</u>** Failure to insist upon strict compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition, nor shall any waiver or relinquishment of any right or power under this Agreement at any one or more times be deemed a waiver or relinquishment of such right or power at any other time.

22. **<u>Amendment:</u>** No waiver, amendment or modification of this Agreement or any portion thereof, including any future representations that are inconsistent with the terms set forth herein, shall be valid unless made in writing and duly executed by each party hereto.

23. **<u>Applicable Law/Venue/Jurisdiction:</u>** This Agreement shall be governed by, and construed and enforced in accordance with, the substantive and procedural laws of the State of Oregon without regard to rules governing conflicts of law applicable to contracts made and to be carried out in Oregon.

24. **<u>Attorney Fees:</u>** In the event legal action is brought by City or Prosecutor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs and expenses as may be set by the court. "Legal action" shall include matters subject to arbitration and appeals.

25. **<u>Compliance with ORS 670.600:</u>** Prosecutor acknowledges that for all purposes related to this Agreement, Prosecutor is and shall be deemed to be an independent contractor as defined by ORS 670.600 and not an agent or employee of City. Prosecutor warrants that she understands and agrees that:

(1) The City will not control the means or manner of how Prosecutor will provide the labor or services, other than specifying the desired results;

(2) Prosecutor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for Prosecutor to conduct the business;

(3) If licensure is required under ORS chapter 671 or 701, Prosecutor will ensure that she is licensed;

(4) Prosecutor is customarily engaged in an independently established business (that is, Prosecutor meets 3 out of the 5 requirements below):

(a) Maintains a business location that is separate from the business or work location of the City, or that is in a portion of the Prosecutor's residence that is used primarily for business.

(b) Bears the risk of loss related to the business or the provision of services as shown by factors such as:

(A) The person enters into fixed-price contracts;

(B) The person is required to correct defective work;

(C) The person warrants the services provided; or

(D) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.

(c) Provides contracted services for two or more different persons within a 12month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

(d) Makes a significant investment in Prosecutor's business through means such as purchasing tools or equipment necessary to provide the services; paying for the premises or facilities where the services are provided; or paying for licenses, certificates or specialized training required to provide the services.

(e) Has the authority to hire and fire other persons to provide or to assist in providing the services and has the authority to fire those persons.

26. **Severability:** If any clause or provision in this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, that clause or provision shall be void and the remainder of this Agreement shall remain in full force and effect.

27. **Entire Agreement:** This Agreement contains the entire agreement of the parties. This Agreement shall terminate and supersede any prior written or oral agreements or understandings between the parties regarding the subject matter of this Agreement.

28. **Acknowledgment:** Prosecutor acknowledges that she has read this Agreement, has had an opportunity to consult with an attorney regarding its terms, fully understands the meaning and significance of such terms, and accepts and signs this Agreement as her own free act and in full and complete understanding of its present and future legal effect.

By signing below, each of the parties enters into this Agreement as of the date below.

CITY OF OREGON CITY

By: ______________________________
Printed Name: Anthony J Konkol III
City Manager

Date: ______________________________

Address: 625 Center Street
Oregon City, OR 97045

By: ______________________________
Matt Zook, Finance Director

Approved as to Legal Sufficiency:

By: ______________________________
City Attorney

PROSECUTOR (Christine Landers Law, LLC.)

By: ______________________________
Printed Name: Christine Landers
Federal Taxpayer ID [redacted]

Date: 6/13/2023

Address: [redacted]

ATTACHMENT A
SCOPE OF SERVICES

GENERAL STATEMENT OF DUTIES: Provides professional legal services and advice to Municipal Court staff and Community Code Enforcement staff.

DUTIES: Prosecutor's duties may include any or all of the following (these examples are not exhaustive and do not necessarily include all of the services Prosecutor may be expected to provide):

1. Drafts and reviews complaints, orders, agreements, and other legal documents. Provides oral and written opinions on these matters as required.
2. Conducts legal research, prepares memoranda and provides advice to Municipal Court staff and Community Code Enforcement staff on a wide range of topics, issues and concerns.
3. Represents City of Oregon City in Municipal and State Courts upon appeal and wide variety of administrative proceedings.
4. Provides all discovery materials to defense attorneys and/or defendants.
5. Assists in the development of legislative and administrative policies.

CITY OF OREGON CITY

Staff Report

625 Center Street
Oregon City, OR 97045
503-657-0891

To: City Commission **Agenda Date:** 6/21/23

From: Assistant Parks and Recreation Director- Denise Toyooka

SUBJECT:

WES Good Neighbor Agreement Project Management Services/Owner Representative Contract Addendum

STAFF RECOMMENDATION:

Staff recommends approval of contract addendum with Cumming Group in the amount not to exceed $35,000

EXECUTIVE SUMMARY:

Staff is recommending a contract addendum with Cumming Group in the amount not to exceed, $35,000 to continue the 23/24 FY improvement project at the River Access Trail location with similar scope and partnership with WES. This project would include removal of invasive plants, removal of hazard limbs and dead trees, planting of the parking lot area hillside with natives and pollinators, install irrigation, repair the asphalt section of the trail, and continue to incorporate public education and administer the WES Good Neighbor Agreement aspects.

Scope of work, fees, and a not to exceed cost was established at $75,880 for FY 21/22-22/23. This scope would be a Not to Exceed cost of $35,000 for FY 23/24. Total contract would be consolidated to a total of $110,880

BACKGROUND:

City Commission approved the contract for Plan B Cost Consultancy LLC, now, Cumming Group, December 1, 2022. This decision was based on staff recommendation from the evaluations of submissions for the RFQ for WGNA-Project Management Services/Owner Representation, Plan B Cost Consultancy LLC (Cumming Group) was ranked highest for their project approach and understanding. The original contract was $75,880.

Staff discussed fees and scope of work along with a site visit to River Access Park.

Plan B/Cumming Group has had project management/owner representation contracts with the Robert Libke Public Safety Building with our Police Department and with the

Engineering and Operations Center with Public Works and WES Good Neighbor Projects with the City. Cumming Group's experience in the City provides them an understanding of Oregon City process as well as having worked with WES in the past.

Cumming Group provided a successful partnership with the City of Oregon City and WES to complete the recent phases of the River Access Trail improvement in a manner that was positive to the community providing safer and more ADA access to and along the trail, a more user friendly and delineated parking area, improved signage, removed invasive plant material, removed hazardous limbs and dead trees, incorporated public education and administered the projects in accordance to the WES Good Neighbor Agreement.

We would like to continue to work as a team with Cumming Group to accomplish the FY 23/24 WES Good Neighbor projects and provide compliance to the agreement objectives.

OPTIONS:

1. Approve contract addendum with Cumming Group for a Not to Exceed amount of $35,000
2. Approve contract addendum with Cumming Group for a not to Exceed amount of $35,000 with modifications.
3. Deny contract addendum approval

BUDGET IMPACT:

Amount: $35,000

FY(s): 23/24

Funding Source(s): General Fund-WES Good Neighbor Agreement Funding

CUMMING
Building Value Through Expertise
6000 Meadows Road
Suite 410
Lake Oswego, OR 97035
Phone: 503-241-8099
cumming-group.com

March 15, 2023

Denise Conrad
Assistant Parks and Recreation Director
City of Oregon City
625 Center Street
Oregon City, Oregon 97045

RE: Addendum Proposal for Project Management Support
Project: WESGNA Project Continuation

Dear Denise,

Cumming Management Groups welcomes the opportunity to provide service for your projects. Our team would be pleased to continue to provide Project Management & Construction Representation services as directed by you. I look forward to our team supporting you in the construction of the WESGNA project.

Proposed Services

We will provide project management and construction representation, as requested.

- Provide peer review of the design documents to confirm they are completed for construction.
- Assist with contractor and vendor solicitation and contact execution.
- Review project scope and construction coordination to best meet budget and schedule requirements for work to be completed.
- Review budgets and estimates and assist with the construction contracts on behalf of the City.
- Attend OAC meetings on site on behalf of the City.
- Oversee quality of construction.
- Assist in permitting tasks and coordinate project inspections.
- Review contractor invoices and change orders. Provide recommendations.
- Manage the closeout of the contract for the project as requested.
- Perform final site walks with contractors or inspectors to monitor quality control.
- Provide additional services requested by the City.

Cost of Services

I have provided our hourly rates for services. Cumming will invoice using the hourly rates on the actual cost of services directed by the City. I propose a start date of 4/03/2023 and a duration of 6 months. Per your request, I propose a cap of 8-10 maximum hours per week unless directed by yourselves to increase this. Only Lilian’s time will be invoiced, my time is shown for informational purposes.

We propose a NTE cost of $35,000 for budgeting and tracking purposes and based upon the above.

Hourly Rates

Staff	*Role*	*2023 Rate*
Gerard Mulrooney	Senior Director Project Management	$ 190
Lilian Duey	Project Manager	$ 145

CUMMING
Building Value Through Expertise
6000 Meadows Road
Suite 410
Lake Oswego, OR 97035
Phone: 503-241-8099
cumming-group.com

Hourly Rates: Cumming hourly rates may increase in 2024 by a maximum of 4% each year to provide a cost-of-living wage increase to staff. The actual hours will vary. Detailed timecards will be provided each month with the number of hours and description of services provided for that period.

Reimbursable Expenses

We do not expect to have any travel reimbursable costs on this project. Reimbursable expenses, such as permits, drawings, external printing and duplication, or other expenses for services taking place on-site, will be invoiced at cost with 5% mark up.

Terms and Conditions

Insurance: We provide General Liability Insurance, including Umbrella coverage, for $2,000,000 and Professional Liability Insurance and errors and omissions coverage of $2,000,000.

Invoicing and Payments: Cumming will invoice the project on a monthly basis. We will provide timesheets defining hours and tasks completed with our invoices. Payments are due within 30 days of receipt of invoice.

Hourly Rates: Cumming seeks and will be increasing hourly rates at the end of each calendar year to reflect market and COLA impacts. Cumming hourly rates may increase by a maximum of 4% each year to provide a cost-of-living wage increase to staff for each following year services are contracted.

Additional Services: Any services requested of Cumming that are outside of the defined scope will be invoiced separately at the current hourly rates. No additional work will be performed except by written agreement.

Sincerely,

Gerard Mulrooney
Senior Director Project Management
6000 Meadows Road, Suite #410
Lake Oswego, Oregon 97035
T 971-256-9112

CITY OF OREGON CITY
Amendment No. _1_to Personal Services Agreement

This is an Amendment to the Personal Services Agreement by and between the City of Oregon City (hereinafter City), and Cumming Group, hereinafter called "Consultant," which was previously entered into on December 1, 2021 ("Contract") for Project Management Services for WESGNA Projects**;** and

Whereas, the parties wish to amend the Contract as set forth below:

WITNESSETH:

Commented [EPB1]: Designate name of the paragraphs of the original contract that you wish to amend, and then set forth amendment terms. Examples of commonly amended paragraphs are set forth.

1. The **Scope of Work** is hereby amended as follows:
   See "Exhibit A"

2. The **Payment Provisions** are hereby amended as follows:
   Original Contract Amount: $75,880
   Amendment Amount: $35,000
   Total Contract + Amendment: $110,880

All other provisions of the Personal Services Agreement referenced above shall remain in full force and effect.

CUMMING GROUP	**CITY OF OREGON CITY**
By: __________________________	By: _________________________________
Name:________________________	Title: City Manager
Title: _________________________	Date: ________________________________
Date: _________________________	

625 Center Street
Oregon City, OR 97045
503-657-0891

CITY OF OREGON CITY

Staff Report

To: City Commission **Agenda Date:** 06/21/2023

From: Public Works Director John M. Lewis, PE

SUBJECT:

Public Improvement Contract with Lee Contractors, LLC for the Beemer Way Stormwater Outfall Improvements (CI 22-007)

STAFF RECOMMENDATION:

Award the bid and authorize the City Manager to execute the Public Improvement Contract with Lee Contractors, LLC in the amount of $214,595.00 for construction of the Beemer Way Stormwater Outfall Improvements (CI 22-0007).

EXECUTIVE SUMMARY:

This project is to repair the existing outfall and eroded slopes adjacent to the house at 14010 Beemer Way. The City has completed the permitting process and received all necessary permits and approvals to construct the outfall improvements within this year's in-water work period which is between July 15 and August 30, 2023. The outfall improvements include the replacement of the failing concrete outfall, regrading within the ravine to mitigate scouring, repair and armoring of the eroded slopes, and installing mitigation plantings within the ravine and neighboring property.

BACKGROUND:

The City has experienced erosion within the existing stormwater creek/ravine located on the southern half of the property at 14010 Beemer Way in Oregon City, tax lot APN 2-2E-28CB-01700. In 2022, portions of the ravine's slopes had eroded and began to encroach on the neighboring property. Upon notification that slopes within the ravine had eroded, the City hired 3J Consulting, Inc. to analyze and design the improvements to revise this drainageway and provide additional protection for the existing slope and ravine.

On May 17 and May 19, 2023, the project was advertised in the *Daily Journal of Commerce* and the City bid site in accordance with City and State contracting procedures. The bid opening was held on June 6, 2023, and two (2) bids were received. City and consulting staff reviewed the bids and determined that Lee Contractors, LLC was the low responsive bidder. The contract award value is two hundred fourteen thousand, five hundred and ninety-five dollars and no cents ($214,595.00).

The list below includes the bidders and bid amounts received for this project:

Lee Contractors, LLC	$214,595.00
Icon Construction	$255,365.00
Engineer's Estimate	$170,360.00

The apparent low bidder was 26% higher than the engineer's estimate. The lack of bids and higher costs can be attributed to current inflation, the tight/constricted work area, and the narrow time window to complete the work.

Construction will occur in the Summer of 2023 and work is anticipated to be completed by Fall 2023.

OPTIONS:

1. Authorize the City Manager to execute the Contract.
2. Authorize the City Manager to execute the Contract with specific modifications.
3. Deny the Contract. If the Commission chooses to deny the Contract, staff requests direction on how to proceed.

BUDGET IMPACT:

Amount: $214,595.00

FY(s): FY24/25

Funding Source(s): Stormwater Fund

Point of Contact: Erik Nichols

Term of Contract: September 29, 2023

SECTION III A
CONTRACT AGREEMENT

This Agreement, made and entered into this____day of__________, 20___, between the CITY OF OREGON CITY ("CITY"), acting by and through the City Commission and **LEE CONTRACTORS, LLC** ("CONTRACTOR").

Witnesseth, that the CONTRACTOR and the CITY, for the considerations stated herein, agree as follows:

ARTICLE I - Scope of Work

The CONTRACTOR hereby agrees to furnish all of the materials, equipment and labor necessary, and to perform all of the work for the project entitled: **BEEMER WAY STORMWATER OUTFALL IMPROVEMENTS CI 22-007** in accordance with the contract documents which are hereby made a part of this agreement.

The contract documents consist of:

Invitation to Bid Scope of Work Instructions to Bidders Bid Proposal and Bid Schedule Compliance with ORS 279C.840 Resident Bidder Status Certification of Drug Testing Program Non-Collusion Statement Asbestos Certification Registrations Certification of Non-Discrimination Certification of Compliance with Tax Law Bidder Responsibility Form Bid Bond First Tier Subcontractor Disclosure Form Customer Service Acknowledgment Form Contract Agreement Oregon City Public Improvement Standard Conditions	Statutory Conditions to Contract Agreement Performance Bond Payment Bond State of Oregon Statutory Public Works Bond General Conditions Prevailing Wage Rates for Public Works Contracts in Oregon, dated January 5, 2023 Amendments to the Prevailing Wage Rates for Public Works Contracts in Oregon dated April 5, 2023 Prevailing Wage Apprenticeship Rates dated April 5, 2023 Definitions of Covered Occupations for Public Works Contracts in Oregon dated July 1, 2018 Special Provisions Contract Drawings City of Oregon City Standard Details Technical Specifications 2021 Oregon Standard Specifications for Construction (ODOT and APWA) as referenced by these documents) All items included within these Contract Documents.

The order of items cited above does not constitute an order of precedence different than that established in the special or standard specifications. Equivalent titles, which may be substituted for the above listed items, are included as if specifically named.

ARTICLE II - Time of Completion

The project shall be substantially complete by **September 15, 2023** and ready for final acceptance by **September 29, 2023** as identified in 00180.50(b) of the Special Provisions.

ARTICLE III – Contract Amount

The Contract Amount for the work covered by this Agreement is estimated to be **two hundred fourteen thousand, five hundred ninety-five dollars and zero cents ($214,595.00)**.

ARTICLE IV - Warranty and Quality of Work

In addition to all other warranties, express or implied, that are part of this Agreement, the Contractor expressly warrants to the City for a period of one year from acceptance of the work by the City that all materials and equipment furnished under this contract will be new, unless otherwise specified, and that the work will be of good quality, free from faults and defects and in conformance with the City's specifications. Work that does not conform to these standards shall be considered defective.

Contractor shall, at its own expense, make good and repair any and all defects arising from faulty workmanship or materials, if the defective work is discovered within the one-year warranty period and notice thereof is given to the Contractor within 60 days after the expiration of the warranty period. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used to repair the defect.

In witness whereof, the parties hereto have executed this agreement, the day and year first above written.

CITY OF OREGON CITY

By: ________________________________
Anthony J. Konkol III
City Manager

By: ________________________________
John M. Lewis, P.E.
Public Works Director

Approved as to Legal Sufficiency

By: ________________________________
City Attorney

City Commission Award Date:

____

LEE CONTRACTORS, LLC.

____
Printed Name

By: ________________________________
Authorized Signature

____
Title

____
Date

Address:
____
____
____
____

Federal Taxpayer ID Number

Client City of Oregon City
Project Beemer Way Stormwater Outfall Improvements
Bid Tabulation
Date: **6/6/23 2:00 PM**

Apparent Low | Other Bidders

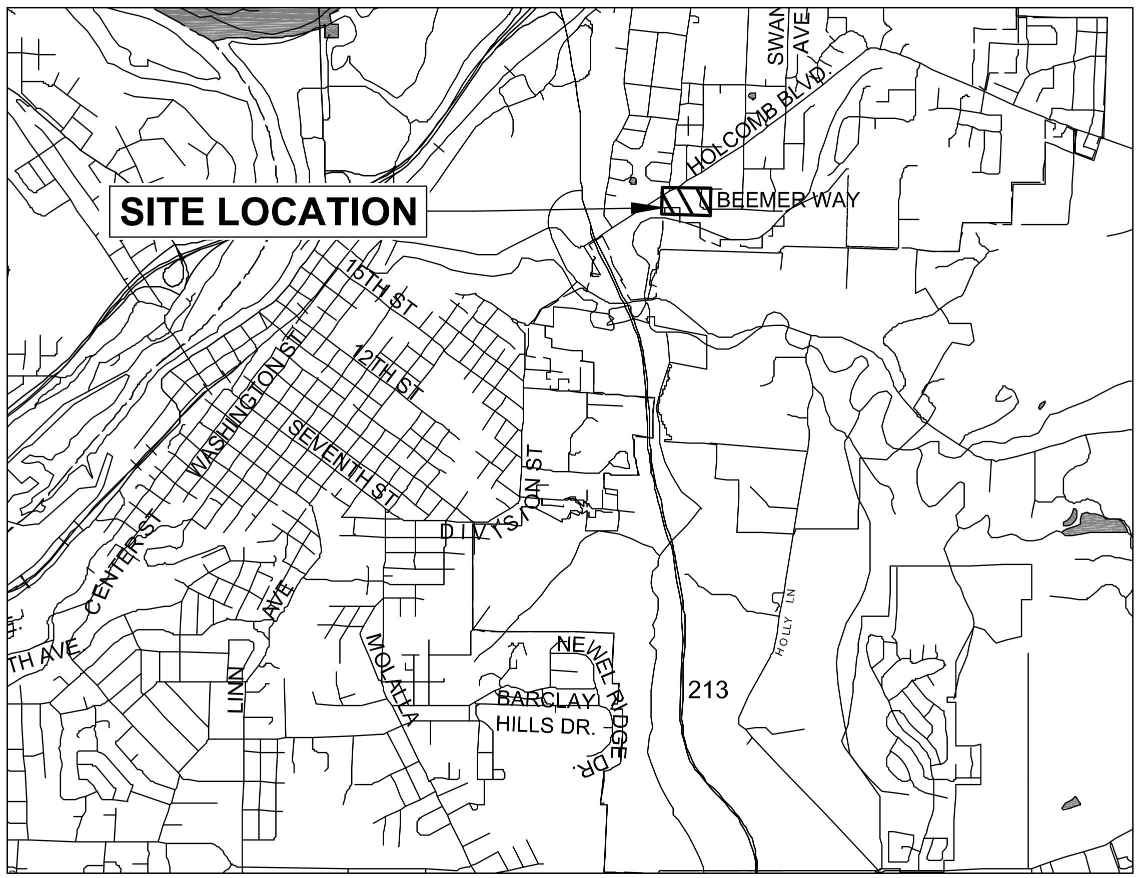
Item	Description	Units	Quantity	Engineers Estimate Unit Price	Engineers Estimate Extended	Lee Contractors, LLC Unit Price	Lee Contractors, LLC Extended	Icon Construction and Development Unit Price	Icon Construction and Development Extended
1	Extra Work	Force Account	1	$20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00
2	Mobilization	LS	1	$10,000.00	$ 10,000.00	$ 20,000.00	$ 20,000.00	$ 55,000.00	$ 55,000.00
3	Temporary Water Management	LS	1	$7,500.00	$ 7,500.00	$ 5,000.00	$ 5,000.00	$ 20,000.00	$ 20,000.00
4	Temporary Tree Protection Fence	LF	46	$15.00	$ 690.00	$ 20.00	$ 920.00		$ 2,530.00
5	Erosion Control	LS	1	$7,500.00	$ 7,500.00	$ 5,000.00	$ 5,000.00	$ 25,000.00	$ 25,000.00
6	Construction Survey Work	LS	1	$5,000.00	$ 5,000.00	$ 1,000.00	$ 1,000.00	$ 10,000.00	$ 10,000.00
7	Removal of Existing Debris and Existing Headwall	LS	1	$7,500.00	$ 7,500.00	$ 15,000.00	$ 15,000.00	$ 10,000.00	$ 10,000.00
8	Tree Removal	EA	4	$350.00	$ 1,400.00	$ 1,000.00	$ 4,000.00	$ 2,500.00	$ 10,000.00
9	Existing Stockpile Removal	CY	6	$100.00	$ 600.00	$ 500.00	$ 3,000.00	$ 250.00	$ 1,500.00
10	General Earthwork	CY	320	$125.00	$ 40,000.00	$ 80.00	$ 25,600.00	$ 125.00	$ 40,000.00
11	Subgrade Geotextile	SY	125	$25.00	$ 3,125.00	$ 10.00	$ 1,250.00	$ 4.00	$ 500.00
12	Class 50 Riprap (Keyed)	CY	15	$200.00	$ 3,000.00	$ 500.00	$ 7,500.00	$ 500.00	$ 7,500.00
13	Class 200 Riprap (Loose)	CY	60	$250.00	$ 15,000.00	$ 200.00	$ 12,000.00	$ 110.00	$ 6,600.00
14	3' Tall Rock Gabion Basket with 4" to 8" Filling Stone	SF	93	$75.00	$ 6,975.00	$ 300.00	$ 27,900.00	$ 45.00	$ 4,185.00
15	6" D3034 PVC (SDR35) Pipe	LF	26	$65.00	$ 1,690.00	$ 200.00	$ 5,200.00	$ 150.00	$ 3,900.00
16	French Drain	LF	30	$80.00	$ 2,400.00	$ 200.00	$ 6,000.00	$ 65.00	$ 1,950.00
17	30" ASTM C76 RCP (CLASS III) Pipe	LF	8	$175.00	$ 1,400.00	$ 700.00	$ 5,600.00	$ 500.00	$ 4,000.00
18	Connection to Ex. Conc. Pipe	LS	1	$1,250.00	$ 1,250.00	$ 2,000.00	$ 2,000.00	$ 3,500.00	$ 3,500.00
19	Connection to Ex. Roof Drain	LS	1	$500.00	$ 500.00	$ 2,000.00	$ 2,000.00	$ 25.00	$ 25.00
20	Construct Concrete Headwall	LS	1	$20,000.00	$ 20,000.00	$ 25,000.00	$ 25,000.00	$ 10,000.00	$ 10,000.00
21	Lawn Seeding	SY	300	$2.50	$ 750.00	$ 10.00	$ 3,000.00	$ 5.00	$ 1,500.00
22	Mitigation Tree Planting	EA	8	$350.00	$ 2,800.00	$ 500.00	$ 4,000.00	$ 650.00	$ 5,200.00
23	Mitigation Shrub Planting	EA	18	$60.00	$ 1,080.00	$ 250.00	$ 4,500.00	$ 250.00	$ 4,500.00
24	Mitigation Herbs/Groundcover Seeding	LB	3	$400.00	$ 1,200.00	$ 500.00	$ 1,500.00	$ 500.00	$ 1,500.00
25	5' Tall Black Vinyl Coated Chain Link Fence	LF	75	$100.00	$ 7,500.00	$ 75.00	$ 5,625.00	$ 75.00	$ 5,625.00
26	4' Wide Black Vinyl Coated Chain Link Gate	EA	1	$1,500.00	$ 1,500.00	$ 2,000.00	$ 2,000.00	$ 850.00	$ 850.00
					$ 170,360.00	26.0%	$ 214,595.00	49.9%	$ 255,365.00

CONSTRUCTION DOCUMENTS

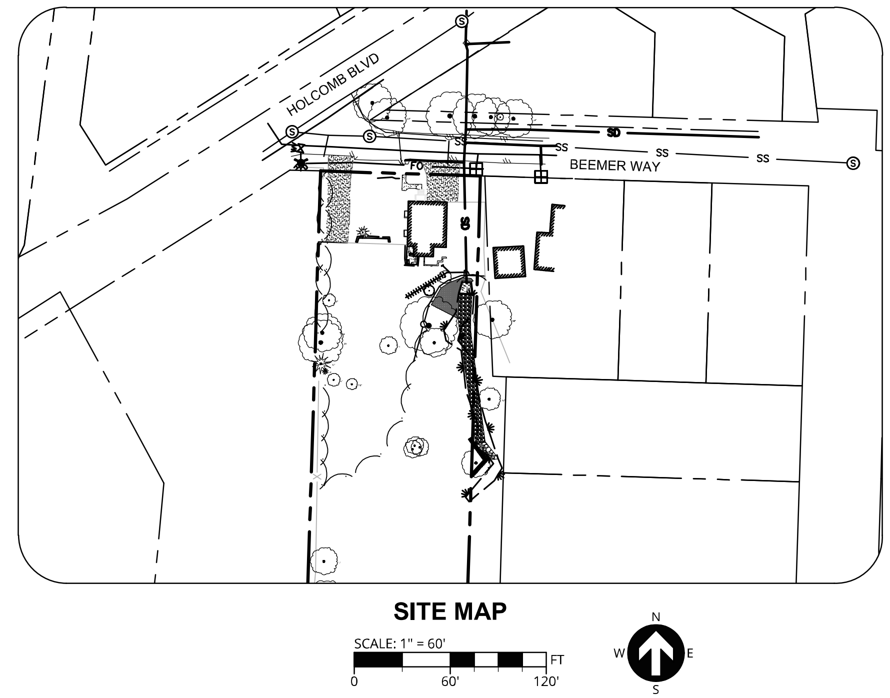
FOR

14010 BEEMER WAY OUTFALL IMPROVEMENTS

PREPARED FOR
CITY OF OREGON CITY



VICINITY MAP
NOT TO SCALE



SITE MAP

Sheet List Table

Sheet Number	Sheet Title
C001	COVER SHEET
C002	GENERAL NOTES
C100	EXISTING CONDITIONS PLAN
C200	OVERALL SITE, UTILITY AND GRADING PLAN
C201	DETAILED GRADING PLAN
C202	CHANNEL PROFILE
C300	TEMPORARY WATER MANAGEMENT AND EROSION CONTROL PLAN
C310	NROD MITIGATION PLANTING PLAN
C400	SITE DETAILS
C401	SITE DETAILS II

SITE INFORMATION

SITE ADDRESS
14010 BEEMER WAY, OREGON CITY, OR 97045

FLOOD HAZARD
MAP NUMBER: 41005C0277D
ZONE X (UNSHADED)

JURISDICTION
CITY OF OREGON CITY

TAX LOT
22E28CB LOT 1700

COORDINATES
45°21'58.6"N 122°34'43.5"W

LOCATION
N.W. 1/4 S.W. 1/4 OF SECTION 22, T.2S., R.2E., W.M., CITY OF OREGON CITY, CLACKAMAS COUNTY, OR

PROJECT TEAM

OWNER
CITY OF OREGON CITY
13895 FIR STREET
OREGON CITY, OR 97054
CONTACT: ERIK NICHOLS
PHONE: (971) 204-4631
EMAIL: enichols@orcity.org

CIVIL ENGINEER
3J CONSULTING, INC.
9600 SW NIMBUS AVE, SUITE 100
BEAVERTON, OR 97008
CONTACT: CHASE WELBORN, P.E.
PHONE: (503) 946-9365 EXT. 215
EMAIL: chase.welborn@3j-consulting.com

CONTACT: JIM SCHMITT, P.E.
PHONE: (503) 946-9365 EXT. 238
EMAIL: jim.schmitt@3j-consulting.com

LAND SURVEYOR
S&F LAND SERVICES
4858 SW SCHOLLS FERRY RD, SUITE A
PORTLAND, OR 97225
PHONE: (360) 326-2334
EMAIL: info@sflands.com

UTILITIES & SERVICES

STORM WATER
OREGON CITY PUBLIC WORKS - STORMWATER DIVISION
13895 FIR STREET
OREGON CITY, OR 97045
PHONE: (971) 204-4600

SANITARY SEWER
OREGON CITY PUBLIC WORKS - WASTEWATER DIVISION
13895 FIR STREET
OREGON CITY, OR 97045
PHONE: (971) 204-4600

WATER
OREGON CITY PUBLIC WORKS - WATER DIVISION
13895 FIR STREET
OREGON CITY, OR 97045
PHONE: (971) 204-4600

POWER
PORTLAND GENERAL ELECTRIC
3905 SE 91ST AVENUE
PORTLAND, OR 97266
PHONE: 800-544-1795

GAS
NORTHWEST NATURAL
220 NW 2ND AVENUE
PORTLAND, OR 97209
PHONE: 800-882-3377

FIRE
CLACKAMAS FIRE
STATION NUMBER 15
624 7TH STREET
OREGON CITY, OR 97045

POLICE
OREGON CITY POLICE DEPARTMENT
1234 LINN AVENUE
OREGON CITY, OR 97045
PHONE: (503) 823-4800

ROADS
OREGON CITY PUBLIC WORKS - TRANSPORTATION ENGINEERING
13895 FIR STREET
OREGON CITY, OR 97045
PHONE: (971) 204-4600

REGISTERED PROFESSIONAL ENGINEER
OREGON
JULY 11, 2017
JAMES J. SCHMITT
EXPIRES: 06/30/24

3J CONSULTING
9600 SW NIMBUS AVE., SUITE 100
BEAVERTON OR, 97006
DESIGNED BY: JJS
REVIEWED BY: CKW

OC PROJECT #: CI 22-007
BEEMER WAY STORMWATER OUTFALL IMPROVEMENTS
COVER SHEET

REVISIONS

REV NO.	DATE	DESCRIPTION

CITY OF OREGON CITY
PUBLIC WORKS DEPARTMENT
APPROVAL FOR CONSTRUCTION

☐ APPROVED AS SUBMITTED
☐ APPROVED AS NOTED IN RED

SIGNATURE
NAME:__________
DATE:__________

DATE: 05/15/2023

OC RECORD DRAWING#:

DRAWING NUMBER:
C001
SHEET 1 OF 10

CITY OF OREGON CITY

Staff Report

625 Center Street
Oregon City, OR 97045
503-657-0891

To: City Commission **Agenda Date:** 06/21/2023

From: Chief of Police Jim Band

SUBJECT:

Police Information Technology Services Agreement

STAFF RECOMMENDATION:

Approve Personal Services Agreement for Police Information Technology Services

EXECUTIVE SUMMARY:

The police department would like to enter into a Personal Services Agreement for Information Technology Services with Tyler Mowreader Consulting LLC on an hourly basis, starting July 1, 2023

BACKGROUND:

OCPD is in a unique situation where Information Technology services are specific to public safety industry needs, requiring a defined set of skills to support a variety of hardware and software systems. The department intends to hire a qualified consultant based on these specific needs.

The City Commission adopted the 2023-2025 biennial budget during the June 7, 2023, meeting. As part of this budget, $100,000 was set forth for each year of the biennium for this specific service. The Personal Services Agreement will begin on July 1, 2023, and end on June 30, 2025.

The scope of work includes but is not limited to; on-going technical support to systems and applications, performing systems administration tasks, and providing training, technical guidance and best practice recommendations on existing applications, equipment, and materials on a 24/7 basis.

After discussions with three qualified consultants, we received one estimate for the attached scope of work. Two consultants were unable to perform the work during the hours needed.

Attached to this staff report are the Scope of Work, Consultant Estimate for work, and the Personal Services Agreement.

Staff is looking for approval of the Personal Services Agreement with Tyler Mowreader Consulting LLC.

BUDGET IMPACT:

Amount:	NTE $200,000
FY(s):	2023-2025
Funding Source(s):	General Fund – Existing Police Department Budget

OREGON CITY

Police Department

1234 Linn Avenue | Oregon City OR 97045
Ph (503) 905-3501 | Fax (503) 655-0530 | Non-Emergency Police Dispatch: (503) 655-8211

Police Information Technology Services

Scope of Work

1. Acts as a lead resource and primary support for Public Safety hardware and software support and recommends best practices for such systems.

2. Provides ongoing routine technical support and enhancements to existing systems and applications; as directed, performs maintenance, testing and daily operations; monitors, troubleshoots and maximizes performance and integrity; performs routine diagnosis of problems, and implements approved solutions.

3. Performs systems administration tasks to include implementing, configuring, and maintaining physical, virtual, and cloud programs.

4. Provides system training and technical support for users, in accordance with applicable information systems policies, procedures, methods and techniques; distributes information regarding system changes or enhancements; assists in preparing training materials.

5. Serves as project lead over all aspects of assigned information systems projects; evaluates and assesses client needs; identifies and allocates resources including equipment and materials.

6. Works with other IT staff, vendors, and regional partners on technical solutions and development.

7. Provides training and technical guidance to users and staff; works with other technical disciplines to facilitate issue resolution, technology development and integration.

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

1. Contractor Identification. Contractor shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Contractor's social security number, as City deems applicable.

2. Payment.

(a) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers.

(b) City agrees to pay Contractor within thirty (30) days after receipt of Contractor's itemized statement. Amounts disputed by City may be withheld pending settlement.

(c) City certifies that sufficient funds are available and authorized for expenditure to finance the cost of the services to be provided pursuant to this Agreement.

(d) City shall not pay any amount in excess of the compensation amounts set forth above, nor shall City pay Contractor any fees or costs that City reasonably disputes.

3. Independent Contractor Status.

(a) Contractor is an independent contractor and is free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results.

(b) Contractor represents that it is customarily engaged in an independently established business and is licensed under ORS chapter 671 or 701, if the services provided require such a license. Contractor maintains a business location that is separate from the offices of the City and bears the risk of loss related to the business as demonstrated by the fixed price nature of the contract, requirement to fix defective work, warranties provided and indemnification and insurance provisions of this Agreement. Contractor provides services for two or more persons within a 12 month period or routinely engages in advertising, solicitation or other marketing efforts. Contractor makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and Contractor has the authority to hire or fire persons to provide or assist in providing the services required under this Agreement.

(c) Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law (including applicable City or Metro business licenses as per Oregon City Municipal Code Chapter 5.04). Contractor shall furnish the tools or equipment necessary for the contracted labor or services. Contractor agrees and certifies that:

(d) Contractor is not eligible for any federal social security or unemployment insurance payments. Contractor is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Contractor under this Agreement.

(e) Contractor agrees and certifies that it is licensed to do business in the state of Oregon and that, if Contractor is a corporation, it is in good standing within the state of Oregon.

4. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term by mutual written consent of the parties or by the City upon ten (10) days written notice to the Contractor, delivered by certified mail or in person.

(b) Upon receipt of notice of early termination, Contractor shall immediately cease work and submit a final statement of services for all services performed and expenses incurred since the date of the last statement of services.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of City provided in this Agreement and relating to defaults by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

5. No Third-Party Beneficiaries. City and

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or 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 Agreement.

6. Payment of Laborers; Payment of Taxes.

(a) Contractor shall:

(i) Make payment promptly, as due, to all persons supplying to Contractor labor and materials for the prosecution of the services to be provided pursuant to this Agreement.

(ii) Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.

(iii) Not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished.

(iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Contractor under this Agreement and, unless Contractor is subject to back-up withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligation.

(v) Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 653.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime.

(b) If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Agreement as such claim becomes due, City may pay such claim to the person furnishing the labor or services and shall charge the amount of the payment against funds due or to become due Contractor by reason of this Agreement.

(c) The payment of a claim in this manner shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.

(d) Contractor and subcontractors, if any, are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

7. SubContractors and Assignment. Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor.

8. Access to Records. City shall have access to all books, documents, papers and records of Contractor that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

9. Ownership of Work Product; License. All work products of Contractor that result from this Agreement (the "Work Products") are the exclusive property of City. In addition, if any of the Work Products contain intellectual property of Contractor that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Contractor hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Contractor under this Agreement. The parties expressly agree that all works produced (including, but not limited to, any taped or recorded items) pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Contractor shall not publish, republish, display or otherwise use any work or Work Products resulting from this Agreement without the prior written agreement of City.

10. Compliance With Applicable Law. Contractor shall comply with all federal, state, and local laws and ordinances applicable to the services

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230 and 279B.270. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

11. Professional Standards. Contractor shall be responsible, to the level of competency presently maintained by others practicing in the same type of services in City's community, for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this authorization.

12. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

13. Indemnity and Insurance.

(a) Indemnity. Contractor acknowledges responsibility for liability arising out of Contractor's negligent performance of this Agreement and shall hold City, its officers, agents, Contractors, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim caused or alleged to be caused by the negligent acts, omissions, activities or services by Contractor, or the agents, Contractors or employees of Contractor provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Contractor certifies that Contractor has qualified for workers' compensation as required by the state of Oregon. Contractor shall provide the Owner, within ten (10) days after execution of this Agreement, a certificate of insurance evidencing coverage of all subject workers under Oregon's workers' compensation statutes. The insurance certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. All agents or Contractors of Contractor shall maintain such insurance.

(c) Comprehensive, General, and Automobile Insurance. Contractor shall maintain comprehensive general and automobile liability insurance for protection of Contractor and City and for their directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, including loss of use, and occurring as a result of, or in any way related to, Contractor's operation, each in an amount not less than $1,000,000 combined, single-limit, per-occurrence/annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Contractor.

14. Legal Expenses. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

15. Severability. The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

16. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

17. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

18. Hierarchy. The conditions contained in this document are applicable to every Personal

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

Services Agreement entered into by the City of Oregon City in the absence of contrary provisions. To the extent there is a conflict, the terms of the Personal Services Agreement will control over the terms of the standard conditions. To the extent there is a conflict between the terms of the standard conditions and any other document, including the scope of services, the terms of the standard conditions shall control those other terms.

19. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the state of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

20. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. Nonwaiver. The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

22. Information and Reports. Contractor shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Contractor shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but shall remain with Contractor. Copies as requested shall be provided free of cost to City.

23. City's Responsibilities. City shall furnish Contractor with all available necessary information, data, and materials pertinent to the execution of this Agreement. City shall cooperate with Contractor in carrying out the work herein and shall provide adequate staff for liaison with Contractor.

24. Arbitration.

All disputes arising out of or under this Agreement shall be timely submitted to nonbinding mediation prior to commencement of any other legal proceedings. The subsequent measures apply if disputes cannot be settled in this manner.

(a) Any dispute arising out of or under this Agreement shall be determined by binding arbitration.

(b) The party desiring such arbitration shall give written notice to that effect to the other party and shall in such notice appoint a disinterested person of recognized competence in the field as arbitrator on its behalf. Within fifteen (15) days thereafter, the other party may, by written notice to the original party, appoint a second disinterested person of recognized competence as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third disinterested person of recognized competence, and the three arbitrators shall, as promptly as possible, determine such matter, provided, however, that:

(i) If the second arbitrator is not appointed as described above, then the first arbitrator shall proceed to determine such matter; and

(ii) If the two arbitrators appointed by the parties are unable to agree, within fifteen (15) days after the second arbitrator is appointed, on the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties and, if the parties fail to agree on the selection of the third arbitrator within fifteen (15) days after the arbitrators appointed by the parties give notice, then, within ten (10) days thereafter, either of the parties, on written notice to the other party, may request such appointment by the presiding judge of the Clackamas County Circuit Court.

(c) Each party shall each be entitled to present evidence and argument to the arbitrators. The determination of the majority of the arbitrators or the sole arbitrator, as the case may be, shall be conclusive on the parties, and judgment on the same may be entered in any court having jurisdiction over the parties. The arbitrators or the sole arbitrator, as the case may be, shall give written notice to the parties, stating the arbitration determination, and shall furnish to each party a signed copy of such determination. Arbitration proceedings shall be conducted pursuant to ORS 33.210 et seq. and the rules of the American Arbitration Association, except as provided otherwise.

(d) Each party shall pay the fees and expenses of the arbitrator appointed by such party and one-half of the fees and expenses of the third arbitrator, if any.

25. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

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Mowreader Computer
Consulting LLC

Tyler Mowreader
1405 SE 8th AVE
Canby, OR 97013
Cell: (971) 221-9856

Estimate

DATE
6/7/2023

Business Name/Contact

Kelly Dilbeck
Oregon City Police Department
1234 Linn Ave
Oregon City, OR 97015
503-905-3501
KDilbeck@orcity.org

Scope of Work	AMOUNT
Provide Oregon City Police Department with:	
24/7/365 onsite and/or remote technical support Recommend best practices and enhancements to existing systems User training on existing and newly implemented systems Work with City IT staff to implement city recommended best practices at OCPD Work with vendors and regional partners as needed Maintain and create technical systems, resource, and vendor contact documentation Serve as project lead on technical projects at OCPD	
Rates	
Standard (6am to 5pm Monday - Friday)	$75/hr
After Hours (5pm to 6am Monday to Friday & 12am to 12am Saturday, Sunday & Federally recognized holidays.)	$100/hr
Proposed Weekly On-Site Schedule	
Tuesday and Thursday 6am to 4:30pm (10 hrs\day)	
Thank you for your business!	

CITY OF OREGON CITY

Staff Report

625 Center Street
Oregon City, OR 97045
503-657-0891

To: City Commission **Agenda Date:** 06/21/2023

From: IT Director Michael Dobaj

SUBJECT:

IT Analysis and Support RFP award to Polar Systems

STAFF RECOMMENDATION:

Staff recommends approving an annual IT Analysis and Support Contract with Polar Systems for a period of 2 years.

EXECUTIVE SUMMARY:

The city currently uses Polar Systems for IT Managed Services. This includes infrastructure support and maintenance, Project planning, and after-hours critical support.

A previous RFP and a more recent vendor assessment was used to assess a vendor's ability to support current and future City IT needs along with their performance history in supporting IT services.

In that assessment Polar Systems was the top vendor given their history supporting City IT Services, ability to support future City IT Needs and overall cost.

This is an annual contract to allow IT to update Managed IT Services as the city grows and updates its infrastructure and cloud services as well as the city's internal support capabilities. The approval request is for the next 2-year biennium with an option to extend for another 2 years.

BACKGROUND:

In 2022 the City issued and RFP for IT Analysis and Support. 10 responses were received. Polar Systems was selected as a best fit for these services based on project approach, experience, and overall cost.

Since that time the city has hired a new IT Director who has brought in different viewpoints and capabilities. This has changed the future IT needs for the city which is why the previous RFP and more recent vendor assessment was completed.

Polar systems has been serving the City since 2013, supporting networking, server, and IT infrastructure. The current proposal includes these services, as well as an ability to drive and support the resiliency, reliability, modernization efforts and cloud migration of the City.

OPTIONS:

1. Approve annual agreement for a period of 2-Years.
2. Request more information from staff.
3. Reject the recommended agreement.

BUDGET IMPACT:

Amount:	$204,600 ($102,300 / Year)
FY(s):	2024, 2025
Funding Source(s):	100-170-6004 (General Fund)

Documents:
1. IT Analysis and Support RFP
2. Polar Response to IT Analysis and Support RFP
3. Personal Services Agreement
4. Polar Systems Master Services Agreement
5. Addendum A to Master Services Agreement
6. Polar Systems Managed Services Schedule
7. Exhibit B - Standard Conditions

Item 7g.

MASTER SERVICES AGREEMENT

This Master Services Agreement (this "**Agreement**") is entered into as of __**June 1, 2023**____ (the "**Effective Date**"), by and between Polar Systems, Inc., with its principal address at 21890 Willamette Drive, West Linn, OR 97068 ("**Polar Systems**") and the client below ("**Client**").

Client Name:	**City of Oregon City**
Billing Address:	**625 Center St.**
City:	**Oregon City** State: **OR** Zip: **97045**
Shipping Address:	**625 Center St.**
City:	**Oregon City** State: **OR** Zip: **97045**
Telephone Number: Fax Number:	**503-657-0891**
Company Website:	**www.orcity.org**
Primary Contact Name:	**Michael Dobaj**
Primary Contact Email:	**mdobaj@orcity.org**
Accounting Contact Name:	**Brandy Houseworth**
Accounting Contact Email:	**BHouseworth@orcity.org**
Company Origin Date:	**1844**
Type of Business: Corporation ☐ LLC: ☐ Sole Proprietorship ☐ Other: X	**Municipality**
Oregon Clients: Are you inside the city limits of Portland?	Yes ☐ No **X**
Oregon Clients: If no to above, are you outside the city limits of Portland, but within Multnomah County?	Yes ☐ No **X**
Clients outside of Oregon: What is your Tax Jurisdiction?	**Clackamas County, Oregon**

This Agreement consists of this cover page; the attached Master Services Agreement Terms and Conditions; and all Schedule(s) as agreed by the parties from time to time.

EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS READ AND AGREES TO BE BOUND BY THIS AGREEMENT (INCLUDING THE ATTACHED TERMS AND CONDITIONS) AND IS AUTHORIZED TO EXECUTE THIS AGREEMENT.

Polar Systems, Inc.

By: ______________________________

____
Print Name and Title

Date: ______________________________

Client: ______________________________

By: ______________________________

____
Print Name and Title

Date: ______________________________

POLAR SYSTEMS MASTER SERVICES AGREEMENT TERMS AND CONDITIONS

1. **Introduction**. Under the terms of this Agreement, Polar Systems will use reasonable efforts to provide Client with IT services as described in mutually agreed Schedules (the "**Services**").

2. **Services**

(a) Schedules. The Services are described in one or more written schedules, quotes, statements of work, or other documents or correspondence ("**Schedules**") agreed by the parties from time to time. Services may be added or modified through an agreed new Schedule, a Change Order, or other written or oral request for services outside the scope of currently ordered Services that is accepted by Polar Systems. Unless otherwise agreed in a Schedule, Polar Systems is entitled to rely on requests for additional Services made by any Client user, including requests for on-site Services and Services outside of Polar System's Regular Business Hours (as defined below). In all cases, additional or modified Services will be governed by the terms of this Agreement. Polar Systems may, but is not required to, provide any requested Services.

(b) Hours of Service. Unless otherwise agreed by Polar Systems, Services are provided during "**Regular Business Hours**", defined as weekdays between 8:00 a.m. and 5:00 p.m. Pacific Time, excluding holidays on which Polar Systems is closed. Rates for Services outside of Regular Business Hours are 1.5 times otherwise applicable rates.

(c) Estimated Dates. A Schedule may specify estimated dates for the Services. Any such estimated dates are made for project planning purposes only and are not a guarantee; Polar Systems may revise an estimated date if the assumptions upon which Polar Systems relied in determining its initial estimate change the scope of the Services, or if Client fails to provide required information, assistance, and/or decisions.

(d) Warranty Service. Polar Systems does not provide warranty service (including extended warranty and maintenance service) for any third party hardware or software unless expressly agreed in writing by both parties. Polar Systems strongly recommends that Client maintain its hardware and software under warranty or extended warranty/maintenance (for some Services, Polar Systems may require that Client maintain its systems under warranty or extended warranty/maintenance). Client may request that Polar Systems provide certain products and services that are also covered under the manufacturer's warranty in order to expedite repairs to Client systems. Client is responsible for any potential impact that this may have on Client's manufacturers' warranty. Client is also responsible for payment for all requested products and services provided by Polar Systems related to the repair, replacement, and maintenance of third party computer hardware and software that may have been otherwise covered under the manufacturer warranties.

(e) Compliance with Laws. Client agrees to comply with all applicable laws, rules and regulations when making use of the Services and of its IT systems.

3. **Fees and Payment**

(a) Fees. Client shall pay Polar Systems the fees and other amounts set forth in the Schedule(s). Polar Systems will deliver invoices on or shortly after the effective date of the applicable Schedule to Client for any one-time set up fee. Invoices for any recurring monthly Services fee will be delivered approximately fifteen (15) days in advance of the Services. Polar Systems may in its sole discretion require that a portion or all of the amounts due for hardware and software purchases be paid in advance of Polar Systems' ordering of such hardware or software, and/or on a COD basis. All fees and rates are subject to change by Polar Systems on an annual basis, upon thirty (30) days prior written notice to Client. Also, to the extent any fees are based on charges from third-party providers, such fees may increase upon notice from time to time proportionately based on increases imposed by such third-party providers.

(b) Rates; Block Time; On-Site Services. Unless otherwise agreed in a Schedule, Polar Systems' standard rates will apply to Services, with time billed in 1 hour increments. Client may acquire in advance a block of hours ("**Block Time**") to use to pay for Services. Trip charges are applicable on all on-site engagements unless otherwise specified. The minimum charge for any on-site engagement is based on a two (2) hour visit plus Polar Systems' then-current trip charges.

(c) Terms. Unless agreed in a Schedule, all invoices are due within ten (10) days after the invoice date. All payments under this Agreement shall be made in United States dollars and are non-refundable. Late payments are subject to interest at the rate of eighteen (18) percent annually, or the maximum amount allowed by applicable law if lower, calculated from the date when payment becomes overdue until payment is made. Client agrees to pay costs of collection, including reasonable attorney's fees, associated with the collection of overdue amounts hereunder by Polar Systems. Client's agreement to any Schedule constitutes a valid purchase order for the Services associated with that Schedule including any additional Services performed related to but outside the scope of that Schedule. Invoice terms are subject to Client credit approval.

(d) Taxes. Client agrees to pay all federal, state, local and other taxes based on this Agreement, the Services or its use, excluding taxes based on Polar Systems' net income. If Client claims tax-exempt status for any purpose in connection with this Agreement, Client represents and warrants that it is a tax-exempt entity and will provide Polar Systems upon request with a correct copy of Client's tax-exempt certification.

(e) Expenses. Client shall reimburse Polar Systems for all reasonable out-of-pocket expenses incurred by Polar Systems in connection with this Agreement that are approved by Client, including but not limited to travel and shipping expenses

4. **General Client Requirements**. Client will, at its own cost:

(a) Cooperate with and assist Polar Systems in the performance of the Services, and interact with Polar Systems in a professional and courteous manner, including by promptly providing Polar Systems with access to locations, resources, information and the assistance of informed personnel required to carry out the Services hereunder and rebooting servers or monitoring agents upon request of Polar Systems.

(b) Remain solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client data, information, and materials.

(c) If Services are performed at Client's place of business, furnish full and safe access to Client's office, network and systems for Polar Systems' personnel, including parking, internet access, and workspace. Client shall notify Polar Systems of any health or safety hazards that may exist at Client's location and provide and/or recommend safety procedures to be followed. Polar Systems reserves the right to refuse to provide Services if it believes that conditions are not safe. Outside work will only be performed weather permitting.

(d) Provide any passwords necessary for Polar Systems' personnel to perform requested tasks, including a unique administrative password for of providing ongoing maintenance and support of Client's network and systems upon Polar Systems' request. Client agrees that in approvi administrative password to Polar Systems, Client assumes full responsibility and any liability resulting from that decision, unless due to Polar Systems' willful misconduct or gross negligence.

(e) Maintain and pay for valid licenses, warranties and/or support contracts with respective third-party vendors for hardware, operating software and application software used in its network and systems.

5. **Term; Termination**.

(a) Term. This Agreement is a master agreement and remains in place unless and until terminated as set forth herein. Each Schedule will: (i) specify its own term, and (ii) other than Schedules for one-time professional services, automatically renew for subsequent annual renewal terms after the end of the initial term of the Schedule, unless a party gives the other party at least thirty (30) days written notice of termination prior to the end of the current Schedule term. If there are no active Schedules in place between the parties, then either party may terminate this Agreement by providing at least ten (10) days written notice of termination to the other party.

(b) Termination for Breach; Suspension. Either party may terminate this Agreement or any Schedule if the other party materially breaches this Agreement or such Schedule and such breach is not cured within thirty (30) days after written notice. Polar Systems may suspend some or all of the Services upon notice to Client if Client materially breaches this Agreement, including but not limited to by not paying any fees or costs due hereunder that are not disputed in good faith by Client by the due date.

(c) Termination for Insolvency. A party may terminate this Agreement if: (i) the other party has a receiver or administrative receiver appointed over its assets; (ii) the other party's governing body passes a resolution for winding up, or a court of competent jurisdiction enters an order to that effect; (iii) the other party makes a general assignment for the benefit of creditors; (iv) the other party ceases or threatens to cease to carry on business; (v) the other party is generally not paying its debts as they become due; or (vi) the other party is the subject of any petition under any bankruptcy or other law for the protection of debtors, except an involuntary petition that is dismissed within 60 days after filing.

(d) Liquidated Damages. If Client terminates this Agreement or a Schedule without cause, or if Polar Systems terminates this Agreement or a Schedule due to Client's material breach, then: (i) all fees that would have come due under the applicable Schedule(s) for the remainder of the then-current term of such Schedule(s) shall become immediately due and payable by Client to Polar Systems as liquidated damages, without any further demand by Polar Systems, and (ii) Client shall pay to Polar Systems all pre-paid, documented out of pocket expenses incurred by Polar Systems in reliance on the terminated Services. The parties acknowledge that Polar Systems' actual damages arising from such termination would be difficult to determine with accuracy and, accordingly, have agreed to the foregoing liquidated damages, which the parties acknowledge is a reasonable estimate of Polar Systems' potential losses.

(e) Survival. Sections 5(d), 6, 7, 8, 9(b), 10, 11, 12, 13 and 14 of this Agreement shall survive termination or expiration of this Agreement. Termination of this Agreement will not affect any accrued rights or liabilities of either party.

6. **Intellectual Property**

(a) Ownership. Client agrees that Polar Systems and its third party licensors and suppliers own all right, title and interest, including but not limited to copyright, patent, trade secret, and all other intellectual property rights, in the Services and the software used by Polar Systems in connection with the Services (the "Software"), including but not limited to the look and feel, algorithms, documentation format, database structures, methodologies, and know-how associated with the Services and the Software and any and all copies and updates thereto. Polar Systems reserves all rights to the Services and the Software not specifically granted herein.

(b) Restrictions. Client shall not: (1) use or allow use of the Software or Services to provide time-sharing, outsourcing, service bureau, or other IT services to third parties; or (2) distribute, sublicense, reverse engineer, decompile, disassemble, modify or change any portion of Software or Services, or attempt to do any of the foregoing.

7. **Confidentiality**

(a) Definition. "Confidential Information" means any business, financial, or technical information or data that is disclosed by one party to the other party pursuant to this Agreement that is marked as confidential or that, due to the nature of the information or circumstances surrounding its disclosure, would reasonably be recognized as confidential. Confidential Information does not include information that: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a receiving party from a third party without breach of any obligation of confidentiality; or (c) was previously known by the receiving party as shown by its written records. The terms of this Agreement and the Schedules (and information relating to the negotiation of this Agreement and the Schedules), as well as the methodologies and procedures of Polar Systems, shall be deemed the Confidential Information of Polar Systems (excluding information specific to Client).

(b) Confidentiality Obligations. The receiving party agrees: (a) not to, directly or indirectly, use, disclose, or copy the Confidential Information, except to its employees and contractors who have a need to know such information for the purpose of this Agreement; and (b) to protect the disclosing party's Confidential Information with the same degree of care that it uses to protect its own Confidential Information, no less than a reasonable standard of care. The receiving party may disclose Confidential Information of the disclosing party as required by law or court order; in such event, such party shall inform the other party as soon as practicable, prior to any such required disclosure.

(c) Remedies. Each party acknowledges and agrees that any violation of this Section may cause such party irreparable injury for which such party would have no adequate remedy at law, and that such party shall be entitled to preliminary and other injunctive relief against the other party for any such violation. Such injunctive relief shall be in addition to, and in no way in limitation of, all other remedies or rights that such party may have at law or in equity.

(d) Termination. Upon the request of the disclosing party, the receiving party will return to the disclosing party or destroy the Confidential Information delivered or disclosed to the receiving party, together with all copies in existence thereof at any time made by the receiving party; provided that the receiving party may retain Confidential Information in its standard information systems backup programs and as required by law, regulation, or policy, subject to the limitations on disclosure and use hereunder.

8. **Third-Party Software Tools and Services**. Polar Systems will use various third-party software tools and services (whether procured by Polar Systems or Client, "**Third-Party Tools"**) to assist in providing Services. Certain Third-Party Tools may also be provided to Client by Polar Systems for use by Client in connection with the Services. The parties agree as follows with respect to Third-Party Tools:

(a) Client agrees to and will abide by all Third-Party Tool license and agreement terms made available to Client by Polar Systems or the applica
Upon request, Polar Systems will use reasonable efforts to provide Client with links to, or copies of, applicable Third-Party Tool terms.

(b) Client agrees that Polar Systems is not responsible for any defects in, or issues or damages caused by, any Third-Party Tools (including data breaches caused by any Third-Party Tools).

(c) Client may use Third-Party Tools supplied by Polar Systems solely in connection with the Services. Client has no right or license to use Third-Party Tools supplied by Polar Systems outside the scope of the Services or after termination of the applicable Schedule, unless otherwise agreed by Polar Systems.

9. **Warranty**

(a) Limited Warranty. Each party warrants that it has full authority to enter into this Agreement and is not bound by any contractual or legal restrictions from fulfilling its obligations hereunder. Polar Systems warrants that the Services will be provided in a professional and workmanlike manner, using qualified personnel. In the event that Client provides notice of a breach of the foregoing warranty within thirty (30) days after the delivery of the Services, Polar Systems will, as Client's sole and exclusive remedy, use reasonable commercial efforts to correct the breach at no additional charge.

(b) Disclaimer. Client agrees that: (i) Polar Systems makes no promises or guarantees that it will be able to resolve all issues or "bugs" in in any software, systems and technology ("**Systems**"), and (ii) a failure by Polar Systems to resolve any issue or series of issues in any System is not a breach of this Agreement. Polar Systems is in no way liable for defects or "bugs" in any Third-Party Tools or Systems, or for correcting errors introduced into data or software due to failure of Third-Party Tools or Systems, or for any cost of reconstructing software or lost data. Except to the extent set forth in a Schedule, Client has the sole responsibility for securing and backing up its data. **POLAR SYSTEMS IS NOT RESPONSIBLE FOR CLIENT'S FAILURE TO MAINTAIN ADEQUATE BACKUPS, NOR FOR THE COST OF RECONSTRUCTING DATA. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, POLAR SYSTEMS AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY; FITNESS FOR A PARTICULAR PURPOSE; OR ARISING AS A RESULT OF CLIENT USAGE IN THE TRADE OR BY COURSE OF DEALING.**

10. **Indemnification.** Each party will defend, indemnify and hold harmless the other from and against any and all liability, damages, losses, claims, actions, judgments and costs, including reasonable attorney's fees, for damage to any tangible property and for injury to or death of persons, including employees or agents of such other party performing work under this Agreement, caused by the willful misconduct or negligent acts or omissions of the indemnifying party, its agents or employees.

11. **Limitation of Liability.**

(a) General. The parties agree that it is impossible to guarantee: (i) the trouble-free performance and security of computer hardware, software, networks, environments, and systems; (ii) the reliability of any technology or technology-related asset; and (iii) the applicability, outcome or performance of any training or the behavior of any human resources, all regardless of whether procured, provided, installed, managed, supported, administered, trained and/or supervised by Polar Systems, or in any way associated with the Services. Accordingly, Client and Polar Systems agree to the limitations of liability and damages in this Section.

(b) Limitations. Client agrees that the maximum aggregate liability of Polar Systems or any of its suppliers relating to this Agreement and the Services shall be limited to the amount of fees actually received by Polar Systems from Client under the applicable Schedule during the prior three (3) months. In no event shall either party or any of its suppliers be liable for any special, incidental, indirect, cover, consequential, exemplary or punitive damages; any damages based on injury to person or property or death; or any lost sales, profits or data, even if a party is told that any of such damages may occur. In no event is Polar Systems liable for any systems related to medical devices, other life-saving devices, real time controls for critical processes, or other systems the failure of which might cause injury or death, including any interface to any such systems. The fees charged by Polar Systems under this Agreement are calculated by specific reference to the levels of liability undertaken by Polar Systems.

(c) Security. Polar Systems may provide Services designed to assist in securing Client's technology environment. However, Client agrees that Client remains solely responsible for the security of its organization and its systems, developing its own security policy, and periodically testing its security to make sure it meets the requirements of its security policy. Due to the nature of malicious actors and governments, Polar Systems cannot and does not guarantee or certify the security of any current or future Client systems or networks. Any review or recommendations made by Polar Systems regarding the security of Client's systems and networks are made in good faith but are not guaranteed to be accurate, complete, or successful in securing Client's systems and networks. Any changes made to a Client network or system may have direct or indirect impacts that are negative to security. Polar Systems cannot anticipate every possible consequence of such changes. No Services provided by Polar Systems will include the remediation or restoration of systems affected by a data breach, ransomware or other security events. Polar Systems may in its discretion assist Client with such matters at its standard rates (unless a different fee arrangement is agreed to).

(d) Cyber Insurance. Client is specifically advised to obtain appropriate cybersecurity insurance to cover damage caused by data breach, ransomware, and other cybersecurity issues. Client should evaluate and independently determine its coverage needs for its cybersecurity and related insurance. Upon request, Client will provide Polar Systems with information regarding Client's cybersecurity insurance for Polar Systems' records. Polar Systems may in its sole discretion assist Client in Client's applications for cybersecurity insurance, but Client is solely responsible for attesting to the content of its insurance applications. Polar Systems may in its discretion carry its own insurance coverage for cybersecurity or data breaches. Client agrees that any such coverage is not intended to, and will not, cover any intrusions or losses to Client systems or data.

(e) Assistance with Compliance. Polar Systems may, as agreed in a Schedule, assist Client in reviewing Client's compliance with the technical aspects of certain laws, regulations, and standards (such as HIPAA and PCI). The parties agree that, in connection with any such Services:

(i) Polar Systems does not provide any certification services and does not certify Client's compliance with any laws, regulations, or standards.
(ii) Polar Systems also does not provide any legal services or advice and does not warrant or guarantee that its Services will satisfy any Client compliance or legal obligations. Client is specifically advised to obtain and use legal counsel to provide legal advice regarding Client's compliance requirements and to review the Services and deliverables provided for compliance with laws, regulations, standards, and other requirements.
(iii) If compliance requirements change during the term of the applicable Schedule, the parties will negotiate in good faith an increase in the fees for providing such compliance-related services.

12. **Assignment**. Neither party may assign this Agreement without the prior written consent of the other party, except that either party may assign this Agreement without consent to a party's successor in connection with the sale of all or substantially all of such party's business or portion of such party's business to which this Agreement relates, whether by means of a sale of assets, sale of stock or other equity interest, or merger or other consolidation, so long as such successor agrees in writing to the terms of this Agreement.

13. **Informal Dispute Resolution.** The parties shall attempt in good faith to resolve any controversy, claim or dispute of whatever nature arisi relating to this Agreement ("**Dispute**") promptly by negotiation between executives or managers who have authority to settle the Dispute and who are at a higher level of management within each of the parties' organizations than the parties' appointed project or account managers. Each party shall provide the other with all information and documentation relied upon by the party to substantiate its position with respect to the Dispute. If the Dispute has not been resolved through negotiation within thirty (30) business days of the initiation thereof, the parties may make a good faith attempt to settle the Dispute by mediation conducted by a mutually agreed mediator.

14. **Other Provisions**

(a) Security Interest. Client hereby grants to Polar Systems a security interest in any and all hardware and other items purchased by Client from Polar Systems ("**Deliverables**"), until such time as those Deliverables are paid in full by the Client, in order to secure Clients' obligations to Polar Systems. Client agrees that in the event of default in any payment, Polar Systems shall have, in addition to its rights under applicable law, the right to immediately repossess any and all Deliverables previously sold to Client, but not fully paid for by Client, without further operation of law and without notice to Client. Client further agrees to pay for any and all costs, including attorney's fees, engineering fees and other applicable costs which Polar Systems incurs as a result of said repossession. Client further agrees to execute any additional documents, at Client's expense, to perfect or continue the security interest created by this Agreement.

(b) Publicity. Polar Systems may include Client's name and logo in a list of Polar Systems clients and as a user of the Services.

(c) Independent Contractors. The parties are independent contractors, and nothing in this Agreement shall be construed as creating a joint venture, partnership, agent or employment relationship between Polar Systems and Client. Client agrees that Polar Systems may use subcontractors to perform Services.

(d) Non-Solicitation. During the term of this Agreement and for a period of one (1) year following termination of this Agreement, Client shall not, directly or indirectly, solicit, hire or retain as an employee or independent contractor, nor cause to be so solicited, hired or retained, any Polar Systems employee or former employee employed by Polar Systems in a technical or sales position. Client agrees that if Client wishes to hire anyone in violation of this Section, Client will pay to Polar Systems a fee equal to the greater of: (1) $75,000, (2) such employee's most recent annual salary and bonus and (3) the annual salary and bonus offered to such employee by Client. Client agrees that this fee is fair and not excessive.

(e) Notices. Any notice or other communication required or permitted in this Agreement shall be in writing and delivered to the addresses listed on the Contact section of the Cover Page of this Agreement either: (i) by personal delivery; (ii) by certified mail; (iii) by nationally recognized overnight courier; or (iv) by email, so long as email receipt is confirmed. Notice shall be effective upon receipt;

(f) Entire Agreement; Amendments. This Agreement (including the Cover Page and all Schedules) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior proposals, negotiations, discussions and agreements between the parties concerning its subject matter. Client acknowledges and agrees that, in entering into this Agreement, Client has not relied on any information or promises that are not in this Agreement. Polar Systems will have no obligation to provide any services, software, networking, or hardware except as specifically set forth in this Agreement. This Agreement may not be modified or waived except in a written document, signed by both parties. Any additional or conflicting terms on any purchase order for any products or services covered by this Agreement shall be void and without effect. If there is a conflict between the terms of this Agreement and the terms of a Schedule, the terms of this Agreement shall control unless the Schedule expressly identifies the term(s) of this Agreement being varied.

(g) Applicable Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Oregon, without regard to its conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply this Agreement. The parties submit to the jurisdiction of the state and federal courts sitting in Clackamas County, Oregon, and agree that such courts shall have sole and exclusive jurisdiction over any and all disputes and causes of action involving such parties that arise out of or in connection with this Agreement. In any action brought by a party related to this Agreement, in addition to any other rights and remedies it may have, the prevailing party shall be entitled to collect from the other party its reasonable litigation costs and attorney's fees and expenses.

(h) Force Majeure. Except for Client's payment obligations, each party shall be excused from performance and shall not be liable for any delay or failure to perform caused by an event outside the reasonable control of such party, including without limitation war, terrorism, sabotage, insurrection, riot or other act of civil disobedience, labor disturbance or shortage, failure of third-party systems, failure by Customer to perform its obligations under this Agreement (including without limitation failure by Client to provide full and appropriate access to covered equipment), act of public enemy, failure of the Internet, act of any government affecting the terms hereof, explosion, hurricane, earthquake, pandemic, epidemic, flood or other act of God.

(i) Third-party Beneficiaries. There are no intended third-party beneficiaries of this Agreement, and nothing in this Agreement may be relied upon by, or shall benefit, any party other than Polar Systems and Client.

(j) Severability. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, then the invalidity or unenforceability shall not affect the other provisions of the Agreement and all provisions not affected shall remain in full force and effect. Both parties will attempt to substitute with a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

(k) Headings and Counterparts. Headings to clauses are for ease of reference only and will not affect the interpretation of this Agreement. This Agreement may be executed in any number of counterparts and by the parties upon different counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same agreement.

(l) Electronic Signatures. The parties agree that this Agreement and all Schedules may be submitted and signed electronically by digital signatures or other electronic manifestation of acceptance. Such signatures will be fully binding on the parties, in the same manner as if physically signed and submitted by a party. Each party waives any objection that its digital signatures and acceptances are not valid.

OREGON CITY

Information Technology (IT)

625 Center Street | Oregon City OR 97045
Ph (503) 657-0891 | fax (503) 657-7892 | www.orcity.org

October 19, 2022

Request For Proposal – IT Analysis and Support Services

The City of Oregon City has prepared this request for proposal (RFP) to solicit proposals from qualified professional Contractors for an Information Technology analysis and continuing support services.

The City intends to enter into a Personal Services Agreement with the selected vendor for two (2) years starting February 1st, 2023, with the option to renew for an additional two (2) year period.

Applications may be submitted digitally or in hardcopy. If hardcopy, three (3) sealed copies of the proposal for this work should be submitted no later than **4:00PM**, local time, Friday, November 18, 2022 and be clearly identified as "**Sealed Bid - Oregon City Information Technology Analysis and Support Services**". Hardcopies should be provided to: David Knoll, IT Manager at 625 Center Street, Oregon City Oregon 97045. If submitting digitally, email to: dknoll@orcity.org David Knoll, IT Manager, City of Oregon City; Questions concerning this RFP should be directed to dknoll@orcity.org or submit as a question to the Bids/RFPs web site: www.bids.orcity.org. Answers will be compiled and provided to all through the Bids site.

Attachments:

Exhibit A	Personal Services Agreement
Exhibit B	Standard Conditions to Personal Services Agreement

CITY OF OREGON CITY
INFORMATION TECHNOLOGY DEPARTMENT
REQUEST FOR PROPOSALS

SECTION 1: PROJECT SUMMARY

The City of Oregon City is soliciting proposals from qualified professional Contractors for an Information Technology analysis and continued support services. The qualified Contractor will provide the City with strategic direction and best-practices recommendations; server hardware, software, and related network support; expertise in specific, city-utilized applications; and remotely-managed and on-the-ground IT support services. The Contractor proposals should address:

1. Server support and maintenance. This includes patching, remote monitoring, virus protection, and security management. Address ability to support and manage a VMware/VSphere infrastructure and Virtual server management including optimization, expansion and decommissioning.
2. IT Network Analysis - Strategic direction and recommendations. The Contractor should consider and detail, at a minimum, the reliability, resiliency, scalability, and manageability (remote and onsite) of our current IT environment and provide guidance for improving these postures.
3. Consulting Services to support design and implementation of technical projects. The successful Contractor will demonstrate familiarity and ability to support/recommend solutions including client, web, and cloud services for City Departments. Ability to support third-party and internal applications, including specific CJIS and other applications.
4. Management and support for Virus, Security, Firewall, VPN, switches, vendor applications and other network components. The proposal should provide a plan to manage, maintain, and improve the City's network security posture and confidentiality.

SECTION 2: BACKGROUND

The City of Oregon City currently has 35 Windows Server 2016-2022 servers with approximately 300 workstations / laptops running Windows 10. The City is standardized on a Dell Storage, server, and switching configuration. We also use Cisco switches for our Core routing. The City has a City-owned fiber backbone, and City-owned fiber connections to all other facilities. We employ and support mobile technology including an MDM/phone/tablet fleet, and expect this usage to increase. We run MSSQL servers and work in an O365 hybrid environment, User devices connect via network shares to database, application, and web servers. The City desires to employ an outside contractor for support services and maintain a relationship that supports proactive network monitoring/support, quick response time including onsite support as needed, remotely managed helpdesk/troubleshooting, and strategic consultation.

SECTION 3: SCOPE OF WORK

3.1 **IT Network Analysis**

The contractor will perform an initial audit and analysis of City Systems to include:

- Compile/update inventory of all Network and server related assets
- Assess system architecture (network, LAN, WAN, VLAN's, wireless) and update network diagrams
- Assess current processes using these criteria: reliability, scalability, manageability, efficiency, remote accessibility, and security; and provide recommendations for addressing improvements.
- Security.
- Make recommendations for improving IT security and performance. Specifically:
    - Network, AD, and Group Policy optimization
    - Cloud and Virtual infrastructure development and support.
    - Server support and monitoring

3.2 **Monthly Managed Service Support**

The Contractor will work with City IT staff to provide a flat monthly rate to include:

3.2.a Server Administration Services - Manages computer systems and networks including:

- Manage critical application, SQL database, application web servers, and associated hardware
- Monitoring of network events in support of the quality, security, performance, availability, recoverability, and reliability of the system
- Ensure preventive maintenance or needs for replacement equipment is identified and performed according to City specifications
- AD, Azure, and Exchange administration
- Manage VMWare and VSphere cluster and environment
- Configuration management, including changes, upgrades, patches, etc.
- Coordinate repair and maintenance work with contracted service and ensure repairs are conducted in a timely fashion

3.2.b Network Administration Services – Scope of activity includes all City network equipment including, but not limited to, switches, firewalls, routers, and other security devices.

- Primary server maintenance including monitoring, configuration changes, and installation of patches and upgrades
- Alert notifications to designated City personnel in the event of failure
- Complete proactive monitoring of network equipment including bandwidth utilization, and other performance indicators, with reporting when specified thresholds are reached
- Network performance and capacity management services, and network troubleshooting
- Maintain network documentation and procedures

3.2.c Security –

- Maintenance of virus detection programs on City servers
- Maintain vendor best practices for security
- Perform security audits as requested and notify City personnel immediately of suspected breaches of security or instruction detection
- Support City systems for remote access in a secure environment. Provide VPN administration as requested by designated City personnel
- Oversee Public Safety security connections for use with outside agencies. Our Public Safety services include connections to County dispatch services and require CJIS compliant management.

3.2.d Strategic Planning –

Regular engagement with City IT Staff for Strategic Services. Some projects may fall outside of the flat monthly rate and would be considered an additional project cost.

SECTION 4: CONTRACT

The City intends to enter into a Personal Services Agreement with the selected Contractor. This agreement will commence once signatures by both the City and the Contractor are obtained, and will be in effect for two (2) years. The City reserves the right to renew the agreement, with the consent of the Contractor, under the same terms and conditions for two (2) additional years.

Should the City choose to renew the Agreement, all prices at the time of the renewal may be adjusted on the anniversary date of the Agreement, based on the Portland Consumer Price Index (CPI-U, http://www.bls.gov/eag/eag.or_portland_msa.htm) for the immediate twelve (12) month period preceding the renewal of the Agreement. The Agreement shall automatically be renewed for two (2) additional years unless the City provides the Contractor written notice that it does not intend to renew the contract thirty (30) calendar days prior to the ending of the term then in effect.

SECTION 5: COST

The City is requesting a flat-monthly rate for the above services in this RFP. The City is also requesting rates for any Time and Materials or Project cost development outside the scope of monthly services. The City may accept a vendor Scope of Work if proposed as part of the flat rate, provided it covers the requested provided it covers the services listed in this RFP. Vendors will provide a proposal to include:

1. **IT Network Analysis**
2. **Monthly Managed Support Services** – Contractors will submit a flat monthly bid price for the services outlined in Sections 3.1 and 3.2.
3. **Project Rates** for items outside this scope.

SECTION 6: SUBMITTAL REQUIREMENTS

The Contractor shall submit three (3) copies of their proposal; which must include the following information:

- An introductory letter with the company's name, address, phone, and fax numbers included. A name, email address, and phone number of the company point of contact for this project is also required.

- A statement which indicates the proposal and bid price shall be valid and binding for ninety (90) days following the proposal due date.

- A statement of the qualifications and experience of the firm on projects similar in scope and nature, including the firms organization staffing.

- Names, contact information, and qualifications of personnel to be assigned to the project. Local availability of staff will be an important consideration in the selection process.

- Client reference from three (3) recent related projects, including name, address, and phone number of individuals to contact. Reference actual services provided, customer size (number of users), and the length of time providing services to each. The above information must not exceed 3 pages.

- Project Proposal and Summary of Support Services plan for the project not to exceed 7 pages. The plan shall include:
    - Server and Network Services outlined in the Scope of Work
    - Available of on-site assistance if required.
    - Hours and Days of Support Desk support
    - Rates and availability of after hours support. Include an hourly rate schedule (if applicable) for each classification of personnel to be assigned to the project.
    - Project rates and fees for items outside this scope.
    - Service Level Agreement (SLA) information to include:
        - Critical, enterprise-wide issue – work stoppage
        - High priority: Work stoppage
        - Normal: resolution required; normal work flow impacted
        - Low: No immediate workflow impact, low priority

SECTION 7: SUBMISSION PROCESS

Proposals must be submitted in an envelope clearly marked on the outside as **"Sealed Bid –Information Technology Analysis and Support Services."**

Bids may be mailed or delivered personally; however, if mailed, the responsibility of their delivery on time to Oregon City City Hall 625 Center Street, Oregon City, Oregon, 97045 is wholly upon the bidder. Bid proposals received after the designated date and time will be returned unopened.

Three (3) hard copies of the Proposal must be submitted to: David Knoll, IT Manager, City of Oregon City.

The Proposal must be received no later than **4:00 PM**, local time, on Friday, November 18th, 2022.

Each proposal shall be double-sided and printed on recycled paper wherever possible. All proposals become part of the public file for the project, without obligation to the City of Oregon City.

The City reserves the right to reject any or all submittals for good cause, in the public interest, and is not liable for any costs incurred by the Contractor in the submittal preparation.

A City of Oregon City Business License is required. Chapter 5.04 of the City Code states no person shall do business within the City without a current, valid City license. No contracts shall be signed prior to the obtaining of the City of Oregon City Business License.

Questions regarding this RFP should be directed to the City's Bids/RFPs web site: www.bids.orcity.org. Similar questions may be combined into one answer. Interpretations or clarifications considered necessary by the City in response to such questions will be issued by Addenda, posted to the City's Bids/RFPs web site and made available to all parties recorded by the City as having received the bid package. Questions received less than five calendar days prior to the date of bid opening may not be answered. Only questions answered by formal written Addenda will be binding. Oral statements and other interpretations or clarifications may not be relied upon and will not be binding or legally effective.

If discrepancies or omissions are found or there is doubt as to the true meaning of any part of this bid package, a request for clarification or interpretation shall be submitted to the City no later than five calendar days prior to the date of bid opening.

SECTION 8: EVALUATION/SELECTION CRITERIA & PROCESS

From the proposals received, the City will select the most qualified firm using the factors in the chart below. The most qualified firms selected may be interviewed by the City prior to final selection.

- Project Approach (30%)
- Experience (30%)
- Cost (30%)
- References (10%)

The contractor selected for consideration must be able to provide staff with demonstrated capabilities to provide the service listed above. In addition, the selected Contractor must show they have the staffing capabilities to meet all scheduling requirements.

A vendor meeting may be scheduled with City Staff as a final step in this process.

As part of the consideration for entering into a personal service agreement with the successful firm, the firm is required to sign an agreement including the indemnification and hold harmless language and to obtain insurance with an insurer or insurers satisfactory to the City as set forth in Exhibit B. Failure to meet the insurance regulations as set forth shall result in the proposer's loss of contract award.

Attachments:

1. Exhibit A – Draft Personal Services Agreement
2. Exhibit B - Standard Conditions to the Oregon City Personal Services Agreement

THE POWER OF EXPERT IT

Polar

SYSTEMS

RFP Response:
IT Analysis and Support Services

OREGON CITY

November 18, 2022

Designed By:
Polar Systems, Inc.

November 18, 2022
Mr. David Knoll, IT Manager
City of Oregon City
625 Center Street
Oregon City, OR. 97045
(503) 657-0891

RE: Request for Proposal – IT Analysis and Support Services

Dear Mr. Knoll,

Thank you for the opportunity to respond to the RFP for the City of Oregon City.

Polar Systems has provided computer network solutions for forty-one years. We take pride in having one of the largest install bases of local and wide area networks in Oregon and SW Washington. Our client list includes many of the best-known not-for-profit, and for-profit organizations in the area. Polar Systems is a charter member of the Microsoft Certified Partner program and a Dell Gold Partner.

Polar Systems provides executive-level IT management consulting and support services. Our highly skilled team of Senior Engineers and Business IT Consultants provides expertise in developing business process, selecting and integrating software solutions, managing new system rollouts, disaster recovery, project management, and training. All our senior staff have more than ten years' experience, and many bring more than twenty years of experience.

Please do not hesitate to call me or any other members of my Team, if you require additional materials or clarification on any of the information that we have provided

Best Regards,

Timothy Tragesser
President
Phone: 503.775.4410 ext. 106
FAX: 503-775.2664
Email: ttragesser@polarsystems.com

Polar Systems, Inc.
21890 Willamette Drive
West Linn, OR. 97068

1. Statement of Bid Price

The included bids are based upon the information provided in "Section 2: Background," and are subject to change based on the findings in the IT Assessment. The bids shall remain valid for ninety (90) days following the proposal due date.

2. Statement of Firm Experience, Qualifications & Staffing

Since 1981 Polar Systems has served the SMB and non-profit/local government community of Oregon and Washington. An example of this is Cowlitz Family Health Center (CFHC), a Non-Profit in Longview, WA. CFHC had 125 users when they first engaged with Polar Systems in 2008 for a site assessment, network re-design and virtualization project. Today, Polar is relied on to support 300 users and the IT systems and infrastructure they count on to be highly available and well performing.

Table 1: FTEs by Position

Position	Number of Employees (FTES)
Executive Management	2
Business Development	2
Technical Service & Support	24
Administration	2
Total	30

Project Personnel – Names, Contact Info

Executive Contract Administrator:

Name: Tim Tragesser - President
Address: 21890 Willamette Drive
West Linn, OR 97068
Contact: 503-775-4410 ext. 106, Email: TTragesser@polarsystems.com

BS – Finance CCSA – 24 years IT Experience

As the president of Polar Systems, Tim works to align innovation and technology with the business needs of more than 200 customers and partners. With a background in corporate finance, Tim brings 20+ years of experience consulting on IT solutions. In the rapidly changing technical landscape, Tim is committed to providing world class thought leadership to enable our clients to maintain a competitive advantage.

vCIO Contract Administrator:

Name: Gary Points, vCIO
Address: 21890 Willamette Drive
West Linn, OR 97068
Contact: 503-775-4410 ext. 130, Email: GPoints@polarsystems.com

MCSE, CCNA, CNE, Network+, A+ - 27 years IT Experience

Tactically minded, Sr Manager with experience driving IT solutions to meet local government and corporate needs. A passionate problem solver with an understanding of operations and the ability to execute 'big picture' vision. Committed to delivering outstanding customer service and determining the steps to find the right solutions to complex technology problems.

Professional Services Contract Administrator:

Name: Kenny Franklin, Director of Operations
Address: 21890 Willamette Drive
West Linn, OR 97068
Contact: 503-775-4410 ext. 123, Email: KFranklin@polarsystems.com

BS – Business Administration, MCSA, CNE, CCA, VCP – 26 years IT Experience

Experienced Professional manager, network administrator, consultant, and project manager, experienced installing, supporting, and project managing systems. Expert in network change management with a focus on value delivery utilizing Windows, Messaging, Virtualization, Citrix, storage area networks (SAN), networking and security.

Service Desk Manager:

Name: Jason Wrede
Address: 21890 Willamette Drive
West Linn, OR 97068
Contact: 503-775-4410 ext. 119, Email: JWrede@polarsystems.com

BA – Political Science, MCSE, A+, Linux+, Network+ - 20 years IT Experience

Sr. Systems Engineer delivering the right technologies to fulfill the business need. Experienced in design and execution of a range of technology including messaging, big data storage, virtualized client/server models, high availability application delivery and network security platforms.

Senior Network Engineer:

Name: Kenny Payne
Address: 21890 Willamette Drive
West Linn, OR. 97068
Contact: 503-775-4410 ext. 126, Email: KPayne@polarsystems.com

CCSP, CCNA – 20 years IT Experience

Sr. Network Engineer responsible for delivering advanced network design, implementation and support services for complex networks. A dedicated customer advocate, with a passion for working with IT teams to identify the right technical solutions to solve business and IT challenges

4. Customer References:

1) Thurston-Mason Behavioral Health Organization
Chris Foster, Information Services Manager. Phone: 360-485-3537. Email: Chris.Foster@tmbho.org
612 Woodland Square Loop SE, Suite 401, Lacey, WA 98503
Services Provided - project-based consulting and ongoing Managed IT Services since 2017 to approximately 125 users. Projects included initial network design and implementation, virtualization deployment, and remote site connectivity.

2) Fora Health, formerly known as DePaul Treatment Center
Pamela Belli, CFO. Phone: 503-535-1154. Email: Pamela.Belli@forahealth.org
10230 SE Cherry Blossom Drive, Portland, OR 97205
Services Provided - project-based consulting and ongoing Managed IT Services since 2018 to approximately 160 users. Projects included virtualization environment upgrades, Infrastructure Strategy Planning for corporate headquarters move.

3) Cowlitz Family Health Center
Janice Emery, CIO. Phone: 360-703-6409. Email: JEmery@cfamhc.org
784 14th Avenue, Longview, WA 98632
Services Provided - project-based consulting and ongoing Managed IT Services since 2008 to approximately 300 users. Projects included IT Network Assessment, Network re-architecture, virtualizing the IT environment.

5. Summary of Support Services & Project Methodology:

Core Support Methodology

Polar Systems methodology for asset monitoring, management and support is heavily grounded in incorporation of industry best-practices and enhanced by use of best-in-breed Managed Service Provider (MSP) technology applications. Our PolarStar Network Service makes use of these top-tier applications:

Kaseya is our IT Automation and systems' monitoring and management platform. This software was developed to optimize the technical management aspect of service delivery. The solution encompasses network monitoring and alerting, Microsoft Windows Event Log monitoring and alerting, secure remote desktop management, patch management, computer inventory and auditing, software deployment, and reporting capabilities in an integrated web-based platform.

ConnectWise Manage is our Professional Services Automation tool. This software was developed to optimize the business management aspect of service delivery. It encompasses service desk, project management, scheduling & dispatch, Client Access Portal, Co-Managed Help Desk, CRM, contract management, time-tracking, billing, and reporting capabilities in a web-based platform.

Regardless of technology tools, our service would not be possible without our extremely talented technical staff. Polar Systems' technical team holds many of the most sought-after industry certifications. This provides for a well-trained, technically proficient support team with a breadth of technical expertise. Our technical staff holds certifications such as VMware Certified Professional (VCP), Microsoft Certified Systems Engineer (MCSE), Microsoft Certified Systems Administrator (MCSA), Cisco Certified Network Associate (CCNA), Project Management Professional (PMP), and many other industry certifications.

We strive to always employ a systematic troubleshooting model that includes:

(1) Problem Definition
(2) Information Gathering
(3) Determination of Probable Cause
(4) Resolution Plan
(5) Implementation of Resolution Plan
(6) Observation of Results
(7) Repeat the process if unresolved, and
(8) Documentation of Issue Resolution

Network Servers

Polar Systems provides comprehensive monitoring, management, and support services for network servers. Through use of our PolarStar Network Service tools above, we provide 24x7x365 server monitoring and alerting, asset inventory, reporting, disk utilization analysis, Windows Event Log analysis, automated server operating system patching, remote troubleshooting, and unlimited fixed-fee technical support. PolarStar Network Service solutions poll Windows Management Instrumentation (WMI) data in order to provide extremely detailed and granular level insight.

E-Mail Services

Polar Systems offers e-mail server monitoring as described above. In addition to the services provided for basic network servers, we also monitor critical e-mail services, licensing, and provide consulting in regard to email archiving and retention policies and solutions, as well as secure messaging needs. PolarStar Network Services supports Microsoft / Office 365, Azure

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and on-premise Microsoft Exchange Server platforms. Polar Systems is a Microsoft Silver Certified Partner and has achieved Data Center and Small and MidMarket Cloud Solutions competencies.

Desktops / Laptops / Printers

Polar Systems provides a wide variety of desktop support services. PolarStar Network Service services may include desktop monitoring and alerting, asset inventory and reporting, automated workstation OS patching, remote and onsite troubleshooting, or a comprehensive desktop support solution which includes unlimited Help Desk support.

PolarStar Service clients have various IT staffing levels. Many of our clients have a small IT staff, and we provide limited staff augmentation or escalation services only. In this scenario, the client's existing IT staff may maintain responsibility for desktop management and maintenance services. Polar Systems provides efficiencies to these clients by assuming responsibility for the network and server management, freeing up the client's internal resources to focus on tasks they perform most proficiently. Polar Systems also offers a "Co-Managed Service Desk," which allows our clients to avoid the costly purchase of help-desk software, and to improve the service collaboration between ourselves and our clients.

Polar Systems provides limited network printer support services. Services include routine printer and print server troubleshooting, print driver updates to ensure system stability, and some monitoring and alerting for basic functionality of print services. Polar Systems provides limited printer hardware maintenance and support services.

Network Security

Polar Systems recommends a multi-tiered approach to network security for all our clients. From a network architecture and design standpoint, security is one of our key focuses.

Polar Systems recommends implementation of security layers at the Internet, network perimeter, host, application and human levels. Technologies may include e-mail and web-based threat management, firewall and VPN solutions, anti-virus and endpoint protection software, Intrusion Detection / Prevention Services (IDS/IPS), a security awareness training platform, and in some cases a Managed Security Services Platform (MSSP).

With all of these security technologies deployed, one must not forget to apply best practice security hardening on the host devices through routine operating system and application patching, disabling unnecessary services and ports, ensuring appropriate data security permissions and rights, and potentially implementing encrypted file structures.

Remote network access is common. Network security often must be designed to ensure the security posture extends beyond the organization's physical confines yet remain flexible enough for secure remote users. Polar Systems has vast experience with deployment of secure remote access technologies, such as Site-to-Site VPNs, Client Access VPNs, SSL VPN solutions, Citrix and Microsoft Terminal Server solutions, and Multi Factor Authentication security solutions. At the core, network security procedures employ an iterative process - requiring constant assessment, testing, remediation, and documentation.

Network Bandwidth

Polar Systems offers products and services designed specifically for network bandwidth monitoring and management. Network bandwidth monitoring may be achieved on many levels, so a thorough understanding of an organization's desires would be required for sound approaches. At one end of the spectrum may be use of existing Microsoft Windows utilities such as Network Monitor or Performance Monitor for internal local area network bandwidth monitoring. At the other end, a client may implement a total network visibility tool which may provide network bandwidth insight.

Applications and software

Polar Systems can offer application and software monitoring to the extent capable based on the particular software package. Oftentimes this is restricted to server-based application databases and critical network server services.

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Polar Systems' technical support team has numerous years of experience working in a diverse set of clients, thus have provided support services on a broad array of software applications. Our troubleshooting methodology for software application issues follows our standard systematic troubleshooting approach.

Monthly Patching

Polar Systems methodology for software upgrades, patches, service packs and hot fixes is rooted on industry "best practices," yet leverages our unique managed services platform.

All Microsoft operating system patching, updates and hot fixes fall under our general PolarStar service contracts. Prior to deployment our team performs extensive research and development and follows a strict implementation approach. Polar Systems investigates these updates, and, to the extent possible, performs deployment testing on our internal equipment prior to deploying on our client's systems. Polar Systems will provide our expert advice on which patches should or should not be applied. For those approved patches, we leverage the use of our managed service technology to deploy patches to select systems at a time most convenient for the client. Polar will consult with the client to determine the best scheduled maintenance window.

Email Security Services

Polar Systems recommends implementation of Mimecast. Mimecast is a managed security services provider of email and Web security services. The solution offers comprehensive protection against a vast array of email threats including spam, viruses, spyware, and phishing attacks. Protection is provided by combining spam filters, multiple anti-virus scanning engines, content filtering, and sophisticated email attack protection. Advanced services are available for disaster recovery and message archiving solutions.

Such a managed security service provides the following benefits:

- Reduced organizational risk and liability
- A multi-tiered approach to threat management
- Ease of administration
- Increased productivity
- Efficient activation and implementation
- Rapid Return on Investment (ROI)

Anti-virus / Endpoint Protection

Polar Systems recommends a multi-tiered approach for anti-virus protection. Implementation of the Mimecast security services for perimeter filtering should be combined with host-based anti-virus protection. Polar Systems recommends and supports managed anti-virus, endpoint detection and response (MDR / EDR) product suites available from Kaseya, Webroot and Huntress.

These solutions provide a high-level of endpoint security management and reporting. Included in most suites is a centralized management, monitoring and reporting console. From this console, installation packages, updates, and definition files may be remotely installed to network servers, workstations, and mobile devices. Product policy configuration and scheduled scan tasks may also be administered and propagated.

Spyware protection

Polar Systems recommends and supports multiple spyware/malware protection solutions. The most common solutions supported by Polar Systems are product suites provided by Kaseya and Webroot. Current anti-virus and endpoint protection products typically include a base level of spyware detection, protection, and removal features.

These solutions are often integrated into a vendors' threat management console. Common features include threat database lookups, automated detection and removal, and protection against phishing and pharming attacks.

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Managed Backup and Disaster Recovery

Polar Systems recommends that data backups be monitored on a daily basis. Approved backup solutions include Unitrends, and PolarStar Backup & Disaster Recovery (BDR) units. Other backup solutions may be authorized if approved by Polar Systems. Backup management includes the following services: notification to client of backup errors, labor to resolve errors, consultation on improving backup strategies, reasonable configuration of backup solutions, and a simple file restore performed on a monthly basis.

Firewall Management

Polar Systems supports numerous hardware and software firewall technologies. The most common firewalls are the Cisco Systems Secure Firewall FirePower Series, Cisco Systems Adaptive Security Appliance (ASA), SonicWALL, Juniper and Fortinet. Devices may be managed through a variety of techniques, given each device's capabilities. Many firewalls have embedded monitoring and alert notification mechanisms which may be leveraged. Nearly all devices may also be monitored through SNMP and by accessing the MIB.

Polar Systems provides security design, implementation and support services on these firewalls. For PolarStar Service clients, we provide configuration backup and restoration, access-list and security rule modification, software code updates and critical patch application services. Polar Systems may configure the client firewall such that Secure Shell (SSH) and/or HTTPS encrypted access is allowed in a restricted mode from the Polar Systems public IP address for ongoing support requirements.

Virtual private network (VPN) and remote access

Polar Systems provides network design, implementation and support services for a diverse set of Virtual Private Network (VPN) and Remote Access technologies. The most common VPN platforms implemented and supported are on the Cisco Systems Secure Firewall FirePower Series, Cisco Systems ASA, SonicWALL, Juniper and Fortinet product lines. Alternative supported methods for remote access include deployment of Microsoft Terminal Services and Citrix XenApp software.

Polar Systems also provides implementation services for SSL VPN technology. SSL VPN provides a more flexible and secure method of extending network resources to remote users and allows for web-based clientless access without previously installed system software.

Operating Hours & Response Time Information

Polar Systems' PolarStar Network Services provide automated monitoring support 24x7x365.

Polar Systems maintains a staffed Help Desk and Technical Support Engineers available weekdays from 8:00 a.m. to 5:00 p.m., excluding holidays on which Polar Systems is closed for business. Polar Systems' holidays are New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Thanksgiving Friday, and Christmas. Polar Systems has optional offerings for 24x7 Services, and may negotiate other support operating hour arrangements as necessary to ensure client coverage.

PolarStar Service includes response time of 1 hour or less, depending on issue severity. Though average response time across our client base is typically less than 15 minutes. Resolution times vary greatly depending on the nature of the issue. For PolarStar customers we can capture and report on response and resolution time metrics.

SLA Response Times:

- Critical, Enterprise-wide issue with a work stoppage — 30 minute response time
- High priority: work stoppage — 30 minute response time
- Normal: resolution required; normal workflow impacted — 1 hour response time
- Low: No immediate workflow impact, low priority — 1 hour response time

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24 x 7 Services

Polar Systems provides optional 24x7 Services for support coverage outside of Polar Systems' regular business hours. Clients are provided an 800 phone number to initiate a Service Support call, and a customized 24x7 Service Support phone tree with assigned technical resources is developed.

24x7 Service Support calls are initiated by the client and fielded by our outside agency which will note the client name, location, contact, and contact call-back number. Our Emergency Service will place notification phone calls through the phone tree to the technical resources' mobile and home phone numbers. The triage continues until a Polar Systems employee is contacted directly.

The technical responder will then contact the client. When appropriate, remote services will be the preferred method of troubleshooting and resolution; otherwise, the technical resource will dispatch to the client location within the hour. For 24x7 Service Support oversight, the final contact for every Emergency Service Support phone tree is our President.

Rate Table

Support Services Rate Sheet

Business Hours

Standard Hours..8:00am – 5:00pm, Monday through Friday (excluding holidays)
After Hours...5:00pm – 8:00am Monday through Friday
After Hours...All day Saturdays, All day Sundays, and Holidays

****Hourly rates include 10% discount for PolarStar Managed Service customers****

Time & Material Services:

Network Engineer (General Services) ……………………………………………………………………….$ 189.00/hour
Network Engineer – Advanced Services (Security, Storage, Virtualization)…………………………….. $ 225.00/hour
vCIO Services……………………………………………………………………………………….... $ 225.00/hour
Project Management……………………………………………………………………………….... $ 180.00/hour
Service Desk Technician (General Services) ………………………………………………………… $ 166.50/hour
Onsite Travel Charge (round trip within 20 miles radius)………………………………………………… $ 75.00/fixed rate

After Hours service rates are 1.5 times the applicable rates, portal to portal

Remote support is billable in 15 minute increments

On-Site support is billable with a 2-hour minimum, plus on-site travel charge.

Inbound Support Process

Client support issues are initiated in one of four methods, (a) Client phone call, (b) Client e-mail, (c) Client Access Portal / Co-Managed Service desk ticket, and/or, (d) automated monitoring system alerts.

Polar maintains a centralized Help Desk available by phone and via support email address. On notification of a client issue, a Service Desk Ticket is created in our Professional Services Automation (PSA) application and the triage process begins.

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1st Level Technical support will be provided by Polar Systems' Help Desk personnel. Our Help Desk personnel will contact the client, assess the issue, and attempt resolution. Troubleshooting will be provided via phone through direct guidance and/or via use of remote support tools. In the event an issue requires escalation, decisions will be made with respect to additional remote support or on-site visit requirements, and escalation plans and response times communicated. The Service Desk Ticket will be updated, placed in a support queue and assigned to an appropriate technical resource.

2nd Level Technical support will be provided by an appropriately qualified technical resource. The technician will initiate communications with the client and perform troubleshooting and remediation using remote sessions whenever possible and appropriate. In the event the issue is still unresolved, the Polar Systems' support team will schedule a site visit.

Outbound Support Process

Similar to the inbound call triage process, Polar Systems Help Desk personnel will typically be the 1st Level Technical Support.

Our Help Desk personnel will contact the client, communicate the issue identified, assess the situation, and attempt resolution. Troubleshooting will be provided via phone through direct guidance and/or via use of remote support tools. In the event an issue requires escalation, decisions will be made with respect to additional remote support or on-site visit requirements, and escalation plans and response times communicated. A Service Desk Ticket will be created and updated, placed in a support queue and assigned to an appropriate technical resource.

2nd Level Technical support will be provided by an appropriately qualified technical person. The technician will initiate client communication and perform troubleshooting and remediation through remote sessions whenever possible and appropriate. In the event the issue is still unresolved, the engineering resource will communicate updated timelines and schedule a site visit.

Network Uptime

The single largest contributors to high availability and network uptime rates are through adoption and enforcement of a proactive Support methodology, including development of a thoroughly tested business continuity plan. As a result, PolarStar clients have benefited from an extremely high rate of network uptime. Most business impacting network outages have proven to be related to outside service providers not under administrative control of Polar Systems, Inc.

Polar Systems cannot guarantee performance or availability of any provider, including but not limited to, power companies, data and phone line providers, Internet Service Providers (ISPs), Software as a Service (SaaS) providers, or other providers.

Client Escalation Process

Polar Systems encourages frequent and effective communications with all our clients. In the event there are problems of a technical, business development, account management, personnel, or other nature our clients have a clear escalation path.

Problem notification and escalation process for technical items should be initially processed through our Help Desk. The next levels of escalation would be, in order, our Service Desk Manager, the vCIO, and then the Director of Operations. If the issue is still not resolved satisfactorily, our President will intervene.

Quarterly Business Reviews

PolarStar clients receive Quarterly Business Review (QBR) meetings. The QBRs are designed to be interactive, consultative, and may include as many client personnel as desired. A quarterly report may be customized to each client's needs within the realms of the tools deployed. Additional reporting which may occur is an assessment of trend data, any planned short-term or long-term IT budget expenditures, critical software and hardware device warranty and maintenance status, as well as proposals under discussion.

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Strategic Planning & Consulting

One of Polar Systems' key missions is to assist clients in developing an optimized approach to Information Technology strategy, which is aligned with main business objectives. Our Senior Engineers and Consultants work with client management teams to assess short-term and long-term business goals. Collectively our teams discuss the pros and cons of various strategies, evaluate competitive advantages, and analyze the business and financial impact with any strategy.

PolarStar QBRs are designed in part to ensure an eye is always on evaluation of the IT strategy and to ensure that IT stays aligned with the business goals of the organization. Additionally, Polar Systems often brings new ideas to the attention of our client's, strategies that we have seen succeed in other organizations, or purposes of discussing newly emerging technologies.

Project Management

Polar Systems has vast expertise in Project Management. We have Consultants who have attended the Project Management Institutes' PMP certification curriculum, and who have years of experience acting in a PM role.

The very nature of our business necessitates that we function in this role on a daily basis. We frequently provide Project Management services to our clients with limited technical staff. Often the engagement entails application or solution assessment and analysis services, or design and implementation services for projects that either we provide deployment services for or that 3rd party software vendors deploy

vCIO Services

Polar Systems provides strategic direction and thought leadership to a variety of verticals in the Portland Metropolitan area by leveraging our market research and best practice development. IT strategy development is an essential part of the organizational culture, overall strategy, and the financial resources available to execute.

For an organization to be successful, its technology environment must support the direction of the leadership. Polar works to enable transformation by aligning IT with the top level vision of the organization.

Many companies succeed in planning great vision and strategy but fail to produce results. Driving change involves both planning and execution. Polar Systems vCIO's leverage industry accepted project management methodologies that guide change and keep in balance planning and execution. Supporting the vCIO position at Polar Systems is a team of talented change agents skilled in delivering execution of technology projects.

Additional Project capabilities with customized delivery as per client requirements

- Organization Technology Strategic Planning and Execution
- IT Budget Development and Management
- IT Vendor Sourcing and Management
- IT Contract Negotiations and Management
- Enterprise IT Project Management

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CITY OF OREGON CITY
INFORMATION TECHNOLOGY DEPARTMENT
REQUEST FOR PROPOSALS

November 18, 2022

NETWORK ANALYSIS AND SUPPORT SERVICES

Bid Proposal

We, the undersigned, do hereby agree to provide to the City the services outlined in this contract by entering into a Personal Services Agreement for the following rate:

UNIT	PRICE
NETWORK ANALYSIS	
One time, all-inclusive price	$ INCLUDED
SUPPORT SERVICES	
Bid price for **monthly** rate	**$ 8,525.00**
***NOTE: Includes Huntress Endpoint Detection & Response (EDR) for servers and workstations*	
Projects outside of the scope will be billed at an additional T&M rate based on agreed upon SOW	

After hours rates shall be agreed upon by the City and Contractor when negotiating the contract.

COMPANY NAME: Polar Systems, Inc

Check one: Corporation X Partnership _______ Sole Proprietor ______ Other______

Employer ID Number: 93-0786782

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POLAR SYSTEMS

ADDENDUM A:

The Master Services Agreement between Polar Systems, Inc. and City of Oregon City has been amended as follows.

EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS READ AND AGREES TO BE BOUND BY THIS AGREEMENT (INCLUDING THE ATTACHED TERMS AND CONDITIONS AND SCHEDULES) AND IS AUTHORIZED TO EXECUTE THIS AGREEMENT.

Polar Systems, Inc.	Client:________________________________
By: ______________________________	By: ______________________________
______________________________ Print Name and Title	______________________________ Print Name and Title
Date: ______________________________	Date: ______________________________

POLAR SYSTEMS MASTER SERVICES AGREEMENT TERMS AND CONDITIONS ADDENDUM

3. **Fees and Payment**

(b) Rates; Block Time; On-Site Services. Unless otherwise agreed in a Schedule, Polar Systems' standard rates will apply to Services, with time billed in 15 minute increments. Client may acquire in advance a block of hours ("**Block Time**") to use to pay for Services. Trip charges are applicable on all on-site engagements unless otherwise specified. The minimum charge for any on-site engagement is based on a two (2) hour visit plus Polar Systems' then-current trip charges

(c) Terms. Unless agreed in a Schedule, all invoices are due within thirty (30) days after the invoice date. All payments under this Agreement shall be made in United States dollars and are non-refundable. Late payments are subject to interest at the rate of eighteen (18) percent annually, or the maximum amount allowed by applicable law if lower, calculated from the date when payment becomes overdue until payment is made. Client agrees to pay costs of collection, including reasonable attorney's fees, associated with the collection of overdue amounts hereunder by Polar Systems. Client's agreement to any Schedule constitutes a valid purchase order for the Services associated with that Schedule including any additional Services performed related to but outside the scope of that Schedule. Invoice terms are subject to Client credit approval.

5. **Term; Termination**.

(a) Term. This Agreement is a master agreement and remains in place unless and until terminated as set forth herein. Each Schedule will specify its own term. If there are no active Schedules in place between the parties, then either party may terminate this Agreement by providing at least ten (10) days written notice of termination to the other party.

If Client terminates this Agreement or a Schedule without cause, or if Polar Systems terminates this Agreement or a Schedule due to Client's material breach, then: (i) Client shall pay a penalty fee in the amount of the lesser of three (3) months of the most recent PolarStar monthly invoice (including all Schedules), or a fee in the amount of the most recent PolarStar monthly invoice (including all Schedules) multiplied by the number of months remaining on the Agreement or Schedule, and (ii) Client shall pay to Polar Systems all pre-paid, documented out of pocket expenses incurred by Polar Systems in reliance on the terminated Services. All fees become immediately due and payable by Client to Polar Systems as damages, without any further demand by Polar Systems.

Polar
SYSTEMS

POLAR STAR MANAGED SERVICES SCHEDULE

This Polar Star Managed Services Schedule (this "**Schedule**") is entered into as of _____**June 1, 2023**_____ (the "**Effective Date**"), by and between Polar Systems, Inc. ("**Polar Systems**") and __**City of Oregon City, Oregon City, OR**___ ("**Client**"). This Schedule is subject to the terms of the Master Services Agreement between Polar Systems and Client dated _____________ (the "**Agreement**"). Capitalized terms used in this Agreement and not otherwise defined have the meaning given to them in the Agreement.

Site Location(s): Numerous locations across the city			
Primary Client Contact:	Michael Dobaj	**Secondary Client contact**:	David Knoll
Emergency Phone #:	971-204-4617	**Emergency Phone #:**	971-221-3257

Polar Star Coverage Summary (see Appendix A and B for details)

Included?	Service
X	Asset Auditing/Inventory
X	Monitoring/Alerting
X	Managed Servers
☐	Managed Server Backup
☐	Managed Workstations
X	Server – Patching
☐	Workstation – Patching
X	Managed Exchange / Office 365 / Email
☐	Managed Anti-Spam Services
☐	Managed E-Mail Encryption
☐	Managed E-Mail Archiving
X	Managed Firewall
X	Managed Network Devices
X	Managed Anti-Virus
☐	Managed Disk Encryption
X	DNS Hosting

Included?	Service
☐	Managed Out-of-Market Site
X	Vendor Relationship Management
X	vCIO Services
X	Reporting
X	Response Time Commitment – 1 hour
☐	Active Security Scanning/SOC
☐	Employee Security Awareness
☐	DNS Protection
☐	Dual Factor Authentication
☐	Office 365 Backup
☐	Scheduled On-site Support Total Hours: Interval: Time Block/Event:
☐	Other: ______________________ ______________________________

Term: _**12**__ months

Polar Star Payment Summary:

Polar Star Payment: $ **8,525.00** per month
Hardware-as-a-Service Payment $ _**N/A**_____ per month (if applicable)
Reduced Labor Rate: **10%**
PC Workstation Build Fee: **$ 450**

All monthly fees under this Schedule must be paid electronically through a service reasonably specified by Polar Systems.

The pricing above is based on an initial review of Client's current servers, workstations and network infrastructure, as inventoried in Appendix A. The parties agree to review changes to, and additional information learned regarding, Client's environment and the other aspects of this Schedule on a quarterly basis (or otherwise as needed) and update fees and Covered Components under this Schedule to reflect any changes. Unless the parties agree otherwise, in no event will any reductions in Covered Components decrease monthly fees by more than 40% than the monthly fees above.

The fees and rates in this Schedule will not automatically renew annually. Other increases may apply per the terms of the Agreement.

EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS READ AND AGREES TO BE BOUND BY THIS SCHEDULE (INCLUDING THE ATTACHED TERMS AND CONDITIONS AND APPENDICES) AND IS AUTHORIZED TO EXECUTE THIS SCHEDULE.

Polar Systems, Inc.	Client: ______________________
By: ______________________	By: ______________________
______________________ Print Name and Title	______________________ Print Name and Title
Date: ______________________	Date: ______________________

Submitted: . Offer in this Schedule valid 30 days from date of submission.

POLAR STAR MANAGED SERVICE TERMS AND CONDITIONS

1. Managed Services

(a) "Covered Component" means the server, workstation, local area networking equipment, wide area networking equipment, and other IT components listed in Appendix A located at the Client location(s) specified above. To be a Covered Component, the Polar Systems managed service agent program must be added to such component. Client agrees that, in order for Polar Systems to provide managed services under this Schedule, (i) all Windows servers in a domain must be covered; and (ii) unless otherwise specified in Appendix A, all workstations at a location must be covered. Managed Services do not include hardware repairs or support for application software unless specifically listed on this Schedule.

(b) Polar Systems will use commercially reasonable efforts to detect and avoid the malfunction of Covered Components. Proactive services include monitoring and alerting, patch management and backup verification. These services are designed to report to Polar Systems performance and availability data concerning Client's network and to alert Polar Systems' Help Desk to potential problems. Monitoring Services do NOT include the provision of any intrusion detection services nor do they address any other security concerns.

(c) Polar Systems will maintain a centralized "Help Desk" to manage the reporting and handling of technical issues. Client agrees to report all technical issues to the Help Desk. The Help Desk may be contacted by Client by either logging into Polar Systems' client portal, sending an email or by calling via telephone, or in other methods as communicated by Polar Systems to Client from time to time.

(d) There is no additional charge for Help Desk Service provided during Regular Business Hours. Polar Systems' Help Desk will also be available under this Schedule after Regular Business Hours, subject to the following terms:

- Access to the Help Desk after Regular Business Hours must be made using a phone number provided to Client specifically for such use. Polar Systems will aim to respond within 1 hour, with escalation to Polar Systems' management team if the call is not returned in the 1-hour time frame.
- Help Desk Service after Regular Business Hours is provided at a rate equal to1.5 times Polar Systems' then-current reduced labor rate.
- Any Client personnel requesting Service after Regular Business Hours will be considered authorized to do so under this Schedule.

(e) Client will provide all necessary information when requesting technical support. This information includes, but is not limited to:

- Name of end user experiencing the issue
- Location of end user and computer
- Contact information for the end user
- Detailed description of the issue

(f) Polar Systems will use diligent efforts to manage the restoration of malfunctioning Covered Components to good working order.

(g) Client's data backup systems may be listed as a Covered Component on this Schedule. However, Client agrees and understands that, unless Polar Systems is providing Client with a fully managed backup (BDR) solution under a separate Schedule, Polar Systems is only able to verify that backup systems are reporting proper operation and can make no guarantees as to whether or not actual backups are taking place. Client is ultimately responsible for ensuring that data backups have actually been performed and are available in the event of any failure of the backup subsystem which leads to any data loss or the inability of the backup subsystem to restore data at any time. Polar Systems has no liability for any costs associated with data recover/disaster recovery services.

(h) When requested by Polar Systems, Client will ensure that all office workstations and laptops will be left turned on after Regular Business Hours so Polar Systems can perform required workstation maintenance and proactive support.

(i) Polar Systems will use diligent efforts to deploy software patches for operating system software in a manner that will, in a timely fashion, address the security or functionality concerns for which a patch was released. Polar Systems will only deliver patches that have been tested and released by the original manufacturer of the software being patched. Client acknowledges that some patches may cause operating difficulties or "break" other software, and agrees that Polar Systems will not be responsible for the potential adverse effects of applying such a patch.

2. Payment Terms

At the Effective Date of this Schedule, Polar Systems will invoice and collect payment for the first and last month of managed Services associated with this Schedule. This payment must be received before any Service under this Schedule can be scheduled or delivered.

3. Hardware

Polar Systems does not provide hardware warranty or maintenance services, and does not maintain an inventory of spare parts or replacement hardware. It is Client's responsibility to enter into appropriate warranty/replacement arrangements with hardware vendors. Polar Systems will use reasonable efforts to coordinate with hardware warranty/maintenance providers in the repair and replacement of defective hardware. Polar Systems reserves the right to utilize the services of manufacturer's representatives for repairs guaranteed by those manufacturers under separate service contracts. Polar Systems shall have no obligation with respect to components that are identified by its manufacturer as a consumable or expendable item including, but not limited to, printer cartridges, fuser assemblies, batteries, print heads, magnetic media, paper supplies and similar items; all such items are the Client's responsibility.

4. Disaster Planning

A formal disaster recovery or business continuation plan is NOT within the scope of this Schedule. Although the services to be provided under this Schedule are designed to provide managed IT continuity and will, under certain conditions, help Client recover from certain disasters, it shou way be considered a formal disaster recovery or business continuity plan. If Client requires a disaster recovery or business continuation plan, including testing of the plan, Polar Systems can assist Client with the development of such a plan. All time spent in the development and testing of this plan would be billable against Block Time or as an agreed additional Service.

5. Documentation

Polar Systems will, at its expense, maintain updated documentation on Covered Components to facilitate the providing of Service. Upon termination of the Agreement, if Client has paid all amounts due under the Agreement, Client will be provided with a printed or electronic copy of such documentation upon written request.

6. Authorization to Access Client Devices. Client hereby authorizes Polar Systems to access, connect to and manage Client devices via remote technologies without first contacting Client as required for the Services. These activities may include, but are not limited to:

- Updating or changing software drivers;
- Installing and applying software patches;
- Rebooting devices within maintenance windows;
- Deleting temporary files and clearing caches;
- Starting or restarting application services;
- Verifying and validating data backup jobs;
- Staging and executing scripts for automated maintenance routines;
- Network performance tuning; and
- Transferring data associated with routine system tuning and upkeep between systems within Client's network.

Notwithstanding the above, Client is responsible for notifying Polar Systems of a restriction of remote access, connections or management activities related to any Covered Component.

7. Polar Systems Equipment

(a) Client agrees that Polar Systems may deliver and install appliances and other equipment in support of the Services ("**Polar Systems Equipment**"), excluding items sold by Polar Systems to Client.

(b) The Polar Systems Equipment is and shall remain the exclusive property of Polar Systems. Client will keep Polar Systems Equipment free and clear from liens or encumbrances of any kind. Upon termination of this Schedule, subject to any applicable laws, Polar Systems may, but is not required to, retrieve any associated Polar Systems Equipment not returned by Client as required below. Client agrees to pay any expense incurred by Polar Systems in any retrieval of the unreturned Polar Systems Equipment. Polar Systems will not be deemed to have "abandoned" the Polar Systems Equipment if it does not retrieve such equipment. Polar Systems shall be entitled to seek injunctive relief to enforce its rights with respect to the Polar Systems Equipment.

(c) Client agrees to provide Polar Systems and its authorized agents access to Client premises on a 24 x 7 basis upon reasonable notice during the term of this Agreement and after its termination to install, connect, inspect, maintain, repair, replace, or disconnect or remove the Polar Systems Equipment, to install associated software, and to conduct an audit of the Polar Systems Equipment.

(d) Polar Systems shall have the right to upgrade, modify and enhance Polar Systems Equipment and associated software from time to time.

(e) Client agrees that, if this Schedule is terminated, Client has no right to possess or use the Polar Systems Equipment. Client agrees to arrange for the return of Polar Systems Equipment to Polar Systems, in the same condition as when received (excepting ordinary wear and tear), upon termination of the Agreement. Polar Systems may charge Client a continuing monthly fee until any outstanding Polar Systems Equipment is returned, collected by Polar Systems or fully paid for by Client.

(f) Client will not, nor will Client allow others to: (i) open, alter, misuse, tamper with or remove the Polar Systems Equipment as and where installed by Polar Systems, or (ii) use Polar System Equipment in any manner contrary to this Agreement, or (iii) remove any markings or labels from the Polar Systems Equipment indicating Polar Systems ownership or serial or identity numbers. Client will reasonably safeguard the Polar Systems Equipment from loss or damage of any kind, including accidents, breakage or fire, and will not permit anyone other than an authorized representative of Polar Systems to perform any work on the Polar Systems Equipment. Nothing in this Agreement shall prevent Polar Systems from enforcing any rights it has with respect to theft or unauthorized tampering of Polar Systems Equipment under applicable law.

(g) Client agrees to pay Polar Systems for the replacement cost of the Polar Systems Equipment as reasonably determined by Polar Systems if (i) Client tampers with, or permit others to tamper with, Polar Systems Equipment, (ii) the Polar Systems Equipment is destroyed, lost, or stolen, whether or not due to circumstances beyond Client's reasonable control, or (iii) the Polar Systems Equipment is damaged (excluding equipment malfunction through no fault of Client) while in Client possession, whether or not due to circumstances beyond Client's reasonable control. Client agrees to return any damaged Polar Systems Equipment to Polar Systems. Notwithstanding the above, Client shall not be required to pay Polar Systems if the damage or destruction of the Polar Systems Equipment arises out of the acts or omissions of Polar Systems or its agents, employees or subcontractors.

8. Client Requirements. Client will at its own cost:

- Maintain sufficient bandwidth and a high speed Internet connection at the Client site(s) to support the Services. If this is not maintained, Polar Systems will not be obligated to provide the Services and/or may increase charges for the Services to reflect the higher cost of supporting Client.
- Reboot/restart equipment or monitoring agents upon request of Polar Systems; if Client does not wish to perform such functions, then if necessary Polar Systems will come on site and additional charges will apply.
- Maintain, manage, and keep records of valid licenses, warranties and/or support contracts for hardware, operating software and application software used in its network and systems with respective third-party vendors.
- Notify Polar Systems upon the removal of a Covered Component from the network so the Polar Systems' remote management and monitoring systems can be updated.

- Follow best security and standardization practices and protocols on all Covered Components as required by Polar Systems. These protocols include but are not limited to the following: (i) secured off-site data vaulting to protect critical operations data, (ii) centrally-managed anti-virus software installation, updates, workstation and server management and remediation, (iii) centrally-managed operating system and application security patch testing, updates and roll-outs, (iv) assignment of role-appropriate user or power-user credentials for PCs and servers and removal of all user-issued administrative login permissions, and (v) creation and ongoing maintenance of full and complete network documentation inclusive of all secured administrative usernames and passwords.
- Maintain Client site conditions within the environmental range of all Client system devices and media as specified by the manufacturer.
- Include (except to the extent that Client wishes to discuss certain aspects of Polar Systems services without Polar Systems present) its Polar Systems account representative in Client's material IT planning and IT decision making meetings in order to facilitate continuity of Services.
- Be responsible for designating one or more authorized contacts responsible for screening end-user service requests and to determine level of service needed and assignment of requests to Polar Systems.
- Instruct all users to leave workstations, servers and other computer and network equipment on at all times, unless otherwise instructed by Polar Systems. Users shall also leave any remote agents active and running at all times unless otherwise instructed by Polar Systems. Users may log off at the end of their work shift.

9. Exclusions. Polar Systems is not required to provide any Services except those Services expressly set forth in this Schedule. Without limiting the foregoing, the following items and/or services are excluded from the Service under this Schedule; any work performed related to the following will be billed at Polar Systems' standard rates:

(a) Any service(s) required due to treatment or attempts to install, repair, maintain, or modify any Covered Components or related software or peripherals by a non-Polar Systems authorized person or entity, including but not limited to negligent acts, improper configuration changes, new application installations, and upgrade installations.

(b) Covered Component(s) which cannot be properly serviced due to end of life conditions, other withdrawal or termination of warranty or support by the manufacturer, unavailability of documentation or parts, or that exhibit excessive damage. Polar Systems will use commercially reasonable efforts to provide advance notice to Client of any issues under this clause.

(c) Provision of supplies or accessories for any Covered Component(s) or electrical work external to Covered Components, including but not limited to printer consumables and backup media.

(d) Maintenance of accessories, alterations, attachments, upgrades or other devices; or services related to any relocation of Covered Component(s) unless specifically listed in this Schedule.

(e) The cost of any parts, equipment, or shipping charges of any kind.

(f) Third-party software license fees, renewal fees, or upgrade fees of any kind (except in connection with software provided by Polar Systems in support of the Service).

(g) The cost of any third-party vendor or manufacturer support or incident fees or charges of any kind.

(h) The cost to bring Client's environment up to minimum standards required for Service.

(i) Programming (modification of software code) and program (software) maintenance.

(j) Training services of any kind unless otherwise agreed in writing by Polar Systems.

(k) Moving hardware from one physical address to another physical address.

(l) Polar Systems covers only the maintenance support of the network connection of network enabled, shared printers/copiers, and the printer connection and printer drivers of locally attached printers. Any other printer maintenance is not covered.

(m) Any peripheral attached to a workstation/laptop including, but not limited to USB hard drives, scanners, docking devices, cameras, and VoIP phones are not covered unless specifically listed on this Schedule.

(n) Mobile devices, smartphones, and tablets are not covered unless Mobile Device Support is included in this Schedule.

APPENDIX A TO POLAR STAR SERVICES SCHEDULE
Covered Components

Servers

Type	Qty	Comments
Windows Servers	28	Currently spread across Windows Server 2022, 2019, 2016 and 2012
(4) VMware Hosts + Compellent SAN	5	
TOTAL	**33**	

Workstations and Laptops

Type	Qty	Comments
	0	
TOTAL	**0**	No workstation support included

Network Devices

Type	Qty	Comments
Cisco FirePower 2110 Firewalls	2	H/A Pair
SonicWALL TZ 500 Firewall	1	“CJIS” Firewall between CORC and Clackamas County
Managed Switches	45	Estimated Dell, Cisco and Hirschmann Switches throughout network environment
TOTAL	**48**	

Other Covered Components

Type	Qty	Comments
Aruba Controller & Ruckus vSZ Controllers	4	(2) Ruckus Controllers – Non-FIPS and FIPS, (2) Aruba Controllers
Aruba & Ruckus Wireless APs	57	(29) Ruckus APs on Non-FIPS, (18) Ruckus APs on FIPs, (10) Aruba APs
UPS Devices	7	Estimated managed UPS devices

Protect +

Type	Qty	Comments
Webroot SecureAnywhere		*Installed on Polar Systems’ Managed Servers only*

APPENDIX B TO POLAR STAR SERVICES SCHEDULE
Service Options and Description

Service Name	Service Description
Asset Auditing and Inventory	Hardware inventory and warranty information relating to Covered Components will be collected as completely as technology allows.
Monitoring and Alerting	Our engineering team monitors for critical events which could result in service interruption. Monitoring capabilities vary by vendor. Polar Systems may inform Client when a device has limited or no capability of being monitored. Although monitoring is automated on a 24 hour per day basis, Client understands that Polar Systems will review, diagnose and respond to alerts during Regular Business Hours only.
Managed Servers	Management includes support for server hardware and operating systems. Support is limited to vendor-supported operating systems and hardware that is covered by a manufacturer's warranty. *Support for operating systems and/or hardware that are beyond support life are handled on a best-effort basis and may generate billings outside of the terms of the PolarStar services agreement.*
Managed Server Backup	Data backups will be monitored daily during Regular Business Hours for approved backup solutions. Backup management includes the following services: Daily monitoring, monthly file restore testing, monthly virtualization testing (if supported) and notification to Client of backup problems. *Unsupported backup solution support is handled on a best effort basis and may generate billings outside the terms of the PolarStar agreement.*
Managed Workstations	Management includes support for workstation hardware and operating systems. Support is limited to vendor-supported operating systems and hardware which is covered by a manufacturer's warranty. *Support for operating systems and/or hardware, which are beyond support life, are handled on a best-effort basis and may generate billings outside of the terms of the PolarStar services agreement.*
Server/Workstation Patching	Windows Operating System patching and maintenance will be performed on a monthly basis. Windows Operating System patches and service packs are evaluated for potential conflicts before they are deployed and are focused on critical security updates. Windows operating system version or build upgrades are not included in PolarStar patching coverage.
Managed Exchange / Office 365 / Email	Management includes support for Polar Systems-approved, vendor-supported e-mail systems. *Unsupported e-mail systems will be supported on a best-effort basis and may generate billings outside the terms of the PolarStar services agreement.*
Managed Anti-Spam & URL Filtering	Managed anti-spam services include e-mail filtering, e-mail continuity, and URL protection services. Includes basic support for allow and deny lists and e-mail flow troubleshooting.
Managed E-mail Encryption	An optional add-on to managed anti-spam services that allows for the sending of encrypted/secure messages.
Managed E-mail Archiving	An optional add-on to managed anti-spam services that allows for the long-term archival and retention of e-mail messages.
Managed Firewall	Management includes support for firewall hardware. Support is limited to vendor-supported hardware that is covered by a manufacturer's warranty. *Support for hardware that is beyond support life is handled on a best-effort basis and may generate billings outside of the terms of the PolarStar services agreement.*
Managed Network Devices	Network device management includes the use of hardware and/or software tools to monitor status and generate alerts, reasonable basic re-configuration of the network device and network device issue resolution. *Support for hardware that is beyond support life is handled on a best-effort basis and may generate billings outside of the terms of the PolarStar services agreement.*
Mobile Device Support	This service includes support for the synchronization of mobile devices and business e-mail accounts. *Assistance with non-business related e-mail accounts, other applications, phone usage or charges, warranty replacement, or device troubleshooting may be performed upon request, using reasonable efforts and are subject to an additional charge outside of the PolarStar services agreement.*
Managed Anti-Virus	Antivirus management includes software deployment and malware monitoring. *Remediation activities related to malware infections resulting from poor client security practices may be billed outside of the terms of the PolarStar services agreement.*

Managed Disk Encryption	Managed disk encryption is an optional service that includes deployment and management of workstation or laptop disk encryption.
Active Network Security Scanning	A PolarStar Protect+ enhanced security option. Provides active scanning for security threats and SOC (Security Operations Center) analysis and response.
DNS Protection	A PolarStar Protect+ enhanced security option. Provides an additional layer of protection to prevent redirection to malicious web sites.
Security Awareness Training / Testing	A PolarStar Protect+ enhanced security option: security awareness testing and training. Polar Systems performs regular testing campaigns to gauge risky Internet behavior within your user base.
DNS Hosting	Polar Systems provides DNS (Domain Name Systems) Hosting, a service which migrates your public DNS presence from your current host to our fully redundant, geographically diverse DNS servers.
Vendor Relationship Management	Polar Systems will act as the technical contact for communications with vendors which may include line-of-business application partners or other service providers. It is the client's responsibility to provide all information required to enlist the vendor's assistance. Any vendor or third-party technical support payment is the responsibility of Client. *Support for any application, device or service which is not covered by a support agreement may be billed on a time and materials basis outside of the PolarStar services agreement.*
vCIO Services	Your vCIO will work with Client's management team to assess short- and long-term business goals, discuss the pros and cons of technology strategies, evaluate competitive advantages, and analyze the business and financial impact. They will help you to architect and work with the Polar Systems engineering team to implement technology solutions to meet your requirements.
Reporting	Polar Systems will issue a set of standard reports on a regular basis including hardware inventory and warranty reports. We will use reasonable efforts to provide any requested customized reports. *Extensive custom report creation may be billed outside of the PolarStar services agreement.*
Online Ticket Management Portal	Key members of Client team will have access to our online ticket management portal where you can submit tickets and/or review the status and notes on any open tickets.
System Documentation	Polar Systems creates a comprehensive set of documentation during the onboarding process. This documentation includes asset lists, configuration information, system diagrams, 3rd party vendor information, application information, and site photos. This set of documentation is enhanced and refined over time as the network evolves.
Response Time Commitment	Polar Systems will respond to and triage all requests within 1 hour during Regular Business Hours.
Ad hoc and Scheduled Onsite Support	Polar Systems will come onsite when needed to troubleshoot or repair covered equipment when remote remediation is not possible. Onsite visits to support covered equipment or systems is included at no extra charge. *Onsite visits related to the addition of equipment or in support of non-covered systems will be billed outside of the PolarStar services agreement.* Polar Systems will provide *scheduled* on-site support services (if any) as indicated on Appendix A. Schedule changes should be made at least one week in advance of the scheduled on-site event. Polar Systems reserves the right to send any qualified Polar Systems employee to an on-site scheduled event.
Managed Out-of-market Site	Remote support for satellite offices in other geographies outside of Polar Systems normal service area. *Expenses incurred by Polar Systems on behalf of the client for travel to remote sites, or costs related to use of 3rd party contractors for onsite remediation will be billed outside of the PolarStar services agreement.*
24x7 Support Acces	All PolarStar agreements provide access to our 24x7 support services for after-hours emergencies. *While after-hours access to our support team is included with your PolarStar agreement, we do bill separately for after-hours services at the prevailing rate.*

CITY OF OREGON CITY
PERSONAL SERVICES AGREEMENT

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between the CITY OF OREGON CITY ("City") and Polar Systems ("Consultant").

RECITALS

A. City requires services that Consultant is capable of providing under the terms and conditions hereinafter described.

B. Consultant is able and prepared to provide such services as City requires under the terms and conditions hereinafter described.

The parties agree as follows:

AGREEMENT

1. Term. The term of this Agreement shall be from the date the contract is fully executed until June 30, 2025, unless sooner terminated pursuant to provisions set forth below. However, such expiration shall not extinguish or prejudice City's right to enforce this Agreement with respect to (i) breach of any warranty; or (ii) any default or defect in Consultant's performance that has not been cured.

2. Compensation. City agrees to pay Consultant on a time-and-materials basis for the services required. Total compensation, including reimbursement for expenses incurred, shall not exceed $8525.00 per month.

3. Scope of Services. Consultant's services under this Agreement shall consist of general services as detailed in "Polar Systems Master Services Agreement - City of Oregon City ", "Polar Systems Managed Services Schedule - City of Oregon City" , "Addendum A - City of Oregon City", attached hereto and by this reference incorporated herein. Additional Scopes of Work may be developed and identified with not to exceed costs and attached as addendums to this PSA.

4. Standard Conditions. This Agreement shall include all of the standard conditions as detailed in Exhibit B, attached hereto and by this reference incorporated herein.

5. Integration. This Agreement, along with the description of services to be performed attached as listed in item 3 above and the Standard Conditions to Oregon City Personal Services Agreement attached as Exhibit B, contain the entire agreement between and among the parties, integrate all the terms and conditions mentioned herein or incidental hereto, and supersede all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

6. Notices. Any notices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received. Bills and invoices may be sent by e-mail or United States mail.

To the City:	City of Oregon City PO Box 3040 625 Center Street Oregon City, OR 97045 Attention: City Manager
To Consultant:	______________________________ ______________________________ ______________________________ ______________________________

Consultant shall be responsible for providing the City with a current address. Either party may change the address set forth above for purposes of notices under this Agreement by providing notice to the other party in the manner set forth above.

7. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this ____________________ day of ________________________, 20____.

CITY OF OREGON CITY	(CONSULTANT)
By: ______________________________ Anthony J. Konkol, III Title: City Manager	By: ______________________________ Title: ______________________________
DATED: ________________________, 20___.	DATED: ________________________, 20___.

By: ______________________________
Department Head's Name
Title: IT Director

APPROVED AS TO LEGAL SUFFICIENCY:

By: ______________________________
City Attorney

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

1. Consultant Identification. Consultant shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Consultant's social security number, as City deems applicable.

2. Payment.

(a) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers.

(b) City agrees to pay Consultant within thirty (30) days after receipt of Consultant's itemized statement. Amounts disputed by City may be withheld pending settlement.

(c) City certifies that sufficient funds are available and authorized for expenditure to finance the cost of the services to be provided pursuant to this Agreement.

(d) City shall not pay any amount in excess of the compensation amounts set forth above, nor shall City pay Consultant any fees or costs that City reasonably disputes.

3. Independent Contractor Status.

(a) Consultant is an independent contractor and is free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results.

(b) Consultant represents that it is customarily engaged in an independently established business and is licensed under ORS chapter 671 or 701, if the services provided require such a license. Consultant maintains a business location that is separate from the offices of the City and bears the risk of loss related to the business as demonstrated by the fixed price nature of the contract, requirement to fix defective work, warranties provided and indemnification and insurance provisions of this Agreement. Consultant provides services for two or more persons within a 12-month period or routinely engages in advertising, solicitation or other marketing efforts. Consultant makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and Consultant has the authority to hire or fire persons to provide or assist in providing the services required under this Agreement.

(c) Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law (including applicable City or Metro business licenses as per Oregon City Municipal Code Chapter 5.04). Consultant shall furnish the tools or equipment necessary for the contracted labor or services. Consultant agrees and certifies that:

(d) Consultant is not eligible for any federal social security or unemployment insurance payments. Consultant is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Consultant under this Agreement.

(e) Consultant agrees and certifies that it is licensed to do business in the state of Oregon and that, if Consultant is a corporation, it is in good standing within the state of Oregon.

4. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term by mutual written consent of the parties or by the City upon ten (10) days written notice to the Consultant, delivered by certified mail or in person. If the City terminates this Agreement without cause, or if the consultant terminates this Agreement due to the City's material breach, then: The City shall pay a penalty fee in the amount of the lesser of three (3) months of the most recent consultant monthly invoice, or a fee in the amount of the most recent consultants monthly invoice multiplied by the number of months remaining on the Agreement.

(b) Upon receipt of notice of early termination, Consultant shall immediately cease work and submit a final statement of services for all services performed and expenses incurred since

EXHIBIT B

the date of the last statement of services.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of City provided in this Agreement and relating to defaults by Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

5. No Third-Party Beneficiaries. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or 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 Agreement.

6. Payment of Laborers; Payment of Taxes.

(a) Consultant shall:

(i) Make payment promptly, as due, to all persons supplying to Consultant labor and materials for the prosecution of the services to be provided pursuant to this Agreement.

(ii) Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.

(iii) Not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished.

(iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Consultant under this Agreement and, unless Consultant is subject to back-up withholding, City will not withhold from such compensation or payments any amount(s) to cover Consultant's federal or state tax obligation.

(v) Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 653.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime.

(b) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Agreement as such claim becomes due, City may pay such claim to the person furnishing the labor or services and shall charge the amount of the payment against funds due or to become due Consultant by reason of this Agreement.

(c) The payment of a claim in this manner shall not relieve Consultant or Consultant's surety from obligation with respect to any unpaid claims.

(d) Consultant and subcontractors, if any, are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

7. Subconsultants and Assignment. Consultant shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Consultant.

8. Access to Records. City shall have access to all books, documents, papers and records of Consultant that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

9. Ownership of Work Product; License. All work products of Consultant that result from this Agreement (the "Work Products") are the exclusive property of City. In addition, if any of the Work Products contain intellectual property of Consultant that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Consultant hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver,

EXHIBIT B

publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Consultant under this Agreement. The parties expressly agree that all works produced (including, but not limited to, any taped or recorded items) pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Consultant shall not publish, republish, display or otherwise use any work or Work Products resulting from this Agreement without the prior written agreement of City.

10. Compliance With Applicable Law. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the services to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230 and 279B.270. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

11. Professional Standards. Consultant shall be responsible, to the level of competency presently maintained by others practicing in the same type of services in City's community, for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this authorization.

12. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

13. Indemnity and Insurance.

(a) Indemnity. Consultant acknowledges responsibility for liability arising out of Consultant's negligent performance of this Agreement and shall hold City, its officers, agents, consultants, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim caused or alleged to be caused by the negligent acts, omissions, activities or services by Consultant, or the agents, consultants or employees of Consultant provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Consultant certifies that Consultant has qualified for workers' compensation as required by the state of Oregon. Consultant shall provide the Owner, within ten (10) days after execution of this Agreement, a certificate of insurance evidencing coverage of all subject workers under Oregon's workers' compensation statutes. The insurance certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. All agents or consultants of Consultant shall maintain such insurance.

(c) Comprehensive, General, and Automobile Insurance. Consultant shall maintain comprehensive general and automobile liability insurance for protection of Consultant and City and for their directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, including loss of use, and occurring as a result of, or in any way related to, Consultant's operation, each in an amount not less than $1,000,000 combined, single-limit, per-occurrence/annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Consultant.

(d) Errors and Omissions Insurance. Consultant shall provide City with evidence of professional errors and omissions liability insurance for the protection of Consultant and its

EXHIBIT B

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

employees, insuring against bodily injury and property damage arising out of Consultant's negligent acts, omissions, activities or services in an amount not less that $500,000 combined, single limit. Consultant shall maintain in force such coverage for not less than three (3) years following completion of the project. Such insurance shall include contractual liability.

Within ten (10) days after the execution of this Agreement, Consultant shall furnish City a certificate evidencing the dates, amounts, and types of insurance that have been procured pursuant to this Agreement. Consultant will provide for not less than thirty (30) days' written notice to City before the policies may be revised, canceled, or allowed to expire. Consultant shall not alter the terms of any policy without prior written authorization from City. The provisions of this subsection apply fully to Consultant and its consultants and agents.

14. Legal Expenses. In the event legal action is brought by City or Consultant against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

15. Severability. The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

16. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

17. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

18. Hierarchy. The conditions contained in this document are applicable to every Personal Services Agreement entered into by the City of Oregon City in the absence of contrary provisions. Should contrary provisions be included in a Personal Services Agreement, those contrary provisions shall control over these conditions.

19. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the state of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

20. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. Nonwaiver. The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

22. Information and Reports. Consultant shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Consultant shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but shall remain with Consultant. Copies as requested shall be provided free of cost to City.

EXHIBIT B

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

23. City's Responsibilities. City shall furnish Consultant with all available necessary information, data, and materials pertinent to the execution of this Agreement. City shall cooperate with Consultant in carrying out the work herein and shall provide adequate staff for liaison with Consultant.

24. Arbitration.

All disputes arising out of or under this Agreement shall be timely submitted to nonbinding mediation prior to commencement of any other legal proceedings. The subsequent measures apply if disputes cannot be settled in this manner.

(a) Any dispute arising out of or under this Agreement shall be determined by binding arbitration.

(b) The party desiring such arbitration shall give written notice to that effect to the other party and shall in such notice appoint a disinterested person of recognized competence in the field as arbitrator on its behalf. Within fifteen (15) days thereafter, the other party may, by written notice to the original party, appoint a second disinterested person of recognized competence as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third disinterested person of recognized competence, and the three arbitrators shall, as promptly as possible, determine such matter, provided, however, that:

(i) If the second arbitrator is not appointed as described above, then the first arbitrator shall proceed to determine such matter; and

(ii) If the two arbitrators appointed by the parties are unable to agree, within fifteen (15) days after the second arbitrator is appointed, on the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties and, if the parties fail to agree on the selection of the third arbitrator within fifteen (15) days after the arbitrators appointed by the parties give notice, then, within ten (10) days thereafter, either of the parties, on written notice to the other party, may request such appointment by the presiding judge of the Clackamas County Circuit Court.

(c) Each party shall each be entitled to present evidence and argument to the arbitrators. The determination of the majority of the arbitrators or the sole arbitrator, as the case may be, shall be conclusive on the parties, and judgment on the same may be entered in any court having jurisdiction over the parties. The arbitrators or the sole arbitrator, as the case may be, shall give written notice to the parties, stating the arbitration determination, and shall furnish to each party a signed copy of such determination. Arbitration proceedings shall be conducted pursuant to ORS 33.210 et seq. and the rules of the American Arbitration Association, except as provided otherwise.

(d) Each party shall pay the fees and expenses of the arbitrator appointed by such party and one-half of the fees and expenses of the third arbitrator, if any.

25. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

EXHIBIT B

CITY OF OREGON CITY
CITY COMMISSION SPECIAL MEETING
DRAFT MINUTES

Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City
Wednesday, May 03, 2023 at 5:30 PM

1. CONVENE MEETING AND ROLL CALL

Mayor McGriff convened the meeting at 5:33 PM.

PRESENT: 5 - Commissioner Frank O'Donnell, Commissioner Adam Marl, Commissioner Rocky Smith, Commissioner Mike Mitchell, Mayor Denyse McGriff

STAFFERS: 8 - City Manager Tony Konkol, City Recorder Jakob Wiley, Communications Manager Jarrod Lyman, Community Development Director Aquilla Hurd-Ravich, Economic Development Coordinator Ann Griffin, Human Resources Director Patrick Foiles, Economic Development Manager James Graham, Assistant City Recorder Angelique Nomie

2. GENERAL BUSINESS

2a. City-Sponsored Public Event Program

James Graham, Economic Development Manager, introduced the City-Sponsored Public Event Program and asked Commissioners if they had any conflicts of interest to declare.

Commissioner O'Donnell had no conflicts of interest.

Commissioner Smith had volunteered at events but had no conflicts of interest.

Mayor McGriff said she represents the City of Oregon City on the Downtown Oregon City Association (DOCA) board as a voting member but does not have a profitable interest in their operations. She also volunteers at events.

Commissioner Marl had no conflicts of interest.

Commissioner Mitchell served on the DOCA board but resigned after being appointed to the City Commission.

Marci Jory, event organizer for the DOCA First City Celebration, presented DOCA's application. She stated that the event loses money every year due to the number of staff hours required and that grant funds would help make the event more sustainable.

Motion made by Commissioner Mitchell, seconded by Commissioner Marl, to approve $15,750 for the First City Celebration. The motion carried by the following vote:

Yea: 5 – Commissioners O'Donnell, Marl, Smith, Mitchell, McGriff

Commissioner Marl expressed concern that a voting member of DOCA sat on the City Commission. Commissioners Marl, O'Donnell, and Mitchell requested that this concern be reviewed in the future.

Lynda Orzen, founding member of the Three Rivers Artist Guild, presented an application for the Oregon City Festival of the Arts.

Mayor McGriff requested that more Oregon City vendors be included in this event. Commissioner O'Donnell suggested that Economic Development work with the applicant to bring in more Oregon City vendors for this event.

Motion made by Commissioner Smith, seconded by Mayor McGriff, to approve $6,875 for the Oregon City Festival of the Arts. The motion carried by the following vote:

Yea: 5 – Commissioners O'Donnell, Marl, Smith, Mitchell, McGriff

Bryce Morrow with the Oregon City Brewing Company presented an application for Oregon Trail Brewfest. He discussed analytics regarding how this event brought in people from outside Oregon City.

Commissioner O'Donnell asked how grant funds would be used for this event. Mr. Morrow said they would be used for advertising, increased security, more bands, and additional staffing.

Motion made by Commissioner Mitchell, seconded by Commissioner Marl, to approve $19,873 for Oregon Trail Brewfest. The motion carried by the following vote:

Yea: 4 – Commissioners Marl, Smith, Mitchell, McGriff

Abstain: 1 – Commissioner O'Donnell

Melissa Riley, Director of Development for Girl Scouts of Oregon and SW Washington, presented an application for Daisy Dash.

Commissioner O'Donnell asked when Oregon City would be involved in the event.

Shannon Evers, CEO of Girls Scouts of Oregon and SW Washington, said it was likely Oregon City would receive high numbers of participants on Saturday morning and that participants could compete in at least 100 specific, Oregon City-related challenges.

Commissioner Marl asked for clarification on how virtual event participation would benefit Oregon City. Ms. Riley replied that participants would receive more points for in-person challenges than for virtual challenges and added that virtual challenges could still garner interest in Oregon City.

Commissioner Mitchell shared concerns that the event does not occur solely within City limits and that it would be promoted primarily to Girl Scout members.

Commissioner Smith shared concerns that the program guidelines are for events that attract 1,000 – 5,000 participants but that the goal for this event, rather than the actual projected number, is 1,000 participants.

Mayor McGriff expressed concern that the event is not solely within Oregon City limits.

Commissioner Smith suggested using unused grant funds for smaller events and other organizations.

Motion made by Commissioner O'Donnell, seconded by Commissioner Mitchell, to decline $22,075 for Daisy Dash. The motion carried by the following vote:

Yea: 5 – Commissioners O'Donnell, Marl, Smith, Mitchell, McGriff

Mayor McGriff adjourned the meeting at 6:50 PM.

Respectfully submitted,

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Jakob S. Wiley, City Recorder

CITY OF OREGON CITY
CITY COMMISSION JOINT WORK SESSION WITH THE PLANNING COMMISSION
DRAFT MINUTES

Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City
Tuesday, March 07, 2023 at 6:00 PM

CONVENE WORK SESSION AND ROLL CALL

Mayor McGriff convened the meeting at 6:03 PM.

PRESENT: 10 - Commissioner Chris Staggs, Commissioner Gregory Stoll, Commissioner Dirk Schlagenhaufer, Commissioner Karla Laws, Commissioner Paul Espe, Commissioner Rocky Smith, Commissioner Mike Mitchell, Commissioner Adam Marl, Commissioner Frank O'Donnell, Mayor Denyse McGriff

ABSENT: 2 - Commissioner Daphne Wuest, Commissioner Bob LaSalle

STAFFERS: 8 - City Manager Tony Konkol, Community Development Director Aquilla Hurd-Ravich, Senior Planner Christina Robertson-Gardiner, Human Resources Director Patrick Foiles, Parks and Recreation Director Kendall Reid, IT Director Mike Dobaj, Public Works Director John Lewis, Assistant City Recorder Angelique Nomie

DISCUSSION ITEMS

1. Summary of Middle Housing Policy Discussion Topics (Package #2 of Legislative File: GLUA 22-0002/LEG-22-0001- HB 2001 Housing Choice Code Update)

Aquilla Hurd-Ravich, Community Development Director, introduced the topic of new middle housing legislation from the state. The purpose of tonight's meeting was to explore policy options that would be best for Oregon City.

Christina Robertson-Gardiner, Senior Planner, presented policy topics reviewed by the Planning Commission, including land use affordability incentives, tiny homes and recreational vehicles, micro shelters, multiple accessory dwelling units (ADUs) per lot, and system development fees.

Discussion occurred over the difference between tiny homes and micro shelters, the latter of which are used for transitional housing.

Mayor McGriff suggested that if affordability incentives are used, the price point should remain stable. Commissioner Mitchell agreed and requested more information on this topic. Commissioner Espe suggested that profit margins at the point of sale should also be regulated. Commissioner Schlagenhaufer discussed the option of a recorded covenant to regulate costs.

Commissioner O'Donnell discussed a percentage contribution to total cost and requested specific information on flexible code provisions.

Mayor McGriff asked if recreational vehicles (RVs) were being considered permanent housing. Ms. Hurd-Ravich said this was up for discussion and added that the concern for RVs was location and hooking up to utilities whether the housing was permanent or temporary. She said RVs were tied to tiny homes because tiny homes are also on wheels.

Commissioner Marl said he does not disagree with long-term park reservations or a private property owner allowing someone to park an RV on their property, but he has concerns with neighborhood livability when it comes to this topic.

Commissioners Smith and O'Donnell agreed.

Commissioner Mitchell agreed and requested more information on the differences between a tiny home and an ADU.

Mayor McGriff suggested an allowance for the development of an RV park. She would like to explore the option of tiny homes but said it depends on where they would go.

Commissioner Espe requested an allowance for temporary structures to accommodate RVs in the event of a disaster.

Commissioner Laws said she went to an RV park in Gladstone and saw a tiny home without wheels nearby. She said the vision of RV parks was to decrease the number of mobile home parks and suggested a vision of tiny homes with no wheels and trees and sitting areas as a possibility for affordable housing.

Commissioner Schlagenhaufer said the Planning Commission considered RVs as part of middle housing due to their low cost and suggested that concerns and enforcement issues could be managed in an RV park. He said he would not support tiny homes without sewer, stormwater, and water connections due to the potential of exposed biohazards.

Commissioner Stoll requested a distinction in the city code between RVs and tiny homes if possible. He said although tiny homes can be moved, they are usually built to remain in place. He commented on changing demographics in the country including fewer children, fewer marriages, and more single-person households, stating that housing availability and laws should be more accommodating to these demographics.

Commissioner O'Donnell asked that the cost of City services be kept in mind when discussing affordable housing.

Commissioner Laws said a lack of system development charges paired with more infill would create a burden on current parks. She requested that system development charge (SDC) fees go to current parks as well as new parks.

Mayor McGriff said infill would affect systems across the board. She suggested exploring the idea of a tiny home development with a neighborhood feel, as opposed to in someone's backyard or a random lot.

Commissioner O'Donnell said placement, terms of use, and duration should be clearly defined when discussing micro shelters. He added that their placement should not affect livability. Commissioner Mitchell said micro shelters were worth investigating, especially if there is a need, but that their placement was important. Commissioner O'Donnell asked that City services for micro shelters also be kept in mind.

Commissioner Staggs suggested that multiple ADUs per lot were similar to cottage clusters.

Commissioner Smith opined that it is different if the units are placed in a neighborhood of cottage homes versus in the center of a neighborhood.

Commissioner Staggs said zoning codes allow for cottage home development in single-family neighborhoods. Commissioner Schlagenhaufer said it is legal to bulldoze a house and build a cottage cluster or fourplex, and this may be the only option available if ADUs are not permitted in single-dwelling housing neighborhoods.

Commissioner Mitchell confirmed that State law requires the city to allow a fourplex in a single-family home neighborhood and asked what the difference was between a fourplex and multiple ADUs, other than that the fourplex would be rented and the ADU would likely be owned.

Commissioner Marl agreed and asked about the difference between cottage clusters and multiple ADUs. He said he would like a low cap on the number but encourages further exploration of this topic.

Commissioner Stoll discussed the difference in square footage requirements between fourplexes and multiple ADUs.

Commissioner Laws suggested the benefits of ADUs for adults needing assistance.

A consensus was reached to bring back discussion of SDCs.

ADJOURNMENT

Mayor McGriff adjourned the meeting at 7:01 PM.

Respectfully submitted,

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Jakob S. Wiley, City Recorder

CITY OF OREGON CITY
CITY COMMISSION
MEETING MINUTES

January 7, 2009

1. **Convene Regular Meeting of January 7, 2009 at 7:02 p.m. and Roll Call**

Roll Call: Mayor Alice Norris; Commissioner Damon Mabee; Commissioner Doug Neeley; and Commissioner Daphne Wuest.

Staff Present: Larry Patterson, City Manager; Ed Sullivan, City Attorney; Nancy Kraushaar, City Engineer and Public Works Director; Scott Archer, Community Services Director; Dan Drentlaw, Community Development Director; David Wimmer, Finance Director; Nancy Ide, City Recorder; Jim Loeffler, Human Resources Director; and Mike Conrad, Acting Police Chief.

2. **Flag Salute**

3. **Ceremonies, Proclamations, Presentations**

Mayor Norris announced a "Sesquicentennial Moment" to honor Oregon's 150th birthday and to give little-known facts about Oregon City. She stated the City's seal includes the City's motto: "Urbs Civitatis Nostrae Prima Et Mater," meaning "First and Mother Town of our State."

a. **Oath of Office for Newly Elected City Commissioners, The Honorable Judge Laraine McNiece, Officiating Commission Position No. 2: Rocky L. Smith, Jr.**

Commission Position No. 3: James J. Nicita

The Honorable Judge Laraine McNiece administered the Oaths of Office to newly elected City Commissioners Rocky L. Smith, Jr. for Position No. 2 and James J. Nicita for Position No. 3.

Commissioners Smith and Nicita took their place at the dais.

b. **Election of Commission President for 2009**

Roll Call: Mayor Alice Norris; Commissioner Doug Neeley; Commissioner James Nicita; Commissioner Rocky Smith, Jr.; and Commissioner Daphne Wuest.

Staff Present: Larry Patterson, City Manager; Ed Sullivan, City Attorney; Nancy Kraushaar, City Engineer and Public Works Director; Scott Archer, Community Services Director; Dan Drentlaw, Community Development Director; David Wimmer, Finance Director; Nancy Ide, City Recorder; Jim Loeffler, Human Resources Director; and Mike Conrad, Acting Police Chief.

Motion by Commissioner Doug Neeley, second by Commissioner Rocky Smith, Jr. to nominate Commissioner Daphne Wuest as Commission President for 2009.

A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Doug Neeley, Commissioner Rocky Smith, Jr., and Commissioner Daphne Wuest voting aye and Commissioner James Nicita abstained. [4:0:1]

c. **Swearing In of Commission President for 2009 The Honorable Judge Laraine McNiece, Officiating**

The Honorable Judge Laraine McNiece administered the Oath of Office to 2009 Commission President, Daphne Wuest.

d. **Commission Assignments**

1. **Metro Policy Advisory Committee (MPAC)**

Mayor Norris announced the assignment of Mayor Alice Norris to MPAC and Commissioner Doug Neeley as alternate.

2. **Joint Policy Advisory Committee on Transportation (JPACT)**

Mayor Norris announced the assignment of Mayor Alice Norris as alternate to JPACT.

3. **South Fork Water Board**

Mayor Norris announced the assignment of Mayor Alice Norris, Commissioner Daphne Wuest, and Commissioner Rocky Smith, Jr. to the South Fork Water Board.

4. **Urban/Rural Reserves - Regional**

Mayor Norris announced the assignment of Mayor Alice Norris to Urban/Rural Reserves - Regional and Commissioner James Nicita as alternate.

5. **Urban/Rural Reserves - County**

Mayor Norris announced the assignment of Commissioner Doug Neeley to Urban/Rural Reserves - County and Commissioner Daphne Wuest as alternate.

6. **Main Street Program**

Mayor Norris announced that Commissioner Daphne Wuest has previously been endorsed as a member of the Main Street Board and Commissioner James Nicita serves on the design subcommittee.

7. **Clackamas County Coordinating Committee (C4)**

Mayor Norris announced the assignment of Mayor Alice Norris to the Clackamas County Coordinating Committee and Commissioner Daphne Wuest as alternate.

8. **Oregon City Tourism Council**

Mayor Norris announced the assignment of Commissioner Rocky Smith, Jr. and Commissioner Daphne Wuest to the Oregon City Tourism Council and Mayor Alice Norris as alternate.

9. **South Metro Light Rail**

Mayor Norris announced the assignment of Mayor Alice Norris to the South Metro Light Rail Committee.

10. **Regional Wastewater Treatment Task Force**

Mayor Norris announced the assignment of Mayor Alice Norris to the Regional Wastewater Treatment Task Force and Commissioner James Nicita as alternate.

11. **Oregon City 150th Task Force**

Mayor Norris announced that Mayor Alice Norris, Commissioner Rocky Smith, Jr., and Commissioner Daphne Wuest are currently serving and will continue to serve on the Oregon City 150th Task Force.

12. **Willamette Falls Heritage Area Coalition**

Mayor Norris announced the assignment of Mayor Alice Norris to the Willamette Falls Heritage Area Coalition and Commissioner Daphne Wuest as alternate.

13. **One Willamette River Coalition (Locks)**

Mayor Norris stated the assignment of the member to the One Willamette River Coalition will be announced at a later date.

14. **Economic Development Liaison**

Mayor Norris announced the assignment of Mayor Alice Norris as the Economic Development Liaison and Commissioner Daphne Wuest as alternate.

15. **Clackamas Heritage Partners Liaison**

Mayor Norris announced the assignment of Commissioner James Nicita as the Clackamas Heritage Partners Liaison and Commissioner Daphne Wuest as alternate.

4. **Citizen Comments**

Claire Met, representing the Chamber, extended an invitation to the Oregon City Chamber of Commerce's annual dinner and auction on January 31, 2009, its 100th year of service to the business community in Oregon City.

5. **Adoption of the Agenda**

The agenda was adopted as presented with item 6b removed from the Consent Agenda for separate vote.

6. **Consent Agenda**

a. **OLCC: Liquor License Application - Full On-Premises Sales for Commercial Establishment, Applying for a Change of Ownership and Change of Trade Name, Boots Enterprises, LLC, DBA Woodstone Steakhouse, Located at 19502 Molalla Avenue, Suite 123, Oregon City**
Staff: Mike Conrad, Acting Police Chief

Motion by Commissioner Daphne Wuest, second by Commissioner Doug Neeley to approve consent agenda item 6a as presented.

A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Doug Neeley, Commissioner James Nicita, Commissioner Rocky Smith, Jr., and Commissioner Daphne Wuest voting aye. [5:0:0]

b. **Minutes of December 9, 2008 Work Session**
Nancy Ide, City Recorder

Motion by Commissioner Daphne Wuest, second by Commissioner Doug Neeley minutes of December 9, 2008 Work Session.

A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Doug Neeley, and Commissioner Daphne Wuest voting aye and Commissioner James Nicita, Commissioner Rocky Smith, Jr. abstained. [3:0:2]

7. **Communications**

a. **City Manager**

Mr. Patterson welcomed Commissioners Smith and Nicita to the Commission and announced the Commission Retreat will be held January 9-10, 2009 at the Ainsworth House in Oregon City.

Mr. Patterson asked Ms. Kraushaar to give an update on the City's efforts during the recent storms. Ms. Kraushaar reported on the heavy, unprecedented rainfall, approximately 5 inches of rain in 24 hours. She said the Operations group performed heroicly considering the circumstances. There was a sewer back-up on Joyce Court that backed up in five homes, resulting from a blockage in the downstream pipe by a paint roller. The drain is restored again and the pipe capacity will be reviewed to ensure it is adequate for the supply. There was also a sewage back-up on Linn Avenue, and a sewage company was hired to restore the system. Public Works will also study this area to ensure its capacity is adequate. Many streets were temporarily closed, streams eroded, and gravel flowed into the roads. Clean up is now taking place. She reported that seven landslides have recently taken place in the City and the City is carefully monitoring these, including some movement at Newell Creek Village Apartments. Catch basins have been cleaned, sand bags are available on the hilltop and at Public Works; the Police Dept. has access to barricades to close streets if needed; and pump contractors are on call if needed. She stated the additional costs incurred are $50,000, and the latest rainstorm has cost $30,000, which is a hit on the stormwater fund. She noted the pavement damage on the roads as a result of the tire chains and said a new patch truck just arrived and will help in repairing the streets as time allows. Mr. Patterson stated that staff delivered many meals-on-wheels during the storms.

Mayor Norris commended the Operations staff for their 24-hour shift work during the storm crises. She asked for the difference in sand vs. de-icing as related to snow on the roads. Ms. Kraushaar responded that de-icer is used more throughout the storm which eliminates the need for excessive amount of sand. De-icer is efficient in labor, as it reduces the clean-up time of the gravel. Priority routes are the public safety streets that lead to emergency services, and steep hills are also a priority. She informed the public that broken tree limbs on the property owner's frontage are their responsibility to remove. Mr. Patterson stated the Code Red emergency system was used to ask the public to clear sidewalks and walkways near their homes.

Ed Allick of Oregon City commended City staff for the great job they did with the little equipment available.

Mr. Sullivan reported on the outcome of a court matter concerning Lowell Wittke and Oak Tree Terrace. Mr. Wittke had failed to appropriately complete the final lift on the road following completion of the development and the City sued to recover the costs incurred in completing the final lift. The case was apparently settled in November 2008, and Mr. Wittke had problems with the paperwork and has not signed the agreement. Court is again scheduled for Friday, and he asked the Commission for permission for the Mayor to sign the City's portion of the settlement and present it to the Court along with the other parties.

Motion by Commissioner James Nicita, second by Commissioner Doug Neeley authorize the City Commission to sign a settlement agreement and mutual release related to the Wittke litigation.

A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Doug Neeley, Commissioner Daphne Wuest, Commissioner James Nicita, and Commissioner Rocky Smith, Jr. voting aye. [5:0:0]

b. **Mayor**

Mayor Norris announced the first Sesquicentennial event on January 14 at City Hall where the event's stamp will be released, including a special postmark in Oregon City that will say "First City Station" and a specially-designed stamp designed by Oregon City high school students.

Mayor Norris announced the Willamette Falls Heritage Area Coalition, an effort by the mayor of West Linn and herself to be the umbrella group to preserve and enhance the Willamette Falls area from the Tualatin River to the Clackamas River. A master plan has begun by students, and she asked the Commission to authorize to spend up to $5,000 for this project, to be paid from the business license reserves. After some discussion, a decision was tabled to a future meeting.

c. **Commissioners**

Commissioner Nicita commended the Public Works crews for the fine work during the storms.

Commissioner Smith reported the Post Office would also display a board showing the students' designs for the Sesquicentennial stamps.

8. **Adjournment**

The meeting was adjourned at 8:02 p.m.

Respectfully submitted,

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Nancy Ide, City Recorder

CITY OF OREGON CITY
CITY COMMISSION
MEETING MINUTES

October 15, 2008

1. **Convene Regular Meeting of October 15, 2008, and Roll Call**

Roll Call: Mayor Alice Norris, Commissioner Damon Mabee, Commissioner Doug Neeley, and Commissioner Trent Tidwell.

Staff Present: Larry Patterson, City Manager, Ed Sullivan, City Attorney, Gordon Huiras, Police Chief and Public Safety Director, Nancy Kraushaar, City Engineer and Public Works Director, Dan Drentlaw, Community Development Director, David Wimmer, Finance Director, Nancy Ide, City Recorder, and Jim Loeffler, Human Resources Director.

2. **Flag Salute**

3. **Ceremonies, Proclamations, Presentations**

4. **Citizen Comments**

None.

5. **Adoption of the Agenda**

The agenda was adopted as presented.

6. **Public Hearings**

a. **LEGISLATIVE: Ordinance No. 08-1009: Amendment to the Oregon City Transportation System Plan (Planning File L 08-03) (Continued from the September 3, 2008 City Commission meeting.)**

Motion by Commissioner Doug Neeley, second by Commissioner Damon Mabee to continue item 6a, Ordinance No. 08-1009, Amendment to the Oregon City Transportation System Plan (Planning File L 08-03) to the November 19, 2008 City Commission meeting.
A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Damon Mabee, Commissioner Doug Neeley, and Commissioner Trent Tidwell voting 'aye' .[4:0]

7. **General Business**

a. **Intergovernmental Agreement Between Clackamas County Service District**

No. 1 and Tri-City Service District

Mike Kuenzi, Director of Water Environmental Services, spoke on this item. Chris Storey, County Counsel for the District, was also present. Mr. Kuenzi stated the IGA defines the relationship between Tri Cities Service District and Clackamas County Service District #1 regarding Phase I improvements currently underway. $65-$75 million dollars is being invested in the improvements, paid solely by CCSD#1. Tri City is not subsidizing the improvements, which will accommodate future growth capacity. He explained the IGA contained two components: 1) The capital component; 2) The operations and maintenance (O & M) component. The capital component included a $4 million dollar lump sum. The O & M would be an annual payment, not yet defined in amount, but possibly a 50/50 split. He noted the agreement is a huge plus from the risk reduction standpoint, as the operation will be a high value/high quality system next to a conventional treatment that allows much flexibility to meet changes in a regulatory environment and to adapt to unexpected future changes. He asked the Commission to endorse the agreement, which he hoped would go before the County Commissioners by mid November.

Mayor Norris noted that the $4 million lump sum can be invested and interest can be used to buy down rates in the future. Mr. Kuenzi responded that the money can be put aside and used as a rate-reduction method.

Commissioner Neeley asked if the Tri City bonds had been paid off, and Mr. Kuenzi responded there is no debt on the bonds.

Mr. Patterson noted Mr. Sullivan had asked some questions, one being whether this was a good arrangement for the rate payers of Tri-City Service District. He felt it was a good solution, and noted that construction had already begun.

Mr. Kuenzi stated there was remediation money set aside. Excavation has been finished and they did not hit the landfill, and no remediation would be done associated with this project. Tri City does not get off the hook in terms of the original agreement. They still need to mediate at the appropriate time.

Mr. Patterson recommended setting back this item for final action due to mediation and ability to work through other wording changes.

Mayor Norris asked if the agreement could be written open ended to allow for different roles or more-or-less governance to be added.

Mr. Kuenzi replied the agreement could be rolled into the binding agreements or terminated and rewritten in some other method. The followed up on the Advisory Committee and noted the role of the committee is in the original charter and part of the bylaws, and if these are to be changed, the charter would need to be modified.

Commissioner Tidwell asked if one of the participants chose not to endorse the IGA, what would be his recourse. Mr. Kuenzi replied the only outstanding issue was the buyback provision that West Linn wants to include. He would ask the Board to make the final decision if one of the participants chose not to participate.

Commissioner Neeley noted that the facility would not be a taxable property for Oregon City and asked how this was dealt with in the meetings. Mr. Kuenzi replied this discussion had been tabled to the next discussion with the community partners. Mayor Norris reiterated it was not off the table, and stated that CCSD rate payers would be stepping up with rate increases.

Commissioner Mabee noted that significant payments are coming to CCSD and it will help the rate payers. He noted that the construction was done on the original footprint, and not taking any further property off the tax rolls. He expressed concern that the facility was in the flood zone, but added the membrane facility is significantly harder to flood an take offline. The pros and cons generally weigh out in Tri-City's favor. Mayor Norris added the facility was being built very green.

Commissioner Mabee stated he provisionally supported the IGA.

Item 7a deferred to a future City Commission meeting to allow for further revision to the IGA.

b. **Consider Request of Clackamas County Land Trust to Pay All or Portion of SDC Fees**

Mr. Patterson reviewed Clackamas County Land Trust's request for a buy-down of SDC credits, $90,000 in relief off the SDC payments which are calculated at $165,000 on this project. He asked whether the Commission wished to move forward, as it provided options for families. He provided a report outlining where the money could be found to pay for the relief. He asked how much, if any, does the Commission wish to pay toward the SDCs. He suggested identifying the money in the general fund if they chose to pay $50,000 or less. He stated this was a one-time request and not a new fund or program.

Sarah Buckley, Executive Director of the Clackamas Community Land Trust, explained how the program that keeps homes affordable works. Once funds have been put in to making homes affordable, the homes will always be affordable to the future buyers. When the house is sold, the owner gains a percentage of the appreciation, not the full appreciation. The percentage gained is tacked onto the original sale price an that is the sales price for the next buyer. The majority of the homeowners move on into the normal market. She described the current project on Morton Road in Oregon City. She explained the other sources of funding subsidy the Trust had sought to partner with them to keep the home prices between $120,000 and $140,000.

Comm. Tidwell asked if there was a sense of urgency to the request, and Ms. Buckley responded she anticipated approval of the plans within a month from the Oregon City Planning Dept., and then move forward with purchase of the land. Commissioner Tidwell said he was not at the previous work session where this was discussed and would be more comfortable with a more complete discussion at a future work session. Ms. Buckley said it would work for her to return to a future work session.

Commissioner Neeley stated he recognized the need and did not have a problem holding this over. He asked for a range of percentages of median income for affordable housing, and she replied the Trust serves families below 80% of the median family income. The average is at 58%.

Commissioner Mabee asked what was the amount of median family income, and Ms. Buckley reported that for a family of 4, it is $54,500.

Mayor Norris stated that statistics show that Oregon City needs affordable housing as much as the remainder of the region. Ms. Buckley stated that Clackamas River Water gave a 25% break on the SDCs, and WES gave a break on stormwater fees and possibly more. Mayor Norris suggested giving a portion, such as $50,000, of the reduction and to encourage her to ask South Fork Water Board and Tri City for relief also.

Commissioner Neeley questioned whether the water and sanitary sewer funds were available for use, and Mayor Norris replied she was not comfortable with using funds where the fees were just raised for citizens. Nancy Kraushaar said they did not raise sewer fees.

Item 7b deferred to the December 2008 Work Session for further discussion.

c. **Resolution No. 08-37: Vacate of Public Sanitary Sewer Easement Located Along the South Side of Library Court for Clackamas County (City File No. EV08-0005).**

Ms. Kraushaar reported that an existing sewer line near the new County Development Services Building that had a public sewer easement over it was not longer needed, but can become a private sewer line. The County requested the City vacate it, and she had no issue with the vacation.

Motion by Commissioner Doug Neeley, second by Commissioner Trent Tidwell to approve Resolution No. 08-37, Vacate of Public Sanitary Sewer Easement located along the south side of Library Court for Clackamas County (City File No. EV08-0005).
A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Damon Mabee, Commissioner Doug Neeley, and Commissioner Trent Tidwell voting 'aye' .[4:0]

d. **Minutes of the August 20, 2008 Regular Meeting (Wuest absent)**

e. **Minutes of the October 1, 2008 Regular Meeting (All present)**

Motion by Commissioner Trent Tidwell, second by Commissioner Damon Mabee to approve minutes of the August 20, 2008 and October 1, 2008 regular meetings as presented.
A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Damon Mabee, Commissioner Doug Neeley, and Commissioner Trent Tidwell voting 'aye' .[4:0]

8. **Communications**

a. **City Manager**

Mr. Patterson recommended the City proceed to take action on #1, #2, and #3 on the report he distributed to the Commission regarding the concerns at Laurel Lane. Commissioner Mabee affirmed the steps outlined by the city manager.

b. **Mayor**

Mayor Norris reported she and Commissioner Wuest and Larry Patterson attended the League of Oregon Cities annual convention last week in Salem, and they had the chance to grill legislators. Tomorrow night is City Hall Week at the Carnegie Center to discuss the shared legislative agenda. She stated that on October 8 there were 200+ people at the Metro meeting and she reported on some of the topics: 1) Demographics, the boom to come to the region will bring one million people - the majority of the people will be going the sunbelt of the west, the Northwest; we will be tearing down 200,000 homes during the next 20 years and replacing them with 500,000 homes, resulting in a building boom. The life span of a home is 165 years, a big box is 10 years; 86% of the growth will be houses without children; 30% want rural; 51% want city or suburb; 19% want conventional suburb for families; 62% want detached housing; 60% want small lot less than 7,000 square feet. Today, homeownership is 60%; in the futre 50% will be rentals. The least foreclosure is in the urban centers. Dan Drentlaw added that the suburbs is less popular due to the cost of transportation. Next joint regional meeting is next Wednesday focused on land use. Tomorrow morning the Willamette stakeholders group that discusses the Falls environment will meet with State Parks and a professor from Univ. of Oregon State Landscape Architecture Department.

c. **Commissioners**

Commissioner Mabee reported on the Clackamas Heritage Partners' planned expansion and access to the Falls, and the need for $30-$40 million dollars to see the project happen. He indicated there was good vision and they were realistic as to what they can accomplish. Commissioner Neeley added that access to museum from the other side of Hwy. 99E would likely be discussed in the early phase of the project.

Mayor Norris was at the workshop with other city officials to plan for the area if the access project goes forward.

Commissioner Tidwell reported that a new coffee shop has moved into the former Acme Coffee Shop. He will announce soon his new location for Conversations with a Commissioner.

9. **Adjournment**

Respectfully submitted,

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Nancy Ide, City Recorder

CITY OF OREGON CITY
MINUTES OF THE CITY COMMISSION WORK SESSION

October 7, 2008

1. Call to Order and Roll Call

Mayor Alice Norris called the work session to order at approximately 6:45 p.m. on October 7, 2008, in City Hall Commission Chambers, 320 Warner Milne Road, Oregon City.

Roll Call: Mayor Alice Norris, Commissioner Doug Neeley.

Staff Present: Larry Patterson, City Manager; Nancy Ide, City Recorder; Nancy Kraushaar, City Engineer and Public Works Director; Dan Drentlaw, Community Development Director; Mike Conrad, Police Chief.

2. Future Agenda Items

No future agenda items discussed.

3. Discussion Items

a. Presentation by Ted Kyle of Tri-City Plant Design

Ted Kyle was present representing Tri-City Service District and spoke on the expansion plan and proposed master plan for the Tri-City plant using a PowerPoint presentation. He stated the plan was a large investment for the region. He described the long-term plan and then explained Phase I which included sustainability efforts. He described how the use of technology would fit three times the use in a smaller framework. He stated the proposal would preserve ten acres for open space and seal off the landfill site for use in future development. He explained the landfill would be shuffled to provide cleaner land and a modern landfill cap covering for earth and trees. The landfill mediation would begin in the summer of 2010. He presented plans for educating the public on the operations of the Tri-City plant, pointing out an outdoors location near the Clackamas River where such education would take place. He explained the back-up operations plan for the plant, and he presented a slide of the proposed building to house the operations. He explained the plant's proposed ability to reuse water in an unrestricted way in the urban and rural environment. He discussed lighting inside the buildings; stormwater management in the infiltration pond; truck traffic on Agnes Road and the infiltration designs for the road; tour routes for the public; and reuse of water under Oregon rule.

Commissioner Neeley expressed concern for failure of operations during down times and redundancy. Mr. Kyle stated there was redundancy at the system level and four tanks to allow for service during failures. He pointed out that redundancy that is interconnected within the plant is more valuable than at another plant. Part of the plant is in Oregon City and another part of the plant is in Milwaukie, allowing for down time at one plant for servicing.

Ms. Kraushaar asked Mr. Kyle to initiate discussion with other Tri-City staff to develop buffering or camouflaging to reduce unsightly, unwelcoming infrastructure at the entrance to Oregon City. Mr. Kyle agreed to have these discussions, and he added the buildings were designed to have a business park look with landscaping and a stone wall similar to the historic walls in Oregon City, including screening from the neighbors and noise control.

Mayor Norris thanked Mr. Kyle for his presentation.

b. Request for City to Pay Partial SDC Cost from Clackamas Community Land Trust

Sarah Buckley, Executive Director of the Clackamas Community Land Trust, and David Bower, project manager and designer, were present for the discussion. Ms. Buckley gave a brief overview of the Trust, in operation since 1999, and how it provided homeownership programs for folks earning in the 30-80% of median family incomes. Community Land Trusts had been assisting people to become homeowners who were in that income category. She was proposing the first home development for the Trust in Oregon City on Morton Road off Division. To meet their goal, the Trust requested a System Development Charge reduction. She presented their newsletters to the Commission.

Ms. Kraushaar stated that the City followed state statutes for system development charges, and there was not a provision for waiving SDCs. The charges were based on formulas derived from potential growth, and rather than waiving the charges, it can be reduced to a reduction on demand of the growth of the system by way of an alternative methodology. A waiver should be made up from other funds. Even though the request was compelling, there was a fairness issue to consider to other developers and the question of what criteria should be used.

Ms. Buckley stated there was an agreement with the tax assessor that the value of the land would be assessed at $10,000, and the homeowner pays that small amount of tax on the land and home improvements.

Mr. Bower pointed out that Portland does not waive SDCs but they do it in an alternative way by using a fund to pay the SDCs for affordable housing. Mayor Norris stated that was the way she felt the City should support the commitment to affordable housing. Mr. Patterson stated he would get further information to the Commission if they wished to pay the waiver amount out of a City fund.

c. Intergovernmental Agreement with CCSD#1

The discussion on this agenda item was deferred to a future meeting.

d. Web Streaming of Work Sessions

Nancy Ide, City Recorder, presented a proposal for initiating web streaming of City Commission work sessions that would provide immediate review of Commission directives and efficiency in minutes transcription. The Commission's consensus was to make a decision at a later time when there was full discussion available from all the Commission members at the next work session.

e. Annexation Policy for Tree Preservation

Dan Drentlaw, Community Development Director, stated there were three efforts in place for tree protection: 1) A proposed code amendment reviewing site development regulations and improvement of tree protection during the development process; 2) Development of a heritage tree protection ordinance; 3) Reviewing policies to prevent landowners from stripping trees prior to annexation, including potential use of aerial photographs for proof of tree stripping. Commissioner Neeley commented that some landowners plant trees for the purpose of growing and selling timber and he would not support interfering with those purposes.

There was consensus to move forward with further review of the annexation policy.

f. MTIP Transportation Funding Application, McLoughlin Boulevard, Phase 2 - Public Comment Period and Listening Posts

The discussion on this agenda item was deferred to a future meeting.

4. City Manager's Report

There were no City Manager's reports.

5. Adjournment

Mayor Norris adjourned the meeting at approximately 8:05 p.m.

Respectfully Submitted:

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Kattie Riggs, City Recorder

625 Center Street
Oregon City, OR 97045
503-657-0891

CITY OF OREGON CITY

Staff Report

To: City Commission **Agenda Date:** 6/21/2023

From: Finance Director Matt Zook

SUBJECT:

Resolution No. 23-13, Supplemental Budget for the 2021-23 Biennium

STAFF RECOMMENDATION:

Move to approve Resolution No. 23-13, A Resolution to Adopt a Supplemental Budget for the 2021-23 Biennium

EXECUTIVE SUMMARY:

The Mayor and City Commission adopted the 2021-23 Biennial Budget on June 2, 2021. Conditions not known at the time the budget was prepared have occurred that require changes in financial planning. Oregon Budget Law allows the City Commission to make budget adjustments by resolution. Notice of this public hearing was noticed in the Oregon City News on June 14. 2023.

BACKGROUND:

Additional information on each adjustment is provided in “Exhibit A - Budget Adjustment Summary” attached to Resolution 23-13. The adjustments include:

- Increase for GASB 96 Subscription Based IT Arrangements (SBITAs)
- Increase Pass Through system development revenue for WES
- Increase Pass Through system development revenue for SFWB
- Increase Code Enforcement additional Parking Kiosks
- Increase Police Software funded by Federal grant
- Increase Parks additional costs for the Cemetery Bathroom project
- Increase Water for land purchase and projects
- Recognize ARPA funding

OPTIONS:

1. Approve Resolution No. 23-13 as is

2. Provide edits to Resolution No. 23-13
3. Deny Resolution No. 23-13

BUDGET IMPACT:

Amount: Information on each adjustment is provided in the Budget Adjustment Summary attached to this staff report

FY(s): 2021-23 biennium

Funding Source(s): Various

RESOLUTION NO. 23-13

A RESOLUTION TO ADOPT A SUPPLEMENTAL BUDGET FOR THE 2021-23 BIENNIUM

WHEREAS, the City Commission adopted a budget for the 2021-23 Biennium and made appropriations by Resolution No. 21-29 on June 2, 2021; and

WHEREAS, ORS 294.338, ORS 294.463 and ORS 294.466 provide the legal basis for changes in appropriations, and ORS 294.471 and ORS 294.473 provide the legal basis for supplemental budgets, by Commission Resolution; and

WHEREAS, the need now exists to transfer and appropriate funds for the purposes and in the amounts shown in the attached Budget Adjustment Summary; and

WHEREAS, conditions not ascertained at the time the budget was prepared have occurred that require changes in financial planning, resulting in a change in appropriation.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of Oregon City that the Budget Adjustment Summary as attached as Exhibit A be made a part hereof and authorized. This resolution shall take effect immediately upon adoption.

Approved and adopted at a regular meeting of the City Commission held on the 21st day of June 2023.

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DENYSE C. MCGRIFF, Mayor

Attested to this 21st day of June 2023:

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Jakob S. Wiley, City Recorder

Approved as to legal sufficiency:

____
City Attorney

Oregon City
Budget Adjustment Summary
2021 - 2023 Budget Adjustment 5

Description	Account	Original Budget	Increase	Decrease	Revised Budget
1) General Fund Transfer to recognize ARPA Funds					
General Fund					
Federal Operating Grants	R 100-210-4302	$ 104,000	$ 8,241,316	$ -	$ 8,345,316
Transfer To Water Fund	E 100-900-9951	$ -	$ 5,600,000	$ -	$ 5,600,000
Transfer To Transportation Fund	E 100-900-9926	$ 960,008	$ 300,000	$ -	$ 1,260,008
Tourism Promotion	E 100-160-6816	$ 650,000	$ 100,000	$ -	$ 750,000
Consulting	E 100-160-6003	$ 290,000	$ 81,590	$ -	$ 371,590
Contingency (Ending Fund Balance)	E 100-190-9998	$ 6,102,559	$ 1,533,549	$ -	$ 7,636,108
Future Reserve- General Fund	E 100-190-9999	$ 1,298,874	$ 626,177	$ -	$ 1,925,051
Water Fund					
Transfer from General Fund	R 510-551-4910	$ -	$ 5,600,000	$ -	$ 5,600,000
Federal Operating Grants	R 510-551-4302	$ 5,607,000	$ -	$ 5,600,000	$ 7,000
Transportation Fund					
Transfer from General Fund	R 260-526-4910	$ 960,008	$ 300,000	$ -	$ 1,260,008
Federal Operating Grants	R 260-526-4302	$ 330,000	$ -	$ 300,000	$ 30,000
2) Water Fund to increase Expense for Land purchase and Water projects					
Water Fund					
Land	E 510-551-7010	$ -	$ 500,000	$ -	$ 500,000
Capital Improvements	E 510-551-7040	$ 18,300,759	$ 5,100,000	$ -	$ 23,400,759
Contingency (Ending Fund Balance)	E 510-551-9998	$ 7,368,149	$ -	$ 5,600,000	$ 1,768,149
3) General Fund to recognize Federal Grant Funds					
General Fund					
Federal Operating Grants	R 100-210-4302	$ 8,345,316	$ 149,376	$ -	$ 8,494,692
Equipment	E 100-210-7054	$ 40,000	$ 149,376	$ -	$ 189,376
4) General Fund to increase Expense for extra Kiosks					
General Fund					
Equipment	E 100-215-7054	$ 225,000	$ 67,000	$ -	$ 292,000
Contingency (Ending Fund Balance)	E 100-190-9998	$ 7,636,108	$ -	$ 67,000	$ 7,569,108
5) General Fund to increase Expense for Cemetery Bathroom project					
General Fund					
Federal Operating Grants	R 100-310-4302	$ -	$ 500,000	$ -	$ 500,000
Park Improvements	E 100-310-7041	$ 802,000	$ 500,000	$ -	$ 1,302,000
6) Pass Through SDC Revenue to South Fork Water Board					
Water Fund					
Pass Through Revenue - SFWB SDC	R 510-551-4579	$ 600,000	$ 320,000	$ -	$ 920,000
Pass Through Expense - SFWB SDC	E 510-551-6710	$ 600,000	$ 320,000	$ -	$ 920,000
7) Pass Through SDC Revenue to Water Environment Services					
Wastewater Fund					
Pass Through Revenue - TCSD SDC	R 520-552-4577	$ 750,000	$ 5,140,000	$ -	$ 5,890,000
Pass Through Expense - TCSD SDC	E 520-552-6712	$ 750,000	$ 5,140,000	$ -	$ 5,890,000
8) Initial Recognition of SBITA Obligations					
General Fund					
Proceeds from SBITA	R 100-120-4988	$ -	$ 50,000	$ -	$ 50,000
Capital Outlay for SBITA	E 100-120-7076	$ -	$ 50,000	$ -	$ 50,000
Proceeds from SBITA	R 100-170-4988	$ -	$ 300,000	$ -	$ 300,000
Capital Outlay for SBITA	E 100-170-7076	$ -	$ 300,000	$ -	$ 300,000
Proceeds from SBITA	R 100-210-4988	$ -	$ 20,000	$ -	$ 20,000
Capital Outlay for SBITA	E 100-210-7076	$ -	$ 20,000	$ -	$ 20,000
Equipment Replace Fund					
Proceeds from SBITA	R 320-210-4988	$ -	$ 40,000	$ -	$ 40,000
Capital Outlay for SBITA	E 320-210-7076	$ -	$ 40,000	$ -	$ 40,000
Building Fund					
Proceeds from SBITA	R 230-411-4988	$ -	$ 5,000	$ -	$
Capital Outlay for SBITA	E 230-411-7076	$ -	$ 5,000	$ -	$

Description	Account	Original Budget	Increase	Decrease	Revised Budget
9) Reclass Current Year Subscription Payments to Debt Service					
General Fund					
Computer & Software Support	E 100-170-6154	$ 604,000	$ -	$ 245,000	$ 359,000
Subscription - Principal	E 100-170-8042	$ -	$ 214,000		$ 214,000
Subscription - Interest	E 100-170-8044	$ -	$ 31,000		$ 31,000
Consulting	E 100-120-6003	$ 62,000	$ -	$ 18,000	$ 44,000
Subscription - Principal	E 100-120-8042	$ -	$ 15,000		$ 15,000
Subscription - Interest	E 100-120-8044	$ -	$ 3,000		$ 3,000
Emergency Services	E 100-210-6617	$ 40,000	$ -	$ 14,000	$ 26,000
Subscription - Principal	E 100-210-8042	$ -	$ 13,000		$ 13,000
Subscription - Interest	E 100-210-8044	$ -	$ 1,000		$ 1,000
Computer & Software Support	E 100-130-6154	$ 164,200	$ -	$ 12,000	$ 152,200
Subscription - Principal	E 100-130-8042	$ -	$ 11,000		$ 11,000
Subscription - Interest	E 100-130-8044	$ -	$ 1,000		$ 1,000
Equipment Replace Fund					
Equipment under $5,000	E 320-210-6580	$ 192,000	$ -	$ 13,000	$ 179,000
Subscription - Principal	E 320-210-8042	$ -	$ 10,000		$ 10,000
Subscription - Interest	E 320-210-8044	$ -	$ 3,000		$ 3,000
Building Fund					
Schools/Training/Travel	E 230-411-6306	$ 20,000	$ -	$ 2,000	$ 18,000
Subscription - Principal	E 230-411-8042	$ -	$ 1,500		$ 1,500
Subscription - Interest	E 230-411-8044	$ -	$ 500		$ 500

Descriptions:

1) General Fund Transfer to recognize ARPA Funds. This adjustment recognizes the transfer from General Fund to the Water Fund for the biennial budget 2021-2023.

2) Water - Land purchase and Water project timing

3) Police VirTra Simulation Software - Funded by a Federal grant. This budget adjustment recognizes the grant revenue.

4) Code Enforcement Downtown Parking Kiosks. This budget adjustment recognizes the Additional Parking Kiosk Replacement purchase that was approved at the December 21st, 2022 City Commission Regular meeting.

5) Cemetery Restroom project. This budget adjustment recognizes the additional cost for the Cemetery Restroom project that was approved at the September 7th, 2022 City Commission Regular meeting. Unanticipated FEMA revenue from the 2021 February Ice Storm will be recongized to cover higher than anticipated construction costs.

6) Oregon City collects system development revenue for South Fork Water Board customers and remits the money to the Board as pass through payments. System development charges have been higher than anticipated due to new construction. This adjustment increases the budget for pass through funds.

7) Oregon City collects system development revenue for Water Environment Services customers and remits the money to the District as pass through payments. System development charges have been higher than anticipated due to new construction. This adjustment increases the budget for pass through funds.

8) The City is implementing the Governmental Accounting Standards Board's (GASB) Statement No. 96, Subscription Based Information Technology Arrangements (SBITA), in the current fiscal year. This standard requires a subscriber to report an expenditure and other financing source in the period a subscription is initially recognized. This budget adjustment accounts for the initial recognition of subscriptions in which the City is the subscriber.

9) The City is implementing the Governmental Accounting Standards Board's (GASB) Statement No. 96, Subscription Based Information Technology Arrangements (SBITA), in the current fiscal year. This standard requires that subscription payments be accounted as debt service payments on long-term debt. This budget adjustment reclassifies the City's subscription payments scheduled for fiscal years 2023 to Debt Service.

625 Center Street
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CITY OF OREGON CITY

Staff Report

To: City Commission **Agenda Date:** 06/21/2023

From: Public Works Director John M. Lewis, PE
Finance Director, Matt Zook

SUBJECT:

Resolution No. 23-16, a Resolution of the City of Oregon City, Oregon Authorizing Full Faith Credit Borrowing for Water System Improvements

STAFF RECOMMENDATION:

Approve Resolution No. 23-16 authorizing full faith credit borrowing of the City of Oregon City, Oregon for water system improvements.

EXECUTIVE SUMMARY:

On November 2, 2021, the voters of Oregon City approved Measure 3-576 authorizing the City to borrow up to $38 million for water system improvements. On December 3, 2021, EPA announced Oregon City was invited to apply for a loan under the Water Infrastructure Finance and Innovation Act (WIFIA). On September 13, 2022, the City Commission directed staff to pursue a WIFIA loan. On October 25 2022, the City submitted its WIFIA loan application and has negotiated the terms of the loan. Closing of the loan is scheduled for July 20, 2022. Prior to closing, the City needs to pass the attached Resolution authorizing the borrowing and delegating authority to City staff to take action to finalize and enter into the WIFIA loan and related bond.

BACKGROUND:

The City has over $81 million dollars of water infrastructure improvements identified in its Water Master Plan, with $38 million identified within the first 5 years.

Increases in Water System Development Charges (SDC) and water rates would be necessary to fund all these improvements. Water rate increases required to fully fund the City's infrastructure needs exceed the 3% annual limit set by City Charter, requiring voter approval. Borrowing money was identified as a way to finance major improvements and minimize the water rate increase necessary above the 3% limit. Borrowing also required voter approval.

In November 2021, the City Commission placed two ballots before the voters of Oregon City:

- Measure 3-567 – Authorized the City to borrow funds for water system improvements.
- Measure 3-578 – Authorized a temporary water rate increase above the 3% annual Charter limit.

Measure 3-567 was passed by voters, authorizing the City to borrow up to $38 million. Measure 3-578 did not pass, limiting the annual water rate increase to 3% in accordance with the City Charter.

Without a rate increase above the 3% annual Charter limit, the City's ability to fund capital improvements on our infrastructure is limited as the majority of the current rate revenue goes to maintenance of our existing system.

With borrowing in mind as an infrastructure solution, the City submitted a Letter of Interest for a WIFIA loan in June 2021. On October 27, 2021, the City received notice from the United States Environmental Protection Agency that its Letter of Interest was selected, and the City was invited to apply for a WIFIA Loan (a form of which is attached to Resolution No. 23-16).

This program provides low-interest, long-term loans for qualifying water infrastructure projects packages of $20 million or more. Funding for the project package comes from a combination of federal dollars and applicant revenues meeting the following parameters:

- Maximum loan amount is 49% of eligible WIFIA project package costs*
- Matching funds make up the balance of WIFIA project package costs:
    - Rate revenue
    - Water SDC revenue
    - ARPA grant funds*

*Up to 80% of the project can receive federal funding in the form of loan and grants.

This program offers unique and flexible financing terms. In addition to having a low fixed-interest rate, other key aspects of the program are:

- **Customized Repayment Schedule**: Allowing flexibility to match applicant's anticipated revenues.
- **Loan Repayment Period**: Up to 35 years to repay the loan.
- **Deferred Payments**: Payments may be deferred up to 5 years after the project's substantial completion.

- **WIFIA Loans Combined with other Funding Sources**: WIFIA loans can be combined with other loans, bonds, debt, grants.

The City of Oregon City has received $8.3 million dollars of American Rescue Plan Act (ARPA) grant funds. In the current biennium budget, the City has allocated $5.6 million of these funds toward water system improvement projects made available from the ARPA funding and is reflected in our financial plan. These funds can be used as matching funds for the WIFIA loan.

While the full water CIP cannot be supported without a rate increase, significant work can be completed if the City pursues this federal funding option.

On February 8, 2022, City staff presented at a City Commission Work Session a short-term CIP implementation plan and strategy that utilized available revenues and borrowed money to tackle some of its highest priority work. In addition to existing budgeted projects, staff identified a short-term CIP implementation plan, focusing on projects that address the City's aging system rehabilitation and replacement needs, cybersecurity, and improvements needed in the Upper Zone where the existing water system is struggling to convey enough water to serve current demands.

The total estimated cost for the projects presented was $24 million dollars. To complete this work with the 3% annual rate limit, borrowing money through the WIFIA loan program and use of ARPA dollars is needed.

At the February work session, the City Commission confirmed its interest in pursuing a WIFIA loan and requested that proposed projects provide a benefit to existing customers.

At the September 13, 2022, work session, staff presented a $28 million dollar WIFIA loan package which would fund identified priority projects through WIFIA, and the City Commission confirmed interest to pursue a WIFIA loan.

On October 25, 2022, the City submitted its WIFIA loan application for the "Oregon City Rehabilitation, Resiliency and Improvement Projects (WIFIA ID-N21143OR). Over the past 8 months, City staff has worked with the WIFIA team to develop the WIFIA loan package. As part of the environmental review for the loan processing, archeological work is required, resulting in unanticipated project costs. Project costs also exceeded the original planned budget and planned 15% contingency. The WIFIA team recommended increasing the authorized loan amount to provide the City flexibility in borrowing more than the originally planned approximately $14 million, if needed. Based on estimated archeological costs and escalation seen in recent projects, a revised loan package was developed totaling approximately $33 million. This revised amount increases the authorized loan amount to approximately $16 million. By increasing the authorized loan amount, the City can borrow up to that amount but is not obligated to do so. The City will only pay interest on the amount borrowed.

This program will allow the City to make significant improvements in its water infrastructure, providing a more resilient, reliable water supply to its customers. In recent years, we have only been able to fund an average of $3.7 million of water capital improvements in our biennium budget with 68% of the water fund required for operation and maintenance of the water system. With this program, we will be able to fund more capital improvements, beginning with our current biennium budget which allocates $9.6 million toward needed improvements. Work covered by this program is planned for substantial completion in 2030. During this period, regular updates will be provided to EPA as well as the City Commission. Informing our community of how their vote helped to make this possible will be an important message to convey.

Closing for this loan is scheduled for July 20, 2023.

OPTIONS:

1. Approve Resolution No. 23-16 as requested.
2. Approve Resolution No. 23-16 with specific modifications.
3. Deny Resolution No. 23-16. If the Commission chooses to deny the Resolution, staff requests direction on how to proceed.

BUDGET IMPACT:

Amount:	Based on the financial model, $17 million initial City funds and $16 million in WIFIA loan principal to be repaid by the City, including approximately $11-$14 million anticipated in interest
FY(s):	Approximately FY 23-24 through FY 29-30 for project completion
Funding Source(s):	Water Rates, Water SDCs, and funding made available through ARPA

RESOLUTION NO. 23-16

A RESOLUTION OF THE CITY OF OREGON CITY, OREGON AUTHORIZING FULL FAITH AND CREDIT BORROWING FOR WATER SYSTEM IMPROVEMENTS.

WHEREAS, the City of Oregon City, Oregon (the "City") desires to enter into a full faith and credit borrowing to finance water system improvements;

WHEREAS, Section 47 of the Oregon City Charter prohibits the City's voluntary floating indebtedness from exceeding $25,000 without a vote of the people, and Section 58 of the Oregon City Charter prohibits the City from issuing general obligation bonds or revenue bonds without a vote of the people;

WHEREAS, the City submitted Measure 3-576 to the electors of the City, which asked the electors to authorize the City to borrow up to $38 million for water system improvements;

WHEREAS, the electors of the City approved Measure 3-576 by majority vote on November 2, 2021;

WHEREAS, the City is authorized by Oregon Revised Statutes ("ORS") Section 271.390 to enter into a financing agreement to finance real or personal property which the City Commission determines is needed so long as the estimated weighted average life of the financing agreement does not exceed the estimated dollar weighted average life of the property that is financed;

WHEREAS, the City is authorized by the City Charter and Measure 3-576 to enter into borrowings to finance water system improvements as described in the measure (collectively, the "Projects"), and to secure the borrowings with the City's full faith and credit, with the expectation that such borrowings will be repaid using revenues of the City's water system; and

WHEREAS, it is desirable to enter into a borrowing under the United States Environmental Protection Agency's (the "EPA's") Water Infrastructure Finance and Innovation Act ("WIFIA") program in an amount not to exceed $38,000,000, as outlined in Measure 3-576, to finance the Projects;

NOW, THEREFORE, the City of Oregon City resolves as follows:

Section 1. Determination of Need. The City Commission hereby determines that the Projects are needed.

Section 2. Borrowing Authorized. The City Commission hereby authorizes the City to enter into a full faith and credit-backed financing agreement in the form of a loan agreement with the EPA in an amount up to $38,000,000 pursuant to the City Charter, Measure 3-576, ORS Section 271.390 and the relevant provisions of ORS Chapter 287A (the "Loan Agreement"). Proceeds of the Loan Agreement may be used to pay for Projects and costs related to the Loan Agreement.

Section 3. Delegation. The City Manager or the Finance Director of the City or a person designated by either of those individuals to act under this Resolution (each of whom is referred to herein as a "City Official") is hereby authorized, on behalf of the City and without further action by the City Commission, to:

(1) Enter into the Loan Agreement with the EPA in substantially the form attached to this resolution as Exhibit A, but with such changes as the City Official approves.

(2) Determine the final principal amount, the interest rate and other terms of the Loan Agreement.

(3) Issue a bond to the EPA to evidence amounts due under the Loan Agreement.

(4) Execute and deliver any certificates or documents related to the Loan Agreement and bond and take any other actions which the City Official determines are desirable to carry out this resolution or which are required by the WIFIA program.

Section 4. Security. Pursuant to ORS 287A.315, the City Official may pledge the City's full faith and credit and taxing power within the limitations of Sections 11 and 11b of Article XI of the Oregon Constitution, and any and all of the City's lawfully available funds, to pay the amounts due under the Loan Agreement. The City is not authorized to levy additional taxes to pay the amounts due under the Loan Agreement. The City may further secure the Loan Agreement with a promise to make payments from the revenues of the City's water system.

Section 5. Effective Date. This resolution is effective immediately upon adoption.

Dated this 21st day of June, 2023.

____
Mayor

Attest: **Approved as to legal sufficiency:**

____________________________________ ____________________________________
City Recorder City Attorney

EXHIBIT A

FORM OF WIFIA LOAN AGREEMENT WITH EPA

Norton Rose Fulbright/EPA
Draft of June 9, 2023
WIFIA CUSIP Number: [___]

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

WIFIA LOAN AGREEMENT

For Up to $16,311,537

With

CITY OF OREGON CITY

For the

OREGON CITY WATER REHABILITATION, RESILIENCY AND IMPROVEMENT PROJECTS (WIFIA ID – N21143OR)

Dated as of [___], 2023

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WIFIA LOAN AGREEMENT

THIS WIFIA LOAN AGREEMENT (this "**Agreement**"), dated as of the Effective Date, is by and between the Borrower (as defined herein) and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America ("**EPA**"), acting by and through the Administrator of the Environmental Protection Agency (the "**Administrator**"), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the "**WIFIA Lender**").

RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act ("**WIFIA**"), § 5021 *et seq.* of Public Law 113-121 (as amended, and as may be further amended from time to time, the "**Act**"), which is codified as 33 U.S.C. §§ 3901-3914;

WHEREAS, the Act authorizes the WIFIA Lender to enter into agreements to provide financial assistance with one or more eligible entities to make secured loans with appropriate security features to finance a portion of the eligible costs of projects eligible for assistance;

WHEREAS, the Borrower has requested that the WIFIA Lender make the WIFIA Loan (as defined herein) in a principal amount not to exceed the Maximum Principal Amount (as defined herein) to be used to pay a portion of the Eligible Project Costs (as defined herein) pursuant to the Application (as defined herein);

WHEREAS, pursuant to the WIFIA Term Sheet (as defined herein), the Administrator has approved WIFIA financial assistance for the Project to be provided in the form of the WIFIA Loan, subject to the terms and conditions contained herein;

WHEREAS, based on the Application and the representations, warranties and covenants set forth herein, the WIFIA Lender proposes to make funding available to the Borrower for a portion of the costs of the Project through the issuance of the WIFIA Bond (as defined herein), upon the terms and conditions set forth herein;

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the WIFIA Bond in accordance with the terms and provisions hereof and of the WIFIA Bond; and

WHEREAS, the WIFIA Lender has entered into this Agreement in reliance upon, among other things, the information and representations of the Borrower set forth in the Application and the supporting information provided by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the WIFIA Lender as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1. Definitions. Capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement, except as otherwise expressly provided herein. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

"**Act**" has the meaning provided in the recitals hereto.

"**Additional Construction Contract**" means, with respect to the Project, each Construction Contract entered into after the Effective Date.

"**Additional Project Obligations**" means any Obligations of the Borrower issued or incurred after the Effective Date to fund any portion of Total Project Costs and that is permitted under Section 15(a) (*Indebtedness*).

"**Administrator**" has the meaning provided in the preamble hereto.

"**Agreement**" has the meaning provided in the preamble hereto.

"**Application**" means the Borrower's application for WIFIA financial assistance received by the WIFIA Lender on the Application Receipt Date.

"**Application Receipt Date**" has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

"**Bankruptcy Related Event**" means, with respect to the Borrower, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) fail to make a payment of WIFIA Debt Service in accordance with the provisions of Section 8 (*Repayments*) and such failure is not cured within thirty (30) days following notification by the WIFIA Lender of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law; (c)(i) any Person shall commence a process pursuant to which all or a substantial part of the Water Fund or the System may be sold or otherwise disposed of in a public or private sale or disposition, (ii) any Person shall commence a process pursuant to which all or a substantial part of the Borrower's assets may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon, or (iii) any Person shall commence a process pursuant to which all or a substantial part of the Borrower's assets may be sold or otherwise disposed of pursuant to a sale or disposition of such assets in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the Holders of the Obligations, funds on deposit in the Water Fund upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under any Obligation Document for application to the prepayment or repayment of any principal amount of any Obligation other than in accordance with the provisions of the applicable Obligation Document.

"**Base Case Financial Model**" means the financial model or plan, prepared by the Borrower and delivered to the WIFIA Lender as part of the Application, forecasting the capital costs of the System (including the Project) and the estimated debt service coverage, rates, revenues, operating expenses and major maintenance requirements of the System (as may be applicable) for the Forecast Period and based upon assumptions and methodology provided by the Borrower and acceptable to the WIFIA Lender as of the Effective Date, which model or plan shall have been provided to the WIFIA Lender as a fully functional Microsoft Excel-based financial model or such other format agreed with the WIFIA Lender.

"**Borrower**" has the meaning ascribed to such term in **Part A of Schedule I** (*Loan Specific Terms*).

"**Borrower Fiscal Year**" means (a) as of the Effective Date, the Initial Borrower Fiscal Year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days' prior written notice to the WIFIA Lender in accordance with **Part E of Schedule V** (*Reporting Requirements*).

"**Borrower's Authorized Representative**" means any Person who shall be designated as such pursuant to Section 21 (*Borrower's Authorized Representative*).

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York, the Trustee Location or the Project Location.

"**Capitalized Interest Period**" has, if applicable, the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as "Not Applicable" in

Schedule I, means capitalized interest shall not be applicable with respect to the WIFIA Loan hereunder.

"**Closing Certificate**" has the meaning provided in Section 11(a) (*Conditions Precedent to Effectiveness*).

"**Construction Contract**" means, with respect to the Project, any prime contract entered into by the Borrower that involves any construction activity (such as demolition, site preparation, civil works construction, installation, remediation, refurbishment, rehabilitation, or removal and replacement services) for the Project. For the avoidance of doubt, "**Construction Contract**" shall include each Existing Construction Contract and, upon the effectiveness thereof, each Additional Construction Contract.

"**Construction Monitoring Report**" means a report on the status of the Project, substantially in the form of **Exhibit F** (*Form of Construction Monitoring Report*), unless otherwise agreed to be in a different form by the WIFIA Lender.

"**Construction Period**" means the period from the Effective Date through (and including) the end of the Federal Fiscal Year during which the Substantial Completion Date occurs.

"**Construction Period Servicing Fee**" has the meaning ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

"**Construction Schedule**" means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached hereto as **Part B of Schedule II** (*Project Details*), and (b) any updates thereto included in the Construction Monitoring Report most recently submitted to the WIFIA Lender in accordance with **Part C of Schedule V** (*Reporting Requirements*).

"**CPI**" means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted) or its successor, published by the Bureau of Labor Statistics and located at https://www.bls.gov/news.release/cpi.t01.htm.

"**Debt Service Payment Commencement Date**" means the earlier to occur of (a) the first Payment Date immediately following the later of (i) the first Disbursement or (ii) if there is a Capitalized Interest Period, the end of the Capitalized Interest Period, in each case as set forth in the WIFIA Loan Amortization Schedule; or (b) the Payment Date falling closest to, but not later than, the fifth anniversary of the Substantial Completion Date.

"**Default**" means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"**Default Rate**" has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

"**Development Default**" means (a) the Borrower abandons work or fails, in the reasonable judgment of the WIFIA Lender, to diligently prosecute the work related to the Project or (b) the Borrower fails to achieve Substantial Completion of the Project by the Development Default

Date, unless such failure to achieve Substantial Completion shall occur by reason of an Uncontrollable Force that is not due to the fault or gross negligence of the Borrower (and which the Borrower could not reasonably have avoided or mitigated), in which case the Development Default Date shall be extended by the number of days equal to the duration of such Uncontrollable Force.

"**Development Default Date**" has the meaning ascribed to such term in **Part B of Schedule I** (*WIFIA Loan Specific Terms*).

"**Disbursement**" means a disbursement of WIFIA Loan proceeds, subject to and in accordance with this Agreement.

"**Dollars**" and "**$**" means the lawful currency of the U.S.

"**Effective Date**" means the date of this Agreement, as specified in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

"**Eligible Project Costs**" means amounts in the Project Budget approved by the WIFIA Lender, which are paid by or for the account of the Borrower in connection with the Project (including, as applicable, Project expenditures incurred prior to the receipt of WIFIA credit assistance), which shall arise from the following:

(a) development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;

(b) construction, reconstruction, rehabilitation, and replacement activities;

(c) the acquisition of real property or an interest in real property (including water rights, land relating to the Project and improvements to land), environmental mitigation (including acquisitions pursuant to 33 U.S.C. §3905(8)), construction contingencies, and acquisition of equipment; or

(d) capitalized interest (with respect to System Related Obligations other than the WIFIA Loan) necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

provided, that Eligible Project Costs must be consistent with all other applicable federal law, including the Act.

"**Eligible Project Costs Documentation**" means all supporting documentation with respect to the Eligible Project Costs, including copies of invoices and records evidencing incurred or previously paid Eligible Project Costs, which documentation should contain sufficient detail satisfactory to the WIFIA Lender (e.g. if the Borrower intends to utilize WIFIA Loan proceeds to make construction progress payments for Eligible Project Costs, the documentation should demonstrate that such progress payments are commensurate with the cost of the work that has been completed).

"**EMMA**" means the Electronic Municipal Market Access system as described in 1934 Act Release No. 59062 and maintained by the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)1 of the Securities Exchange Act of 1934, as amended, and its successors.

"**EPA**" has the meaning provided in the preamble hereto.

"**Event of Default**" has the meaning provided in Section 17(a) (*Events of Default and Remedies*).

"**Event of Loss**" means any event or series of events that causes any portion of the System to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a casualty, a failure of title, or any loss of such property through eminent domain.

"**Existing Construction Contract**" means each Construction Contract of the Borrower in effect as of the Effective Date as set forth in **Part C of Schedule II** (*Project Details*).

"**Existing Indebtedness**" means indebtedness of the Borrower that has been issued or incurred prior to the Effective Date, as listed and described in **Part A of Schedule III** (*Borrower Disclosures*).

"**Federal Fiscal Year**" means the fiscal year of the Federal Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

"**Federal Government**" means the U.S. and its departments and agencies.

"**FEIN**" means a Federal Employer Identification Number.

"**Final Disbursement Date**" means the earliest of (a) the date on which the WIFIA Loan has been disbursed in full; (b) the last anticipated date of disbursement set forth in the then-current WIFIA Loan Disbursement Schedule; (c) the date as of which the Borrower has certified to the WIFIA Lender that it will not request any further disbursements under the WIFIA Loan; (d) the date on which the WIFIA Lender terminates its obligations relating to disbursements of any undisbursed amounts of the WIFIA Loan in accordance with Section 17 (*Events of Default and Remedies*); and (e) the date that is one (1) year after the Substantial Completion Date.

"**Final Maturity Date**" has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

"**Financial Statements**" has the meaning provided in Section 12(q) (*Financial Statements*).

"**Flow of Funds**" has the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

"**Forecast Period**" means, as of any date, the time period from and including the then-current Borrower Fiscal Year until the later ending date of either (a) the five (5) immediately succeeding Borrower Fiscal Years or (b) the end of the Borrower Fiscal Year in which the Borrower's then-currently effective capital improvement plan for the System concludes.

"**Full Faith and Credit Obligation Documents**" means any resolution, ordinance, indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee, financing agreement or any other agreement, instrument or document pursuant to which any Full Faith and Credit Obligation is incurred by the Borrower, including this Agreement.

"**Full Faith and Credit Obligations**" means obligations of the Borrower secured by a pledge of the Borrower's full faith and credit and taxing power subject to the limitations of Article XI, Sections 11 and 11b of the Oregon Constitution.

"**Full Faith and Credit Pledge**" has the meaning provided in Section 7(a) (*Security; Dedicated Source of Repayment from Revenues – WIFIA Bond; Full Faith and Credit Pledge*).

"**GAAP**" means generally accepted accounting principles for U.S. state and local governments, as established by the Government Accounting Standards Board (or any successor entity with responsibility for establishing accounting rules for governmental entities), in effect from time to time in the U.S.

"**General Obligation Documents**" means any resolution, ordinance, indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee, financing agreement or any other agreement, instrument or document pursuant to which any General Obligation is incurred by the Borrower.

"**General Obligations**" means obligations of the Borrower secured by a pledge of the Borrower's full faith and credit and taxing power which are not subject to the limitations of Article XI, Sections 11 and 11b of the Oregon Constitution.

"**Government**" means the United States of America and its departments and agencies.

"**Governmental Approvals**" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, registrations, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

"**Governmental Authority**" means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the U.S. or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts "on behalf of" any of the foregoing, whether as an agency or authority of such body.

"**Holder**" means (a) when used with respect to the WIFIA Bond, the WIFIA Lender (and any subsequent registered holder of the WIFIA Bond), and (b) when used with respect to any other Obligation, the registered owner or beneficiary of such Obligation.

"**Indemnitee**" has the meaning provided in Section 32 (*Indemnification*).

"**Initial Borrower Fiscal Year**" has the meaning ascribed to such term in **Part A of Schedule I** (*Loan Specific Terms*).

"**Initial Construction Period Servicing Fee**" has the meaning ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

"**Insolvency Laws**" means the U.S. Bankruptcy Code, 11 U.S.C. § 101 *et seq*., as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

"**Interest Only Period**" has, if applicable, the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as "Not Applicable" in **Schedule I**, means no interest only period shall be applicable with respect to the WIFIA Loan hereunder.

"**Interest Payment Date**" has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

"**Interim Financing**" means interim bond anticipation notes, commercial paper or other short-term temporary financing, in each case with a maturity not later than five (5) years following the issuance or incurrence thereof, the proceeds of which are applied to pay Eligible Project Costs.

"**Investment Grade Rating**" means a rating of 'BBB-', 'Baa3', 'bbb-', or 'BBB (low)', or higher, from a Nationally Recognized Rating Agency.

"**Legal Entity**" has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

"**Lien**" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

"**Loss Proceeds**" means any proceeds of builders' risk or casualty insurance (other than any proceeds from any policy of business interruption insurance insuring against loss of revenues upon the occurrence of certain casualties or events covered by such policy of insurance) or proceeds of eminent domain proceedings resulting from any Event of Loss.

"**Material Adverse Effect**" means a material adverse effect on (a) the Taxes, the System, the Project or the Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower, (c) the legality, validity or enforceability of any material provision of any WIFIA Loan Document, (d) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any WIFIA Loan Document, (e) the validity or enforceability of the Full Faith and Credit Pledge or (f) the WIFIA Lender's rights or remedies available under any WIFIA Loan Document.

"**Maximum Principal Amount**" has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

"**Nationally Recognized Rating Agency**" means any nationally recognized statistical rating organization registered with, and identified as such by, the Securities and Exchange Commission.

"**NEPA**" means the National Environmental Policy Act of 1969, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

"**NEPA Determination**" has the meaning ascribed to such term in **Part B of Schedule I** (*WIFIA Loan Specific Terms*).

"**Obligation Documents**" means the Full Faith and Credit Obligation Documents, General Obligation Documents and System Related Obligation Documents, but excluding the WIFIA Loan Documents.

"**Obligations**" means Full Faith and Credit Obligations, General Obligations and System Related Obligations.

"**Operating Period Servicing Fee**" has the meaning ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

"**Oregon Constitution**" means the Constitution of the State of Oregon.

"**Organizational Documents**" means: (a) the constitutional and statutory provisions that are the basis for the existence and authority of the Borrower, including any enabling statutes, ordinances or public charters and any other organic laws establishing the Borrower and (b) the resolutions, bylaws, or other organizational documents (including any amendments, modifications or supplements thereto) of or adopted by the Borrower by which the Borrower, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

"**Outstanding**" means (a), with respect to Obligations other than the WIFIA Loan, Obligations that have not been cancelled or legally defeased or discharged within the meaning of the related Obligation Documents, and (b) with respect to the WIFIA Loan, the (i) entire amount available to be drawn under this Agreement (including amounts drawn and amounts that remain available to be drawn), *less* (ii) any amount that has been irrevocably determined will not be drawn under this Agreement, *less* (iii) the aggregate principal amount of the WIFIA Loan Balance that has been repaid or prepaid.

"**Patriot Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all regulations promulgated thereunder.

"**Payment Date**" means each Interest Payment Date and each Principal Payment Date.

"**Payment Default**" has the meaning provided in Section 17(a)(i) (*Payment Default*).

"**Permitted Investments**" means any investment permitted under applicable State law and the Borrower's investment policies.

"**Person**" means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority, including in each case such Person's successors and permitted assigns.

"**Principal Payment Date**" has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

"**Project**" has the meaning ascribed to such term in **Part B of Schedule I** (*WIFIA Loan Specific Terms*).

"**Project Budget**" means the budget for the Project attached to this Agreement as **Part A of Schedule II** (*Project Details*) showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project.

"**Project Location**" has the meaning ascribed to such term in **Part B of Schedule I** (*Loan Specific Terms*).

"**Projected Substantial Completion Date**" has the meaning ascribed to such term in **Part B of Schedule I** (*WIFIA Loan Specific Terms*).

"**Public Benefits Report**" means the report, in the form attached hereto as **Exhibit C** (*Form of Public Benefits Report*).

"**Related Documents**" means the WIFIA Loan Documents and the Obligation Documents.

"**Requisition**" means the request for Disbursement in the form attached hereto as **Exhibit D** (*Form of Requisition*).

"**Revenues**" has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

"**SAM**" means the federal System for Award Management (www.SAM.gov) (or any successor system or registry).

"**Sanctions Laws**" means collectively, any applicable anti-drug trafficking, anti-terrorism, anti-money laundering, anti-bribery, or anti-corruption laws or regulations, as applicable, including those contained in the Bank Secrecy Act of 1970 (as amended) and the U.S. Patriot Act.

"**Servicer**" means such entity or entities as the WIFIA Lender shall designate from time to time to perform, or assist the WIFIA Lender in performing, certain duties hereunder.

"**Servicing Fee**" means the Servicing Set-Up Fee and any Construction Period Servicing Fee or Operating Period Servicing Fee.

"**Servicing Set-Up Fee**" has the meaning ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

"**State**" has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

"**Substantial Completion**" means, with respect to the Project, the stage at which the Project is able to perform the functions for which the Project is designed.

"**Substantial Completion Date**" means the date on which the Borrower certifies to the WIFIA Lender, with evidence satisfactory to the WIFIA Lender and notice to the WIFIA Lender in accordance with **Part E of Schedule V** (*Reporting Requirements*), that Substantial Completion has occurred.

"**System**" has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

"**System Related Obligation Documents**" means any Full Faith and Credit Documents, any General Obligation Documents, and any other resolution, ordinance, indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee, financing agreement or any other agreement, instrument or document pursuant to which any System Related Obligation is incurred by the Borrower, including this Agreement.

"**System Related Obligations**" means the WIFIA Loan, Full Faith and Credit Obligations, General Obligations and any other obligations of the Borrower, all or a portion of the proceeds of which are used for payment of costs paid or incurred or to be paid or incurred by the Borrower in connection with or incidental to the acquisition, design, construction and equipping of the System.

"**Taxes**" means the taxes levied by the Borrower pursuant to the Full Faith and Credit Pledge.

"**Total Project Costs**" means (a) the costs paid or incurred or to be paid or incurred by the Borrower in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and financing (including costs of issuance); (b) amounts, if any, required by the Related Documents to be paid into any fund or account upon the incurrence of the WIFIA Loan or any other obligation, in each case in respect of the Project; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) in respect of any indebtedness of the Borrower (other than the WIFIA Loan), in each case in connection with the acquisition, design, construction and equipping of the Project; and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

"**Trustee**" has, if applicable, the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as "Not Applicable" in Schedule I, means a trustee shall not be applicable with respect to the WIFIA Loan hereunder.

"**Trustee Location**" has, if applicable, the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as "Not Applicable" in **Schedule I**, means a trustee location shall not be applicable with respect to the WIFIA Loan hereunder.

"**Uncontrollable Force**" means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, pandemic, or act of God (provided, that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided, that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

"**Uniform Commercial Code**" **or** "**UCC**" means the Uniform Commercial Code, as in effect from time to time in the State.

"**Unique Entity Identifier**" means, with respect to any Person, the unique entity identifier issued by the Government through SAM.gov for such Person.

"**Updated Financial Model/Plan**" means (a) an updated Base Case Financial Model or (b) a financial plan in a format agreed with the WIFIA Lender, in each case reflecting the then-current and projected conditions for the Forecast Period, in accordance with **Part A of Schedule V** (*Reporting Requirements*).

"**U.S.**" means the United States of America.

"**Water Fund**" has the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

"**WIFIA**" has the meaning provided in the recitals hereto.

"**WIFIA Bond**" has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as "Not Applicable" in **Schedule I**, means a bond as evidence of the Borrower's Obligation shall not be applicable with respect to the WIFIA Loan hereunder.

"**WIFIA Bond Resolution**" has the meaning ascribed to such term in **Part E of Schedule I** (*WIFIA Loan Specific Terms*).

"**WIFIA CUSIP Number**" has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

"**WIFIA Debt Service**" means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the WIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) as set forth on the WIFIA Loan Amortization Schedule and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (*Payment of WIFIA Debt Service*).

"**WIFIA Debt Service Account**" has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as "Not Applicable" in **Schedule I**, means a separate debt service account designated for the WIFIA Lender shall not be applicable with respect to the WIFIA Loan hereunder.

"**WIFIA Debt Service Reserve Account**" has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as "Not Applicable" in **Schedule I**, means a separate debt service reserve account designated for the WIFIA Lender shall not be applicable with respect to the WIFIA Loan hereunder.

"**WIFIA Debt Service Reserve Requirement**" has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as "Not Applicable" in **Schedule I**, means a separate debt service reserve requirement shall not be applicable with respect to the WIFIA Loan hereunder.

"**WIFIA Interest Rate**" has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Term*).

"**WIFIA Lender**" has the meaning provided in the preamble hereto.

"**WIFIA Lender's Authorized Representative**" means the Administrator and any other Person who shall be designated as such pursuant to Section 22 (*WIFIA Lender's Authorized Representative*).

"**WIFIA Loan**" means the secured loan made by the WIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed the Maximum Principal Amount, to be used in respect of Eligible Project Costs.

"**WIFIA Loan Amortization Schedule**" means the loan amortization schedule reflected in **Schedule VI** (*WIFIA Loan Amortization Schedule*), as amended from time to time in accordance with Section 8(c) (*Adjustments to WIFIA Loan Amortization Schedule*).

"**WIFIA Loan Balance**" means (a) the aggregate principal amount of the WIFIA Loan disbursed by the WIFIA Lender to the Borrower hereunder, *plus* (b) if applicable, capitalized interest added to the principal balance of the WIFIA Loan pursuant to Section 8(a)(iii) (*Payments of WIFIA Debt Service*), *minus* (c) the aggregate principal amount of the WIFIA Loan repaid or prepaid by the Borrower, as reflected from time to time in the WIFIA Loan Amortization Schedule in accordance with Section 8(c) (*Adjustments to WIFIA Loan Amortization Schedule*).

"**WIFIA Loan Disbursement Schedule**" means the disbursement schedule set forth in **Schedule VI** (*WIFIA Loan Amortization Schedule*), reflecting the anticipated disbursement of proceeds of the WIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(b) (*Disbursement Conditions*).

"**WIFIA Loan Documents**" means this Agreement, the WIFIA Bond and the WIFIA Bond Resolution.

"**WIFIA Term Sheet**" has the meaning ascribed to such term in **Part E of Schedule I** (*WIFIA Loan Specific Terms*).

Section 2. Interpretation. The rules of interpretation set forth below in this Section 2 shall apply to this Agreement, except as otherwise expressly provided herein.

(a) Unless the context shall otherwise require, the words "hereto," "herein," "hereof" and other words of similar import refer to this Agreement as a whole.

(b) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa.

(c) Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require.

(d) The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."

(e) Whenever the Borrower's knowledge is implicated in this Agreement or the phrase "to the Borrower's knowledge" or a similar phrase is used in this Agreement, the Borrower's knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower's knowledge after reasonable and diligent inquiry. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person's successors and permitted assigns.

(f) Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement.

(g) The recitals, schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement.

(h) The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions.

(i) Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof.

(j) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 31 (*Notices*) and signed by a duly authorized representative of such party.

(k) References to "disbursements of WIFIA Loan proceeds" or similar phrasing shall be construed as meaning the same thing as "paying the purchase price of the WIFIA Bond."

(l) Whenever this Agreement requires a change in principal amount, interest rate or amortization schedule of the WIFIA Loan, it is intended that such change be reflected in the WIFIA Bond. Whenever there is a prepayment of the WIFIA Loan, it is intended that such prepayment be implemented through a prepayment of the WIFIA Bond.

(m) Whenever this Agreement sets forth a time period for a number of days by when a deliverable must be provided or an action must be taken, such time period shall be computed on the basis of a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months.

ARTICLE II
THE WIFIA LOAN

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed the Maximum Principal Amount.

Section 4. Disbursement Conditions.

(a) WIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred and approved for payment by or on behalf of the Borrower in connection with the Project, including, for the avoidance of doubt, Eligible Project Costs that were initially funded with Interim Financing proceeds. Each Disbursement of the WIFIA Loan shall be made pursuant to the procedures of **Schedule IV** (*Requisition Procedures*) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(b) (*Conditions Precedent to Disbursements*); provided, that no Disbursements shall be made after the Final Disbursement Date.

(b) Subject to this Section 4, any scheduled Disbursement (as reflected in the WIFIA Loan Disbursement Schedule) that remains undrawn as of its scheduled date shall automatically be available for the next scheduled Disbursement date, up to the Final Disbursement Date, with the effect of automatically updating the WIFIA Loan Disbursement Schedule (and the WIFIA Loan Amortization Schedule) without need for the WIFIA Lender's approval. The Borrower may also amend the WIFIA Loan Disbursement Schedule by submitting a revised version thereof to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised WIFIA Loan Disbursement Schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be deemed granted if the WIFIA Lender has not objected within thirty (30) days from receipt of the revised schedule, and which approval shall have the effect of updating the WIFIA Loan Amortization Schedule to reflect the updated WIFIA Loan Disbursement Schedule. Notwithstanding the foregoing, the date of the first Disbursement shall not be earlier than the initial date of Disbursement set out in the WIFIA Loan Amortization Schedule as of the Effective Date.

Section 5. Term. The term of the WIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in immediately available funds.

Section 6. Interest Rate. The Borrower shall pay interest on the WIFIA Loan Balance at the WIFIA Interest Rate; provided, that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the WIFIA Loan Balance at the Default Rate, (a) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment of the overdue amount of principal of the WIFIA Loan and accrued interest thereon and (b) in the case of any other Event of Default, from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (i) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement or waived by the WIFIA Lender and (ii) the WIFIA Loan Balance has been irrevocably paid in full in immediately available funds. Interest shall (x) accrue on the WIFIA Loan commencing on the date of the first disbursement of the WIFIA Loan, (y) be payable commencing on the Debt Service Payment Commencement Date and (z) be computed on the WIFIA Loan Balance on the basis of a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months.

Section 7. Security; Sources of Repayment.

(a) WIFIA Bond; Full Faith and Credit Pledge. As security for the WIFIA Loan, and concurrently with the issuance and delivery of this Agreement, the Borrower shall deliver to the WIFIA Lender, as the registered owner, the WIFIA Bond. The Borrower shall pay principal and interest on the WIFIA Loan and the WIFIA Bond and all other amounts due hereunder from all lawfully available funds of the Borrower, and pursuant to Oregon Revised Statutes Section 287A.315, the Borrower hereby pledges its full faith and credit and taxing power within the limitations of Section 11 and 11b of Article XI of the Oregon Constitution to pay such amounts. The foregoing pledge is referred to herein as the "**Full Faith and Credit Pledge**." The obligation of the City to make payments under the WIFIA Loan and the WIFIA Bond is not subject to appropriation. The Borrower hereby agrees that its obligation to pay such amounts is absolute and unconditional, and shall not be subject to the following: (i) any setoff, counterclaim, recoupment, defense or other right which the Borrower may have against the WIFIA Lender, any contractor or anyone else for any reason whatsoever; (ii) any insolvency, bankruptcy, reorganization or similar proceeding by the Borrower; (iii) abatement through damage, destruction or non-availability of the projects financed with the proceeds of the WIFIA Loan; and (iv) any other event or circumstances whatsoever, whether or not similar to any of the foregoing.

(b) Sources of Repayment. The WIFIA Loan shall be payable from all legally available funds of the Borrower, including without limitation, Revenues and Taxes. Without limiting the foregoing, the Borrower expects to use Revenues as the source of repayment for the WIFIA Bond and all of the other obligations of the Borrower under this Agreement. However, the Borrower has not granted a lien on Revenues to secure the WIFIA Bond or other obligations of the Borrower under this Agreement.

(c) Deposit of Payment Sources. All Revenues shall be deposited into the Water Fund when and as received.

(d) Levy of Taxes. For the purpose of providing funds required to pay the principal and the interest on the WIFIA Bond promptly when and as the same falls due, the Borrower covenants and agrees to levy, and shall take the action within its control to cause the county assessor to impose and collect, a tax sufficient to pay such amounts when due and for past due amounts (within the limitations of Article XI, Sections 11 and 11b of the Oregon Constitution), in each case to the extent not paid from other lawfully available sources. The Borrower covenants and agrees with the owner of the WIFIA Bond that so long as the WIFIA Bond remains Outstanding the Borrower will take no action or fail to take any action that in any way would adversely affect the ability of the Borrower to levy, or the ability of the county assessor to impose and collect, the Taxes. The Borrower and its officers will comply with all present and future applicable laws in order to assure that the Taxes may lawfully be levied, and lawfully imposed and collected by the county assessor, to the extent required hereunder.

Section 8. Repayments.

(a) Payment of WIFIA Debt Service.

(i) No WIFIA Debt Service shall be due or payable prior to the Debt

Service Payment Commencement Date. The Borrower shall pay (A) WIFIA Debt Service in the amounts and manner and on the Payment Dates as set forth in the WIFIA Loan Amortization Schedule, as the same may be revised pursuant to Section 8(c) (*Adjustments to WIFIA Loan Amortization Schedule*) and (B) payments of any other amounts on each other date on which payment thereof is required to be made hereunder; provided, that, in either case if any such date is not a Business Day, payment shall be made on the next Business Day following such date. WIFIA Loan proceeds borrowed and repaid may not be reborrowed.

(ii) Notwithstanding anything herein to the contrary, the WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date.

(iii) [Reserved].

(iv) If an Interest Only Period is applicable as set forth in **Part C of Schedule I** (*WIFIA Loan Specific Terms*), during the Interest Only Period, the WIFIA Debt Service payable by the Borrower shall consist of one hundred percent (100%) of the amount of interest then due and payable on the WIFIA Loan Balance, and no payment of principal on the WIFIA Loan will be due and payable during the Interest Only Period.

(v) The WIFIA Loan is not subject to defeasance.

(b) Manner of Payment. Payments under this Agreement (and the WIFIA Bond, which payments shall not be duplicative) shall be made in Dollars and in immediately available funds (without counterclaim, offset or deduction) in accordance with the payment instructions provided by the WIFIA Lender prior to the relevant payment, as may be modified in writing from time to time by the WIFIA Lender; provided, that the failure to provide updated payment instructions shall not affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

(c) Adjustments to WIFIA Loan Amortization Schedule. The WIFIA Lender may, from time to time, modify the WIFIA Loan Amortization Schedule included in **Schedule VI** (*WIFIA Loan Amortization Schedule*) to reflect (A) any change to the WIFIA Loan Balance, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower hereunder in accordance with this Agreement, (C) any mathematical corrections as the WIFIA Lender may determine are necessary, and (D) with the consent of the Borrower (not to be unreasonably withheld), such other information as the WIFIA Lender may determine is necessary for administering the WIFIA Loan and this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the WIFIA Loan Amortization Schedule as a result of a decrease in the WIFIA Loan Balance shall be applied to reduce future payments due on the WIFIA Loan in inverse order of maturity, other than prepayments which shall be applied in accordance with Section 9(b) (*General Prepayment Instructions*). If the WIFIA Loan Amortization Schedule is modified pursuant to this Section 8(c), the WIFIA Lender shall provide the Borrower with a copy of such revised WIFIA Loan Amortization Schedule, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other

WIFIA Loan Documents. The WIFIA Lender may also, from time to time or when so requested by the Borrower, advise the Borrower by written notice of the amount of the WIFIA Loan Balance as of the date of such notice. Absent manifest error, the WIFIA Lender's determination of the WIFIA Loan Balance and all matters as set forth on the WIFIA Loan Amortization Schedule shall be deemed conclusive evidence thereof absent manifest error; provided, that neither the failure to make any such determination, modification, or recordation nor any error in such determination, modification, or recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

Section 9. Prepayment.

(a) Optional Prepayments. The Borrower may prepay the WIFIA Loan, without penalty or premium, (i) in full on any date or (ii) in part on any Payment Date (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, that such prepayment shall be in principal amounts of $500,000 or any integral multiple of $1.00 in excess thereof), in each case from time to time but not more than once annually in accordance with 33 U.S.C. § 3908(c)(4)(A). The Borrower may make such prepayment by paying to the WIFIA Lender such principal amount of the WIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment and all fees and expenses then due and payable to the WIFIA Lender. Each prepayment of the WIFIA Loan pursuant to this Section 9(a) shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice, signed by the Borrower's Authorized Representative and delivered to the WIFIA Lender, for full prepayments, not less than thirty (30) days prior, and for partial prepayments, not less than sixty (60) days prior to the requested date of prepayment, unless otherwise agreed by the WIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Lender. Anything in this Section 9(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(b) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full in immediately available funds of the entire WIFIA Loan Balance and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower or its authorized representative, by mail in accordance with Section 31 (*Notices*) or as otherwise agreed between the parties hereto. If, upon sixty (60) days' prior notice to the WIFIA Lender, the Borrower prepays only part of the unpaid balance of principal of the WIFIA Loan, the WIFIA Lender shall prepare a new WIFIA Loan Amortization Schedule. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on an updated WIFIA Loan Amortization Schedule shall be conclusive evidence thereof; provided, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. If, pursuant to the prepayment notice, the Borrower opts to apply the prepayment *pro rata*, such partial prepayment of principal shall be applied to reduce the WIFIA Loan Balance such that the remaining scheduled principal and interest payments for the WIFIA Loan set out in the WIFIA Loan Amortization Schedule are reduced substantially *pro rata*. If, pursuant to the prepayment notice, the Borrower opts to apply the prepayment in inverse order of maturity, such partial prepayment of principal shall be applied to reduce the WIFIA Loan Balance such that the remaining scheduled interest payments for the WIFIA Loan set out in the WIFIA Loan Amortization Schedule are reduced. If such funds have not been so paid on the prepayment date, such principal amount of the WIFIA Loan shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 10. Fees and Expenses.

(a) Fees. The Borrower shall pay to the WIFIA Lender:

(i) the Servicing Set-Up Fee, which shall be due and payable within thirty (30) days after receipt by the Borrower of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the date of the first Disbursement of the WIFIA Loan);

(ii) the Construction Period Servicing Fee, which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the period beginning from the Effective Date through (and including) the end of the Federal Fiscal Year during which the Substantial Completion Date occurs; provided, that the Initial Construction Period Servicing Fee shall be due and payable within thirty (30) days after receipt by the Borrower of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the date of the first Disbursement of the WIFIA Loan); and

(iii) the Operating Period Servicing Fee, which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the Substantial Completion Date occurs, until (and including) the Final Maturity Date; provided, that the Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Maturity Date occurs shall be equal to the *pro-rata* monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and the Final Maturity Date.

(b) The amount of each Construction Period Servicing Fee (other than the initial Construction Period Servicing Fee) and each Operating Period Servicing Fee shall be adjusted in proportion to the percentage change in CPI for the calendar year immediately preceding the calendar year during which such fee is due. The WIFIA Lender shall notify the Borrower of the amount of each such fee at least thirty (30) days before payment is due, which determination shall be conclusive absent manifest error.

(c) Expenses. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Lender on demand from time to time, within thirty (30) days after receipt by the Borrower of any invoice from the WIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this

Agreement and the other WIFIA Loan Documents and the transactions hereby and thereby contemplated, including attorneys', and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with: (i) the enforcement of or attempt to enforce, or the monitoring, protection or preservation of any right or claim under, the Full Faith and Credit Pledge, the WIFIA Bond or any provision of this Agreement or any of the other WIFIA Loan Documents or the rights of the WIFIA Lender thereunder; (ii) any amendment, modification, re-execution, waiver, or consent with respect to this Agreement or any other WIFIA Loan Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents, including during the pendency of any Event of Default.

(d) The obligations of the Borrower under this Section 10 shall survive the payment or prepayment in full or transfer of the WIFIA Bond, the enforcement of any provision of this Agreement or the other WIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

ARTICLE III
CONDITIONS PRECEDENT

Section 11. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) The Borrower shall have duly executed and delivered to the WIFIA Lender this Agreement and the WIFIA Bond, each in form and substance satisfactory to the WIFIA Lender.

(ii) The Borrower shall have delivered to the WIFIA Lender complete and fully executed copies of (A) any Related Document authorizing the Borrower to enter this Agreement and issue the corresponding WIFIA Bond and (B) any Related Document with respect to which all or a portion of the proceeds are or will be applied to fund all or any portion of Total Project Costs, in each case that has been entered into on or prior to the Effective Date, along with a certification in the Closing Certificate that each such document is complete, fully executed and in full force and effect, and that all conditions contained in the Related Documents that are necessary to the closing of the WIFIA transaction contemplated hereby (if any) have been fulfilled.

(iii) The Borrower shall have delivered to the WIFIA Lender fully executed copies of each Existing Construction Contract, together with any amendments, waivers or modifications thereto.

(iv) Counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-1** (*Opinions Required from Counsel to Borrower*) and bond counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-2** (*Opinions Required from Bond Counsel*)).

(v) The Borrower shall have delivered to the WIFIA Lender a certificate, signed by the Borrower's Authorized Representative, substantially in the form attached hereto as **Exhibit B** (*Form of Closing Certificate*) (the "**Closing Certificate**"), designating the Borrower's Authorized Representative, confirming such person's position and incumbency, and certifying as to the satisfaction of the certain conditions precedent (and, if requested by the WIFIA Lender, has provided evidence satisfactory to the WIFIA Lender of such satisfaction), including the following:

(A) as of the Effective Date, (1) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs; (2) the aggregate amount of Eligible Project Costs previously incurred prior to the Effective Date does not exceed fifty-one percent (51%) of Eligible Project Costs; and (3) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs;

(B) the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project;

(C) the Borrower has (1) obtained a FEIN (as evidenced by the delivery of a copy of the Borrower's W-9), (2) obtained a Unique Entity Identifier, and (3) registered with SAM and obtained confirmation of active SAM registration status;

(D) the Borrower has obtained the WIFIA CUSIP Number;

(E) the representations and warranties of the Borrower set forth in this Agreement and in each other WIFIA Loan Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and

(F) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the date of the Application.

(vi) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction, prior to the Effective Date, of the assignment by at least one (1) Nationally Recognized Rating Agency of a public Investment Grade Rating on the WIFIA Loan, along with a certification in the Closing Certificate that no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(vii) The Borrower shall have delivered to the WIFIA Lender the Public Benefits Report.

(viii) The Borrower shall have paid in full all invoices delivered by the WIFIA Lender to the Borrower as of the Effective Date for any applicable Servicing Fees and the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

(b) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender shall have no obligation to make any Disbursement of the WIFIA Loan to the Borrower (including the initial Disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) The Borrower shall have delivered to the WIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), **Schedule IV** (*Requisition Procedures*) and **Exhibit D** (*Form of Requisition*), including satisfactory Eligible Project Costs Documentation relating to such Requisition. The Borrower's Authorized Representative shall also certify in such Requisition that:

(A) at the time of, and immediately after giving effect to, any Disbursement of WIFIA Loan proceeds then currently requested, (1) no Default or Event of Default and no event of default under any other Related Document has occurred and is continuing and (2) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any other Related Document, has occurred and is continuing;

(B) no Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, has occurred since the Effective Date;

(C) the aggregate amount of all Disbursements (including the requested Disbursement amount) does not exceed (1) the maximum principal amount of the WIFIA Loan or (2) the amount of Eligible Project Costs paid or incurred by the Borrower;

(D) the Eligible Project Costs for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of (1) WIFIA Loan proceeds or (2) any other source of funding for the Project as identified in the Project Budget;

(E) (1) the Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products); and (2) supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender;

(F) the representations and warranties of the Borrower set forth in this Agreement and in each other WIFIA Loan Document are true and correct as of each date on which any disbursement of the WIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties were true and correct as of such earlier date); and

(G) the Borrower represents that it has delivered all required deliverables under and in compliance with the requirements of **Schedule V** (*Reporting Requirements*), except as has been otherwise agreed by the WIFIA Lender;

(H) the amount being requested for Disbursement is with respect to Eligible Project Costs for which all or a portion of the Eligible Project Costs Documentation was previously submitted to and approved by the WIFIA Lender in accordance with **Schedule IV** (*Requisition Procedures*) and **Schedule V** (*Reporting Requirements*) of the WIFIA Loan Agreement, and/or the Borrower has set out in the Requisition (or attached separately to the Requisition) a summary of any Eligible Project Costs that have not otherwise been previously submitted to the WIFIA Lender for approval, together with supporting Eligible Project Costs Documentation; and

(I) none of the Holder(s) of Obligations under an Obligation Document has exercised remedies permitted thereunder for an event of default that occurred (and was not cured or waived by the expiration of any applicable grace period), in respect of the performance of any covenant, agreement or obligation of the Borrower under such Related Document.

(ii) If applicable, to the extent necessary to make the representations and warranties in Section 12(f) (*Litigation*) and 12(j)(iii) (*Compliance with Laws*) true, correct and complete as of the date of the applicable Disbursement, the Borrower shall have delivered an updated **Schedule III** (*Borrower Disclosures*).

(iii) The Borrower shall have paid in full (A) any outstanding Servicing Fees due and payable under Section 10 (*Fees and Expenses*) and (B) all invoices delivered by the WIFIA Lender to the Borrower, for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Section 12. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 12(b) (*Officers' Authorization*) and the first sentence of Section 12(m) (*Construction Contracts*), as of each date on which any Disbursement of the WIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a Legal Entity duly organized and validly existing under its Organizational Documents and the laws of the State, has full legal right, power and authority to do business in the State and to enter into the WIFIA Loan Documents then in existence, to execute and deliver this Agreement and the WIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of this Agreement, the WIFIA Bond, and the other WIFIA Loan Documents. Other than such Organizational Documents and the WIFIA Bond Resolution, there are no additional instruments or documents necessary for the Borrower to execute and deliver, or to perform its obligations under, the WIFIA Loan Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the WIFIA Loan Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the WIFIA Loan Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the WIFIA Loan Documents to which the Borrower is a party, the consummation of the transactions contemplated by the WIFIA Loan Documents, and the fulfillment of or compliance with the terms and conditions of all of the WIFIA Loan Documents, do not and will not (i) conflict with the Borrower's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(e) Consents and Approvals. All Governmental Approvals required as of the Effective Date and required as of any subsequent date on which this representation is made (or deemed made) for the undertaking, construction and completion by the Borrower of the Project and the operation and maintenance of the System, and to execute and deliver and perform its obligations under the WIFIA Loan Documents and the Construction Contracts, have been obtained or effected and are in full force and effect. The Borrower is not in default with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person is necessary in connection with the execution, delivery, and performance by the Borrower of the WIFIA Loan Documents and the consummation of any transaction contemplated thereunder, except as have been obtained or made and as are in full force and effect.

(f) Litigation. Except as set forth in **Part B of Schedule III** (*Borrower Disclosures*), there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the System, the Project or the ability of the Borrower to execute, deliver and perform its obligations under the WIFIA Loan Documents or that in any case could reasonably be expected to result in a Material Adverse Effect.

(g) Pledge of Full Faith and Credit. Pursuant to the terms hereof, as security for the payments required to be made and the obligations required to be performed by the Borrower under this Agreement and the WIFIA Bond, the Borrower has irrevocably pledged its full faith and credit and taxing power pursuant to Oregon Revised Statutes Section 287A.315 for such payment and performance. The obligation of the Borrower to make any payments required under this Agreement and the WIFIA Bond constitutes a Full Faith and Credit Obligation of the Borrower. As of the Effective Date and as of each other date this representation and warranty is made, (A) all actions as are necessary or desirable have been taken to establish a legal, valid, binding, and enforceable Full Faith and Credit Pledge and (B) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any WIFIA Loan Documents, or any instruments, certificates or financing statements in connection with the foregoing, have been paid. The Full Faith and Credit Pledge made pursuant hereto is not governed by the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. § 1532.995) (i) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters, (ii) is presently indicted for or otherwise criminally or civilly charged by a Governmental Authority with commission of any of the offenses listed in 2 C.F.R. § 180 or 2 C.F.R. § 1532; and (iii) have, within the three (3) year period preceding the Effective Date, (x) been convicted for or had a civil judgment rendered against the Borrower for any of the offenses within such period or (y) had any public transactions (federal, state or local) terminated for cause or default.

(i) No Lobbying. Pursuant to 31 U.S.C. §1352, to the best of the Borrower's knowledge and belief, (A) 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 an agency, a member (or employee of a member), officer, or employee of the U.S. Congress, in connection with the making of the WIFIA Loan, execution (including amendments or modifications) of the WIFIA Loan Documents, or any other federal action under 31 U.S.C. §1352(a)(2); and (B) 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 (or employee of a member), officer, or employee of the U.S. Congress in connection with the WIFIA Loan, the Borrower has completed and submitted to the WIFIA Lender Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(j) Compliance with Laws.

(i) The Borrower, and to the best of its knowledge, each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto), 33 U.S.C. §3914 (relating to American iron and steel products), 20 C.F.R. §180.320 and 20 C.F.R. §1532 (relating to non-debarment), 31 U.S.C. §1352 and 49 C.F.R. §20.100 (relating to non-lobbying), and any applicable Sanctions Laws.

(ii) To ensure such compliance, the Borrower has included in all contracts with respect to the Project (A) the contract clauses relating to applicable federal requirements (such as Davis-Bacon and Equal Employment Opportunity) and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 12(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 12(j).

(iii) Except as set forth in **Part C of Schedule III** (*Borrower Disclosures*), the Borrower is in compliance with all laws applicable to the System (including the Project) relating to environmental, health or safety matters.

(k) Credit Ratings. The WIFIA Loan has received a public Investment Grade Rating from at least one (1) Nationally Recognized Rating Agency, written evidence of such rating has been provided to the WIFIA Lender prior to the Effective Date, and such rating has not been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no default or event of default by the Borrower under any other Related Document, has occurred and is continuing.

(m) Construction Contracts. **Part C of Schedule II** (*Project Details*) sets forth a list of the Existing Construction Contracts as of the Effective Date. With respect to each Construction Contract executed as of any date on which this representation and warranty is made, such Construction Contract is in full force and effect.

(n) Information. The information furnished by, or on behalf of, the Borrower to the WIFIA Lender, when taken as a whole, is true and correct in all material respects (other than for projections and other forward-looking statements contained in the Base Case Financial

Model and any Updated Financial Model/Plan which have been made in good faith and based on reasonable assumptions) and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading as of the date made or furnished.

(o) Insurance. The Borrower is in compliance with all insurance obligations required under each Construction Contract and the WIFIA Loan Documents (including Section 14(f) (*Insurance*) hereof) as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower's self-insurance program is actuarially sound.

(p) No Prohibited Liens. The Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on any of the Revenues, the Water Fund, or the Borrower's respective rights in any of the foregoing.

(q) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the WIFIA Lender pursuant to **Part B of Schedule V** (*Reporting Requirements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition (including any liabilities or obligations that are required to be disclosed in accordance with GAAP) of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein.

(r) Securities Laws. Under existing law, the WIFIA Bond may be issued and sold without registration under the Securities Act of 1933, as amended, and any State blue sky laws.

(s) No Delinquent Taxes or Federal Debt. The Borrower has paid all applicable taxes and other material taxes and assessments payable by it that have become due (other than those taxes or assessments that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by GAAP). The Borrower has no delinquent federal debt (including tax liabilities but excluding any delinquencies that have been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996).

(t) Sufficient Funds. The amount of the WIFIA Loan, when combined with all other funds committed for the development and construction of the Project as set forth under the various sources of funds in the Project Budget, will be sufficient to carry out the Project, pay all Total Project Costs anticipated for the development and construction of the Project and achieve Substantial Completion by the Projected Substantial Completion Date. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs. The Updated Financial Model/Plan most recently delivered to the WIFIA Lender pursuant to **Part A of Schedule V** (*Reporting Requirements*) demonstrates that the projected Revenues are sufficient to meet the WIFIA Loan Amortization Schedule. The Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining, and repairing the Project over the useful life of the Project.

(u) Sovereign Immunity. The Borrower either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Borrower under any of the WIFIA Loan Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder, or, to the extent that the Borrower has such immunity, the Borrower has waived such immunity pursuant to Section 14(m) (*Immunity*).

(v) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other WIFIA Loan Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties were true, correct, and complete as of such earlier date).

Section 13. Representations and Warranties of WIFIA Lender. The WIFIA Lender represents and warrants that:

(a) Power and Authority. The WIFIA Lender has all requisite power and authority to make the WIFIA Loan and to perform all transactions contemplated by the WIFIA Loan Documents to which it is a party.

(b) Due Execution; Enforceability. The WIFIA Loan Documents to which it is a party have been duly authorized, executed and delivered by the WIFIA Lender, and are legally valid and binding agreements of the WIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the WIFIA Lender executing each of the WIFIA Loan Documents to which the WIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the WIFIA Lender.

ARTICLE V
COVENANTS

Section 14. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Bond and all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make Disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) [Reserved].

(b) Further Assurances. The Borrower shall, at the request of the WIFIA Lender, authorize, execute, acknowledge and deliver such further certifications, resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be deemed necessary or desirable by the WIFIA Lender, in its sole discretion, for better assuring, conveying, granting, assigning and confirming the rights, pledges, security interests, representations and warranties and agreements granted or intended to be granted by or set forth in this Agreement and the other WIFIA Loan Documents.

(c) Use of Proceeds. The Borrower shall use the proceeds of the WIFIA Loan solely for purposes permitted by applicable law, this Agreement and the other WIFIA Loan Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule (and on or prior to the Development Default Date), the Governmental Approvals in connection with the Project, and prudent utility and industry practice.

(ii) The Borrower shall comply with Subpart C of 2 C.F.R. Part 180, as supplemented by Subpart C of 2 C.F.R. Part 1532 (relating to debarment), including the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320, and shall include in its contracts with respect to the Project similar terms or requirements for compliance.

(e) Operations and Maintenance. The Borrower shall operate and maintain the System (including the Project) substantially in accordance with the Updated Financial Model/Plan most recently delivered by the Borrower to the WIFIA Lender pursuant to **Part A of Schedule V** (*Reporting Requirements*) and its operations and maintenance plan (that incorporates the Project). The Borrower shall operate and maintain the System (including the Project) in a reasonable and prudent manner and in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable WIFIA Loan Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business and the operation and maintenance of the System.

(f) Insurance.

(i) The Borrower shall at all times procure and maintain or cause to be maintained insurance on the System and the construction of the Project, with responsible insurers, or as part of a reasonable system of self-insurance that is actuarially sound and adequately funded, in such amounts and against such risks (including damage to or destruction of the System) as are customarily maintained with respect to works and properties of like character against accident to, loss of, or damage to such works or properties, including insurance against public liability, property damage, workers' compensation, and builders' risk, casualty and liability, as appropriate, and otherwise in accordance with the Related Documents and Construction Contracts. The insurance policies shall be available at all reasonable times for inspection upon request by the WIFIA Lender, its agents and representatives.

(ii) The Borrower shall cause all liability insurance policies that it maintains (excluding property damage, automobile or workers' compensation insurance), to reflect the WIFIA Lender as an additional insured to the extent of its insurable interest.

(g) Maintain Legal Structure. The Borrower shall maintain its existence as a Legal Entity organized and existing under its Organizational Documents and the laws of the State.

(h) Water Fund; WIFIA Debt Service Reserve Account; Permitted Investments.

(i) The Borrower shall maintain the Water Fund in accordance with the terms hereof.

(ii) If a WIFIA Debt Service Reserve Requirement is applicable as set forth in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), then the Borrower shall maintain the WIFIA Debt Service Reserve Account in an amount equal to the WIFIA Debt Service Reserve Requirement in accordance with the terms hereof. If the WIFIA Debt Service Reserve Account is funded with proceeds of the WIFIA Loan, then amounts in the WIFIA Debt Service Reserve Account shall be applied only to make payments with respect to the WIFIA Bond.

(iii) Amounts on deposit in the WIFIA Debt Service Reserve Account (if applicable) shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder at such times as may be necessary to ensure that funds will be available within the applicable account to be applied towards the purpose for which the applicable account has been established.

(i) Compliance with Laws.

(i) The Borrower shall, and shall require its contractors and subcontractors at all tiers with respect to the Project to, comply with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto), 33 U.S.C. §3914 (relating to American iron and steel products), 20 C.F.R. § 180.320 and 20 C.F.R. §1532 (relating to non-debarment), 31 U.S.C. §1352 (relating to non-lobbying), and any applicable Sanctions Laws.

(ii) To ensure such compliance, the Borrower shall include in all contracts with respect to the Project (A) the contract clauses relating to applicable federal requirements (such as Davis-Bacon and Equal Employment Opportunity) and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 14(i) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 14(i).

(j) Material Obligations. The Borrower shall pay its material obligations payable from the Revenues promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Revenues or other assets of the System, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon the System or any part thereof or on the Revenues; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(k) SAM Registration and Unique Entity Identifier. The Borrower shall obtain and maintain, on or prior to the Effective Date through (i) the Final Disbursement Date, an active SAM registration status and (ii) the Final Maturity Date, a Unique Entity Identifier.

(l) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the System (including the Project) or any part thereof, the Borrower shall (i) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such Event of Loss and (ii) apply all Loss Proceeds (after excluding any proceeds of delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties) in respect of such Event of Loss to repair, reconstruct, and/or replace the portion of the System in respect of which the applicable Loss Proceeds were received. The Borrower shall begin such repair, reconstruction or replacement promptly after such damage or destruction shall occur, and shall continue and properly complete such repair, reconstruction or replacement as expeditiously as possible, and shall pay out of such Loss Proceeds (after excluding any proceeds of delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties) all costs and expenses in connection with such repair, reconstruction or replacement so that the same shall be completed and the System shall be free and clear of all claims and Liens.

(m) Immunity. To the fullest extent permitted by applicable law, the Borrower agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other WIFIA Loan Document.

(n) Accounting and Audit Procedures.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (A) Taxes, Revenues, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (B) Project-related costs, Requisitions submitted, WIFIA Loan proceeds received, payments made by the Borrower with respect to the Project, and other sources of funding for the Project (including amounts paid from such sources for Project costs so that audits may be performed to ensure compliance with and enforcement of this Agreement). The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the WIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts Outstanding.

(ii) The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 from (and including) the first Borrower Fiscal Year in which a Disbursement is made under this Agreement and annually thereafter to the extent required by applicable law, except in all cases to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Lender, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the WIFIA Loan, to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(o) Access; Records.

(i) So long as the WIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the WIFIA Loan shall have been paid in full, the WIFIA Lender shall have the right, upon reasonable prior notice, to visit, monitor and/or inspect any portion of the Project and its operations, to examine books of account and records of the Borrower relating to the Project, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts relating to the Project with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the WIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 14(o) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the WIFIA Lender may request. The Borrower agrees to pay all out-of-pocket expenses incurred by the WIFIA Lender in connection with the WIFIA Lender's exercise of its rights under this Section 14(o) at any time when an Event of Default shall have occurred and be continuing.

(ii) The Borrower shall maintain and retain all pertinent files relating to the Project and the WIFIA Loan, as may be necessary for the WIFIA Lender to facilitate an effective and accurate audit and performance evaluation of the Project, until five (5) years after the later of the date on which (A) all rights and duties under this Agreement and under the WIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (B) any litigation relating to the Project, the WIFIA Loan or this Agreement is finally resolved or, if the WIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the WIFIA Lender and the Borrower. The Borrower shall provide to the WIFIA Lender in a timely manner all records and documentation relating to the Project that the WIFIA Lender may reasonably request from time to time.

Section 15. Negative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Bond and all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make Disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) [Reserved].

(ii) The Borrower shall not incur any Additional Project Obligations while a Payment Default or Bankruptcy Related Event has occurred and is continuing.

(iii) The Borrower may not create, incur or suffer to exist any Additional Project Obligations other than Additional Project Obligations that are Full Faith and Credit Obligations.

(iv) The Borrower may not create, incur or suffer to exist any security interests in, or pledge on, the Revenues to secure Additional Project Obligations.

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender, (i) extinguish or impair the Full Faith and Credit Pledge or any dedicated source of repayment of the WIFIA Loan or any other obligations (the proceeds of which are applied to fund Total Project Costs); (ii) amend, modify, replace or supplement any Related Document or permit a waiver of any provision thereof in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to result in a Material Adverse Effect; or (iii) terminate, assign or replace any Related Document in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to have a Material Adverse Effect.

(c) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the System or a substantial portion of the assets included in the System, unless such sale, lease or assignment (i) could not reasonably be expected to have a Material Adverse Effect and (ii) is made by the Borrower in the ordinary course of business.

(d) Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with or merge into another Person unless (i) such reorganization, merger or consolidation is with or into another entity established by State law and such reorganization, merger or consolidation is permitted by State law, and in each case, does not adversely affect or impair to any extent or in any manner (A) the Full Faith and Credit Pledge, the Taxes or the Revenues or (B) the availability of the Taxes or the Revenues for the payment and security of the obligations of the Borrower under this Agreement and the WIFIA Bond; and (ii) the Borrower provides to the WIFIA Lender notice of such reorganization, consolidation or merger in accordance with **Part E of Schedule V** (*Reporting Requirements*) and such other information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Lender.

(e) Hedging. Other than interest rate hedging transactions permitted under the Indenture, the Borrower shall not enter into any swap or hedging transaction, including any such transaction that is speculative or creates extraordinary leverage or risk, without the prior written consent of the WIFIA Lender.

Section 16. Reporting Requirements. The Borrower agrees to comply with each of the reporting requirements set out in **Schedule V** (*Reporting Requirements*), unless otherwise agreed or waived by the WIFIA Lender in writing.

ARTICLE VI
EVENTS OF DEFAULT AND REMEDIES

Section 17. Events of Default and Remedies.

(a) An "**Event of Default**" shall exist under this Agreement if any of the following occurs; provided, that the occurrence of an event set forth in sub-clauses (v) through (and including) (ix) below shall not constitute an Event of Default under this Agreement until the WIFIA Lender has provided a notice of such Event of Default to the Borrower; provided, further, that nothing in this paragraph is intended to limit any obligation of the Borrower hereunder, including any obligation to cure any event or condition contemplated under this Section 17(a):

(i) Payment Default. The Borrower shall fail to pay when due any part of the principal amount of or interest on the WIFIA Loan (including WIFIA Debt Service required to have been paid pursuant to the provisions of Section 8 (*Repayment*)), and such failure continues for a period of five (5) days, when and as the payment thereof shall be required under this Agreement or the WIFIA Bond or on the Final Maturity Date (each such failure, a "**Payment Default**").

(ii) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to the Borrower.

(iii) Acceleration of Obligations. Any acceleration shall occur of the maturity of any Obligation, or any such Obligation shall not be paid in full upon the final maturity thereof.

(iv) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower contests in any manner the validity or enforceability of any WIFIA Loan Document to which it is a party or denies it has any further liability under any WIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Loan Document to which it is a party; (B) this Agreement ceases to be effective; (C) this Agreement or the WIFIA Bond ceases to grant a valid and binding Full Faith and Credit Pledge; or (D) any event occurs that results in the impairment of the Full Faith and Credit Pledge.

(v) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the WIFIA Bond or any other WIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the WIFIA Lender of written notice thereof or (B) the Borrower's knowledge of such failure; provided, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30)-day cure period, then such thirty (30)-day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30)-day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(vi) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the WIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the WIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made; provided, that no Event of Default shall be deemed to have occurred under this Section 17(a)(vi) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(g) (*Pledge of Full Faith and Credit*), Section 12(h) (*No Debarment*), Section 12(i) (*No Lobbying*), or Section 12(j) (*Compliance with Laws*), (C) in the reasonable determination of the WIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect, (D) in the reasonable determination of the WIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured and (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days after the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation.

(vii) Material Adverse Judgment. Any final, non-appealable judgment related to the Full Faith and Credit Pledge, the Taxes, the Revenues, the System or the Project shall be entered against the Borrower which has a material adverse effect on (a) the legality, validity or enforceability of any material provision of any WIFIA Loan Document, (b) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any WIFIA Loan Document, (c) the validity or enforceability of the Full Faith and Credit Pledge or (d) the WIFIA Lender's rights or remedies available under any WIFIA Loan Document.

(viii) Development Default. A Development Default shall occur.

(b) Upon the occurrence of any Bankruptcy Related Event, all obligations of the WIFIA Lender hereunder with respect to the Disbursement of any undisbursed amounts of the WIFIA Loan shall automatically be deemed terminated.

(c) Upon the occurrence of any Event of Default, the WIFIA Lender, by written notice to the Borrower, may exercise any or all of the following remedies:

(i) the WIFIA Lender may suspend or terminate all of its obligations hereunder with respect to the Disbursement of any undisbursed amounts of the WIFIA Loan;

(ii) the WIFIA Lender may cease permitting interest on the WIFIA Loan to be capitalized (if applicable);

(iii) the WIFIA Lender may apply the Default Rate provisions of Section 6 (*Interest Rate*);

(iv) the WIFIA Lender may suspend or debar the Borrower from further participation in any Federal Government program administered by the WIFIA Lender and notify other departments and agencies of such default; and

(v) the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the WIFIA Bond or the other WIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the WIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code (if applicable), and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by the Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents.

(d) If a right of acceleration is or has been granted for the benefit of any Holder of Obligations and such Obligations have been accelerated, then the WIFIA Lender shall have the right to declare the unpaid principal amount of the WIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents, all without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) No action taken pursuant to this Section 17 shall relieve the Borrower from its obligations pursuant to this Agreement, the WIFIA Bond or the other WIFIA Loan Documents, all of which shall survive any such action.

ARTICLE VII
MISCELLANEOUS

Section 18. Disclaimer of Warranty. The WIFIA Lender makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the WIFIA Lender be liable for any incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the System (including the Project) or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 19. No Personal Recourse. No official, employee or agent of the WIFIA Lender or the Borrower or any Person executing this Agreement or any of the other WIFIA Loan Documents shall be personally liable on this Agreement or such other WIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 20. No Third-Party Rights. The parties hereby agree that this Agreement creates no third-party rights against the Borrower, the Federal Government, or the WIFIA Lender, solely by virtue of the WIFIA Loan, and that no third-party creditor of the Borrower shall have any right against the WIFIA Lender with respect to the WIFIA Loan made pursuant to this Agreement.

Section 21. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the WIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 22. WIFIA Lender's Authorized Representative. The WIFIA Lender hereby appoints the Director of the WIFIA Program, whose notice details are set forth below in Section 31 (*Notices*), to serve as the WIFIA Lender's Authorized Representative under this Agreement until such time as a successor or successors shall have been appointed. Thereafter, the successor in office shall serve as the WIFIA Lender's Authorized Representative. The WIFIA Lender shall provide notice to the Borrower within a reasonable time period following the succession.

Section 23. Servicer. The WIFIA Lender may from time to time designate another entity or entities to perform, or assist the WIFIA Lender in performing, the duties of the Servicer or specified duties of the WIFIA Lender under this Agreement and the WIFIA Bond. The WIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Lender shall have delegated to such Servicer. The WIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the WIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 24. Amendments, Waivers and Termination. No amendment, modification, termination, or waiver of any provision of this Agreement or the WIFIA Bond shall in any event be effective without the prior written consent of each of the parties hereto. Notwithstanding the foregoing sentence, if the first Disbursement of the WIFIA Loan has not occurred on or prior to the Final Disbursement Date, the WIFIA Lender or the Borrower may terminate this Agreement upon no less than ten (10) Business Days' prior written notice to the other party. Once terminated, this Agreement may not be reinstated.

Section 25. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 26. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 27. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder or under the WIFIA Bond nor any interest herein or therein may be assigned or delegated by the Borrower without the prior written consent of the WIFIA Lender.

Section 28. Remedies Not Exclusive. No remedy conferred herein or in the WIFIA Bond or reserved to the WIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the WIFIA Bond or now or hereafter existing at law or in equity or by statute.

Section 29. Delay or Omission Not Waiver. No delay or omission of the WIFIA Lender to exercise any right or remedy provided hereunder or under the WIFIA Bond upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or under the WIFIA Bond or by law to the WIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the WIFIA Lender.

Section 30. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 31. Notices.

(a) All notices, requests, or communication hereunder shall be given in writing.

(b) Notices to the WIFIA Lender should be made by (i) email to the email address noted below for the WIFIA Lender or (ii) submission through another electronic medium or transmission system as designated by and in a format acceptable to the WIFIA Lender, unless otherwise instructed by the WIFIA Lender:

<u>If to WIFIA Lender:</u> Environmental Protection Agency
WJC-E 7334A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

(c) Notices to the Borrower should be made by (i) nationally recognized courier service, (ii) hand delivery, (iii) email, to the email address noted below for the Borrower, or (iv) another electronic medium in a format acceptable to the Borrower, unless otherwise instructed by the Borrower's Authorized Representative:

<u>If to Borrower</u>: The notice details set forth in **Part G of Schedule I** (*WIFIA Loan Specific Terms*)

(d) Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party), and (y) if given by email or other electronic method, when such email is delivered to the email address specified in this Section 31 or submitted to the electronic medium as directed by the receiving party, in each case with the sender's receipt of an acknowledgement from the intended recipient (such as by a "read receipt," return email, or other written acknowledgement) (or in accordance with the latest unrevoked written direction from the receiving party); <u>provided</u>, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 32. <u>Indemnification</u>. The Borrower shall, to the extent permitted by law, indemnify the WIFIA Lender, the Servicer (if any), and any official, employee, agent, advisor or representative of the WIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement, any Construction Contract, or any Related Document, (b) the WIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; <u>provided</u>, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; <u>provided</u>, that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 32 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 32. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the WIFIA Lender shall assert, and each of the Borrower and the WIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any Construction Contract, or any Related Document, the other transactions contemplated hereby and thereby, the WIFIA Loan or the use of the proceeds thereof, provided, that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 32 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 32 shall survive the payment or prepayment in full or transfer of the WIFIA Loan, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 33. Sale of WIFIA Loan. The WIFIA Lender shall not sell the WIFIA Loan at any time prior to the later of (a) the Substantial Completion Date and (b) other than with respect to a sale or transfer to another Governmental Entity within the Federal Government, the Final Disbursement Date. After such date, the WIFIA Lender may sell the WIFIA Loan to another entity or reoffer the WIFIA Loan into the capital markets only in accordance with the provisions of this Section 33. Such sale or reoffering shall be on such terms as the WIFIA Lender shall deem advisable. However, in making such sale or reoffering the WIFIA Lender shall not change the terms and conditions of the WIFIA Loan without the prior written consent of the Borrower in accordance with Section 24 (*Amendments, Waivers and Termination*). Prior to any sale or reoffering of the WIFIA Loan, the WIFIA Lender shall provide reasonable written notice to the Borrower of the WIFIA Lender's intention to consummate such a sale or reoffering. The Borrower shall not be required to provide any disclosure or take any other action related to a potential sale or reoffering (except for any action expressly required by this Agreement). The provision of any notice pursuant to this Section 33 shall neither (x) obligate the WIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the WIFIA Lender, for any reason, does not sell the WIFIA Loan.

Section 34. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 35. Surrender of Bond. Upon the irrevocable payment in full in immediately available funds by the Borrower of the WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower in accordance with Section 9(b) (*General Prepayment Instructions*).

Section 36. Survival.The indemnification requirements of Section 32 (*Indemnification*), the reporting and record keeping requirements of Section 14(o) (*Access; Records*) and the payment requirements of Section 10 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such Sections.

Section 37. Integration. This Agreement, together with the other WIFIA Loan Documents, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[*The remainder of this page intentionally left blank; signature pages immediately follow.*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

CITY OF OREGON CITY,
by its authorized representative

By: ______________________________
Name:
Title:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the Environmental Protection Agency

By: ______________________________
Name: Michael S. Regan
Title: Administrator

SCHEDULE I

WIFIA LOAN SPECIFIC TERMS

No.	Item	WIFIA Loan Specific Term
PART A. Key Borrower Metrics		
1.	Effective Date	[___], 2023.
2.	Borrower	City of Oregon City, a Legal Entity organized and existing under the State.
3.	Legal Entity	Municipal corporation.
4.	State	Oregon.
5.	Borrower FEIN	93-6002230.
6.	Borrower Unique Entity Identifier	R9QKAFGEQ293.
7.	Initial Borrower Fiscal Year	The fiscal year of the Borrower commencing on July 1 of any given calendar year and ending on June 30 of the immediately succeeding calendar year.
8.	Application Receipt Date	January 12, 2023.
9.	WIFIA CUSIP Number	[___], as the CUSIP number for the WIFIA Loan for purposes of monitoring through EMMA.
10.	System	The water system owned and operated by the Borrower (and of which the Project is a part).
11.	Revenues	All income, from whatever source derived, from the ownership or operation of the System (other than from taxes) and all investment income thereon.
12.	Trustee	Not Applicable.
13.	Trustee Location	Not Applicable.
14.	[Reserved]	Not Applicable.

No.	Item	WIFIA Loan Specific Term
PART B. Key Project Metrics		
15.	Project	The Project is the Oregon City Water Rehabilitation, Resiliency and Improvement Projects, located at the Project Location, which is designed to improve the ability of the Borrower's water system to provide high-quality and reliable water service through (i) the supervisory control and data acquisition isolation project, (ii) the pipe rehabilitation program and (iii) the upper system transmission improvements.
16.	Project Location	Clackamas County, Oregon.
17.	Projected Substantial Completion Date	June 30, 2028, as such date may be adjusted in accordance with **Part C of Schedule V** (*Reporting Requirements*).
18.	Development Default Date	June 30, 2030.
19.	NEPA Determination	[Finding of No Significant Impact][Categorical Exclusion][Record of Decision] for the Project issued by EPA on [___], 20[__] in accordance with NEPA.[1]
20.	[Reserved]	Not Applicable.
PART C. Key Loan Metrics		
21.	Maximum Principal Amount	Principal amount up to $16,311,537.
22.	WIFIA Interest Rate	[__]% per annum.
23.	Default Rate	Interest rate equal to the sum of (a) the WIFIA Interest Rate *plus* (b) 200 basis points.
24.	Interest Payment Date	Each June 1 and December 1, beginning on the Debt Service Payment Commencement Date.
25.	Capitalized Interest Period	Not Applicable.

[1] **Note to Draft**: To be completed once NEPA environmental review has concluded.

No.	Item	WIFIA Loan Specific Term
26.	Interest Only Period	The period commencing from (and including) the Debt Service Payment Commencement Date and ending on December 1, 2030 (or on such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in cash).
27.	Principal Payment Date	Each June 1 and December 1, beginning on December 1, 2030.
28.	Final Maturity Date	The earliest of (a) June 1, 2063; (b) the date on which the maturity of the WIFIA Loan and corresponding WIFIA Bond have been accelerated or subject to mandatory redemption or prepayment (as the case may be) prior to maturity thereof; and (c) the Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.
29.	[Reserved]	Not Applicable.
PART D. Key Security Metrics		
30.	Lien priority	Not Applicable.
31.	Springing lien	Not Applicable.
32.	Revenue source	The WIFIA Loan shall be payable from all legally available funds of the Borrower, including without limitation, Revenues and Taxes. Without limiting the foregoing, the Borrower expects to use Revenues as the source of repayment for the WIFIA Bond and all of the other obligations of the Borrower under this Agreement. However, the Borrower has not granted a lien on Revenues to secure the WIFIA Bond or other obligations of the Borrower under this Agreement.
33.	Pledge	The WIFIA Loan shall be secured by the Full Faith and Credit Pledge of the Borrower.
34.	System Accounts	Not Applicable.
35.	Water Fund	The Water Fund is the enterprise fund of such name, as established by the Borrower and used to account for the Revenues collected by the Borrower, including any

No.	Item	WIFIA Loan Specific Term
		subaccounts therein.
36.	WIFIA Debt Service Account	Not Applicable.
37.	WIFIA Debt Service Reserve Account	Not Applicable.
38.	Additional Indebtedness	The Borrower may not create, incur or suffer to exist any Additional Project Obligations other than as Full Faith and Credit Obligations. The Borrower may not create, incur or suffer to exist any security interests in, or pledge on, the Revenues to secure Additional Project Obligations.
39.	Flow of Funds	Not Applicable.
40.	[Reserved]	Not Applicable.
PART E. Other Key WIFIA Loan Documents		
41.	WIFIA Bond	The bond issued and delivered by the Borrower in substantially the form of **Exhibit A** (*Form of WIFIA Bond*).
42.	Master Bond Resolution	Not Applicable.
43.	WIFIA Bond Resolution	Resolution No. [__], adopted by the Borrower's Commission on June 21, 2023, authorizing the execution, delivery and performance by the Borrower of this Agreement, the WIFIA Bond, and certain related actions by the Borrower in connection with the issuance of the WIFIA Loan.
44.	WIFIA Term Sheet	WIFIA term sheet, dated as of the Effective Date, between the Borrower and the WIFIA Lender.
45.	[Reserved]	Not Applicable.
PART F. Fees		

No.	Item	WIFIA Loan Specific Term
46.	Servicing Set-Up Fee	A servicing set-up fee equal to $11,550.
47.	Construction Period Servicing Fee	An annual construction period servicing fee equal to $11,550.
48.	Initial Construction Period Servicing Fee	The initial Construction Period Servicing Fee in a pro-rated amount equal to $2,880[2].
49.	Operating Period Servicing Fee	An annual operating period servicing fee equal to $8,670.
PART G. Borrower Related Notices		
50.	Borrower notice details	City of Oregon City 625 Center Street Oregon City, OR 97045-2253 Attention: Matt Zook, Finance Director Email: mzook@orcity.org and Attention: Patty Nelson, Senior Engineer Email: pnelson@orcity.org
51.	Trustee notice details	Not Applicable.

[2] **Note to Draft**: EPA to provide new fee amounts for a July 2023 closing.

SCHEDULE II

PROJECT DETAILS

PART A. Project Budget.

SOURCES OF FUNDS	**AMOUNT ($ USD)**	**PERCENTAGE (%)**
WIFIA	$16,311,537	49.00%
Borrower Cash	$16,977,314	51.00%
Total Sources of Funds	**$33,288,850**	**100.00%**
USES OF FUNDS	**AMOUNT ($ USD)**	**PERCENTAGE (%)**
Construction	$20,087,950	85.55%
Planning & Design	$2,568,650	7.72%
Land Acquisition	$1,312,000	3.94%
Other Capital Costs	$517,700	1.56%
Program Contingency	$8,389,150	25.2%
Financing Costs	$413,400	1.24%
Total Uses of Funds	**$33,288,850**	**100.00%**
Total Eligible Project Costs	[__]	[__]
Total Project Costs	[__]	[__]

PART B. Construction Schedule.

Projected Substantial Completion Date: June 30, 2028

PROJECT ELEMENT	**DESIGN COMPLETION**	**CONSTRUCTION START**	**CONSTRUCTION END**
SCADA Isolation Project	6/30/2023	7/1/2023	12/31/2023
Pipe Rehabilitation	12/30/2026	5/30/2023	6/30/2028
Upper System Projects	12/31/2025	1/1/2024	6/30/2027

PART C. Existing Construction Contracts.

Contract Name	**Effective Date**	**Amount**	**Parties**	**Description**
Main Street Water Improvements – WIFIA 2-1 (CI 21-007)	11/23/2022	$2,230,677.75	ICON Construction and Development and City of Oregon City	Construction Contract

SCHEDULE III

BORROWER DISCLOSURES

PART A. Existing Indebtedness.

1. Full Faith and Credit Obligations

	Agreement/Series	**Outstanding Principal as of July 1, 2023**
1.	Full Faith and Credit Obligations, Series 2018, issued pursuant to a Financing Agreement and Escrow Agreement, each between the City and U.S. Bank, National Association and dated as of June 5, 2018, maturing on June 1, 2038.	$12,005,000
2.	PERS Limited Tax Pension Obligations, Series 2005, issued pursuant to a Loan Agreement and Trust Indenture, each between the City and Wells Fargo Bank, National Association and dated as of September 28, 2005, maturing on June 1, 2028.	$7,445,000

2. General Obligations

	Agreement/Series	**Outstanding Principal as of July 1, 2023**
1.	General Obligation Bond, Series 2015, issued pursuant to a Bond Purchase Agreement between the City and Pinnacle Public Finance, Inc. and dated as of January 7, 2015, maturing June 1, 2034.	$3,826,296

PART B. Litigation Disclosure.

None.

PART C. Environmental Matter Disclosure.

None.

SCHEDULE IV

REQUISITION PROCEDURES

This **Schedule IV** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for any Disbursement of the WIFIA Loan. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the WIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the WIFIA Lender under the WIFIA Loan Documents, and (ii) nothing contained herein shall be construed to limit the rights of the WIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the WIFIA Loan Agreement during the term thereof.

PART A. General Requirements.

(a) Manner of Request: All requests by the Borrower for a Disbursement shall be made in writing by electronic submission to the WIFIA Lender, in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement.

(b) Required Documentation: Any request by the Borrower should include the submission of:

(i) a Requisition, in the form attached as **Exhibit D** (*Form of Requisition*), completed and executed by the Borrower's Authorized Representative, and otherwise in form and substance satisfactory to the WIFIA Lender; and

(ii) all Eligible Project Costs Documentation that has not otherwise been provided to the WIFIA Lender in accordance with **Part C of Schedule V** (*Reporting Requirements*) of the WIFIA Loan Agreement.

(c) Timing: Any request for a Disbursement must be received by the WIFIA Lender and the Servicer (if any) at or before 5:00 P.M. (Eastern Time) on either:

(i) the first (1st) Business Day of a calendar month in order to obtain the requested Disbursement by the fifteenth (15th) day of such calendar month;

(ii) the fifteenth (15th) day of a calendar month, in order to obtain the requested Disbursement by the first (1st) day of the immediately following calendar month;

provided, that, (x) if any such day is not a Business Day, the Disbursement request or payment (as the case may be) shall be made by the next succeeding Business Day; (y) the Borrower shall not request to receive more than one (1) Disbursement per month or every thirty (30) days (whichever is longer); and (z) no Disbursements shall be made after the Final Disbursement Date.

PART B. **<u>WIFIA Lender Review Process</u>**.

(a) The WIFIA Lender shall review the Requisition and the Eligible Project Costs Documentation for compliance with WIFIA Disbursement requirements.

(b) If a Requisition is approved by the WIFIA Lender, the WIFIA Lender will notify the Borrower of such approval and of the amount so approved. A Requisition containing an apparent mathematical error will be corrected by the WIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount. If the amount requested for Disbursement in the Requisition exceeds the available balance of the WIFIA Loan proceeds remaining to be disbursed, the Disbursement request will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Lender will so notify the Borrower.

(c) The WIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the Disbursement of WIFIA Loan proceeds if: (i) a Default or an Event of Default shall have occurred and be continuing or (ii) the Borrower (1) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable law, in connection with the transactions contemplated hereby; (2) prevents or materially impairs the ability of the WIFIA Lender to monitor compliance by the Borrower with applicable law pertaining to the Project or with the terms and conditions of the WIFIA Loan Agreement; (3) fails to observe or comply with any applicable law, or any term or condition of the WIFIA Loan Agreement; (4) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent to Disbursements*) of the WIFIA Loan Agreement; or (5) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Lender at the times and in the manner specified by the WIFIA Loan Agreement; <u>provided</u>, that in such case of sub-clause (5) above, the WIFIA Lender may, in its sole discretion, partially approve a Requisition in respect of any amounts for which adequate Eligible Project Costs Documentation has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts. The WIFIA Lender will notify the Borrower of any withholding, and the reasons therefor.

(d) A Requisition may be rejected in whole or in part by the WIFIA Lender if it is: (i) submitted without signature; (ii) submitted under signature of a Person other than a Borrower's Authorized Representative; (iii) submitted after prior Disbursement of all proceeds of the WIFIA Loan; or (iv) submitted without adequate Eligible Project Costs Documentation. The WIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified under this paragraph (d) must be resubmitted in proper form in order to be considered for approval.

SCHEDULE V

REPORTING REQUIREMENTS

PART A. **Updated Financial Model/Plan**.

The Borrower shall provide to the WIFIA Lender, not later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, an Updated Financial Model/Plan. The Updated Financial Model/Plan shall reflect the Borrower's reasonable expectations, using assumptions that the Borrower believes to be reasonable, and include: (a) the Borrower's capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected Revenues and projected Operating Expenses for a reasonable projection period consistent with the Borrower's operating and financial planning and demonstrating that the Borrower has developed and identified adequate revenues to implement a plan for operating, maintaining, and repairing the Project; and (b) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model/Plan.

PART B. **Annual Financial Statements**.

The Borrower shall deliver to the WIFIA Lender, as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year; provided that the failure of the Borrower to furnish or post the audited financial statements within such one hundred eighty (180)-day period shall not constitute a Default or an Event of Default so long as the Borrower either furnishes to the WIFIA Lender or posts to EMMA under the WIFIA CUSIP Number such financial statements within ninety (90) days after the end of such period, a copy of the audited income statement and balance sheet of the Borrower as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower for such Borrower Fiscal Year, (a) setting forth in each case in comparative form the figures for the previous fiscal year; (b) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower; and (c) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

PART C. **Construction Monitoring**.

(a) The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Project, including environmental compliance, design, and construction of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with applicable federal, state and local governmental requirements. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation or other information as shall be requested by the WIFIA Lender or its agents, including any independent engineer reports, documentation or information.

(b) Construction Monitoring Report. During the period beginning from the first quarter following bid advertisement of the first Construction Contract for the Project, through and until Substantial Completion of the Project, the Borrower shall furnish to the WIFIA Lender, on a quarterly basis, the Construction Monitoring Report. The report shall be delivered to the WIFIA Lender within thirty (30) days of the end of each such quarter (or if such day is not a Business Day, on the next following Business Day). If the then-current projection for the Substantial Completion Date is a date different than the Projected Substantial Completion Date, the Borrower shall provide in the Construction Monitoring Report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the reasons for such projected delay or difference. The Projected Substantial Completion Date shall automatically be adjusted to the new date specified by the Borrower in the Construction Monitoring Report unless the WIFIA Lender objects to the adjustment in writing to the Borrower within sixty (60) days following receipt of such Construction Monitoring Report on the basis that such report does not demonstrate the matters specified in this paragraph.

(c) Quarterly Certification of Eligible Project Costs. If requested by the WIFIA Lender, on a basis not more frequently than quarterly, the Borrower shall submit to the WIFIA Lender, concurrently with the delivery of the Construction Monitoring Report, a certificate, in the form of **Exhibit E** (*Form of Certification of Eligible Project Costs Documentation*), signed by the Borrower's Authorized Representative, and attaching Eligible Project Costs Documentation as applicable. If there are no applicable Eligible Project Costs for such quarter, the Borrower may notify the WIFIA Lender by written confirmation of the same by email in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement. Within sixty (60) days following the receipt of such certificate and accompanying Eligible Project Costs Documentation (if applicable), the WIFIA Lender shall notify the Borrower confirming (i) which Eligible Project Costs incurred by the Borrower set forth in the certification have been approved or denied (and, if denied, the reasons therefor) and (ii) the cumulative amount of Eligible Project Costs that have been approved as of the date of such notice. Any such approved amounts of Eligible Project Costs shall then be deemed to be available for Disbursement at such time as the Borrower submits a Requisition in respect of such approved amounts in accordance with Section 4 (*Disbursement Conditions*).

(d) Final Specifications. The Borrower shall deliver to the WIFIA Lender, prior to bid advertisement for the Project (including each sub-project or component, if applicable), a copy of the final specifications relating to the development and construction of the Project (or such sub-project or component, as the case may be), demonstrating compliance with all applicable federal requirements and including a summary of the scope of work thereunder.

PART D. Public Benefits Report.

The Borrower shall deliver to the WIFIA Lender the Public Benefits Report (a) no later than thirty (30) days prior to the Effective Date, (b) within ninety (90) days following the Substantial Completion Date and (c) within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date. The Borrower agrees that information described in the Public Benefits Report may be made publicly available by the WIFIA Lender at its discretion.

PART E. Notices.

(a) The Borrower shall, within fifteen (15) days (or such other time as may be specified below) after the Borrower learns of the occurrence, give the WIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(i) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit G** (*Form of Certificate of Substantial Completion*);

(iii) Defaults; Events of Default: any Default or Event of Default;

(iv) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, that could reasonably be expected to have a Material Adverse Effect, and (2) any final, non-appealable judgment related to the Full Faith and Credit Pledge, the Taxes, the Revenues, the System or the Project, in each case, that could reasonably be expected to result in the impairment of (A) the Borrower's ability to comply with any of its payment obligations under the WIFIA Bond or this Agreement or (B) the Full Faith and Credit Pledge;

(v) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(vi) Environmental Notices: any material notice of violation related to the Project or any material change to the Project that could reasonably be expected to affect the NEPA Determination;

(vii) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of any fully executed amendments, modifications, replacements or supplements to any Related Document; provided, that such notice may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(viii) Related Document Defaults: any material breach or default or event of default on the part of the Borrower or any other party under any Related Document; provided, that such notice may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(ix) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to materially and adversely affect the Project;

(x) Ratings Changes: any change in the rating assigned to the WIFIA Loan or any Obligations, in each case by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, and any notices, reports or other written materials (other than those that are ministerial in nature) received from any such rating agencies; provided, that such notice may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xi) 2 C.F.R. § 180.350 Notices: any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the Borrower to disclose information previously required to have been disclosed or due to the Borrower or any of its principals meeting any of the criteria set forth in 2 C.F.R. § 180.335;

(xii) Issuance of Obligations: copies of any final issuing instrument (together with any continuing disclosure documents, ordinances, official statement, certifications or cash flow projections in connection therewith), prepared in connection with the incurrence of any Additional Project Obligations, together with a confirmation by the Borrower that incurrence of such additional indebtedness does not constitute a breach or default under this Agreement; provided, that such notice may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xiii) Postings on EMMA: the posting of any document on EMMA in accordance with the requirements of any continuing disclosure agreement or similar document with respect to any Outstanding Obligations relating to annual financial information and operating data and the reporting of significant events; provided, that such notice may be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xiv) SAM / Unique Entity Identifier: any change in the Borrower's SAM registration status (including any exclusions, expiration or inactive registration) or Unique Entity Identifier (including any expiration or change in effectiveness); provided, that such notice may be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xv) Reorganization, Consolidation or Merger: the occurrence of any reorganization, consolidation, or merger, together with the agreements and documents authorizing the reorganization, consolidation or merger; and

(xvi) Fiscal Year: any change to or adoption of any fiscal year other than the Initial Borrower Fiscal Year; provided, that such notice may be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement; and

(xvii) Other Adverse Events: the occurrence of any other event or condition, including without limitation any notice of breach from a contract counterparty or any Holder of any Obligations, that could reasonably be expected to result in a Material Adverse Effect.

(b) The Borrower shall, at any time while the WIFIA Loan remains Outstanding, promptly deliver to the WIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the System, the Project, the Taxes, or the Revenues as the WIFIA Lender may from time to time reasonably request. The Borrower agrees that the delivery of any documents or information under and pursuant to this Agreement shall not be construed as compliance with, or affect in any manner, any obligations of the Borrower under any other contracts, agreements, decrees, Governmental Approvals, or other documents with EPA (other than the WIFIA Loan Documents) or the Federal Government.

SCHEDULE VI

WIFIA LOAN AMORTIZATION SCHEDULE[3]

[*To be attached with final interest rate on the Effective Date*]

[3] **Note to Draft**: To be finalized by the EPA and Borrower on the day of closing to account for the final interest rate.

EXHIBIT A

FORM OF WIFIA BOND

CITY OF OREGON CITY

OREGON CITY WATER REHABILITATION, RESILIENCY AND IMPROVEMENT PROJECTS

(WIFIA ID – N21143OR)

WIFIA BOND

Interest Rate	Final Maturity Date	Dated Date	WIFIA CUSIP
[___]%, subject to the Default Rate (as defined and in accordance with the WIFIA Loan Agreement)	[___], subject to adjustment as set forth in the WIFIA Loan Agreement	[___]	[___]

Registered Owner	**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the Environmental Protection Agency**
Maximum Principal Amount	**$16,311,537**

THE CITY OF OREGON CITY, a municipal corporation under the laws of the State of Oregon (the "**Borrower**"), for value received, hereby promises to pay to the order of the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, acting by and through the Administrator of the United States Environmental Protection Agency, or its assigns (the "**WIFIA Lender**"), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all Disbursements made by the WIFIA Lender (such lesser amount being hereinafter referred to as the "**Outstanding Principal Sum**"), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the WIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in that certain WIFIA Loan Agreement, dated as of the date hereof, between the WIFIA Lender and the Borrower (the "**WIFIA Loan Agreement**"). All capitalized terms used in this WIFIA Bond and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

The WIFIA Debt Service hereof shall be payable in the amounts, manner and on the Payment Dates as set forth in the WIFIA Loan Amortization Schedule in accordance with the WIFIA Loan Agreement (which WIFIA Loan Amortization Schedule may be revised from time to time in accordance with the WIFIA Loan Agreement), until paid in full (which Loan Amortization Schedule, as modified from time to time in accordance with the terms of the WIFIA Loan Agreement, is incorporated in and is a part of this WIFIA Bond). The WIFIA Lender is hereby authorized to modify the WIFIA Loan Amortization Schedule from time to time to reflect the amount of each Disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder and otherwise in accordance with the terms of the WIFIA Loan Agreement. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on the WIFIA Loan Amortization Schedule to the WIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

Payments hereon are to be made in accordance with Section 8(b) (*Manner of Payment*) and Section 31 (*Notices*) of the WIFIA Loan Agreement as the same become due. Principal of and interest on this WIFIA Bond shall be made in Dollars and in immediately available funds (without counterclaim, offset or deduction). Any payment in respect of the WIFIA Bond shall be treated as a payment in respect of the WIFIA Loan and any prepayment of principal in respect of the WIFIA Loan shall be treated as a redemption in respect of the WIFIA Bond. If the Final Maturity Date is adjusted in accordance with the WIFIA Loan Agreement, the due date of this WIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the WIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this WIFIA Bond without the prior written agreement of the WIFIA Lender. Any such amendment shall be reflected in a revised Loan Amortization Schedule.

This WIFIA Bond has been executed under and pursuant to the WIFIA Loan Documents and is issued to evidence the obligation of the Borrower under the WIFIA Loan Documents to repay the loan made by the WIFIA Lender and any other payments of any kind required to be paid by the Borrower under the WIFIA Loan Agreement or the other WIFIA Loan Documents referred to therein. Reference is made to the WIFIA Loan Agreement for all details relating to the Borrower's obligations hereunder.

Payment of the obligations of the Borrower under this WIFIA Bond is secured pursuant to the WIFIA Loan Agreement. The Borrower shall pay principal and interest on this WIFIA Bond from all lawfully available funds of the Borrower, and pursuant to Oregon Revised Statutes Section 287A.315, the Borrower hereby pledges its full faith and credit and taxing power within the limitations of Section 11 and 11b of Article XI of the Oregon Constitution to pay such amounts.

This WIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least $500,000 or any integral multiple of $1 in excess thereof), without penalty or premium, and otherwise in accordance with the WIFIA Loan Agreement.

Any delay on the part of the WIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

The Borrower hereby certifies, recites and declares that all things, conditions and acts required by the Constitution and Statute of the State of Oregon and by the WIFIA Loan Agreement to exist, to have happened and to have been performed precedent to an in the issuance of this WIFIA Bond, do exist, have happened and have been performed in due time, form and manner, as required by law, and that this WIFIA Bond is a valid and binding obligation of the Borrower which is enforceable against the Borrower in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws or judicial decisions or principles of equity relating to or affecting the enforcement of creditors' rights or contractual obligations generally. This WIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, CITY OF OREGON CITY has caused this WIFIA Bond to be executed in its name and attested by its duly authorized officer, all as of the Effective Date set forth above.

CITY OF OREGON CITY,
by its authorized representative

By:____________________________
Name:
Title:

ATTEST:

By:____________________
Name:
Title:

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns

and transfers unto

(*Please Insert Social Security or other identifying number of Assignee(s)*):

the within WIFIA Bond and all rights thereunder.

Dated: ________________

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B

FORM OF CLOSING CERTIFICATE

Reference is made to that certain WIFIA Loan Agreement, dated as of [__], 2023 (the "**WIFIA Loan Agreement**"), by and among City of Oregon City (the "**Borrower**") and the United States Environmental Protection Agency, acting by and through the Administrator (the "**WIFIA Lender**"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement.

In connection with Section 11(a) (*Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, the undersigned, as the Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 11(a)(v) of the WIFIA Loan Agreement, attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the WIFIA Loan Documents to which the Borrower is or will be a party, and who have been appointed as a Borrower's Authorized Representative in accordance with Section 21 (*Borrower's Authorized Representative*) of the WIFIA Loan Agreement;

(b) pursuant to Section 11(a)(ii) of the WIFIA Loan Agreement, the Borrower has delivered to the WIFIA Lender copies of (A) any Related Document authorizing the Borrower to enter the WIFIA Loan Agreement and issue the corresponding WIFIA Bond and (B) any Related Document with respect to which all or a portion of the proceeds are or will be applied to fund all or any portion of Total Project Costs, in each case that has been entered into on or prior to the Effective Date, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in the Related Documents that are necessary to the closing of the WIFIA transaction contemplated hereby (if any) have been fulfilled;

(c) pursuant to Section 11(a)(v)(A) of the WIFIA Loan Agreement, (i) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs; (ii) the aggregate amount of Eligible Project Costs previously incurred prior to the Effective Date does not exceed fifty-one percent (51%) of Eligible Project Costs; and (iii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs;

(d) pursuant to Section 11(a)(v)(B) of the WIFIA Loan Agreement, the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project;

(e) pursuant to Section 11(a)(v)(C) of the WIFIA Loan Agreement, (i) the Borrower's FEIN is 93-6002230, as evidenced by the Borrower's W-9, which has been delivered to the WIFIA Lender, and the Borrower's Unique Entity Identifier is R9QKAFGEQ293, in each case as set forth on Part A of Schedule I (*WIFIA Loan Specific Terms*) to the WIFIA Loan Agreement, and (ii) the Borrower registered with SAM and obtained confirmation of active SAM registration status, which has been delivered to the WIFIA Lender;

(f) pursuant to Section 11(a)(v)(D) of the WIFIA Loan Agreement, the Borrower's WIFIA CUSIP Number is [__], as set forth on Part A of Schedule I (*WIFIA Loan Specific Terms*) to the WIFIA Loan Agreement, and which confirmation has been delivered to the WIFIA Lender;

(g) pursuant to Section 11(a)(v)(E) of the WIFIA Loan Agreement, the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;

(h) pursuant to Section 11(a)(v)(F) of the WIFIA Loan Agreement, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the date of the Application; and

(i) pursuant to Section 11(a)(vi) of the WIFIA Loan Agreement, the rating letter delivered to the WIFIA Lender pursuant to such Section 11(a)(vii) has not been reduced, withdrawn or suspended as of the Effective Date.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

CITY OF OREGON CITY,
by its authorized representative

By: ______________________________
Name:
Title:

ANNEX A TO EXHIBIT B

INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the City Recorder of the City of Oregon City, an Oregon municipal corporation, (the "**Borrower**"), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Loan Documents as the Borrower's Authorized Representative (each as defined in that certain WIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator):

Name	Title	Signature
[________________]	[____________________]	___________________________
[________________]	[____________________]	___________________________
[________________]	[____________________]	___________________________
[________________]	[____________________]	___________________________
[________________]	[____________________]	___________________________

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of [___], 2023.

CITY OF OREGON CITY,
by its authorized representative

By: ________________________________
Name:
Title:

EXHIBIT C

FORM OF PUBLIC BENEFITS REPORT

Pursuant to Section 11(a)(vii) and Part D of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement (as defined below), City of Oregon City (the "**Borrower**") is providing this Public Benefits Report in connection with the Oregon City Water Rehabilitation, Resiliency and Improvement Projects (WIFIA ID – N21143OR). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement dated on or about the date hereof (the "**WIFIA Loan Agreement**"), between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator.

Reporting Period: [Prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) following the fifth (5th) anniversary of the Substantial Completion Date]

(i) The number of total jobs and direct jobs projected to be created by the Project during the period between the Effective Date and the Substantial Completion Date:

WIFIA projects that the Project will create [__] total jobs, of which the Borrower projects [__] will be direct jobs.

(ii) Indicate (yes or no) whether the Project will assist the Borrower in complying with applicable regulatory requirements, and if yes, describe how the project assists with regulatory compliance:

Yes □
If yes, additional description: [___]

No □

(iii) The Project will assist the Borrower with the following environmental measure:

[___].

EXHIBIT D

FORM OF REQUISITION

VIA EMAIL
United States Environmental Protection Agency[4]
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Re: Oregon City Water Rehabilitation, Resiliency and Improvement Projects (WIFIA ID – N21143OR)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) and Schedule IV (*Requisition Procedures*) of the WIFIA Loan Agreement, dated as of [__], 2023 (the "**WIFIA Loan Agreement**"), by and between CITY OF OREGON CITY (the "**Borrower**") and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the "**WIFIA Lender**"), the Borrower hereby requests a Disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

In connection with this Requisition, the undersigned, as the Borrower's Authorized Representative, hereby represents and certifies the following:

1.	**Project name**	[___]
2.	**Borrower name**	[___]
3.	**WIFIA Loan ID**	[___]
4.	**Borrower DUNS Number**	[___]
5.	**Borrower FEIN number**	[___]
6.	**Requisition number**	[___]
7.	**Requested Disbursement amount**	$[___]
8.	**Requested date of Disbursement (the "Disbursement Date")**[5]	[___]
9.	**Total amounts previously disbursed under the WIFIA Loan Agreement**	$[___]
10.	**Wire or ACH transfer instructions (please specify method)**	[___]

[4] If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.
[5] Note this should be the actual disbursement date on which the Borrower requests to receive the funds, not the date that this Requisition form is submitted to the WIFIA Lender.

11. As of the date hereof, and immediately after giving effect to the Disbursement of WIFIA Loan proceeds requested under this Requisition, (a) no Default or Event of Default and no event of default under any other Related Document shall have occurred and be continuing and (b) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any other Related Document, shall have occurred and be continuing.

12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since the Effective Date.

13. The aggregate amount of all Disbursements (including the requested Disbursement amount under this Requisition) does not exceed (a) the maximum principal amount of the WIFIA Loan or (b) the amount of Eligible Project Costs paid or incurred by the Borrower.

14. The Eligible Project Costs for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of (a) WIFIA Loan proceeds or (b) any other source of funding for the Project as identified in the Project Budget.

15. The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender.

16. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct as of such earlier date).

17. The Borrower has delivered all required deliverables under and in compliance with the requirements of Schedule V (*Reporting Requirements*), except as has been otherwise agreed by the WIFIA Lender.

18. The amount hereby being requested for Disbursement is with respect to Eligible Project Costs for which [all][a portion][none] of the Eligible Project Costs Documentation was previously submitted to and approved by the WIFIA Lender in accordance with Schedule IV (*Requisition Procedures*) and Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement. The [following table below][attached excel sheet] sets out a summary of

any Eligible Project Costs that have not otherwise been previously submitted to the WIFIA Lender for approval, and supporting Eligible Project Costs Documentation in respect of such new Eligible Project Costs is attached hereto.[6]

19. None of the Holder(s) of Obligations under an Obligation Document has exercised remedies permitted thereunder for an event of default that occurred (and was not cured or waived by the expiration of any applicable grace period), in respect of the performance of any covenant, agreement or obligation of the Borrower under such Related Document.

								WIFIA USE ONLY	
Vendor or Contractor Name[7]	**Invoice Number[8]**	**Invoice Date**	**Payment Date**	**Invoice Amount**	**WIFIA Requested Amount[9]**	**Activity Type[10]**	**Description of Activity[11]**	**Approved Amount**	**Notes**

The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001, to the extent the Federal Government deems appropriate.

Date: ______________________

CITY OF OREGON CITY,
by its authorized representative

By: ______________________________
Name:
Title:___________________________

[6] See Schedules IV, V and Exhibit E of the WIFIA Loan Agreement for additional details on EPC Documentation.
[7] If seeking reimbursement for internal costs, enter “Internally financed activities.”
[8] Vendor’s number indicated on the invoice sent to the Borrower.
[9] If the amount requested for reimbursement by the WIFIA Lender is less than the total amount of the invoice, include an explanation for the difference.
[10] Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in the ”Description of Activity” column.
[11] Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

EXHIBIT E

FORM OF CERTIFICATION OF ELIGIBLE PROJECT COSTS DOCUMENTATION

VIA EMAIL
United States Environmental Protection Agency[12]
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Re: Oregon City Water Rehabilitation, Resiliency and Improvement Projects (WIFIA ID – N21143OR)

Ladies and Gentlemen:

Pursuant to Part C of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement, dated as of [__], 2023 (the "**WIFIA Loan Agreement**"), by and between CITY OF OREGON CITY (the "**Borrower**") and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the "**WIFIA Lender**"), the Borrower hereby presents this certificate in connection with the Borrower's delivery of Eligible Project Costs Documentation to the WIFIA Lender. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

The undersigned does hereby represent and certify the following:

1. This certificate is being delivered to the WIFIA Lender in connection with the Eligible Project Costs during the period between [___] and [___] (the "**Quarterly Period**").

2. A summary of the Eligible Project Costs incurred, invoiced and/or paid (as the case may be) is set out in the [attached excel sheet][table on the following page:]

							WIFIA USE ONLY	
Vendor or Contractor Name[13]	**Invoice Number**[14]	**Invoice Date**	**Payment Date**	**Invoice Amount**	**Activity Type**[15]	**Description of Activity**[16]	**Approved Amount**	**Notes**

[12] If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.
[13] If the expectation is to seek reimbursement for internal costs, enter "Internally financed activities."
[14] Vendor's number indicated on the invoice sent to the Borrower.
[15] Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, (*continued from previous page)*

3. The anticipated sources of funding for such Eligible Project Costs are [listed below][set forth in the attached excel sheet].

4. Supporting Eligible Project Costs Documentation for the above Eligible Project Costs for the Quarterly Period are also attached hereto.[17]

5. The most recently delivered Construction Monitoring Report delivered in accordance with Part C of Schedule V (*Reporting Requirements*) sets out a summary of the progress of construction of the Project, no change has occurred since the date of such Construction Monitoring Report that could reasonably be expected to cause a Material Adverse Effect, and the Borrower is otherwise in compliance with Part C of Schedule V (*Reporting Requirements*).

Date: ______________________

CITY OF OREGON CITY[18]

By: ______________________________
Name:
Title:__________________________

which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest on other Project Obligations during construction, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in the "Description of Activity" column.

[16] Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the documentation.

[17] See Schedules IV and V of the WIFIA Loan Agreement for additional details on EPC Documentation.

[18] To be executed by the Borrower's Authorized Representative.

EXHIBIT F

FORM OF CONSTRUCTION MONITORING REPORT

VIA EMAIL
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, DC 20460
Attn: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Re: Oregon City Water Rehabilitation, Resiliency and Improvement Projects (WIFIA ID – N21143OR)

This Construction Monitoring Report for the period of [*insert relevant quarterly period*] (the "**Quarterly Period**") is provided pursuant to Part D of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement, dated as of [__], 2023 (the "**WIFIA Loan Agreement**"), by and between CITY OF OREGON CITY (the **"Borrower**") and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the Environmental Protection Agency (the "**WIFIA Lender**"). Unless otherwise defined herein, all capitalized terms in this Construction Monitoring Report have the meanings assigned to those terms in the WIFIA Loan Agreement.

1. **Project Status**. Provide a narrative summary of the Project's construction progress during the Quarterly Period, including with respect to the Project components or sub-projects where appropriate. Complete the table in Appendix A to update the Project scope, schedule, and costs with the latest information.

2. **Current Projected Substantial Completion Date**: ______________________

If the current Projected Substantial Completion Date differs than the date set forth in the Construction Monitoring Report most recently delivered to the WIFIA Lender (or, if no such report has yet been provided, the date of the Projected Substantial Completion Date set forth in the WIFIA Loan Agreement as of the Effective Date), provide a description in reasonable detail for such projected delay or difference:

3. **Material Problems (if any)**

Note any problems encountered or anticipated during the construction of the Project during the Quarterly Period that (1) impedes Project completion within the scope, costs, and schedule outlined in the WIFIA Loan Agreement or (2) relates to unforeseen complications in connection with the construction of the Project. This may include commissioning/start-up issues, constructability issues for the Project as planned, adverse impacts to Project surroundings, changes in or issues with meeting environmental or federal compliance requirements, and unanticipated or abnormal permit approval timelines. Include an assessment of the impact and any current plans to address the problems.

4. Other Matters Related to the Project (if applicable)

Date: ________________________

CITY OF OREGON CITY

By: ________________________________

Name: ______________________________

Title:

APPENDIX A [19] / [20]

Option 1: Use for individual or combination of sub-projects

Project Scope		**Project Schedule**						**Project Costs**		
Project Component	**Completed (Y/N)**	**Contract/ Vendor**	**Bid Advertisement Date**	**Contract Award Date**	**NTP Effective Date**	**Original Substantial Completion Date**	**Estimated Substantial Completion Date**	**Original Contract Amount**	**Estimated Costs to Complete**	**Costs Earned or Paid to Date**
Total										

Option 2: Use for program of sub-projects

Project Scope					**Project Schedule**						**Project Costs**		
Project Component	**Complete (Y/N)**	**Description**	**Location**	**Covered by existing NEPA?**	**Contract/ Vendor**	**Bid Advertisement Date**	**Contract Award Date**	**NTP Effective Date**	**Original Substantial Completion Date**	**Estimated Substantial Completion Date**	**Original Contract Amount**	**Estimated Costs to Complete**	**Costs Earned or Paid to Date**
Total													

Table Definitions:
Project Component – project name or ID as tracked by the borrower
Complete (Y/N) – indication that project is complete, and no additional updates will be provided
Description (program of projects only) – brief overview of scope of work for the project component.
Location (program of projects only) – physical project boundaries
Covered by existing NEPA? (program of projects only) – refer to the environmental review documents that is the basis for the NEPA finding. Is the project within the geographic scope and scope of activities described in the documents?

Contract/Vendor – the contract identifier and contractor that is/will be completing the project construction.
Bid Advertisement Date – the date the bid was advertised
Contract Award date – the date the contract was awarded
NTP Effective date – the effective date to proceed with the construction in the Notice to Proceed
Original Substantial Completion Date – the substantial completion date for the given project as noted in the original contract award
Estimated Substantial Completion Date – the latest date estimate for substantial completion for the given project component

Original Contract Amount – the original contract award amount
Estimated Costs to Complete – the latest cost estimates to complete the given project component
Costs Earned or Paid to Date – the latest incurred contract costs for the given project component
Total – Total the cost amounts across all project components and contracts

[19] Appendix A summarizes all project components that will be bid in the next quarter, are currently under construction, or have completed construction. It should be a cumulative list of projects that is updated each quarter. A Microsoft Excel spreadsheet with similar table format is acceptable.
[20] Include the appropriate option and delete the other option prior to circulating a draft to the Borrower.

EXHIBIT G

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[*Letterhead of Borrower*]

VIA EMAIL [*Date*]

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, DC 20460
Attn: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Project: Oregon City Water Rehabilitation, Resiliency and Improvement Projects (WIFIA ID – N21143OR)

Dear Director:

This Notice is provided pursuant to Part E of Schedule V (*Reporting Requirements*) of that certain WIFIA Loan Agreement (the "**WIFIA Loan Agreement**"), dated as of [__], 2023, by and between CITY OF OREGON CITY (the "**Borrower**") and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through its Administrator (the "**WIFIA Lender**").

Unless otherwise defined herein, all capitalized terms in this certificate have the meanings assigned to those terms in the WIFIA Loan Agreement.

I, the undersigned, in my capacity as the Borrower's Authorized Representative and not in my individual capacity, do hereby certify to the WIFIA Lender that:

(a) the Project has satisfied each of the requirements for Substantial Completion set forth in the Construction Contracts;

(b) Substantial Completion has been declared under each of the relevant Construction Contracts and copies of the notices of Substantial Completion under such agreements are attached to this certification;

(c) Substantial Completion, as defined in the WIFIA Loan Agreement, has been achieved and the Substantial Completion Date is [___]; and

(d) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs.

CITY OF OREGON CITY,

by its authorized representative

By: ________________________________
Name:
Title:

EXHIBIT H-1[21]

OPINIONS REQUIRED FROM GENERAL COUNSEL TO BORROWER

[21] **Note to Draft**: Borrower Counsel opinion currently under review and subject to EPA team comment in all respects.

EXHIBIT H-2[22]

OPINIONS REQUIRED FROM BOND COUNSEL TO BORROWER

[22] **Note to Draft**: Bond Counsel opinion currently under review and subject to EPA team comment in all respects.

CITY OF OREGON CITY

Staff Report

625 Center Street
Oregon City, OR 97045
503-657-0891

To: City Commission **Agenda Date:** June 21, 2023

From: Parks & Recreation Director, Kendall Reid

SUBJECT:

Second Reading of Ordinance No. 23-1007, designating the Ermatinger House as a Park Under Oregon City Charter Chapter X

STAFF RECOMMENDATION:

Approve the second reading of Ordinance No. 23-1007, designating the Ermatinger House as a Park Under Oregon City Charter Chapter X.

BACKGROUND:

The Parks and Recreation Advisory Committee (PRAC) was established in 1983 by the City Commission to advocate for recreational opportunities for Oregon City and to oversee implementation of the Parks and Recreation Master Plan. To ensure recreational opportunities are preserved in Oregon City, the PRAC has undertaken a review of the charter park status of all Oregon City parks which are owned and managed by the Oregon City Parks and Recreation Department. Identification in the City Charter ensures park protection by preventing the transfer, sale, vacation, or major changes to charter parks without a legal vote of the people.

The Ermatinger House, located on a portion of Lot 4 in Block 63, of the Plat of Oregon City, was acquired by the City of Oregon City through Clackamas County deed Book 459, Page 716, recorded on August 15, 1952. In addition, the Ermatinger House was gifted to the City by the family of Ruth Powers McBride by Gift Deed recorded at Clackamas County as 96-059135 and relocated to the aforementioned lot.

Following numerous discussions over the years and most recently, at a City Commission Work Session on January 10, 2023, consensus was reached to designate the Ermatinger House as a charter park. Adoption of Ordinance No. 23-1007 will satisfy the request of the City Commission by designating the Ermatinger House as a charter park.

OPTIONS:

1. Approve the second reading of Ordinance No. 23-1006, designating Ermatinger House as a Park Under Oregon City Charter Chapter X.
2. Amend the proposed Ordinance.
3. Deny the proposed Ordinance.

BUDGET IMPACT:

Amount:	$0
FY(s):	N/A
Funding Source(s):	N/A

Attachments:
Exhibit A – Map of Park

ORDINANCE NO. 23-1007

AN ORDINANCE OF THE CITY OF OREGON CITY DESIGNATING THE PROPERTY KNOWN AS THE ERMATINGER HOUSE AS A PARK UNDER OREGON CITY CHARTER CHAPTER X

WHEREAS, the City of Oregon City acquired Lot 4 in Block 63, of the Plat of Oregon City by Clackamas County deed Book 459, Page 716, recorded on August 15, 1952; and

WHEREAS, the City of Oregon City acquired Lot 3 in Block 63 as well as a portion of the adjacent vacated alley of the Plat of Oregon City by Clackamas County deed Book 327, Page 642, recorded on July 3, 1944;

WHEREAS, more specifically the legal description of Lot 3 in Block 63, and part of the vacated alley in said block of the Plat of Oregon City, was more specifically identified by legal description in the deed as:

> "Beginning at the most southerly corner of Lot 3 on John Adams Street; thence westerly on the line between Lots 3 and 4, a distance of 105.00 feet, more or less, to the most westerly corner of said Lot 3; thence northeasterly parallel with John Adams Street, 71.00 feet, more or less, to the center of the vacated alley in said block; thence easterly at right angles to John Adams Street, 52.50 feet, to a point; thence northeasterly parallel with John Adams Street, 5.00, feet to a point; thence easterly at right angles to John Adams Street 52.50 feet to John Adams Street;· thence southerly along John Adams Street 76.00 feet, more or less to the place of beginning"; and

WHEREAS, the Ermatinger House has a storied history having been built c. 1843 for Francis Ermatinger, a key official of the Hudson's Bay Company, and was listed on the National Register of Historic Places in 1977; and

WHEREAS, although the structure was relocated a few times, its final move was in 1987 to its current location by preservationist Ruth McBride Powers who entered into an agreement with the City of Oregon City whereby Mrs. McBride Powers would acquire the house, move it to its current location on land owned by the City and then restore the house with the purpose that the house would eventually be owned and operated as a historic tourist facility; and

WHEREAS, Mrs. McBride Powers passed in 1995 and her family, wanting to maintain their mother's legacy, gifted the house and loaned the contents of the house to the City of Oregon City for the continued operation as a pioneer museum; said gift deed was recorded at Clackamas County as 96-059135; and

WHEREAS, the 1999 Parks Master Plan identified the Ermatinger House as a developed park being used as a museum and the 2008 Parks Master Plan described the house as being the oldest existing house in Clackamas County and one of the most historically significant; and

WHEREAS, the status of Oregon City's parks as charter parks has been discussed by the Parks & Recreation Advisory Committee (PRAC) and the City Commission on multiple occasions going back to at least 2018; and

WHEREAS, designating the Ermatinger House as a park under Chapter X of the City Charter would ensure protection of the park by preventing the transfer, sale, vacation or major changes to the Ermatinger House without a legal vote of the people which is also in accordance with the wishes of Ms. McBride Powers and her family; and

WHEREAS, at a City Commission Work Session on January 10, 2023, consensus was reached to designate the Ermatinger House as a charter park and staff was directed to prepare an ordinance for adoption by the City Commission recognizing the Ermatinger House as a Charter Park.

NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:

Section 1. The Ermatinger House, identified as the structure and land located at Lot 4 in Block 63, as well as Lot 3 in Block 63, and a portion of the vacated alley adjacent to Lot 3, of the Plat of Oregon City, with the boundaries as shown on the map attached to this Ordinance as Exhibit A, is hereby designated as a park in accordance with the Charter of Oregon City, Chapter X, Section 43, creating a permanent park for the enjoyment of the citizens of Oregon City.

Read for the first time at a regular meeting of the City Commission held on the 17th day of May, 2023, and the City Commission finally enacted the foregoing Ordinance this 21st day of June, 2023.

DENYSE C. MCGRIFF, Mayor

Attested to this 21st day of June 2023:

Jakob S. Wiley, City Recorder

Approved as to legal sufficiency:

City Attorney

Attachment:
Exhibit A –Map of Park

Item 9b.

Exhibit A

This map is not suitable for survey, engineering, legal, or navigation purposes. Data errors and omissions may exist.

N

Ermatinger House
Ordinance 23-1007

0 50 100 200 Feet

City of Oregon City
PO Box 3040
Oregon City
OR 97045
(503) 657-0891
www.orcity.org

Date: 5/8/2023; Map: Ermatinger House.aprx|Exhibit - 8_5x11P; Plot: Ermatinger House Exhibit - 8_5x11P - 20230508.pdf