



CITY COUNCIL AGENDA
Monday, February 01, 2016 - 6:00 PM
City Council Chambers-169 SW Coast Highway, Newport OR 97365

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

1. PLEDGE OF ALLEGIANCE

2. CALL TO ORDER AND ROLL CALL

3. PUBLIC COMMENT

This is an opportunity for members of the audience to bring to the Council's attention any item not listed on the agenda. Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others

4. CONSENT CALENDAR

The consent calendar consists of items of a repeating or routine nature considered under a single action. Any Councilor may have an item on the consent agenda removed and considered separately on request.

4.A. City Council Minutes - January 4, 2016 Special Meeting; January 19, 2016 Work Session and Regular Meeting

- 4.B. Approval of Recommendation to the Oregon Liquor Control Commission (OLCC) to Green Gables B & B, LLC for a Full On-Premise Sales Liquor License for a New Outlet to Green Gables B & B/ Italian Café, LLC located at 156 SW Coast St.

[Green Gables 1-26-16.docx](#)

[Green Gables OLCC Application.pdf](#)

5. PUBLIC HEARING

This is an opportunity for members of the audience to provide testimony/comments on the specific issue being considered by the City Council. Comments will be limited to three (3) minutes per person.

- 5.A. Public Hearing and Possible Adoption of Resolution No. 3735, A Resolution Making Appropriation/Total Requirement Changes for Specific Funds as Part of a Supplement Budget Adjustment for Fiscal Year 2015-16

[Staff Report Resolution 3735 City Supplemental Budget -February 1, 2016.docx](#)

[Budget with Supplementals.FY 2016 - for Feb 1 CC Res 3735.pdf](#)

[Supplemental Resolution No. 3735 for Feb 1 2016.docx](#)

6. COMMUNICATIONS

Any agenda items requested by Mayor, City Council Members, City Attorney, or any presentations by boards or commissions, other government agencies, and general public will be placed on this part of the agenda.

- 6.A. From the Newport Marathon - Report on the 18th Running of the Newport Marathon on June 4, 2016, and Request for Special Event Fee Waiver

- 6.B. From the City Manager Evaluation Committee - Report on the 2015 Evaluation of the City Manager

7. CITY MANAGER'S REPORT

All matters requiring approval of the City Council originating from the City Manager and departments will be included in this section. This section will also include any status reports for the City Council's information.

- 7.A. Confirming the Adoption of Ordinance No. 2088, regarding the resumption of fluoride of the City's water supply, and consideration of the adoption of Resolution No. 3734, referring the measure to the voters on the resumption of fluoridation of the City's water supply

7.B. Consideration and Possible Adoption of Resolution No. 3739, Appointing an Advisory Committee to Assist in the Preparation of a Parking Management Plan for the Bayfront, Nye Beach, and City Center Areas of Newport

[CAI Summary - Resolution No. 3739 - Parking Study Advisory Committee.docx](#)
[Resolution No. 3739 - Parking Study Advisory Committee 2-1-16.doc](#)

7.C. Approval of Clean Water State Revolving Fund (CWSRF) Loan Agreements with the Oregon Department of Environmental Quality for Various Sanitary and Storm Sewer Improvements

7.D. Termination of Dark Fiber Lease with Lincoln County

7.E. Acceptance of the Contribution for the Newport Aquatics Facility

[Proposal for Contribution and Grant Authorization](#)

7.F. Rescheduling of the Annual Goal Setting Session and Possible Cancelation of February 29, 2016 Town Hall Meeting

7.G. Financial Reports for the First Six Months of the 2015-16 Fiscal Year

[Staff Report - 2015-16 2nd Quarter financial report.docx](#)
[December 2015 Financials.xlsx](#)

8. REPORT FROM MAYOR AND COUNCIL

This section of the agenda is where the Mayor and Council can report any activities or discuss issues of concern.

9. PUBLIC COMMENT

This is an additional opportunity for members of the audience to provide public comment. Comments will be limited to five (5) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.

10. ADJOURNMENT

January 4, 2016
6:00 P.M.
Newport, Oregon

The Newport City Council met, in a special meeting, on the above date, in the Council Chambers of the Newport City Hall. On roll call, Allen, Roumagoux, Engler, Busby, Swanson, Sawyer, and Saelens were present.

Staff present was City Manager Nebel, City Recorder Hawker, City Attorney Rich, Community Development Director Tokos, Public Works Director Gross, Finance Director Murzynsky, Fire Chief Murphy, Parks and Recreation Director Protiva, and Police Chief Miranda.

Nebel reported that he and Allen had a discussion today regarding the organizational meeting. He stated that Allen indicated that Council has not typically had an organizational meeting at the midterm mark for the purpose of electing the Council President. He added that the liaisons to the various committees have typically remained in place unless someone wanted to make a change. He noted that in discussing this with Roumagoux, she concurred that the only thing that would happen with the liaisons would be an inquiry as to whether anyone wanted to make a change, but there was not an effort to formally appoint them. He stated that in reviewing the Council Rules and the City Charter, he concurred with Allen and Roumagoux. He added that for the purposes of tonight's meeting, the meeting set-up as an organizational meeting can be considered a special meeting for the purposes outlined. He noted that there is no need to act on the committee liaisons since this will remain the same until the next organizational meeting. He stated that he updated the recommendations to address this fact. He added that several terms of Council members do need to be reappointed to several specific committees as outlined in his recommendation.

ELECTION OF COUNCIL PRESIDENT

Nebel reported that Chapter 3, Section 9 of the City Charter provides that on: "The first meeting of each year the Council shall elect a President from its membership. The President presides in the absence of the Mayor of the Mayor and acts as Mayor when the Mayor is unable to perform duties."

Nebel reported that under the Council Rules for the City of Newport - Organizational Meetings, "the term of the Council President is for one year and the intent is for this position to rotate on an annual basis to different members of the Council."

Nebel reported that the process for the election is outlined in the Council Rules as follows: "The Mayor will ask each member for a nomination of Council members to serve as Council President. The Mayor is allowed to nominate a member to serve in this capacity as well. Once nominations are closed, the City Recorder will distribute ballots and the Council members will write a name of a nominated Council member and sign their own name on the written ballot. The City Recorder will count the ballots and the member of the Council receiving the most votes will become the Council President for

that year. The City Recorder will include the individual votes of each Councilor for Council President in the minutes of the organizational meeting.”

MOTION was made by Sawyer, seconded by Engler, to nominate Saelens as Council President for the 2016 calendar year. The motion carried unanimously in a voice vote.

APPOINTMENT OF COUNCILORS AS VOTING MEMBERS TO INTERNAL COMMITTEES

Nebel reported that Roumagoux will also appoint Council members to serve as voting members on internal committees.

MOTION was made by Saelens, seconded by Engler, to confirm the Mayor’s appointment of Council members David Allen, Laura Swanson, and Alternate Mark Saelens, to the Audit Committee for terms to expire on December 31, 2017. The motion carried unanimously in a voice vote.

MOTION was made by Swanson, seconded by Engler, to confirm the Mayor’s appointment of Councilor Busby to serve as an alternate for the City Manager/ City Attorney Evaluation Quality Review Team. The motion carried unanimously in a voice vote.

MOTION was made by Allen, seconded by Saelens, to alternate positions as liaison to the Retirement Board of Trustees, with Saelens serving as liaison, and Allen serving as alternate. The motion carried unanimously in a voice vote.

APPOINTMENT OF VOTING MEMBERS ON EXTERNAL COMMITTEES

Nebel reported that appointment of Council members for service on outside boards and committees, representing the city, shall be done by motion and vote of the Council. He noted that the packet contains a list of Council members serving on outside boards and committees.

MOTION was made by Allen, seconded by Swanson to appoint Sawyer, with Busby as alternate, to the Cascade West Area Commission on Transportations for terms expiring on December 31, 2017. The motion carried unanimously in a voice vote.

ADJOURNMENT

Having no further business, the meeting adjourned at 6:12 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor

January 19, 2016
Noon
Newport, Oregon

The Newport City Council met in a work session at the above time in the City Council Chambers of the Newport City Hall. On roll call, Roumagoux, Allen, Saelens, Sawyer, Engler, Swanson, and Busby were present.

Staff present was Acting City Manager (Library Director) Smith, City Recorder Hawker, City Attorney Rich, and Police Chief Miranda.

Also in attendance were approximately 15 people interested in the fluoridation issue.

ROLL CALL AND INTRODUCTIONS

Roll was called and introductions were made.

Allen asked whether attendees would be allowed to comment during this work session, and Roumagoux responded that they would be allowed to comment at the evening meeting.

ACTIVE SHOOTER PREPAREDNESS – FBI VIDEO

Miranda presented an active shooter preparedness video produced by the FBI. He responded to Council questions.

He also distributed a handout entitled, “Oregon Task Force on School Safety.”

DISCUSSION ON FLUORIDATION OF THE CITY WATER SYSTEM

Smith reported that at the October 19, 2015 City Council meeting, Council approved a motion to direct the City Attorney and staff to develop an ordinance to resume the fluoridation of the city’s water supply in accordance with Resolution No. 1165-A, which is a current, standing directive approved by the City Council on June 25, 1962, and to bring the ordinance back to the City Council for consideration and eventual adoption and referral to the citizens of Newport for public vote at the May 17, 2016 election.

Smith reported that on November 2, 2015, Council approved Resolution No. 3729 which suspended Resolution No. 1165-A (which is the current standing directive to add fluoride to the water) until an election is held on May 17, 2016. He stated that it also laid out the schedule of actions that will need to be taken to place this matter on the ballot for the May election.

Smith reported that Hawker researched the election schedule for the May 17, 2016 election, and noted that this issue will be considered at the same time as the Presidential primary election which may ensure more voter turnout than an off-cycle election. He added that the city would not be responsible for the cost of the election since this is a scheduled election, and the state has specific windows of time in which various actions need to be taken in order to be timely for this election date.

Smith reported that on January 4, 2016, Council reviewed drafts of a resolution, ordinance, and ballot language, and suggested certain revisions. He stated that at this meeting, representatives of Clean Water Newport and Gary Lahman provided comments to Council on certain modifications to the draft documents. He added that Clean Water Newport also met with Nebel and several Council members. He noted that Allen and Roumagoux have forwarded suggested modifications to Rich. He stated that in consideration of these suggestions, Nebel met with Hawker, Gross, and Rich to try to address the various comments and suggestions in order to be as accurate as possible regarding the language. He noted that staff has attempted to use consistent terms throughout the documents.

Smith reported that Clean Water Newport took exception to the term “fluoride,” and suggested using the term “fluoride chemicals” to describe how water would be fluoridated. He stated that staff agreed that “fluoride” is not a good term. He added that since the actual fluoride compound to be used for this purpose will not be known until the city proceeds with a design, the term “fluoride” has been replaced by “fluoridation” throughout the document.

Smith reported that Gary Lahman and Clean Water Newport took exception to the references of various organizations named in the ordinance, resolution, and ballot language, and that most of those references have been replaced with the term “state and local government.”

Smith reported that Lahman indicated that the term “resume” fluoridation should be used, and that has been incorporated as well. He stated that Lahman also requested that Council delay the election until November 2016. He noted that while this would not create any operational issues for the city, Nebel believes the schedule included in previous resolutions should be maintained.

Smith reported that the preliminary costs for implementing fluoride and initial estimates operation cost for fluoridation of water have been incorporated into the documents.

Smith reported that any final adjustments to the documents can be made following today’s work session.

Smith reviewed the proposed schedule as follows:

On January 19, 2016 – Council will hold a work session to finalize the draft language for the ordinance, resolution, and ballot language for the fluoridation of city water;

January 19, 2016 – Council will consider adoption of a fluoridation ordinance that will be referred to the voters;

February 1, 2016 – Council will consider adoption of a resolution to place a question on the ballot for the May 17, 2016 election; May 17, 2016 – Election day. If voters approve the ordinance then Resolution No. 1165-A will be superseded by the ordinance requiring fluoridation of the city’s water. In the event that voters do not approve the ordinance then Resolution No. 1165-A will be rescinded.

Council discussed possible changes to the ordinance and reached a consensus on several changes that Rich agreed to make and provide a revised draft to Council at its evening meeting.

ADJOURNMENT

Having no further business, the meeting adjourned at 1:30 P.M.

January 19, 2016
6:07 P.M.
Newport, Oregon

The Newport City Council met on the above date in the Council Chambers of the Newport City Hall. On roll call, Allen, Roumagoux, Engler, Busby, and Sawyer were present. Swanson and Saelens were excused.

Staff present was Library Director Smith, City Recorder Hawker, City Attorney Rich, Community Development Director Tokos, Fire Chief Murphy, and Police Chief Miranda.

PLEDGE OF ALLEGIANCE

Council, staff, and the audience participated in the Pledge of Allegiance.

Roumagoux reported that the agenda would be amended to move VII. Communications to follow V. Consent Calendar.

PROCLAMATIONS, PRESENTATIONS, AND SPECIAL RECOGNITIONS

Oath of Office – Firefighter Tommy Walker and Larry Wooten. Hawker introduced the agenda item. She administered the oath of office to Firefighters Tommy Walker and Larry Wooten.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of minutes of the regular meeting of January 4, 2016;
- B. Approval of recommendation to the OLCC for a full on-premise sales liquor license for Pacific Kitchen located at 912 North Coast Highway;
- C. Approval of recommendation to the OLCC for an off-premise greater privilege sales license for Newport Liquor Store located at 2019 North Coast Highway;
- D. Confirmation of the Mayor's re-appointment of Robin Dennis to the Wayfinding Committee for a term expiring December 31, 2017, and the appointment of Lance Beck to the Destination Newport Committee for a term expiring December 31, 2016.

MOTION was made by Sawyer, seconded by Engler, to approve the consent calendar with the change to the minutes as noted by Allen. The motion carried unanimously in a voice vote.

COMMUNICATIONS

Received from the Ernest Bloch Legacy Project – Request for Support to

Name the North Highway 101 Wayside in Newport as the “Ernest Bloch Memorial Wayside.” Hawker introduced the agenda item. Smith reported that the Ernest Bloch Legacy Project has been working to recognize the significant contributions that Ernest Bloch made as an American classical composer. He stated that in 1941, Ernest Bloch and his wife, Marguerite, moved to Agate Beach where they lived until his passing in 1959. He added that the local group is hoping that one day Ernest Bloch’s home can be purchased to become a State of Oregon Heritage Site. He noted that with the proximity of the wayside to the Ernest Bloch home, and the fact that the wayside is currently unnamed, there is a request for Council to support the effort to name the wayside the “Ernest Bloch Memorial Wayside.” He stated that a decision on naming this state facility lies with the Oregon Transportation Commission, and to proceed with naming a facility after an individual, it is important to demonstrate statewide support for the naming of the facility, with the honored individual making a significant contribution and impact to the State of Oregon; the individual shall have been deceased for at least one year; and the facility is significant enough to warrant a name. He added that the formal name of this wayside would be timely with the significant improvements that are proposed to develop the facility to better serve visitors traveling Highway 101.

Mark McConnell thanked Council for taking time to consider this issue. He reported that the packet contains petitions from supporters of the renaming; he has a letter of support from Senator Arnie Roblan; and anticipates the receipt of letters of support from Representative David Gomberg and the Lincoln County Commissioners. He stated that the only missing support component is from the rest of the state. He noted that he mailed 45 letters to symphonies and orchestras to garner statewide support. Roumagoux suggested music departments at colleges. McConnell reported that he had sent letters to the University of Oregon, Oregon State University, and Eastern Oregon University.

Allen asked about the process and timeline once all support letters have been received. McConnell stated that once he has the letters of support, he will contact the transportation staff to determine how to proceed. Allen asked that Nebel be kept in the loop on this issue. McConnell stated that he would need staff assistance to define the area. McConnell introduced the following supporters in attendance: John Lavrakas, Greg Steinke, Kay Moxness, and Twylah Olson.

MOTION was made by Sawyer, seconded by Busby, to formally support the naming of the wayside located at Agate Beach, north of Newport, as the “Ernest Bloch Memorial Wayside” and communicate that support to the Oregon Transportation Commission. The motion carried unanimously in a voice vote.

Received from the Sister City Committee – Recognition of the 50th Anniversary of the Mombetsu/Newport Sister City Agreement. Hawker introduced the agenda item. Smith reported that 2016 marks the 50th anniversary of the Sister City relationship between Mombetsu and Newport. He stated that because of the anniversary year, there are three separate exchanges that will be occurring. He noted that the first delegation will be visiting Newport, from Mombetsu, arriving on the May 18 or 19, and leaving on the 21. He added that this visit will include city officials. He noted that the second exchange will be a group of adults traveling from Newport to Mombetsu in the second half of July. He stated that finally, there will be a youth group traveling from Mombetsu to

Newport in the first week and half of August. He stated that because of this significant anniversary, and without having had any expenditure in the previous fiscal year, Council appropriated \$10,000 (\$5,000 that was unused from last year and \$5,000 from this year) to help recognize the 50th Anniversary of this important exchange.

Smith reported that Mark McConnell will be making a presentation to Council on the 50th anniversary exchanges between the two cities. He stated that Mark and Cindy McConnell are recruiting individuals to make the trip to Japan, and if anyone is interested, there will be a meeting on Tuesday, February 9 at 5:30 P.M. in the Council Chambers. He noted that the purpose of the meeting is to discuss the 50th anniversary, including hosting delegates in Newport, and organizing a delegation to travel to Mombetsu.

McConnell reported that the Sister City relationship began when Connie Bates, associated with the Rotary Club, was contacted by someone from Mombetsu, who had found Newport by drawing a line across the latitude lines, and that was the beginning of the exchange. He stated that Newport and Mombetsu share the same latitude, but not the climate. He noted that he and Cindy (McConnell) have been involved in this Sister City program for 28 of its 50 years. He added that a committee is currently working on plans for the upcoming exchanges, and that committee members are Ted DeWitt, Laura Swanson, Sachiko Parker, Spencer Nebel, and the McConnell's. He stated that Mombetsu will be sending a delegation to Newport in May, a delegation of adults plan to visit Mombetsu, from Newport, in July, and a youth exchange, from Newport to Mombetsu is planned for late July or early August.

PUBLIC HEARING

Public Hearing and Possible Adoption of Ordinance No. 2090 – An Ordinance Re-Adopting Provisions of Ordinance No. 1992 Related to Sign Code Variances.

Hawker introduced the agenda item. Smith reported that new sign code variance standards were established with Ordinance No. 1992 but were inadvertently left out of the Municipal Code. He stated that in 2012 and 2015, the city adopted amendments to other provisions of the sign code relating to electronic message signs. He noted that the old (outdated) sign code variance standards that remained in the Municipal Code were replicated in these more recently adopted ordinances, creating a problem.

Smith reported that on November 20, 2015, the city received a sign code variance application for Motel 6. He stated that this is the first request for a variance to the sign code standards that the city has received since 2010 and is the reason the omission was caught. He noted that the Motel 6 variance application was evaluated under the old rules (i.e. those that are currently contained in the Municipal Code).

Smith reported that Council is being asked to consider whether it is in the public interest to correct an inadvertent omission from the Municipal Code of amendments to City of Newport sign code variance standards that were adopted with Ordinance No. 1992 (January 1, 2010).

Smith recommended that the Mayor conduct a public hearing on Ordinance No. 2090, an ordinance re-adopting provisions of Ordinance No. 1992 related to sign code variances.

Roumagoux opened the public hearing on Ordinance No. 2090, at 6:29 P.M. She called for public testimony. There was none. She closed the public hearing at 6:29 P.M. for Council deliberation.

MOTION was made by Allen, seconded by Engler, to read Ordinance No. 2090, an ordinance re-adopting provisions of Ordinance No. 1992 related to sign code variances, by title only, and place for final passage. The motion carried unanimously in a voice vote. Hawker read the title of Ordinance No. 2090. Voting aye on the adoption of Ordinance No. 2090 were Allen, Sawyer, Engler, Busby, and Roumagoux.

Public Hearing and Possible Adoption of Ordinance No. 2088 – An Ordinance Directing and Authorizing the City of Newport Staff, Under the Direction of the City Manager, to Resume Fluoridation of the Water Supply of the City of Newport with the Ordinance Being Referred to the Voters. Hawker introduced the agenda item. Smith reported that at the October 19, 2015 City Council meeting, Council approved the following motion: “to direct the City Attorney and city staff to develop an ordinance to resume the addition of fluoride to the city’s drinking water in accordance with Resolution No. 1165-A, which is a current, standing directive approved by the City Council on June 25, 1962, and to bring the ordinance back to the City Council for consideration and eventual adoption and referral to the citizens of Newport for public vote at the May 17, 2016 election.”

Smith reported that on November 2, 2015, Council adopted Resolution No. 3729 which suspended Resolution No. 1165-A (the current standing directive to add fluoride to the water) until an election is held on May 17, 2016. He stated that it also established the schedule for actions that will need to be taken to place this matter on the May election ballot.

Smith reported that Hawker researched the election schedule for the May 17, 2016 election which is also the Presidential Primary Election which may ensure greater voter turnout than an off-cycle election. He stated that furthermore, the city would not be responsible for the cost of the election since this is a scheduled election date. He added that the state has specific windows of time in which various actions need to be taken to be timely for this election date. He noted that actions must be taken within certain time periods in order to qualify for this ballot.

Smith reported that on January 4, 2016, Council reviewed drafts of a resolution, ordinance, and ballot language and suggested certain revisions. He stated that at this meeting, representatives of Clean Water Newport and Gary Lahman provided comments on certain modifications to the draft documents. He added that Clean Water Newport also met with Nebel and several Council members. He noted that Allen and Roumagoux have forwarded suggested modifications to Rich. He stated that in consideration of these suggestions, Hawker, Gross, Rich, and Nebel met to try to address the comments and suggestions in order to be as accurate as possible with the language. Staff attempted to use the same terms throughout the documents in a consistent manner.

Smith reported that Clean Water Newport took exception to using the term “fluoride” and suggested using the term “fluoride chemicals” to describe how water would be fluoridated. He stated that staff agreed that “fluoride” was not a good term. He added that since the actual fluoride compound to be used for this purpose will

not be known until the city proceeds with a design for this effort, the term “fluoride” has been replaced with the term “fluoridation” throughout the document to address this issue.

Smith reported that both Gary Lahman and Clean Water Newport took exception to the references of various organizations named in the ordinance, resolution, and ballot language, and those references have been replaced with the term “state and local government.”

Smith reported that Lahman recommended that the term “resume” fluoridation should be used, and that has been incorporated into the revised documents. He stated that Lahman also requested that Council delay the election until November 2016, and while this would not create any operational issues for the city, Nebel believes that Council should maintain the schedule that has been included in previous resolutions.

Smith reported that staff incorporated the preliminary implementation and operational cost estimates for fluoridation of the water into the documents.

Smith recommended that the Mayor conduct a public hearing on Ordinance No. 2088, an ordinance directing and authorizing the City of Newport staff, under the direction of the City Manager, to resume fluoridation of the water supply of the City of Newport with the ordinance being referred to voters.

Allen noted a correction in Nebel’s report on page 50 in that the proper reference should be state and federal government rather than state and local government. He also mentioned that Nebel’s report mentioned a larger turnout at the May election. He paraphrased comments made by County Clerk, Dana Jenkins, predicting that the voter turnout this May is expected to be 60% - 65%, rather than a typical May election turnout of approximately 50%.

Roumagoux opened the public hearing at 6:38 P.M. She called for public testimony.

Gary Lahman suggested including AWWA in the ordinance after the reference to NSF International. He noted that the reason to include this reference is that information from the CDC on water references the AWWA. He added that the AWWA establishes minimum requirements for the design, installation, performance, and products used for fluoridation.

Susan Andersen, representing Clean Water Newport, stated that she would like there to be references to fluoridation chemicals, rather than fluoridation. She suggested clarifying who would be paying for the implementation and on-going costs of fluoridation. She suggested adding the word “alleged” to the section regarding the reduction of tooth decay.

Roumagoux closed the public hearing at 6:46 P.M. for Council deliberation.

Sawyer stated that he agrees with adding AWWA.

Allen addressed the reference to chemicals, noting that the goal is consistency. He stated that if chemicals is used, it would emphasize chemicals more than it should. He added there is an opportunity to add the word to the ballot title which would not over-emphasize the word. He reported that the ordinance will not be included in the voter’s pamphlet. He addressed the issue of including how the installation and operation of fluoridation is funded. He suggested that the existing sentence could be modified to read, “shall be paid through water rates as provided

in the city budget and consistent with local budget law.” It was noted that the dates of discontinuation of fluoridation is included in the findings of the ordinance. Allen stated that he would not weigh in on the addition of the word alleged in regard to the reduction of tooth decay. Allen reported that he had spoken to Gross on Friday, and that Gross was not overly concerned that the reference to AWWA was not included in the ordinance.

Busby stated that including the source of funds is a good idea. He also agreed that the addition of the word product in the last sentence to replace fluoridation is a good call. He supported the addition of “alleged” in the section related to tooth decay, noting that it promotes neutrality.

Engler suggested that 5.10.015(B)(2) of the ordinance would read better if the word “optimal” was removed and replaced with “recommended.”

Roumagoux noted that she preferred the addition of AWWA.

Hawker read the proposed, and agreed upon, changes to the ordinance.

Lahman asked whether stating that the implementation and operation of fluoridation would limit the city in using other potential funds for this purpose, i.e., grants.

MOTION was made by Sawyer, seconded by Engler, to read Ordinance No. 2088, an ordinance which directs and authorizes the City of Newport staff under the direction of the City Manager, to resume fluoridation of the water supply of the City of Newport with the ordinance being referred to voters, with the changes discussed by Council, by title only and place for final passage. The motion carried in a voice vote with Busby voting no.

Voting aye on the adoption of Ordinance No. 2088 were Roumagoux, Swanson, Engler, Saelens, Sawyer, and Allen. Busby voted no.

CITY MANAGER REPORT

Discussion Regarding the Creation of an Advisory Committee for all Parking Districts. Hawker introduced the agenda item. Smith reported that a Request for Proposals (RFP) for consulting services to assist in the preparation of a Parking Management Plan is open to potential proposers and it is likely that a consultant will be selected by mid-February. He stated that the city has three commercial parking districts, one for each of the study areas. He added that each of the parking districts has an advisory committee that Council established by resolution. He noted that Council could empanel these three groups as a single project advisory committee for the parking study. He stated that in addition, the Planning Commission would like to have a representative attend the meetings, since the Commission is likely to be asked to help implement recommendations that result from the study. If Council chooses this approach, the policy advisory committee would be as follows: Cris Torp – Business Owner, Bayfront; Kathy Cleary – Business Owner, Nye Beach; Janet Webster – Business Owner, Bayfront; Wendy Engler – Business Owner, Nye Beach (Council Liaison); Gary Ripka – Fisherman, Bayfront; Linda Neigebauer – Business Owner, Nye Beach; Sharon Snow – Fish Processing, Bayfront; Frank Geltner – Business Owner, City Center; Laura Anderson – Business Owner, Bayfront; Bill Bain – Citizen Representative, City Center; Kevin Greenwood – Port of Newport, Bayfront; Tom McNamara – Business Owner, City Center;

Jody George – Business Owner, Nye Beach; Bill Branigan – Planning Commission representative.

Smith reported that there is no action required as this is a discussion item. He stated that if Council wishes to move forward with the creation of a policy advisory committee, a resolution establishing the advisory committee will be presented to the City Council for consideration at its February 1, 2016 meeting.

Tokos read an e-mail from Janet Webster which noted that she was comfortable with the recommended advisory committee, and that it would be appropriate for this committee to be allowed to comment on the draft report. Engler asked whether the committee will review RFPs and have input into what consultant is hired. Tokos noted that this group did review the RFP, and that some members will help with the consultant selection process. Engler asked about appointments to review the proposals. Tokos noted that the Bayfront suggested a few people, and that he still needs to talk with Nye Beach, but that a couple of people from each parking district would be reviewing the proposals. Engler asked whether it will be possible to review and have input into the final report. Tokos noted that this was possible, and that there will be a primary stakeholder group evaluating the plan as it is developed. Terry Obteshka suggested involving more people than simply businesses. Roumagoux noted that this item will be before Council on February 1, and to let Tokos know of people who should be a part of the stakeholder group.

Report on Emergency Declaration. Hawker introduced the agenda item. Smith reported that the city planned to let the declaration expire. Tokos noted that the impacts of the disaster are known at this time. Murphy stated that he had no word that this event will be declared a FEMA disaster, so there is no need to extend the declaration. Tokos reported that post-disaster processes are in place, and the Building Official, Joseph Lease, is monitoring the slope. He added that one of the homeowners is arranging for demolition, and one homeowner appealed, and the appeal was heard last Friday. Busby asked whether no action on the part of the federal government means that there is no recovery. Murphy stated that recovery occurs if a federal disaster is declared. He stated that staff is monitoring the area, and the ground is still noticeably moving. Tokos reported that FEMA conducted a preliminary damage assessment. Murphy stated that his was pleased with the city's response to this disaster, and the cooperation between departments.

City Manager's Year End Report for 2015. Hawker introduced the agenda item. Smith reported that Nebel had provided a summary of the activities that the City Council and staff have accomplished through the course of the calendar year. Smith reviewed the top 20 most significant issues of the city during the 2015 calendar year. He noted that the packet contains a more extensive list. The top 20 issues include: legalization of marijuana; fluoridation of the city's water supply; creation of two new urban renewal districts; review and modification of the Nye Beach Design Overlay; work associated with the airport, including the exploration of a concessionaire to operate the airport, creation of the Regional Airport Review Task Force, and the beginning of a revision to the Airport Master Plan; visioning efforts, including the creation of a work group to recommend whether to move forward with a visioning project, and the creation of a

committee to develop an RFP for a visioning consultant; breaking ground on a new Aquatic Center; other significant construction projects, including Don Davis Bollard Lighting, PAC Storage Shed Roof Replacement, City Hall Window Replacement, 2015/2016 Street Overlays and Improvements, SE Ferry Slip Road Street Improvement Project, South Beach Tsunami Improvements (Phase II), SW Abalone/Brant Street Improvement Project, Highway 10 Pedestrian Crossing Improvements, Wastewater System Master Plan, 2015 Sanitary Sewer Televising Program, Big Creek Wastewater Lift Station Replacement, Storm Sewer System Master Plan, Big Creek Dams Preliminary Design, NE 71st Street Water Tank and Pump Station, Fixed-Base Metering System, Seal Rock Water District Intertie Project, Fixed Base Operation Building; Room Tax; Growth and Building Permits; work to maintain the United States Coast Guard Air Facility at the Newport Municipal Airport; Port of Newport was successful in obtaining grant from the US Department of Transportation; Pacific Communities Health District passed a \$57 million dollar general obligation bond issue to construct a new hospital, Oregon State University announced a Marine Science Initiative, Central Lincoln Public Utilities District announced plans to develop a new operations center, and OMSI is completing construction of the Coastal Discovery Center at Camp Gray; Council entered into three multi-year contracts with the Newport Employee's Association, Newport Police Association and the IAFF; reorganized job responsibilities in the Finance Department; handling of human resources in the city; sorted through various issues relating to the City of Newport Employees' Retirement System; developed a comprehensive fee schedule was also planned. In 2015, the Finance Department, working with the City Recorder, former Interim Finance Director, and Department Heads to develop a comprehensive fee schedule; Council declared an emergency relating to weather conditions that damaged public lands, infrastructure, as well as causing a slide that impacted seven homes on NE 70th Drive; and the Newport Police were involved in a use of deadly force incident at the Agate Beach RV Park.

REPORT FROM MAYOR AND COUNCIL

Roumagoux reported that she and Ginny Goblirsch gave welcoming statements at Senator Wyden's recent Town Hall meeting.

Roumagoux reported that she attended the inaugural Mayor's exhibit at the VAC. She stated that she and Mayor Woodruff, from Waldport, curated the exhibit. She noted that there was a large turnout, and the show was featured on the cover of Oregon Coast Today showing the work of an artist who paints on silk.

Roumagoux reported that the Lincoln County Mayor's met on January 13, at the Deep End Café. She noted that it was a spirited meeting.

Roumagoux reported that she attended the Crab Krack fundraiser, on January 17, at the Pacific Maritime and Heritage Center.

Sawyer reported on the passing of Yvonne Dennis who was Lincoln County's Veterans Service Officer. He noted that she was a humble and wonderful person who will be missed.

Busby reported that Roumagoux was honored as an artist with a permanent display at the Portland Art Museum.

Busby reported that the Crab Krack fundraiser was a great event.

Busby reported that four responses were received in response to the RFP for operation of the airport. He noted that, of the four responses, there were three proposals.

Engler reported that she attended the Solid Waste Advisory Committee meeting on January 5. She noted that the SWAC is finalizing the emergency debris management plan. She added that future projects include a solid waste management plan.

Engler reported that she attended the Mayor's exhibit at the VAC, and noted that Tom Webb had done a good job.

Engler reported that she attended a recent meeting of the Library Board. She noted that Smith had survived the "Polar Express," that included the attendance of 150 children. She added that a soup and books event is scheduled; the city's Safety Committee evaluated the parking lot lighting; and the elevator has been installed.

Engler reported that she attended a recent meeting of the Nye Beach Merchants Association. She added that the group is planning for the upcoming year, and had some discussion about the turnaround parking lot.

Engler reported that the Smart Growth Conference will be held in Portland, and that she is interested in attending.

PUBLIC COMMENT

Rick North, representing Clean Water Newport, stated that 28 cities in Oregon fluoridate water, and to the best of his knowledge, none of them receive private funding. He reiterated that it should be made clear to voters that the costs of fluoridation will be borne by rate payers.

ADJOURNMENT

Having no further business, the meeting adjourned at 7:52 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor



Agenda #:4.B.
Meeting Date: 2-1-2016

Agenda Item:

Approval of Recommendation to the Oregon Liquor Control Commission (OLCC) to Green Gables B & B, LLC for a Full On-Premise Sales Liquor License for a New Outlet for Green Gables B & B/ Italian Café, located at 156 SW Coast St.

Background:

Green Gables B & B, LLC had requested favorable consideration from the City Council in 2015 for a new Full On-Premise Sales liquor license from the Oregon Liquor Control Commission (OLCC) for this establishment. Green Gables B & B, LLC do not go forward with the license at that time. Green Gables B & B, LLC are reinitiating their efforts to obtain a license and are again requesting a favorable recommendation from the City Council. The Newport Police have reviewed the request and recommends favorable action by the City Council on the following application.

Recommendation:

City staff recommends that the City Council make a favorable recommendation on the issuance of a Full On-Premise Sales liquor license for a new outlet to Green Gables B & B, LLC to be located at 156 SW Coast St.

Fiscal Effects:

None by making this recommendation. The city does receive a fee for processing liquor licenses.

Alternatives:

Issue an unfavorable recommendation to the OLCC or as suggested by the City Council.

Respectfully Submitted,

Spencer R.
Nebel City
Manager



Agenda Item # _____
Meeting Date _____

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title OLCC License Approval

Prepared By: Newport Police Dept Head Approval: Lt. Jason Malloy City Mgr Approval: _____

Issue Before the Council:

Shall the City Council recommend approval of the liquor license application for Green Gables Italian Café?

Staff Recommendation:

The Police Department recommends favorable action by the City Council

Proposed Motion:

Handled as a consent calendar item

Key Facts and Information Summary:

Green Gables Italian Café, 156 SW Coast Street, has made application to the Oregon Liquor Control Commission for a “Full On-Premises Sales” license, and “Off-Premises Sales” as a new outlet. Such a license allows for the applicant to sell ‘by the drink’ wine, malt beverages, cider and distilled liquor. These beverages must be consumed on the premises. Partially consumed bottles of wine that had been served with a meal may also be taken from the premises. The Off-Premises license allows for the applicant to sell factory sealed containers of wine, malt beverages and cider. Containers of malt beverages sold under the license may not hold more than two and one-quarter gallons.

A background check of the applicant revealed no disqualifying information. Green Gables is located in the Nye Beach area, on the north/west corner of SW Coast Street and SW 2nd Street. There have been 11 police calls to the business within the last year. One call involved an ongoing dispute with a neighbor where the owner of Green Gables filed a Stalking Order against the neighbor. The stalking order was issued on March 6, 2015 and does not expire. Another call resulted in a subject arrested on an outstanding warrant.

Green Gables applied for an OLCC license in February and September 2015. The Newport City Council gave a Favorable Recommendation times. Green Gables apparently allowed the application to lapse and is required to reapply at this time.

ORS 471.166 requires an applicant to obtain a recommendation from the local governing body in the city where the business is located. The City Council may make a “Favorable Recommendation” or an “Unfavorable Recommendation” to OLCC. The Commission will then decide if granting a license is appropriate.

Other Alternatives Considered:

Not applicable.

City Council Goals:

Public Safety related.

Attachment List:

License Application

Fiscal Notes:

There is no fiscal impact on the City other than time to process the application





OREGON LIQUOR CONTROL COMMISSION INDIVIDUAL HISTORY

1. Trade Name Green Gables Italian Cafe' 2. City Newport
 3. Name Campole Rhonda Marie
 (Last) (First) (Middle)
 4. Other names used (maiden, other) Fingerhut
 5. *SSN [REDACTED] 6. Place of Birth Bronx N.Y. 7. DOB [REDACTED] 8. Sex M F
 (State or Country) (mm) (dd) (yyyy)

***SOCIAL SECURITY NUMBER DISCLOSURE:** As part of your application for an initial or renewal license, Federal and State laws require you to provide your Social Security Number (SSN) to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 686(a)(13) & ORS 25.785). If you are an applicant or licensee and fail to provide your SSN, the OLCC may refuse to process your application. Your SSN will be used only for child support enforcement purposes unless you sign below.

Based on our authority under ORS 471.311 and OAR 845-005-0312(6), we are requesting your voluntary consent to use your SSN for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your SSN for these administrative purposes (5 USC § 552(a). If you consent to these uses, please sign here:

Applicant Signature: Rhonda M. Campole

9. Driver License or State ID # _____ 10. State ~~NY~~ Oregon
 11. Residence Address 156 SW Coast St. Newport OR 97365
 (number and street) (city) (state) (zip code)
 12. Mailing Address (if different) Same
 (number and street) (city) (state) (zip code)
 13. Contact Phone 541-574-0986 14. E-Mail address (optional) grngables7@aol.com
 15. Do you have a spouse or domestic partner? Yes No
 If yes, list his/her full name: _____
 16. If yes to #15, will this person work at or be involved in the operation or management of the business?
 Yes No
 17. List all states, other than Oregon, where you have lived during the past ten years:
None
 18. In the past 12 years, have you been **convicted** ("convicted" includes paying a fine) in Oregon or any other state of driving a car with a suspended driver's license or driving a car with no insurance?
 Yes No Unsure If yes, list the date(s), or approximate dates, and type(s) of convictions.
 If unsure, explain. You may include the information on a separate sheet.

 19. In the past 12 years, have you been **convicted** ("convicted" includes paying a fine) in Oregon or any other state of a misdemeanor or a felony? Yes No Unsure
 If yes, list the date(s), or approximate dates, and type(s) of convictions. If unsure, explain. You may include the information on a separate sheet.



Agenda #:5.A.
Meeting Date: 2-1-2016

Agenda Item:

Public Hearing and Possible Adoption of Resolution No. 3735, A Resolution Making Appropriation/Total Requirement Changes for Specific Funds as Part of a Supplement Budget Adjustment for Fiscal Year 2015-16

Background:

Finance Director Mike Murzynsky is recommending that two budget amendments be made to the 2015-16 City Budget. The first impacts the Room Tax Fund. Destination Newport Committee has been very diligent about remaining within the appropriated amount for various marketing activities for the City of Newport. In the past the Finance Department would recognize financial commitments made prior to June 30th as part of the expenses for the previous fiscal year. This practice; however, is not consistent with generally accepted accounting practices which require the expense to be recognized in the fiscal year in which services are being provided. As a result, Destination Newport Committee did not fully expend their appropriations for marketing in the 2014-15 fiscal year, since a number of these commitments extended into providing services in the 2015-16 fiscal year. In other words, they underspent the last fiscal year, and those expenses have been carried into the new fiscal year, leaving the Committee short of their normal allocation of funding for projects for this fiscal year. In order to facilitate this transition Finance Director, Mike Murzynsky, is recommending that \$36,855 of unanticipated new revenue be allocated towards marketing projects in the 2015-16 fiscal year. Please note that this will balance out as we get to the end of the current fiscal year since commitments made in June will be actually expended in the next fiscal year in the months that those advertising contract are in place.

The second amendment is in the Building Inspection Fund. With the uptick in permitting activity, both the revenues and expenses for building inspection are surpassing the anticipated amount at budget time. In order to correct this Finance Director Mike Murzynsky is recommending that \$25,000 of additional income be recognized in the Building Inspection Fund, with the same amount being allocated for building inspection expenses.

Since the supplement adjustments are less than a 10% increase in each respective fund, a public hearing is not required by the State. As a matter of practice; however, we have been holding a non-required public hearing on all budget amendments at the local level.

Recommendation:

I recommend that the Mayor conduct a public hearing on Resolution No. 3735, a resolution making appropriation/total requirement changes for specific funds as part of a supplement budget adjustment for fiscal year 2015-16.

Following the public hearing and any recommendation made, I recommend the City Council consider the following motion:

I move to adopt resolution No. 3735 with attachment A, a resolution adopting a supplemental budget and making appropriation increases and changes for the fiscal year 2015-16.

Fiscal Effects:

Sufficient revenues are available over the original appropriated amount to cover both of these adjustments.

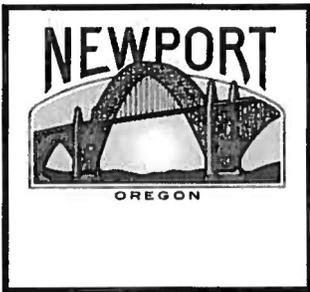
Alternatives:

None recommended.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. R. Nebel", is written over a light blue circular stamp.

Spencer R. Nebel
City Manager



Agenda Item # _____

Meeting Date February
1, 2016

**CITY OF NEWPORT AGENDA
ITEM SUMMARY**
City Of Newport, Oregon

Issue/Agenda Title: Resolution No. 3735 providing for a supplemental budget and making appropriation/total requirement changes for the Fiscal Year 2015-2016.

Prepared By: Murzynsky Dept Head Approval: Murzynsky City Mgr Approval:

Issue before the Council: The Room Tax and Building Department funds require an adjustment due to increase costs and revenues. These are noted on Attachment A.

The Room Tax Fund requires an increase due to carried forward costs. The increase in collected room tax revenues will cover these carried forward expenditures.

For the Building Fund, the anticipated Building inspection services are coming in higher than expected, \$25,000. However, the Building permit revenues are coming in higher so an adjustment in the same amount, \$25,000, is necessary.

This supplemental budget does not require a public hearing because the adjustments are less than a 10% increase in the respective budgets.

Staff Recommendation: Staff recommends the adoption of the supplemental budget and making appropriation and transfer of funds changes in the funds as detailed on Attachment "A" to Resolution No. 3735.

Proposed Motion: I move to adopt Resolution No. 3735 with Attachment "A", a resolution adopting a supplemental budget for fiscal year 2015-16 and making appropriation increases and changes for fiscal year 2015-16.

Key Facts Summary: ORS 294.471 authorizes a supplemental budget with a public hearing when the estimated expenditures differ by 10 percent or less from the expenditures from the most recent amended budget prior to the supplemental budget. Therefore, fund budgets may be changed by supplemental budget without a public hearing that are within that threshold. Fund budgets requiring an increase in appropriations supported by additional revenues and/or fund budgets requiring a decrease in appropriations due to insufficient resources may be included, accordingly.

Fiscal Notes:

The two funds included in this supplemental budget are the only ones requiring an adjustment. The individual fund information is noted on Attachment A.

Attachments:

Resolution 3735
Attachment A

CITY OF NEWPORT
Budget with Supplementals/Transfer Resolutions

Fiscal Year 2015 - 2016

Agate Beach
Wayside

Fund	Appropriation Level	Project No.	Adopted Budget Resolution #3710	Agate Beach Wayside Appropriation Change August 31, 2015	Adopted Budget Resolution 3,726	Adopted Budget Resolution 3,735	Adjusted Budget FY 2015-2016
230 - Room Tax Fund							
	Beginning Fund Balance		778,488		72,000		850,488
	Revenues		1,321,300			36,855	1,358,155
	Total Revenues:		2,099,788	0	72,000	36,855	2,208,643
230 - Room Tax Fund							
	Room Tax		1,145,246		(200,000)	36,855	982,101
	Transfer to General Fund		21,822				21,822
	Transfer to Parks & Rec Fund		180,500				180,500
	Transfer to Airport Fund		25,000				25,000
	Transfer to Debt Service General		14,491				14,491
	Transfer to Debt Service Wastewater		127,325				127,325
	Transfer to Capital Proj Fund		375,513	60,000	272,000		707,513
	Contingency		126,381	(60,000)			66,381
	Total Room Tax Fund		2,016,278	0	72,000	36,855	2,125,133
	Unappropriated Ending Fund Balance		83,510				83,510
	Total Room Tax Fund		2,099,788	0	72,000	36,855	2,208,643
ROOM TAX FUND - 230			0	0	0	0	0

CITY OF NEWPORT
Budget with Supplementals/Transfer Resolutions

Fiscal Year 2015 - 2016

Agate Beach
Wayside

Fund	Appropriation Level	Project No.	Adopted Budget Resolution #3710	Agate Beach Wayside Appropriation Change August 31, 2015	Adopted Budget Resolution 3,726	Adopted Budget Resolution 3,735	Adjusted Budget FY 2015-2016
240 - Building Inspection Fund							
	Beginning Fund Balance		469,943				469,943
	Revenues		167,010			25,000	192,010
	Transfer from General Fund		3,000				3,000
	Total Revenues:		639,953	0	0	25,000	664,953
240 - Building Inspections							
	Building Inspections		258,868			25,000	283,868
	Contingency		25,887				25,887
	Total Building Inspections Fund		284,755	0	0	25,000	309,755
	Unappropriated Ending Fund Balance		355,198				355,198
	Total Building Inspections Fund		639,953	0	0	25,000	664,953
BUILDING INSPECTION - 240			0	0	0	0	0

**CITY OF NEWPORT
RESOLUTION NO. 3735**

**A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET ADJUSTMENT FOR FISCAL
YEAR 2015-16, MAKING APPROPRIATION/TOTAL REQUIREMENT CHANGES FOR
SPECIFIC FUNDS**

WHEREAS, the City of Newport's 2015-16 budget requires changes of appropriation for the Room Tax Fund, and the Building Inspection Fund; and

WHEREAS, under the provisions of Oregon Local Budget Law, fund accounts are required to reflect sufficient authorized appropriations consistent with available resources; and

WHEREAS, ORS 294.471 requires a supplemental budget with a public hearing when the estimated expenditures differ by 10 percent or more from the most recent amended budget prior to the supplemental budget, the governing body may adopt the supplemental budget with a public hearing at a regular meeting, and

WHEREAS, the Building Inspection, requires an expenditure adjustment due to increased Building Inspection Services. No additional appropriation increase authority is required other than the increase in Building Inspection Services; and

WHEREAS, the Room Tax Fund requires an adjustment for increased revenues and the related costs which carried forward from the prior year budget. Adjustments are listed and no other adjustments are needed,

THE CITY OF NEWPORT RESOLVES AS FOLLOWS:

- 1)** That this supplemental budget is hereby adopted with an increase in the Building Department budget, and an increase in the Room Tax revenues with an increase in related expenditures; overall appropriation balances are noted on Attachment A.

This resolution will become effective immediately upon passage.

Adopted by the Newport City Council on February 1, 2016.

Sandra N. Roumagoux, Mayor

Attest:

Margaret M. Hawker, City Recorder



Agenda #: 6.A.
Meeting Date: 2-1-2016

Agenda Item:

From the Newport Marathon - Report on the 18th Running of the Newport Marathon on June 4, 2016, and Request for Special Event Fee Waiver

Background:

The Newport Booster's Club has sponsored an annual marathon for the purpose of raising funds for various sporting and educational events for the schools in Newport. Tom Swinford will be making a brief presentation on the race.

In past years, the City Council has waived 100% of the fees, since these funds are funneled directly back into various local programs as charitable contributions. The event attracts approximately 1,500 participants, and an additional 3,000 spectators for the running of the race.

Recommendation:

I recommend the City Council consider the following motion:

I move approval of the request for a waiver of the 2016 Newport Marathon Special Event fees for the 18th running of the event in the total estimated amount of \$3,975.

Fiscal Effects:

The calculation of the costs estimates are included in the attached staff report from City Recorder, Peggy Hawker.

Alternatives:

Waive 35% of the fiscal impact to the City of \$1,391.25, with the balance being \$2,583.75 being invoiced to the Newport Marathon or as suggested by the City Council.

Respectfully Submitted,

Spencer R. Nebel
City Manager



**STAFF REPORT
CITY COUNCIL AGENDA ITEM**

Prepared by: Peggy Hawker, City Recorder/Special Projects Director

Title: Consideration of Special Event Fee Waiver for the 2016 Newport Marathon

Recommended Motions:

I move to approve the special event permit request from the Newport Marathon, in the amount of \$3,975, for its event to occur on June 4, 2016, as the event complies with special event permit criteria and guidelines, and to transfer \$3,975 from the Transient Room Tax Fund to the General Fund to reimburse the Police, Fire, and Public Works Departments.

Background Information:

The Newport Marathon is in its 18th year, and is scheduled for June 4, 2016 between the hours of 5:00 A.M. and 2:00 P.M. This well-received event brings more than 3,000 visitors to Newport – many from out of state, Canada, and increasingly, from across the globe. It is organized by the Newport Boosters Club, and has raised hundreds of thousands of dollars for local high school sports and activities. The event is planned to include 1,500 participants and more than 3,000 people total including runners, families, and spectators. Most runners stay in city lodging establishments for several nights and frequent local restaurants and shops.

The cost of police services is estimated to be \$3,000; fire services is estimated to be \$550; and public works crew costs are approximately \$425, for a total of \$3,975. Last year, Council has considered waiving 35% of the fiscal impact to the city, but opted to waive the full amount.

Fiscal Notes: If approved, \$3,975 will be transferred from the Transient Room Tax Fund to the General Fund.

Alternatives: Waive 35% of the fiscal impact to the city of \$1,391.25, with the balance of \$2,583.75 being invoiced to the Newport Marathon.

Attachments: Special Event Permit Application for the 2016 Newport Marathon.



**SPECIAL EVENTS PERMIT
APPLICATION PACKAGE**

**CITY OF NEWPORT
SPECIAL EVENTS FEE WAIVER CRITERIA**

The city may grant a total or partial fee waiver.

The city will consider the following factors in determining whether to grant a fee waiver for special events:

1. Benefit to the community.
2. Financial benefit to the city government.
3. Financial benefit to businesses in the city.
4. Positive publicity for the city.
5. Whether the event raises money for a charitable purpose or purpose that benefits the community.
6. Whether the event is operated for profit.
7. Whether the event is operated by a non-profit entity.
8. Whether the event promotes education, public health, or public safety.

In addition to these factors, the city will consider whether the event has in the past or is likely in the future to take action that, if taken by a governmental entity, would be unconstitutional. The city will not fund any event that takes action that, if taken by the city, would be unconstitutional.

SPECIAL EVENT APPLICATION

Submit to: City Recorder
City of Newport
169 SW Coast Highway
Newport, OR 97365
Email: p.hawker@newportoregon.gov
541.574.0613

This application must be completed, signed and submitted 90 days before the first day of the event. Late applications may be accepted, but the city cannot assure that late applications will be processed in time to issue the permit. Misrepresentation in the application is ground for denial or revocation of the permit. The city may withdraw the permit if the actual event differs from the description in the application materials.

If you cannot answer in the space provided, submit additional sheets

EVENT

Event Name: Newport Marathon

Event Date: June 4, 2016 Time: 5 am to 2 pm

Location: Streets of Newport from Yaquina Park, thru Nye Beach and along the Bay Front

Facilities to be used: Park Yaquina Bay Park

(Be specific) Street Government, Elizabeth, Olive, Brook, Coast Street

 Sidewalk – Board walk on Bay Front

 Other City Property

Private Property Yes, Embarcadero, and Oregon

Coast Bank and Port of Newport/Yacht Club

Set-up dates and start time: _June 3 starting at 3 PM

Take-down dates and end time: _June 4, starting after runners pass area and 2 pm at finish area _____

Estimated crowd size: Participants (including vendors and volunteers)

_____1500_____

Spectators

___3000_____

Has event occurred previously? ___yes_____ What dates? This is the 17th year_____

Any changes from previous events? ___No_____ (If yes, list changes on separate sheet)

APPLICANT

Name: _Newport

Boosters_____

Mailing Address: PO Box 1313

Newport_____

Phone: _541-270-4250

Email:

___run@newportmarathon.org_____

Fax: _____

Contact Person (must be authorized to sign for entity):Tom Swinford

Contact Person Address, Phones, Email ___PO Box 681, Toledo, OR

run@newportmarathon.org

541 270 4250 _____

—

—

Status of Applicant (Type of Entity, For Profit/Nonprofit) NON

PROFIT _____

DEPOSIT/REQUEST FOR WAIVER

The City of Newport requires payment for the services it provides to special events, unless a waiver is granted. To process an application, the city requires either submission of a \$25 deposit to be credited against the fees that will be charged or submission of a fee waiver request.

_____ A \$25 deposit is submitted with this application.

X A fee waiver request is submitted with this application.

DETAILED DESCRIPTION OF EVENT

Provide a detailed description of activities associated with the event, including a detailed description of city services requested. In the description, state whether food, drink, and/or alcoholic beverages will be served. To the extent that the event involves use of parks, streets or other city facilities, provide a description of how and when the facilities will be used and a diagram of the areas that the event will use. To the extent applicable, provide a parking plan, security plan, medical assistance plan, litter control and disposal plan and any other information that would be useful to the city. Use additional sheets as necessary to provide complete information.

See Responsibility Checklist Example for types of city services that may be required. The city will decide what city services will be provided and how they will be provided. The city may provide more services or fewer services than requested.

Walkers start at 6 am, marathon runners start at 7 am and Half marathon participants start at 7:45 from Yaquina Bay Park. The runners and walkers run

Provide detailed information on traffic control assistance needed from the city, including both barriers and police officers to control traffic. Specify the locations and whether the event or the city will be required to place the barriers:

_In years past the city provided police support. The police set up barricades as needed. _____

INSURANCE INFORMATION

If a special events permit is granted, evidence of insurance may be required naming the City of Newport as an additional insured.

Applicant's Signature

Date: _____

CITY MANAGER'S REPORT AND RECOMMENDATIONS



Agenda #: 6.B.
Meeting Date: 2-1-2016

Agenda Item:

From the City Manager Evaluation Committee - Evaluation Report for the City Manager for 2015

Background:

Mayor Roumagoux and Council President Ralph Busby served as the City Manager Evaluation team to coordinate the evaluation process for my second year as City Manager. Attached is the summary report from the evaluation process. In addition, a self-evaluation report has been completed by me for your review. I appreciate the Mayor and members of the City Council for taking time to complete the evaluation process. I also appreciate the support Council has given me during my two years as Newport's City Manager.

Recommendation:

I recommend that the City Council consider the following motion:

I move acceptance of the 2015 City Manager evaluation report.

Fiscal Effects:

None

Alternatives:

None recommended.

Respectfully Submitted,

Spencer R. Nebel
City Manager

CITY OF NEWPORT, OREGON CITY MANAGER PERFORMANCE EVALUATION PROCESS

The following information, inclusive of an evaluation form, is intended to serve as a tool to evaluate the performance of the City Manager in the areas of Organizational Management, Department Operations, Financial Management, Personal Traits, External Stakeholder Relations, and Foresight/Vision. The evaluation process is designed to create performance goals for the City Manager for the next year.

Each City Council will have its own specific challenges and may suggest modifications to this document that improve its value to their own unique circumstances.

1. What is a City Manager evaluation?
 - a. The process of planning, reviewing, and providing feedback on the performance of the City Manager.
 - b. A means of demonstrating organizational accountability to citizens, employees, and key regional partners.
 - c. A means of maintaining alignment between goals set and achievements reached.
 - d. An element of decision about compensation.
 - e. A means of determining the need for further professional development, education, or training.

2. What is the role of the City Council?
 - a. Be familiar with all policy established by Council that describes how authority is delegated to the City Manager and its proper use monitored; the City Manager's role and his/her authority and accountability; constraints on the City Manager's authority which establish the practical, ethical, and legal boundaries within which all staff activity and decision-making will take place and be monitored; and what the Council intends for the city to achieve.
 - b. Provide annual review of City Manager performance and results achievement.
 - c. Maintain a balance of support and trust with a relationship of accountability with the City Manager.

3. What is the process?
 - a. The Mayor and Council President shall serve as a Quality Review Team to coordinate a full Council annual review of the City Manager's performance. The City Council shall designate an alternate member of the Council who will only serve in the absence of the Mayor or Council President for any team meetings.
 - b. The Quality Review Team will annually review the evaluation tool and present a report to the City Council in August of each year regarding any modifications to the evaluation tool.
 - c. The Mayor and Council President will coordinate the distribution of any evaluation forms to members of the City Council, collect the forms from Council members and compile a summary of the results of the evaluation.

- d. The Mayor and Council President will review the results of the evaluation in an executive session of the Council with the City Manager.
- e. A summary of the results will be presented at a following regular meeting of the City Council.
- f. The Mayor and Council President meets each quarter with the City Manager to review adherence to the governance policies, City Manager Evaluation Summary, and the city's progress on the Annual Council goals.
- g. The Quality Review Team is responsible for providing quarterly updates to the full Council on City Manager progress and achievements.
- h. Based on the results of the comprehensive annual review, Council determines the need for further professional development, education, training or other methods of evaluation for the City Manager and adjusts compensation accordingly.

4. Opportunities

In a relationship of trust and support, Council members and the City Manager can have an honest dialogue about what is being accomplished, where the gaps may be, and how to maintain progress. Good relationships promote candor and constructive planning.

Evaluate the WHAT and the HOW - Results that should be accomplished and leadership skills that should be demonstrated.

Examples of WHAT include: Fulfillment of the City Mission, achievement of the objectives on the Annual Performance Plan, operational effectiveness, fiscal and staff management, public relations and advocacy.

Examples of HOW include: Personal qualities such as integrity and commitment, interpersonal skills such as effective communication and influence, and leadership skills such as vision, staff development, innovation, and process efficiency.

5. Pitfalls to Avoid

- a. Council members represent a diverse group of voices that may not be unified in their expectations of the City Manager.
- b. Relationships are too close, supportive, and friendly, there can be a reluctance to bring up areas of performance that need improvement and a tendency to avoid conflict.
- c. Compensation adjustments do not reflect the results of the annual review.
- d. Members of the Personnel Committee have no experience in performance management.

Please note: This documents was developed from different City Manager evaluation forms provided as a part of the process, including information from System Integration™.

Rating Period: 12/14 - 12/15

Performance Standard Rating

Exceeds Expectations	=	EE	3
Fully Effective	=	FE	2
Needs Improvement	=	NI	1
No Opinion/Not Observed	=	NO	NO

The standard evaluation form rates the City Manager performance at four levels defined as follows:

Exceeds Expectations: Employee performance exceeds normal expectations of the position.

Fully Effective: Employee has achieved full competence in all critical measures of performance and overall contribution is entirely satisfactory.

Needs Improvement: Employee has had adequate time, training, and the opportunity to achieve the fully effective level but performance in one or more areas is below the level of full competence and effectiveness.

No Opinion/Not Observed: Evaluator has no opinion and/or knowledge in this area.

Seven responses received. Not every respondent addressed every item.

Element A: Organizational Management

Overall Rating 2.583334

Indicators	Rating
1. Does the Manager facilitate an on-going leadership partnership between elected officials and Department Heads?	2.571429
2. Does the Manager provide effective communications to keep the Council informed regarding agenda items, participation in community events, meetings with staff and public, progress on administrative projects, and other anticipated issues that may concern the Council.	2.642857
3. Does the Manager take a long-term view and initiate and manage organizational change for the future; build the vision with others; spot opportunities to move the organization toward the vision?	2.714286
4. Does the Manager evaluate City organization, operations and programs, and explore new methods for conducting city business and enhancing city effectiveness?	2.571429
5. Does the Manager actively promote, support, and champion efforts to Involve mid-level managers in city management issues?	2.416667
6. Does the Manager foster an environment that promotes an expectation of high performance standards throughout the organization?	2.583333

Comments including examples of performance to support your appraisal.

Communications with Council via status report, which can evaluate city organizations, operations, and programs.

Supports and is professional with department heads and all employees.

Thorough and thoughtful status reports from Manager, and monthly department head reports keep us informed.

Has a visionary and practical and professional and experienced approach to city management.

Excellent communications to Council.

Spencer excels in this category! He is a professional's professional City Manager.

One of the weaknesses we have had, prior to your hiring, was organization at the City Manager level. You have turned that completely around.

Element B: Department OperationsOverall Rating 2.427249

Indicators	Rating
1. Is the Finance Department effective and meeting community needs? (Finance, Human Resources, and Municipal Court)	2.5
2. Is the Community Development Department effective and meeting community needs? (Planning and Building)	2.083333
3. Is the Fire Department effective and meeting community needs?	2.416667
4. Is the City Manager's Office effective and meeting community needs? (City Manager, City Recorder)	2.714286
5. Is the Parks and Recreation Department effective and meeting community needs?	2.571429
6. Is the Library effective and meeting community needs?	2.857143
7. Is the Public Works Department effective and meeting community needs? (Building Maintenance, Streets, Storm Drainage, Wastewater, Water, Grounds Maintenance)	2.285714
8. Is the Police Department effective and meeting community needs?	2.416667
9. Is the Airport effective and meeting community needs?	2

Comments including examples of performance to support your appraisal.

Spencer has guided the Finance Department through challenging times in a most effective manner.

Finance making great progress, but room to continue.

Engineering and project management need resources.

Finance Department is light years ahead of where it was. Still improving - front desk has an unusual style with public.

Community Development Department is very effective at producing policies and needs improvement with involving public in planning before policies and proposals are prepared. Great challenges ahead with housing and transportation issues. Need to recognize economic and cultural value of north side of Newport as well as South Beach.

Public Works is way ahead in many areas from where it was a few years ago. City Manager's priority of working with this department this year should be a positive thing and bring it to a "3."

Police Department seems to do well but has high turnover.

There is a reasonable amount of autonomy for departments which creates ownership for various departments. This is one reason the Library is so successful.

You have done a great job in the Finance and Public Works Departments. I feel you need to do the same in other departments.

Element C: Financial Management

Overall Rating 2.685714

Indicators	Rating
1. Does the Manager develop financial Plans that allow City Council to Anticipate and respond to changes In the city's finances?	2.714286
2. Do the budgets developed by the Manager reflect Council priorities?	2.785714
3. Does the Manager ensure that the City budget is based on a sustainable Service and funding strategy so that Ongoing expenses are supported by Ongoing revenue?	2.714286
4. Does the Manager control Expenditures in accordance with Approved budgets?	2.571429
5. Does the Manager ensure that city Financial matters are clear and Available to the public?	2.642857

Comments including examples of performance to support your appraisal.

Public information - Council packet/minutes; Budget Committee (public meeting) access to published budget.

There is much transparency in all city matters.

Great improvement in budget and budget management in past two years.

The Budget Committee is an excellent example of how the city can now anticipate and respond to the city's finances. All of the changes made have been made clear to the public and available to the public.

You have made the budget process understandable for the first time.

Element D: Personal TraitsOverall Rating 2.580357

Indicators	Rating
1. Communication: Ensures both oral and written communication is clear, concise, and articulate.	2.785714
2. Initiative: Proposes, when appropriate, ideas that could Represent new or different ways To advance Council, department, Staff, or management goals.	2.714286
3. Judgment: Exercises good judgment in fiscal, personnel, and other matters of public concern.	2.583333
4. Fairness and Impartiality: Deals with the Council, Department Heads, and staff in a fair and impartial manner.	2.5
5. Creativity: Demonstrates a willingness to explore new ways to leverage existing and potential assets.	2.428571
6. Professional Development: Seeks and undertakes professional development opportunities that could enhance efficiency, effectiveness, and creativity in areas that would benefit the city.	2.416667
7. Professional Leadership: Seeks roles in local and regional organizations.	2.428571
8. Ethics and Morals: Exhibits high standards of personal moral and ethical behavior.	2.785714

Comments including examples of performance to support your appraisal.

I admire Spencer's ability to take copious notes at every meeting he attends. He then shares those notes and thoughts to the Council in written form and posts them on the city's website.

Spencer's career as a professional City Manager, which spans several decades, is very valuable to Newport.

Good participation with local/state organizations.

Good working relationship with local media.

Manager is responsive to all requests and makes time for people in the midst of his busy schedule.

Has good sense of humor!

Is a good listener.

Good at problem solving and analyzing situation - for instance, organizing Wayfinding Committee.

Exercises excellent judgment in topnotch hires for the city.

No real complaints here.

Element E: External Stakeholder Relations Overall Rating: 2.372449

Indicators	Rating
1. Builds and maintains active partnerships with local, regional, state, and federal government jurisdictions and agencies.	2.5
2. Builds and maintains active partnerships with non-profit and non-governmental organizations.	2.357143
3. Builds and maintains active partnerships with private enterprise.	2.25
4. Builds and maintains relationships with members of boards and commissions.	2.25
5. Ensures strategic pursuit of financial resources (grants) from other agencies, including proactive notice to Council of opportunities that may require re-prioritization of goals.	2.5
6. Contributes to good government through regular participation in local, regional, and state committees and organizations.	2.5
7. Lobbies effectively with legislators and state agencies regarding city programs and projects.	2.25

Comments including examples of performance to support your appraisal.

I am new to the Council and the Manager is relatively new, so I don't have a depth of knowledge on external relations, and the Manager will probably develop these over time.

Leadership role in USCG helicopter retention.

Spencer's active role in the saving of the USCG helicopter is a perfect example in how he builds and maintains active partnerships with local, regional, state, and federal government jurisdictions and agencies. His role was not only active, but that of leadership.

Would like to be more informed as to your initiatives in these areas.

Element F: Foresight/Vision

Overall Rating 2.357143

Indicators	Rating
1. Maintains the long-term view for the city in national, state, county, and local affairs.	2.5
2. Communicates and interacts productively with governmental entities at local, state, and national levels.	2.214286

Comments including examples of performance to support your appraisal.

Spencer's long career as a City Manager, before taking the position with the City of Newport, has given him the knowledge and expertise to hit the ground running. Newport is most fortunate to have a City Manager of his caliber.

Manager has articulated the importance of a city vision and supported it.

He communicates well with Port, OSU, state, and national elected officials as far as I can tell.

Looking down the road with a city committee and work group for feedback and community decisions on city's future.

Spencer, I am very pleased with your work on behalf of the city. You've made Council meetings much easier with clear City Manager reports.

The only issue I have is lack of time during work sessions. I find out information I could have used in making a decision after the fact - information that would have been available with more face time with the rest of the Council. I think regular work sessions with TIME to discuss issues would help alleviate the feeling of Council being managed.

Again, please give Council more information on your initiatives.

Spencer R. Nebel
City Manager
CITY OF NEWPORT
169 S.W. Coast Hwy.
Newport, OR 97365
s.nebel@newportoregon.gov

MEMO

DATE: January 28, 2016

TO: Mayor Roumagoux & City Council Members

FROM: City Manager Spencer Nebel

SUBJECT: Self-Evaluation

–

Mayor Roumagoux and Council President Busby coordinated the annual evaluation process for my second year as City Manager. On Monday, December 7 2015, an executive session was held of the City Council to discuss the individual comments from Council members regarding the City Manager's performance from the previous year. I certainly appreciated the evaluation and comments provided by the members of the City Council regarding my performance with the City. I have thoroughly enjoyed the experience working with the Mayor, Council members, Department Heads, employees and citizens of Newport in order to continue to move this community in a positive direction. I look forward to continuing these efforts during my third year as Newport's City Manager.

At the work session, it was requested that I provide a self-evaluation of my performance as City Manager to the Council for your review in accordance with the City Manager performance evaluation process. The following is this self-evaluation.

CITY MANAGER SELF-EVALUATION

1. Employee's Overall Self-Evaluation of Performance.

I continue to be pleased with the progress that has been made within the City organization to continue moving this community in a forward direction. Much was accomplished this past year, including dealing with the legalization of marijuana; significant efforts in addressing the fluoridation of City water; creating two new Urban Renewal Districts, with virtually unanimous support from the other taxing entities;

proceeding with several initiatives regarding the Newport Airport, including the issuance of an RFP for contractual services; initiation of an FAA financed Master Planning Process, and gathering a group to take a look at the regional role played by the Airport; we have also worked through various issues to initiate a community wide visioning effort for 2016. A significant time was take to negotiate three multi-year contracts with the Newport Employees' Association, Newport Police Association, and the IAFF. A significant amount of time was spent on cleaning up the City's retirement system, creating and implementing a comprehensive fee schedule for the City, and moving forward on a number of human resource initiatives as well. Finally, a significant amount of time was spent on dealing on the use of deadly force by one of our Police Officers, and the weather emergencies that caused the loss of several homes, as well as damage to other infrastructure in the City. I am very pleased in the way the organization has progressed during my second year on the job in the City of Newport!

2. Development Plans in Areas Targeted for Improved Performance.

One of the frustrating parts of my job is not having enough time to move forward with a number of more mundane, but important issues for the City, including a review of our purchasing policies, water and sewer policies, and moving forward with a review of our advisory committees and the role they play within the organization. During this next year, I need to carve more unscheduled time to allow more focus on moving forward these issues forward. Furthermore, I need to improve on the way I manage my communications. With the ease of electronic communications, we are all bombarded with lots of communications, many of which are not very important. However, it is easy to lose some of the important issues amongst the endless copies of communications that cross over my desk on a daily basis. I want to work with office staff in restructuring how some of my time is used during the course of the day.

3. Recommended Goals and Objectives for Next Year.

These were discussed in part in August with the Council, during an update of the City Manager's Quarterly Evaluation. At that time a number of projects were identified as priorities over the next 18 month Period. These include: conducting a utility rate study, which is budgeted in the current fiscal year; review the City's water and sewer policies; review the City's purchasing policy; review the roles and functions of the City's Advisory Committees; conduct a review of the organizational structure for Public Works, and coordinating a visioning process for 2016 for the City. In addition, with the construction of the Aquatic Center, we will not only be dealing with the construction issues and costs, but we will also be developing an operational plan to deal with combined Recreation/Aquatic Center facility that will be completed by the end of this year. Finally, we need to complete our process on construction project reporting. Significant progress has been made, but we need to begin routinely reporting on the status of these capital construction projects.

The key for me getting through these issues in 2016 will lie, in part, on other priorities that come to the forefront during this next year. In 2015, there were a number of

unanticipated issues that took substantial time from the specific projects that I have identified as priorities to work on in 2015. I have been in this business long enough to understand that this is not necessarily unusual, but it is frustrating.

4. How Can Your Mayor and/or City Council Assist in Your Job's Success and Enjoyment?

Overall I have appreciated the support given to me by the Mayor and City Council in order to manage the City. It is important to me as your City Manager to try to minimize surprises to the Council, and likewise, I certainly appreciate the fact the Council tries to minimize surprises to me. During this next year, it will be important for me to be able to carve out more time to work on specific projects during the course of the workday, which will likely result in restructuring the meetings and appointments I have through the course of the week to better utilize my time on the job. As you know, I don't mind putting in the additional time that it takes to properly do the job as City Manager; however, I do value my time away from work, and I appreciate the fact that the Council recognizes I spent a lot of time at work, but when I am off of work I do really try to be "off of work" to the extent that a City Manager can be.

5. Additional Comments.

I do really appreciate the Mayor and Council members giving me the opportunity to serve as the City Manager of the City of Newport. As I indicated last year, this community is blessed with many opportunities to move forward. There is strong leadership throughout this community, and strong passions about where the community should be headed in the future. There is always challenges in trying to find the balance between many ideas, and many thoughts that relate to the policies affecting the future of this community; however, it is important to have a constructive way to work our way through these differences in order to identify common values and goals for the advancement of the community.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Nebel".

Spencer Nebel
City Manager

CITY MANAGER'S REPORT AND RECOMMENDATIONS



Agenda#7.A.
MeetingDate: 2/1/2016

Agenda Item:

Confirming the Adoption of Ordinance No. 2088, regarding the resumption of fluoride of the City's water supply, and consideration of the adoption of Resolution No. 3734, referring the measure to the voters on the resumption of fluoridation of the City's water supply

Background:

Two items need to be addressed at the February 1, 2016, Council meeting regarding the referral of an ordinance to the voters on resumption of fluoridation of the City's water supply. This issue has been a topic of discussion for the Council since the budget meetings in May, 2015, which led to a discussion as to whether the City should resume fluoridation of the City's water supply, as directed by Resolution No. 1165-A. This practice was discontinued as part of an administrative decision in 2005. In order to move forward with this matter, the City Council approved a motion at the October 19, 2015, City Council meeting as follows:

Motion was made by Allen, seconded by Swanson, to direct the City Attorney and city staff to develop an ordinance to resume the addition of Fluoride to the city's drinking water in accordance with Resolution No. 1165-A, which is a current, standing directive approved by the City Council on June 25, 1962, and to bring the ordinance back to the City Council for consideration and eventual adoption and referral to the citizens of Newport for public vote at the May 17, 2016 election.

On November 2, 2015, the City Council approved Resolution No. 3729 which suspended Resolution No. 1165-A (which is the current standing directive to add fluoride to the water) until an election is held on May 17, 2016. It also laid out the schedule of actions that will need to be taken in order to place this matter on the ballot for the May election.

City Recorder Peggy Hawker researched the election schedule for the May 17, 2016 election. Please note that this issue will be considered at the same time as the Presidential Primary Election which may ensure more voter turnout than an off cycle election would. Furthermore, the city would not be responsible for the cost of the election since this is a scheduled election. The State of Oregon has specific windows of time in which various actions need to be taken in order to be timely for this election date. Actions must be taken within certain time periods in order to qualify for this ballot.

On January 4, 2016, The Council reviewed drafts of a resolution, ordinance, and ballot language and suggested certain revisions. At this meeting, representatives of Clean Water Newport and Gary Lahman provided comments to the Council on certain modifications to the draft documents. Clean Water Newport also met with me and several Council members. Also Councilor Allen and Mayor Roumagoux have forwarded suggested modifications to City Attorney Steve Rich. In consideration of all of these suggestions, Peggy Hawker, Tim Gross, Steve Rich and I met to try to address the various comments and suggestions made in order to be as accurate as possible regarding the language. We have attempted to use the same terms

throughout the documents in a consistent manner.

Clean Water Newport took exception to using the term “fluoride” and suggested using the term “fluoride chemicals” to describe how water would be fluoridated. We agreed that “fluoride” is not a good term. Since the actual fluoride compound to be used for this purpose will not be known until the City proceeds with a design for this effect, we have replaced the term of “fluoride” with “Fluoridation” throughout the document to address this issue.

Furthermore, both Gary Lahman and Clean Water Newport took exception to the references of various organizations named in the ordinance, resolution, and ballot language. We have replaced most of those references with the term “state and local government”

In addition, Gary Lahman indicated that the term “resume” fluoridation should be used. That has been incorporated as well. Mr. Lahman also requested that the Council delay the election until November 2016. While this would not create any operational issues for the City, I do believe we should maintain the schedule that has been included in previous resolutions.

We incorporated the preliminary cost estimated for implementing fluoride and initial estimates operation cost for fluoridation of water into the documents.

City Attorney Steve Rich, City Recorder Peggy Hawker, and I developed a proposed schedule for implementing this action as follows:

On January 19, 2016 - The Council held a work session to finalize the draft language for the ordinance, resolution, and ballot language for the fluoridation of city water.

January 19, 2016 - Following a public hearing, and considering comments made, the City Council then approved a fluoridation ordinance that will be referred to the voters.

February 1, 2016 - The Council will consider the adoption of a resolution to place a question on the ballot for the May 17, 2016 election. A draft copy of the resolution is attached for your review.

May 17, 2016 - Election day. If voters approve the ordinance then Resolution No. 1165-A will be superseded by the ordinance requiring fluoridation of the city’s water. In the event that voters do not approve the ordinance then Resolution No. 1165-A will be rescinded.

The Adoption of Ordinance No. 2088

At the January 19, 2016, Council meeting, the City Council voted to read the ordinance by title only, and place for final passage. The City Charter provides: “Ordinances shall be adopted only after an initial vote of the Council, followed by a reading of the ordinance by title only, and a final roll call vote.” Apparently with the confusion of reviewing the various modifications that were made to the draft ordinance, the reading of the ordinance title was not done. In reviewing this with City Attorney, Steve Rich, he indicated that the Council can ratify its previous action at the February 1, 2016, meeting by voting again on the adoption of Ordinance 2088 with the initial motion to read the ordinance by title only and place for final passage. If this motion passes, the City Recorder will read the title of the ordinance and a roll call vote will be taken on the ordinance. A copy of the ordinance, as amended at the January 4, 2016, Council meeting is attached for your review. Please note, that while the AWWA supports fluoridation of City water, Public Works Director, Tim Gross, has indicated that the AWWA does not certify fluoridation products. I have attached some additional information from Tim on this matter. I would suggest removing “...and the AWWA (American Water Works Association)” from the ordinance (5.10.015, B.2.) and resolution, since Tim has indicated that the AWWA is not a

body that certifies fluoridation products.

Adoption of Resolution 3734 -- Referring to the Voters a Measure that would Resume Fluoridation of the City's Water Supply

In order to move forward with placing the issue of fluoridation on the May 17, 2016, ballot, the City Council will need to consider the adoption of a resolution to place the question on the ballot on the May 17, 2016, election. Please note that Resolution No. 3734 includes Attachment A, which is the language for the ballot, Attachment B, which is an explanatory statement, and Attachment C, which is the approved ordinance. There has been significant wordsmithing on these documents, considering comments made by various advocacy groups, City staff and Council members. Following a discussion of the draft documents, the Council will need to approve the documents in order to proceed with the May election schedule. The Council may want to make the same changes to the resolution as I suggested for the ordinance.

Recommended Action:

I recommend that the Council consider the following motion:

I move to consider Ordinance No. 2088, an ordinance amending Title V of the Newport Municipal Code by the addition of Section 5.10.015, which directs and authorizes the City of Newport staff, under the direction of the City Manager, to resume fluoridation of the water supply in the City of Newport, and read by title only and place for adoption.

The Mayor will then ask for a voice vote on whether or not to read the ordinance by title only and placed for final passage.

If the motion is approved, the City Recorder will read the title of the ordinance, and any amendments to the printed version of the ordinance approved by the Council.

A roll call vote on the final passage of the ordinance will then be requested by the Mayor, and taken by the City Recorder.

I move the adoption of Resolution No. 3734, a resolution calling for an election to refer to the voters of the City of Newport, Oregon, a measure that would resume fluoridation of the City water supply

Fiscal Effects:

None by referring this issue to the voters. If approved by the voters, the city would need to invest an estimated \$300,000 to implement fluoridation of the City's water supply. An estimated \$18,000 per year in initial operation costs, with these costs being supported by the Water Fund through water rates.

Alternatives:

Remove the references to the AWWA certifying fluoridation products.

Respectfully submitted,



Spencer R. Nebel City
Manager

Cindy Breves

From: Spencer Nebel
Sent: Thursday, January 28, 2016 2:38 PM
To: Cindy Breves
Subject: FW: fluoridation websites

This will be an attachment to my report before Peggy's report and documents

Spencer R. Nebel

City Manager
 City of Newport, Oregon 97365
 541-574-0601
 s.nebel@newportoregon.gov

From: Tim Gross
Sent: Thursday, January 28, 2016 2:35 PM
To: Spencer Nebel <S.Nebel@NewportOregon.gov>
Cc: Peggy Hawker <P.Hawker@NewportOregon.gov>
Subject: fluoridation websites

Fluoridation of Public Water Supplies

The American Water Works Association (AWWA) supports the recommendations of the World Health Organization (WHO), American Medical Association (AMA), Canadian Medical Association (CMA), Centers for Disease Control (CDC), American Dental Association (ADA), Canadian Dental Association (CDA), and other professional organizations in the medical community, for the fluoridation of public water supplies as a public health benefit. AWWA supports the application of fluoride in a responsible, effective, and reliable manner that includes monitoring and control of fluoride levels mandated by provincial, state, and/or federal laws and that is subject to community acceptance through applicable local decision-making processes. AWWA is committed to regular reviews of the most current research on fluoride and the positions of the medical and dental communities.

Adopted by the Board of Directors Jan. 25, 1976, reaffirmed Jan. 31, 1982, revised Jan. 20, 2002, revised Jan. 21, 2007, and revised Jan. 22, 2012.

<http://www.awwa.org/about-us/policy-statements/policy-statement/articleid/202/fluoridation-of-public-water-supplies.aspx>

Fluoride

Current US guidelines and standards addressing fluoride in drinking water are undergoing review.

In early 2011, the US Department of Health and Human Services and the US Environmental Protection Agency jointly announced steps to ensure that standards and guidelines on fluoride in drinking water provide the maximum protection to support good dental health, especially in children.

HHS, through the Centers for Disease Control and Prevention, proposed that the recommended level of fluoride in drinking water be set at the lowest end of the current optimal range to prevent tooth decay, and EPA initiated review of the maximum amount of fluoride allowed in drinking water.

HHS recommended that the optimal fluoride concentration range in water to reduce cavities and tooth decay is 0.7 mg/l, which is the lower end of the current range of from 0.7 – 1.2 mg/L. [HHS finalized that recommendation in April 2015.](#)

EPA is considering whether the current fluoride standard of 4 mg/L - set to prevent skeletal fluorosis - should be lowered to protect against severe dental fluorosis. EPA's review will be partly influenced by a 2006 National Research Council report on fluoride risks and benefits.

Also in the mix is a pesticide tolerance level for sulfuryl fluoride, which appears to be the focal point for federal policy coordination.

<http://www.awwa.org/legislation-regulation/regulations/contaminants/fluoride.aspx>

Why is the drinking water standard from the Environmental Protection Agency (EPA)—referred to as the MCL or MCLG—different than the optimal fluoride level recommended for community water systems by the Public Health Service (PHS)?

EPA's drinking water standard differs from the Public Health Service (PHS) recommendation for fluoridation because the two have different purposes. EPA's enforceable standard for fluoride in public water supplies (4.0 milligrams per liter) is set to protect against exposure to high levels of naturally occurring fluoride. The PHS recommendation (0.7 milligrams per liter) identifies the optimal concentration of fluoride to prevent tooth decay while limiting the chance for dental fluorosis, which is a change in the appearance of the tooth enamel. The PHS recommendation only applies to those public water systems that add fluoride to reach the optimal concentration. Public water systems that contain naturally occurring fluoride at concentrations above 0.7 mg/L will not be affected by the new recommendation.

<http://www.cdc.gov/fluoridation/faqs/#fluoride3>

Timothy Gross, PE
 Public Works Director/City Engineer
 City of Newport
 169 SW Coast Highway
 Newport, OR 97365
 P 541-574-3369
 F 541-265-3301
 C 541-961-5313



**STAFF REPORT
CITY COUNCIL AGENDA ITEM**

Prepared by: Peggy Hawker

Title: Consideration of, and Confirming, the Adoption of Ordinance No. 2088, Regarding the Resumption of Fluoridation of the City's Water Supply, and the Consideration of the Adoption of Resolution No. 3734 Referring to the Voters a Measure that Would Resume Fluoridation of the City's Water Supply

Recommended Motions:

I move to read Ordinance No. 2088, an ordinance amending Title V of the Newport Municipal Code by the addition of Section 5.10.015 which directs and authorizes the City of Newport staff, under the direction of the City Manager, to resume fluoridation of the water supply of the City of Newport, by title only, and place for final passage.

I move to adopt Resolution No. 3734, a resolution calling for an election to refer to the voters of the City of Newport, Oregon, a measure that would resume fluoridation of the city water supply.

Background Information:

At the October 19, 2015, City Council meeting the Council approved the following motion: "to direct the City Attorney and staff to develop an ordinance to resume the addition of fluoride to the city's drinking water in accordance with Resolution No. 1165-A, which is a current, standing directive approved by the City Council on June 25, 1962, and to bring the ordinance back to the City Council for consideration and eventual adoption and referral to the citizens of Newport for public vote at the May 17, 2016 election."

On November 2, 2015, Council adopted Resolution No. 3729 which suspended Resolution No. 1165-A which is the current standing directive to add fluoride to the water until an election is held on May 17, 2016.

On January 19, 2016, Council considered the adoption of Ordinance No. 2088 to resume fluoridation of the city's water supply. The City Council voted to read the ordinance by title only and place for final passage. This motion carried in a 4-1 vote.

The City Charter states that “Ordinances shall be adopted only after an initial vote of the Council, followed by a reading of the ordinance by title only, and a final roll call vote.” At the meeting of January 19, **there was a final roll call vote, but the title of the ordinance was not read.** At this meeting, Council is being asked to confirm its action of January 19, 2016, by moving to read the ordinance by title only and place for final passage. The title will be read, and a roll call vote will be taken to appropriately adopt the ordinance.

To adhere to the election schedule previously developed by staff, and consistent with state election law, that would allow for the fluoridation matter to appear on the May 17, 2016 ballot, Council must adopt Resolution No. 3734 at its February 1, 2016 meeting.

Fiscal Notes: None.

Alternatives: None.

Attachments: Ordinance No. 2088
Resolution No. 3734

ORDINANCE NO. 2088

**AN ORDINANCE AMENDING TITLE V OF THE NEWPORT MUNICIPAL CODE
BY THE ADDITION OF SECTION 5.10.015
WHICH DIRECTS AND AUTHORIZES THE CITY OF NEWPORT STAFF,
UNDER THE DIRECTION OF THE CITY MANAGER, TO RESUME FLUORIDATION OF
THE WATER SUPPLY OF THE CITY OF NEWPORT**

A. **Findings:** The Newport City Council finds:

1. That on August 23, 1960, the Council adopted Resolution No. 1154 calling for the submission to voters of the City of Newport the question of introducing fluoride into the city water supply; and
2. That on November 8, 1960, the electors of the City of Newport voted on the following ballot question: "FLUORIDATION OF NEWPORT'S WATER SUPPLY. Shall the Common Council of the City of Newport add fluorine to the public water supply, under the supervision of the Oregon State Board of Health?" The measure passed with a vote of 1,070 yes; 1,049 no; and
3. That on December 5, 1960, the Council adopted Resolution No. 1165 providing for the fluoride supplementation of the city water supply; and
4. That on May 18, 1962, the electors of the City of Newport voted on the following ballot question: "Shall the Charter of the City of Newport be amended to prohibit fluoridation of the City's public water supply by adding fluorine or fluoride compound thereto?" The question failed by a vote of 704 - yes; and 789 - no; and
5. That on June 25, 1962, the Council readopted Resolution No. 1165 calling the readopted resolution, Resolution No. 1165-A providing for fluoride supplementation of the city water supply ; and
6. That during the week of August 26 – 31, 2005, fluoridation was suspended due to the overflow of the recycle pond into Big Creek. Thereafter, because of physical limitations of the chemical room, staff suspended fluoridation of the city water supply until such time as appropriate changes could be made to the chemical room. When the new water treatment plant was designed, and budgetary constraints were encountered, the fluoridation equipment was eliminated without any specific action being taken by Council; and
7. That on January 28, 2015, members of the Lincoln County Public Health Advisory Committee met with members of the city staff regarding concerns about fluoridation of the city water supply not being fluoridated as provided for by Resolution No. 1165-A. By resolution of the Lincoln County Public Health Advisory Committee

adopted on July 7, 2015, the Committee urged the City Council to resume fluoridation of the city water supply; and

8. That the City Council determined to solicit public comment concerning the possible resumption of fluoridation of the city water supply; and

9. That on September 8, 2015, the City Council held a public hearing on the issue of fluoridation of the city water supply, and at the October 19, 2015 City Council meeting the Council received a report from the City Manager, and additional documentation was received from interested parties; and

10. That after receipt of public testimony and written comments, the City Council finds that it is in the best interests of the City of Newport and its electors that the resumption of fluoridation of the city water supply be directed by ordinance and that such ordinance be referred to the electors of the City of Newport at the election of May 17, 2016.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

A. **Amendment.** The Newport Municipal Code shall be amended to include the addition of the following:

5.10.015 Fluoridation of City Water Supply

- A. City staff shall keep an accurate record of the type and amount of fluoridation introduced into the city water supply, and the quantities of water treated. City staff shall conduct and keep records of tests of the fluoridation in the city water supply in accordance with state and federal standards. City staff shall document and monitor the costs for implementing fluoridation of the city water supply.
- B. Funds necessary for fluoridation of the city water supply shall be paid through water rates as provided in the city budget and consistent with local budget law.
- C. Fluoridation statistics shall be included in the annual Water Quality Report in accordance with state and federal requirements.

B. Implementation Provisions.

- 1. **Date.** The City Council shall establish, by resolution, a date to resume fluoridation of the city water supply.
- 2. **Design.** City staff is directed and authorized to design and implement a fluoridation program of the city water supply to the recommended levels to reduce tooth decay and promote good oral health as recommended by state and federal authorities. Any fluoridation products used for this purpose shall be certified by NSF International (formerly known as the National Sanitation Foundation) and the AWWA (American Water Works Association).

3. **Report.** City staff shall prepare a report and recommendation to the City Council prior to the resumption of fluoridation of the city water supply. The report and recommendation shall include a general outline of a fluoridation program; a preliminary estimate of the financial resources required to design and implement the fluoridation program; and a recommended date to resume fluoridation of the city water supply.

C. **Effective Date.** This ordinance shall be effective immediately upon certification of the election results if approved by the electors of the City of Newport at the election of May 17, 2016.

Adopted by the Newport City Council on February 1, 2016.

Sandra N. Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

APPROVED AS TO FORM:

Steven Rich, City Attorney

CITY OF NEWPORT
RESOLUTION NO. 3734

**A Resolution Calling for an Election
to Refer to the Voters of the City of Newport, Oregon,
A Measure That Would Resume Fluoridation of the City Water Supply**

Finding

On February 1, 2016, the City Council adopted Ordinance No. 2088 directing the resumption of fluoridation of the city water supply, and referring Ordinance No. 2088 to the electors of the City of Newport at the election of May 17, 2016.

Based upon this finding:

THE CITY OF NEWPORT RESOLVES AS FOLLOWS:

Section 1. An election is called in and for the City of Newport for the purpose of submitting to the legal voters of the city the ballot title, Attachment A, with the following question:

Shall the City of Newport resume fluoridation of the city water supply?

Section 2. The explanatory statement for this ballot measure is included as Attachment B.

Section 3. Tuesday, May 17, 2016, is designated as the date for holding the election on the question stated in Section 1 above.

Section 4. The election will be conducted by the Lincoln County Clerk's Office.

Section 5. The precincts for the election shall include all territory within the corporate limits of the City of Newport and no other territory.

Section 6. If the ballot measure is approved by the voters of the City of Newport, the Newport Municipal Code shall be amended as provided in Attachment C.

Adopted by the Newport City Council on February 1, 2016

CITY OF NEWPORT

Sandra N. Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

ATTACHMENT A
TO
CITY OF NEWPORT RESOLUTION NO. 3734

BALLOT TITLE

CAPTION

Resumption of Fluoridation of City of Newport Water Supply

QUESTION

Shall the City of Newport resume fluoridation of the city water supply?

SUMMARY

The City of Newport supplies water to city residents and businesses. In the past the City of Newport fluoridated the city water supply. Currently, the city water supply is not being fluoridated.

This measure requires the City of Newport to resume fluoridation of the city water supply. The measure requires fluoridation at state and federal recommended levels. The measure is a referral of Ordinance No. 2088, adopted by the City Council on February 1, 2016. The date for resumption of fluoridation of the city water supply will be established by resolution of the City Council. Fluoridation chemicals used in the city water supply must meet NSF International standards. The measure requires recordkeeping and testing of the city water supply in accordance with state and federal standards. The measure also requires the city to conduct tests for fluoridation levels in the city water supply in accordance with state and federal requirements. Preliminary cost estimates are approximately \$300,000 for implementation. Initial estimates for operations are \$18,000 annually. Costs are paid through water rates in the city budget.

**ATTACHMENT B
TO
CITY OF NEWPORT RESOLUTION NO. 3734**

EXPLANATORY STATEMENT

On June 25, 1962, the City of Newport adopted Resolution No. 1165-A which authorized and directed the fluoridation of the city water supply.

Resolution No. 1165-A was adopted following a vote on November 8, 1960, by the electors on a ballot measure containing the following question: "Shall the Common Council of the City of Newport add fluorine to the public water supply, under the supervision of the Oregon State Board of Health." The measure passed.

After the election of November 8, 1960, a citizen's measure was placed on the ballot for May 18, 1962, with the following question: "Shall the Charter of the City of Newport be amended to prohibit fluoridation of the city's public water supply by adding fluorine or fluoride compound thereto." The measure failed.

During the week of August 26 - 31, 2005, fluoridation was suspended due to the overflow of the recycle pond into Big Creek. Thereafter, because of physical limitations of the chemical room, staff suspended fluoridation of the city water supply until such time as appropriate changes could be made to the chemical room. When the new water treatment plant was designed, and budgetary constraints were encountered, the fluoridation equipment was eliminated without any specific action being taken by Council.

In January 2015, members of the Lincoln County Public Health Advisory Committee met with members of the city staff regarding resumption of fluoridation of the city water supply.

Following the initiation of these discussions, the City Council held a series of public meetings and public hearings on the topic of fluoridation of the city water supply. The City Council determined that it is in the best interests of the city and its residents to refer to the electors the question of whether an ordinance directing the resumption of fluoridation of the city water supply should be approved.

Preliminary cost estimates to resume fluoridation of the city water supply are approximately \$300,000 for implementation. Initial estimates for operations are \$18,000 annually. Costs are paid through water rates in the city budget.

Ordinance No. 2088 will become effective, if passed by the vote of the electors, upon certification of the election by the Lincoln County Clerk.

The full text of the ordinance can be obtained at City Hall or at www.newportoregon.gov.



Agenda #:7.B.
Meeting Date: 2-1-2016

Agenda Item:

Consideration and Possible Adoption of Resolution No. 3739, Appointing an Advisory Committee to Assist in the Preparation of a Parking Management Plan for the Bayfront, Nye Beach, and City Center Areas of Newport

Background:

At January 19, 2016 City Council meeting, the Council discussed the need for a project advisory committee to oversee the parking study that will focus on the Bayfront, City Center, and Nye Beach. The advisory committee would consist of representatives that have been active in parking and business issues within their various areas. The advisory committee would be appointed through the duration of the study, which is anticipated to be completed no later than February 1, 2017. Recommended advisory committee members:

- | | |
|---|--|
| Cris Torp - Business Owner, Bayfront | Kathy Cleary - Business Owner, Nye Beach |
| Janet Webster - Business Owner, Bayfront | Wendy Engler - Business Owner, Nye Beach (Council Liaison) |
| Gary Ripka - Fisherman, Bayfront | Linda Neigebauer - Business Owner, Nye Beach |
| Sharon Snow - Fish Processing, Bayfront | Frank Geltner - Business Owner, City Center |
| Laura Anderson - Business Owner, Bayfront | Bill Bain - Citizen Representative, City Center |
| Kevin Greenwood - Port of Newport, Bayfront | Tom McNamara - Business Owner, City Center |
| Jody George - Business Owner, Nye Beach | Bill Branigan - Planning Commission Representative |

Recommendation:

I recommend the City Council consider the following motion:

I move to adopt resolution No. 3739, a resolution creating an advisory committee to assist in the preparation of a parking management plan for the Bayfront, Nye Beach, and City Center areas and appointing the members to that advisory committee.

Fiscal Effects:
None.

Alternatives:
None recommendation.

Respectfully Submitted,



Spencer R. Nebel
City Manager



CITY COUNCIL
AGENDA ITEM SUMMARY
City of Newport, Oregon

Issue/Agenda Title Resolution No. 3739 Appointing an Advisory Committee to Assist in the Preparation of a Parking Management Plan for the Bayfront, Nye Beach and City Center Areas of Newport

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval: _____

ISSUE BEFORE THE COUNCIL: Whether or not it is in the public interest to bring the Bayfront, Nye Beach, and City Center parking district advisory committees together to serve as a single project advisory committee to assist in the preparation of a new parking management plan.

STAFF RECOMMENDATION: Staff recommends the Council approve the resolution.

PROPOSED MOTION: I move that the Council approve Resolution No. 3739, a resolution appointing an advisory committee to assist in the preparation of a parking management plan for the Bayfront, Nye Beach and City Center areas of Newport.

KEY FACTS AND INFORMATION SUMMARY: A Request for Proposals (RFP) for consulting services to assist in the preparation of a Parking Management Plan was open to proposers until January 28, 2016 and it is likely that a consultant will be selected by mid-February. The City has three commercial parking districts, one for each of the study areas. The parking districts have advisory committees that were established by Council. The City Council could empanel these three groups as a single project advisory committee for the parking study. In addition, the Planning Commission would like to have a representative attend the meetings, since the Commission is likely to be asked to help implement recommendations that result from the study. Taking this approach, the policy advisory committee would be as follows:

- Cris Torp – Business Owner, Bayfront
- Janet Webster – Business Owner, Bayfront
(Council Liaison)
- Gary Ripka – Fisherman, Bayfront
- Sharon Snow – Fish Processing, Bayfront
- Laura Anderson – Business Owner, Bayfront
- Kevin Greenwood – Port of Newport, Bayfront
- Jody George – Business Owner, Nye Beach
Representative

- Kathy Cleary – Business Owner, Nye Beach
- Wendy Engler – Business Owner, Nye Beach
- Linda Neigebauer – Business Owner, Nye Beach
- Frank Geltner – Business Owner, City Center
- Bill Bain – Citizen Representative, City Center
- Tom McNamara – Business Owner, City Center
- Bill Branigan – Planning Commission

On January 19, 2016 the City Council discussed the need for a project advisory committee and there was general agreement that bringing the three existing parking district advisory committees together to serve in

that capacity was appropriate. This appointment is for the duration of the project, which should be no more than 12 months.

OTHER ALTERNATIVES CONSIDERED: None.

CITY COUNCIL GOALS: Preparation of the parking management plan is a budgeted project.

ATTACHMENT LIST:

Resolution No. 3739

FISCAL NOTES: There are no fiscal impacts associated with this agenda item.

RESOLUTION NO. 3739

**A RESOLUTION APPOINTING AN ADVISORY COMMITTEE
FOR THE PREPARATION OF A PARKING MANAGEMENT PLAN FOR
THE BAYFRONT, NYE BEACH, AND CITY CENTER AREAS**

WHEREAS:

1. A Request for Proposals (RFP) for consulting services to assist in the preparation of a parking management plan was open to proposers until January 28, 2016 and it is likely that a consultant will be selected by mid-February; and
2. The project encompasses the Bayfront, Nye Beach and City Center areas, all of which have economic improvement “parking” districts that were formed to generate funding for parking system improvements; and
3. Each of the parking districts includes an advisory committee established by the City Council; and
4. It is appropriate that these committees be brought together to serve as a single project advisory committee to assist in the preparation of the parking management plan; and
5. The project advisory committee should further include representation from the Newport Planning Commission.

THE CITY OF NEWPORT RESOLVES AS FOLLOWS:

Section 1. A project advisory committee for the preparation of a parking management plan for the Bayfront, Nye Beach, and City Center areas shall consist of the following individuals:

Cris Torp, Business Owner, Bayfront Beach	Kathy Cleary, Business Owner, Nye Beach
Janet Webster, Business Owner, Bayfront Beach	Wendy Engler, Business Owner, Nye Beach
Gary Ripka, Fisherman, Bayfront Nye Beach	Linda Neigebauer, Business Owner, Nye Beach
Sharon Snow, Fish Processing, Bayfront City Center	Frank Geltner, Business Owner, City Center
Laura Anderson, Business Owner, Bayfront City Center	Bill Bain, Citizen Representative, City Center
Jody George, Business Owner, Nye Beach City Center	Tom McNamara, Business Owner, City Center
Kevin Greenwood, Port of Newport, Bayfront Commission	Bill Branigan, Newport Planning Commission

Section 2. The foregoing appointment is for the duration of the project, which is to be completed no later than February 1, 2017.

Section 3. This resolution shall be effective immediately upon passage.

Adopted by a _____ vote of the Newport City Council on February 1, 2016.
Signed on _____, 2016.

Sandra Roumagoux
Mayor

ATTEST:

City Recorder



Agenda Item:

Approval of Clean Water State Revolving Fund (CWSRF) Loan Agreements with the Oregon Department of Environmental Quality (DEQ) for Various Sanitary and Storm Sewer Improvements

Background:

Public Works Director Tim Gross and Chase Park Grants have been working with Oregon Department of Environmental Quality since 2013 to acquired low interest financing through the CWSRF program to apply to both point (Wastewater) and non-point (storm water) projects. The city has qualified for the DEQ's Sponsorship Program which proves a further reduction in interest rates through this program.

The financing from the DEQ is being provided to fund the Bay-Moore Basin Storm Water Improvements, the Sam Moore Bio-Retention Facility, and Big Creek Fish Passage Mitigation in an amount of \$4,128,454.

The second loan will be for the Nye Beach Pump Station grinder and sanitary sewer pipe replacement to address infiltration issues in amount of \$1,115,000.

As you are aware the Bay-Moore project has been tied up for several years to address various permitting and mitigation issues related to the project. Through the ongoing efforts of Tim Gross, Civil West Engineering, and Chase Park Grants these issues have now been satisfactorily addressed to allow the project to go forward during the 2016 summer/fall construction season. Furthermore by combining these programs the city will only be required to pay an interest rate on the loans of 1%. This is a lower rate than what the city has previously paid to the State Revolving Fund for previous SRF wastewater projects. The other advantage of these bonds is that the city is charged for interest only on the funds used during the progress of the construction of the project. Furthermore, the first payment or principal is not due until six months after the project is completed. These are very favorable terms in order to facilitate much needed improvements in city infrastructure of cities throughout the State of Oregon.

Recommendation:

I recommend the City Council Consider the following motions:

I move approval of the Clean Water State Revolving Fund Loan Agreement No. R68935 with the Oregon Department of Environmental Quality for the Bay-Moore Basin Storm sewer improvements, the Sam Moore Bio-Retention Facility, and Big Creek Fish Passage Mitigation in the of \$4,128,454 and authorize the Mayor to execute this agreement on behave of the City of Newport.

I move approval of the Clean Water State Revolving Fund Loan Agreement No. R68934 with the Oregon Department of Environmental Quality for the Nye Beach Pump Station grinder and sanitary sewer pipe replacement to address infiltration issues in amount of \$1,115,000 and authorize the Mayor to execute this agreement on behalf of the City of Newport.

Fiscal Effects:

These loan proceeds were factored into the budget for the current fiscal year to fund this work that will extend into the next fiscal year as well.

Alternatives:

None recommended.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. R. Nebel", is written over a faint, light blue circular stamp or watermark.

Spencer R. Nebel
City Manager



Agenda Item #
Meeting Date February 1, 2016

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Authorization of CWSRF Loan Agreements

Prepared By: TEG Dept Head Approval: TEG City Manager Approval:

Issue Before the Council:

Approval of Clean Water State Revolving Fund (CWSRF) loan agreements with Oregon Department of Environmental Quality (ORDEQ) for point (wastewater) and non-point (storm water) projects.

Staff Recommendation:

Approve the agreements

Proposed Motion:

I move to approve the Clean Water State Revolving Fund loan agreement number R68935 with Oregon Department of Environmental Quality for the Bay-Moore Basin storm sewer improvements, Sam Moore bio-retention facility, and Big Creek Fish Passage mitigation in the amount of \$4,128,454 and hereby authorize the Mayor to execute the agreement on behalf of the City of Newport.

I move to approve the Clean Water State Revolving Fund loan agreement number R68934 with Oregon Department of Environmental Quality for the Nye Beach Pump Station grinder, and sanitary sewer pipe replacement to address I&I in the amount of \$1,115,000 and hereby authorize the Mayor to execute the agreement on behalf of the City of Newport.

Key Facts and Information Summary:

These loan agreements are proposed to fund the Bay-Moore Basin storm sewer improvements, Sam Moore bio-retention facility, Big Creek Fish Passage mitigation, the Nye Beach Pump Station grinder, and sanitary sewer pipe replacement to address inflow and infiltration (I&I), described as follows

- Bay-Moore Basin storm sewer improvements: Replacement of failing storm sewer on Bay Boulevard at SE Moore Drive and at Fogarty Street.
- Sam Moore Bio-Retention Facility: Water quality basins at Sam Moore Creek to mitigate bacterial pollution in storm water runoff
- Big Creek Fish Passage Mitigation: Fish passage mitigation is required as a part of the environmental permit for the Bay-Moore project. SRF financing can be used for this mitigation and a likely location is at the Big Creek Reservoirs.

- Nye Beach Pump Station grinder: Installation of a grinder at Nye Beach Wastewater Pump Station to alleviate pump plugging due to debris.
- Sanitary sewer pipe replacement to address inflow and infiltration (I&I): Replacement of various sanitary sewer pipes that are failing and susceptible to I&I.

The City has been working with ORDEQ, and the City's consultants Civil West Engineering and Chase Park Grants since 2013 to acquire low interest financing through the CWSRF program. The CWSRF interest rate of 1% is lower than any currently available bond rate. The CWSRF program operates through a disbursement process, where the City fronts the cost of the project and then reimburses on a quarterly basis. The City is only charged interest on funds that are actually dispersed, and repayment of the loan is not required to begin until 6 months after the project is completed.

By applying for funding for both point (wastewater) and non-point (storm water) projects, the City was able to qualify for the DEQ's Sponsorship Program. DEQ wants communities to complete non-point improvement projects and provides financial incentive to do so by reducing interest rates for point projects to essentially cover the cost of the non-point project.

The loan agreement has been reviewed by both legal counsel and by the City's finance department.

Other Alternatives Considered:

- Fund the projects using utility rates. The Infrastructure Fee and Storm Water Utility Fee do not collect enough in revenue annually to fund the storm water projects in cash.
- Revenue bonds - the rates for the CWSRF loan (1%) were more competitive than the current bond market rates (approximately 3.5%)

City Council Goals:

- N/A

Attachment List:

- Clean Water State Revolving Fund Loan Agreement No. R68935 & R68934

Fiscal Notes:

See above

**CLEAN WATER STATE REVOLVING FUND
LOAN AGREEMENT
No. R68934**

BETWEEN

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

AND

CITY OF NEWPORT

DOJ Doc. #
4133190
May 2013

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THIS LOAN AGREEMENT (“Agreement”) is made and entered into as of the date it is fully executed by both parties (and in the case of the State, approved by the Attorney General's Office, if required) and is by and between the **State of Oregon, acting by and through its Department of Environmental Quality (“DEQ”)**, and the **Borrower** (as defined below). Unless the context requires otherwise, capitalized terms not defined below shall have the meanings assigned to them by ARTICLE 9 of this Loan Agreement. The reference number for the Loan made pursuant to this Loan Agreement is Loan No. R68934.

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

ARTICLE 1: THE LOAN - SPECIFIC TERMS

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

- (A) **BORROWER:** City of Newport.
- (B) **BORROWER'S ADDRESS:** 169 SW Coast Highway
Newport, Oregon 97365
Fax 541-265-3301
- (C) **LOAN AMOUNT:** \$1,115,000
- (D) **TYPE AND PURPOSE OF LOAN.** The Loan is a "Revenue Secured Loan" made by DEQ pursuant to OAR Section 340-054-0065(2) for the purpose of financing the Project.
- (E) **PROJECT TITLE:** Nye Beach Project
- (F) **DESCRIPTION OF THE PROJECT:** Nye Beach Pump Station grinder, sanitary sewer pipe replacement to address I & I
- (G) **INTEREST RATE:** One and 00/100 percent (1.00%) per annum. provided however that if the Project or any part thereof is not completed in accordance with the terms of this Agreement, the interest rate shall be Two percent (2.00%) per annum, retroactive to the date of this Agreement. Calculation of interest is also discussed in ARTICLE 2(E) and in ARTICLE 2(F)(4) of this Agreement.
- (H) **REPAYMENT PERIOD:** Ending no later than (a) twenty (20) years after the Completion Date or (b) twenty (20) years after the estimated Completion Date set forth in ARTICLE 3(A)(10), whichever date is earlier.

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

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

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

ARTICLE 2: GENERAL LOAN PROVISIONS

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

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

(C) DISBURSEMENT OF LOAN PROCEEDS.

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

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

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

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

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

(E) INTEREST. Interest will accrue at the rate specified in ARTICLE 1(G) from the date that a disbursement hereunder is mailed or delivered to the Borrower or deposited into an account of the Borrower. Interest will accrue using a 365/366 day year and actual days elapsed until the Final Loan Amount is determined and the final repayment schedule is prepared and thereafter on a 360-day year basis and actual days elapsed.

(F) LOAN REPAYMENT.

(1) Preliminary Repayment Schedule; Interim Payments. The attached APPENDIX A is a preliminary repayment schedule based on the estimated date of the first

disbursement hereunder and Loan Amount. Until the final repayment schedule is effective, the Borrower shall make the payments set forth in the preliminary repayment schedule.

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

(3) Crediting of Scheduled Payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received. Scheduled payments will be applied first to fees due, if any, and then to interest, according to the applicable repayment schedule, and then to principal.

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

(5) Final Payment. The Outstanding Loan Amount, all accrued and unpaid interest, and all unpaid fees and charges due hereunder are due and payable no later than twenty (20) years after the Completion Date.

(G) PREPAYMENT.

(1) Optional Prepayment. The Borrower may prepay any amount owed on this Loan without penalty on any business day upon 24 hours prior written notice. Any prepayment made hereunder will be applied in accordance with ARTICLE 2(F)(4).

(2) Refinancing of Loan by the Borrower. If the Borrower refinances the portion of the Project financed by this Loan or obtains an additional grant or loan that is intended to finance the portion of the Project financed by this Loan, it will prepay the portion of the Loan being refinanced by the additional grant or loan.

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

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

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

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

ARTICLE 3: GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

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

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

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

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

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

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

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

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

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

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

(10) The estimated Completion Date of the Project is December 31, 2016. The Borrower agrees to complete the Project by the estimated Completion Date.

(11) The estimated total Costs of the Project are \$1,115,000.

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

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

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

ARTICLE 4: CONDITIONS TO LOAN

(A) CONDITIONS TO CLOSING. DEQ's obligations hereunder are subject to the condition that on or prior to January 31, 2016, the Borrower will duly execute and deliver to DEQ the following items, each in form and substance satisfactory to DEQ and its counsel:

- (1) this Agreement duly executed and delivered by an authorized officer of the Borrower;
- (2) a copy of the ordinance, order or resolution of the governing body of the

Borrower authorizing the execution and delivery of this Agreement, certified by an authorized officer of the Borrower;

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

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

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

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

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

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

(5) Borrower will deliver a duly executed certification that it completed its Fiscal Sustainability Plan on the date specified in the certificate; or if completion of the Fiscal Sustainability Plan is part of the Project, the Borrower agrees to deliver its certification regarding completion prior to final disbursement of the Loan, and

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

ARTICLE 4(A)(5) shall survive closing of this Loan.

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

(1) An Event of Default or an event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both has occurred and is continuing;

(2) Any of the Borrower's representations and warranties in this Agreement is untrue or incorrect on the date of disbursement with the same effect as if made on such date;

(3) The Borrower does not submit a disbursement request to DEQ that complies with the requirements of ARTICLE 2(C);

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

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

ARTICLE 5: COVENANTS OF BORROWER

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

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

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

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

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

(5) Concurrent with the execution and delivery of this Loan Agreement, or as soon thereafter as practicable, the Borrower shall take all steps necessary to cause the Project to be completed in a timely manner in accordance with all applicable DEQ requirements. Project construction must begin within five (5) years of the environmental determination required by OAR 340-054-0022(5)(c). Borrower shall take reasonable steps to begin using the Loan proceeds within two (2) years after execution of this Agreement, and if Borrower fails to do so, DEQ may terminate this Agreement.

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

(7) The Borrower shall undertake the Project, request disbursements under this Loan Agreement, and use the Loan proceeds in full compliance with all applicable laws and regulations of the State of Oregon, including but not limited to ORS Chapter 468 and Oregon Administrative Rules Sections 340-054-0005 to 340-054-0065, as they may be amended from time to time, and all applicable federal authorities and laws and regulations of the United States,

including but not limited to Title VI of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4, the federal cross-cutters listed at APPENDIX D, the equal employment opportunity provisions in APPENDIX F, and the regulations of the U.S. Environmental Protection Agency, all as they may be amended from time to time.

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

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

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

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

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

(3) Reporting Requirement. By December 31 of each year the Borrower shall provide DEQ with a report that demonstrates the Borrower's compliance with the requirements of this ARTICLE 5(B). If the audit report described in ARTICLE 5(F)

identifies the Net Operating Revenues and contains a calculation demonstrating the Borrower's satisfaction of the requirements of this ARTICLE 5(B), that audit will satisfy the requirements of this ARTICLE 5(B)(3).

(C) LOAN RESERVE REQUIREMENT; LOAN RESERVE ACCOUNT.

(1) Loan Reserve Requirement. The Loan reserve requirement equals 100% times one-half of the average annual debt service based on the final repayment schedule. Until the Final Loan Amount is calculated, the Loan reserve requirement is \$31,075. The Borrower shall deposit the Loan reserve requirement amount into the Loan Reserve Account no later than the date the first payment is due hereunder.

(2) Loan Reserve Account. The Borrower shall create a segregated Loan Reserve Account that shall be held in trust for the benefit of DEQ. The Borrower hereby grants to DEQ a security interest in and irrevocably pledges the Loan Reserve Account to pay the amounts due under this Loan Agreement. The funds in Loan Reserve Account so pledged and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent permitted by ORS 287A.310. The Borrower represents and warrants that the pledge of the Loan Reserve Account hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310. The Borrower shall use the funds in the Loan Reserve Account solely to pay amounts due hereunder until the principal, interest, fees, and any other amounts due hereunder have been fully paid.

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

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

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

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

(1) Financial Records. The Borrower shall keep proper and complete books of record and account and maintain all fiscal records related to this Agreement, the Project, and the Facility in accordance with generally accepted accounting principles, generally accepted government accounting standards, the requirements of the Governmental Accounting Standards Board, and state minimum standards for audits of municipal corporations. The Borrower must maintain separate Project accounts in accordance with generally accepted government accounting standards promulgated by the Governmental Accounting Standards Board. The Borrower will permit DEQ and the Oregon Secretary of State and their representatives to inspect its properties, and all work done, labor performed and materials furnished in and about the Project, and DEQ, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have access to the Borrower's fiscal records and other books, documents, papers, plans and writings that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts and take copies.

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

(3) Audit. Federal enabling legislation and applicable regulations require an audit of each CWSRF Loan. The Borrower agrees to provide to DEQ the following which DEQ agrees to accept as adequate to meet this federal audit requirement.

(a) As soon as possible, but in no event later than six (6) months following the Project Completion Date, a full and complete accounting of the Costs of the Project, including but not limited to documentation to support each cost element and a summary of the Costs of the Project and the sources of funding; and

(b) As soon as possible, but in no event later than nine (9) months after the end of each fiscal year, a copy of the Borrower's annual audit report, if requested by DEQ.

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

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

subrecipient(s), contractor(s), or subcontractor(s) of the Borrower responsible for the financial management of funds received under this Agreement.

(b) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If the Borrower did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the Loan.

(c) The Borrower shall save, protect and hold harmless DEQ from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Agreement. The Borrower acknowledges and agrees that any audit costs incurred by the Borrower as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between the Borrower and the State of Oregon.

(G) DBE GOOD FAITH EFFORT. Pursuant to the good faith efforts described in APPENDIX C, the Borrower shall make a good faith effort to promote fair share awards to Minority Business Enterprises (“MBE”), Women's Business Enterprises (“WBE”), and Small Businesses in Rural Areas (“SBRA”) on all contracts and subcontracts awarded as part of the Project. The Borrower agrees to include, in its contract(s) with its prime contractor(s), the following language, which must not be altered in any way:

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

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

(1) A prime contractor must pay its subcontractor(s) no more than 30 days from the prime contractor’s receipt of payment from the Borrower.

(2) The Borrower must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

(3) If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the Six Good Faith Efforts as described in 40 C.F.R. 33.301 if soliciting a replacement subcontractor.

(4) A prime contractor must employ the Six Good Faith Efforts even if the prime contractor has achieved its Fair Share Objectives under Subpart D of 40 C.F.R. Part 33.

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

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

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

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

(1) The Borrower represents and warrants to DEQ that, as of the date of this Loan Agreement, the Costs of the Project actually incurred by the Borrower for construction, do not exceed \$300,000.

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

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

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

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

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

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

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

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

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

(4) Inspections; Reports. The Borrower shall provide inspection reports during the construction of the Project as required by DEQ to ensure that the Project complies with approved plans and specifications. Qualified inspectors shall conduct these inspections under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate. DEQ or its representative(s) may enter property owned or controlled by the Borrower to conduct interim inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with the Loan Agreement, as appropriate.

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

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

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

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

(9) Project Initiation of Operations.

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

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

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

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

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

(E) AMERICAN IRON AND STEEL

(1) Requirement. All of the iron and steel products used in the Project must be produced in the United States if the Project is for the construction, alteration, maintenance, or repair of a "treatment works" as defined in the federal Water Pollution Control Act, 33 U.S.C. §1381 *et seq.*

(2) Definition. "Iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(3) Applicability. The requirement set forth in ARTICLE 6(E)(1) above applies if the Loan Agreement is fully executed on or after January 17, 2014 but before October 1, 2014, but does not apply if the engineering plans and specifications for the Project were approved by DEQ prior to January 17, 2014.

(4) Waiver. The requirement set forth in ARTICLE 6(E)(1) above does not apply if : (a) application would be inconsistent with the public interest; (2) iron and steel products that are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent. Borrower may apply for a waiver of the requirement set forth in ARTICLE 6(E)(1) above by sending a waiver request directly to EPA with a copy to DEQ or by sending its waiver request to DEQ who will then forward it on to EPA.

(5) Subject to Change. Guidance is pending from EPA on the American Iron and Steel requirement set forth in this ARTICLE (6)(E), and so the current language in this ARTICLE (6)(E) is subject to change by DEQ.

F. Super Circular Requirements. 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B. Without limiting the generality of the foregoing, the Borrower expressly agrees to comply and require all subcontractors or sub recipients to comply with the following:

(1) **Property Standards.** The Borrower shall comply with 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.

(2) **Procurement Standards.** When procuring goods or services (including professional consulting services), the Borrower shall follow applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or follow 2 CFR §§ 200.318 General procurement standards through 200.326 Contract provisions, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.

(3) **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, are hereby incorporated into this Agreement and are obligations of the Borrower, when applicable. The Borrower shall include such contract provisions in its contracts with non-Federal entities.

ARTICLE 7: DISCLAIMERS BY DEQ; LIMITATION OF DEQ'S LIABILITY

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

any inspection or disbursement made by DEQ. Any inspection done by DEQ shall be for its sole benefit.

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

(C) NONLIABILITY OF STATE.

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

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

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

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

ARTICLE 8: DEFAULT AND REMEDIES

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

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

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

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

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

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

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

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

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

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

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

(4) Set and collect utility rates and charges;

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

(6) Direct the State Treasurer to withhold any amounts otherwise due to the Borrower from the State of Oregon and, to the extent permitted by law, direct that such funds be applied to the amounts due DEQ under this Loan Agreement and be deposited into the SRF; and

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

ARTICLE 9: DEFINITIONS

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

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

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

(1) Cost of labor and materials and all costs the Borrower is required to pay under the terms of any contract for the design, acquisition, construction or installation of the Project;

(2) Engineering fees for the design and construction of the Project.

(3) The costs of surety bonds and insurance of all kinds that may be required or necessary during the course of completion of the Project;

(4) The legal, financing and administrative costs of obtaining the Loan and completing the Project; and

(5) Any other costs approved in writing by DEQ.

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

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

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

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

(H) “**FINAL LOAN AMOUNT**” means the total of all Loan proceeds disbursed to the Borrower under the Loan Agreement, determined on the date on which the Borrower indicates that no further Loan funds will be requested, all eligible expenditures have been reimbursed from the Loan proceeds, or all Loan proceeds have been disbursed hereunder, whichever occurs first.

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

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

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

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

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

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

(O) “**LOBBYING**” means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above.

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

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

(R) “**OPERATING EXPENSES**” means all direct and indirect expenses incurred for operation, maintenance and repair of the Facility, including but is not limited to administrative expenses, legal, financial and accounting expenses, insurance premiums, claims (to the extent that monies are not available from insurance proceeds), taxes, engineering expenses relating to operation and maintenance, payments and reserves for pension, retirement, health, hospitalization, and sick

leave benefits, and any other similar expenses to be paid to the extent properly and directly attributable to operations of the Facility. Operating expenses include an appropriate amount for reserves for repair and replacement of the Facility based on the expected life of the collection, treatment and disposal facilities.

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

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

(U) “**REPAYMENT PERIOD**” means the repayment period ending on the date specified in ARTICLE 1(H) which date shall not in any event be later than twenty (20) years after the Completion Date.

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

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

ARTICLE 10: MISCELLANEOUS

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

Clean Water State Revolving Fund Loan Program
Water Quality Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-1390
Fax (503) 229-6037

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

(B) WAIVERS AND RESERVATION OF RIGHTS.

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

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

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

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

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

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

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

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

(I) VALIDITY AND SEVERABILITY; SURVIVAL. If any part, term, or provision of this Loan Agreement or of any other Loan document shall be held by a court of competent jurisdiction

to be void, voidable, or unenforceable by either party, the validity of the remaining portions, terms and provisions shall not be affected, and all such remaining portions, terms and provisions shall remain in full force and effect. Any provision of this Agreement which by its nature or terms is intended to survive termination, including but not limited to ARTICLE 5(E), shall survive termination of this Agreement.

(J) NO CONSTRUCTION AGAINST DRAFTER. Both parties acknowledge that they are each represented by and have sought the advice of counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

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

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

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

(1) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

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

(3) Notwithstanding ARTICLE 10(M)(2), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This ARTICLE 10(M)(3) applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This ARTICLE 10(M)(3) is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

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

(O) ENTIRE AGREEMENT; AMENDMENTS. This Loan Agreement, including all appendices and attachments that are by this reference incorporated herein, constitutes the entire agreement between the Borrower and DEQ on the subject matter hereof, and it shall be binding on the parties thereto when executed by all the parties and when all approvals required to be obtained

by DEQ have been obtained. This Loan Agreement, including all related Loan documents and instruments, may not be amended, changed, modified, or altered without the written consent of the parties.

CITY OF NEWPORT

By: _____
Authorized Officer

Date

Printed Name: _____

Title: _____

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

By: _____
Lydia Emer, Operations Division Administrator

Date

APPENDIX A: PRELIMINARY REPAYMENT SCHEDULE

Due Date	Pmt#	----- PAYMENT -----				Principal Balance
		Principal	Interest	Fees	Total	
						1,115,000
6/1/2019	1	0	12,972	0	12,972	1,115,000
12/1/2019	2	25,964	5,575	5,575	37,114	1,089,036
6/1/2020	3	26,094	5,445	0	31,539	1,062,942
12/1/2020	4	26,224	5,315	5,315	36,854	1,036,718
6/1/2021	5	26,355	5,184	0	31,539	1,010,363
12/1/2021	6	26,487	5,052	5,052	36,591	983,876
6/1/2022	7	26,620	4,919	0	31,539	957,256
12/1/2022	8	26,753	4,786	4,786	36,325	930,503
6/1/2023	9	26,886	4,653	0	31,539	903,617
12/1/2023	10	27,021	4,518	4,518	36,057	876,596
6/1/2024	11	27,156	4,383	0	31,539	849,440
12/1/2024	12	27,292	4,247	4,247	35,786	822,148
6/1/2025	13	27,428	4,111	0	31,539	794,720
12/1/2025	14	27,565	3,974	3,974	35,513	767,155
6/1/2026	15	27,703	3,836	0	31,539	739,452
12/1/2026	16	27,842	3,697	3,697	35,236	711,610
6/1/2027	17	27,981	3,558	0	31,539	683,629
12/1/2027	18	28,121	3,418	3,418	34,957	655,508
6/1/2028	19	28,261	3,278	0	31,539	627,247
12/1/2028	20	28,403	3,136	3,136	34,675	598,844
6/1/2029	21	28,545	2,994	0	31,539	570,299
12/1/2029	22	28,688	2,851	2,851	34,390	541,611
6/1/2030	23	28,831	2,708	0	31,539	512,780
12/1/2030	24	28,975	2,564	2,564	34,103	483,805
6/1/2031	25	29,120	2,419	0	31,539	454,685
12/1/2031	26	29,266	2,273	2,273	33,812	425,419
6/1/2032	27	29,412	2,127	0	31,539	396,007
12/1/2032	28	29,559	1,980	1,980	33,519	366,448
6/1/2033	29	29,707	1,832	0	31,539	336,741
12/1/2033	30	29,855	1,684	1,684	33,223	306,886
6/1/2034	31	30,005	1,534	0	31,539	276,881
12/1/2034	32	30,155	1,384	1,384	32,923	246,726
6/1/2035	33	30,305	1,234	0	31,539	216,421
12/1/2035	34	30,457	1,082	1,082	32,621	185,964
6/1/2036	35	30,609	930	0	31,539	155,355
12/1/2036	36	30,762	777	777	32,316	124,593
6/1/2037	37	30,916	623	0	31,539	93,677
12/1/2037	38	31,071	468	468	32,007	62,606
6/1/2038	39	31,226	313	0	31,539	31,380
12/1/2038	40	31,380	157	157	31,694	0
TOTALS		1,115,000	127,991	58,938	1,301,929	

APPENDIX B: ESTIMATED CWSRF LOAN DISBURSEMENT SCHEDULE

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

Disb. Number	Disb. Amount	Disb. Date
1	111,500	12/31/2015
2	111,500	7/1/2016
3	111,500	9/1/2016
4	111,500	11/1/2016
5	111,500	1/1/2017
6	111,500	3/1/2017
7	111,500	5/1/2017
8	111,500	7/1/2017
9	111,500	9/1/2017
10	111,500	11/1/2017

APPENDIX C: DBE GOOD FAITH EFFORTS

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

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

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

Additional resources available to recipients and contractors include the following:

EPA Office of Small and Disadvantaged Business Utilization:

Phone: 206 – 553 – 2931

Web Site: www.epa.gov/osdbu

Oregon Office of Minority, Women and Emerging Small Business

350 Winter Street N.E., Room 300

Salem, OR 97301-3878

Phone: 503 – 947 – 7922

Web Site: www.cbs.state.or.us/omwesb

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

ENVIRONMENTAL LEGISLATION:

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

ECONOMIC LEGISLATION:

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

SOCIAL LEGISLATION:

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

MISCELLANEOUS AUTHORITY:

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

APPENDIX E: DAVIS-BACON PROVISIONS

Part 1

(1) Minimum wages.

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

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

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

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

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

(3) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees--

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

4. Contract Provision for Contracts in Excess of \$100,000.

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

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed

on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

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

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

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Oregon Department of Environmental Quality and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

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

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

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

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

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

APPENDIX F

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

Signed _____

Title _____

Date _____

Recipient _____

APPENDIX H
Information required by 2 CFR § 200.331(a)(1)

Federal Award Identification:

- (i) Subrecipient name (which must match registered name in DUNS): _____
- (ii) Subrecipient's DUNS number: _____
- (iii) Federal Award Identification Number (FAIN): _____
- (iv) Federal Award Date: _____
- (v) Sub-award Period of Performance Start and End Date: From _____ to _____
- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$ _____
- (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement: \$ _____
- (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$ _____
- (ix) Federal award project description: _____
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the pass-through entity:
 - (a) Name of Federal awarding agency: _____
 - (b) Name of pass-through entity: Oregon Department of Environmental Quality

 - (c) Contact information for awarding official of the pass-through entity:

- (xi) CFDA Number and Name: _____
Amount: _____
- (xii) Is Award R&D? _____
- (xiii) Indirect cost rate for the Federal award: ____%

**CLEAN WATER STATE REVOLVING FUND
LOAN AGREEMENT
No. R68935**

BETWEEN

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

AND

CITY OF NEWPORT

DOJ Doc. #
4133190
May 2013

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THIS LOAN AGREEMENT (“Agreement”) is made and entered into as of the date it is fully executed by both parties (and in the case of the State, approved by the Attorney General's Office, if required) and is by and between the **State of Oregon, acting by and through its Department of Environmental Quality (“DEQ”)**, and the **Borrower** (as defined below). Unless the context requires otherwise, capitalized terms not defined below shall have the meanings assigned to them by ARTICLE 9 of this Loan Agreement. The reference number for the Loan made pursuant to this Loan Agreement is Loan No. R68935.

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

ARTICLE 1: THE LOAN - SPECIFIC TERMS

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

(A) BORROWER: CITY OF NEWPORT.

(B) BORROWER'S ADDRESS: 169 SW COAST HIGHWAY
NEWPORT, OREGON 97365
Fax 541-265-3301

(C) LOAN AMOUNT: \$4,128,454

(D) TYPE AND PURPOSE OF LOAN. The Loan is a "Revenue Secured Loan" made by DEQ pursuant to OAR Section 340-054-0065(2) for the purpose of financing the Project.

(E) PROJECT TITLE: Sponsorship option, Bay-Moore Basin, Sam Moore Creek, Big Creek Reservoirs.

(F) DESCRIPTION OF THE PROJECT: Bay-Moore Basin Stormwater sewer, Sam Moore Creek bioretention facility and Big Creek reservoirs fish passage mitigation.

(G) INTEREST RATE: One and 00/100 percent (1.00%) per annum; provided however that if the Project or any part thereof is not completed in accordance with the terms of this Agreement, the interest rate shall be Two and 00/100 percent (2.00%) per annum, retroactive to the date of this Agreement. Calculation of interest is also discussed in ARTICLE 2(E) and in ARTICLE 2(F)(4) of this Agreement.

(H) REPAYMENT PERIOD: Ending no later than (a) twenty (20) years after the Completion Date or (b) twenty (20) years after the estimated Completion Date set forth in ARTICLE 3(A)(10), whichever date is earlier.

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

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

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

ARTICLE 1: GENERAL LOAN PROVISIONS

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

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

(C) DISBURSEMENT OF LOAN PROCEEDS.

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

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

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

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

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

(E) INTEREST. Interest will accrue at the rate specified in ARTICLE 1(G) from the date that a disbursement hereunder is mailed or delivered to the Borrower or deposited into an account of the Borrower. Interest will accrue using a 365/366 day year and actual days elapsed until the Final Loan Amount is determined and the final repayment schedule is prepared and thereafter on a 360-day year basis and actual days elapsed.

(F) LOAN REPAYMENT.

(1) Preliminary Repayment Schedule; Interim Payments. The attached APPENDIX A is a preliminary repayment schedule based on the estimated date of the first

disbursement hereunder and Loan Amount. Until the final repayment schedule is effective, the Borrower shall make the payments set forth in the preliminary repayment schedule.

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

(3) Crediting of Scheduled Payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received. Scheduled payments will be applied first to fees due, if any, and then to interest, according to the applicable repayment schedule, and then to principal.

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

(5) Final Payment. The Outstanding Loan Amount, all accrued and unpaid interest, and all unpaid fees and charges due hereunder are due and payable no later than twenty (20) years after the Completion Date.

(G) PREPAYMENT.

(1) Optional Prepayment. The Borrower may prepay any amount owed on this Loan without penalty on any business day upon 24 hours prior written notice. Any prepayment made hereunder will be applied in accordance with ARTICLE 2(F)(4).

(2) Refinancing of Loan by the Borrower. If the Borrower refinances the portion of the Project financed by this Loan or obtains an additional grant or loan that is intended to finance the portion of the Project financed by this Loan, it will prepay the portion of the Loan being refinanced by the additional grant or loan.

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

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

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

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

ARTICLE 3: GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

REPRESENTATIONS AND WARRANTIES OF THE BORROWER. THE BORROWER REPRESENTS AND WARRANTS TO DEQ THAT:

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

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

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

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

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

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

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

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

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

(10) The estimated Completion Date of the Project is March 31, 2016. The Borrower agrees to complete the Project by the estimated Completion Date.

(11) The estimated total Costs of the Project are \$4,128,454.

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

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

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

ARTICLE 4: CONDITIONS TO LOAN

(A) CONDITIONS TO CLOSING. DEQ's obligations hereunder are subject to the condition that on or prior to January 31, 2016, the Borrower will duly execute and deliver to DEQ the following items, each in form and substance satisfactory to DEQ and its counsel:

- (1) this Agreement duly executed and delivered by an authorized officer of the Borrower;
- (2) a copy of the ordinance, order or resolution of the governing body of the

Borrower authorizing the execution and delivery of this Agreement, certified by an authorized officer of the Borrower;

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

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

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

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

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

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

(5) Borrower will deliver a duly executed certification that it completed its Fiscal Sustainability Plan on the date specified in the certificate; or if completion of the Fiscal Sustainability Plan is part of the Project, the Borrower agrees to deliver its certification regarding completion prior to final disbursement of the Loan, and

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

ARTICLE 4(A)(5) shall survive closing of this Loan.

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

(1) An Event of Default or an event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both has occurred and is continuing;

(2) Any of the Borrower's representations and warranties in this Agreement is untrue or incorrect on the date of disbursement with the same effect as if made on such date;

(3) The Borrower does not submit a disbursement request to DEQ that complies with the requirements of ARTICLE 2(C);

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

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

ARTICLE 5: COVENANTS OF BORROWER

(A) GENERAL COVENANTS OF THE BORROWER. UNTIL THE LOAN IS PAID IN FULL, THE BORROWER COVENANTS WITH DEQ THAT:

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

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

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

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

(5) Concurrent with the execution and delivery of this Loan Agreement, or as soon thereafter as practicable, the Borrower shall take all steps necessary to cause the Project to be completed in a timely manner in accordance with all applicable DEQ requirements. Project construction must begin within five (5) years of the environmental determination required by OAR 340-054-0022(5)(c). Borrower shall take reasonable steps to begin using the Loan proceeds within two (2) years after execution of this Agreement, and if Borrower fails to do so, DEQ may terminate this Agreement.

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

(7) The Borrower shall undertake the Project, request disbursements under this Loan Agreement, and use the Loan proceeds in full compliance with all applicable laws and regulations of the State of Oregon, including but not limited to ORS Chapter 468 and Oregon Administrative Rules Sections 340-054-0005 to 340-054-0065, as they may be amended from time to time, and all applicable federal authorities and laws and regulations of the United States,

including but not limited to Title VI of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4, the federal cross-cutters listed at APPENDIX D, the equal employment opportunity provisions in APPENDIX F, and the regulations of the U.S. Environmental Protection Agency, all as they may be amended from time to time.

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

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

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

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

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

(3) Reporting Requirement. By December 31 of each year the Borrower shall provide DEQ with a report that demonstrates the Borrower's compliance with the requirements of this ARTICLE 5(B). If the audit report described in ARTICLE 5(F)

identifies the Net Operating Revenues and contains a calculation demonstrating the Borrower's satisfaction of the requirements of this ARTICLE 5(B), that audit will satisfy the requirements of this ARTICLE 5(B)(3).

(C) LOAN RESERVE REQUIREMENT; LOAN RESERVE ACCOUNT.

(1) Loan Reserve Requirement. The Loan reserve requirement equals 100% times one-half of the average annual debt service based on the final repayment schedule. Until the Final Loan Amount is calculated, the Loan reserve requirement is \$115,895. The Borrower shall deposit the Loan reserve requirement amount into the Loan Reserve Account no later than the date the first payment is due hereunder.

(2) Loan Reserve Account. The Borrower shall create a segregated Loan Reserve Account that shall be held in trust for the benefit of DEQ. The Borrower hereby grants to DEQ a security interest in and irrevocably pledges the Loan Reserve Account to pay the amounts due under this Loan Agreement. The funds in Loan Reserve Account so pledged and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent permitted by ORS 287A.310. The Borrower represents and warrants that the pledge of the Loan Reserve Account hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310. The Borrower shall use the funds in the Loan Reserve Account solely to pay amounts due hereunder until the principal, interest, fees, and any other amounts due hereunder have been fully paid.

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

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

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

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

(1) Financial Records. The Borrower shall keep proper and complete books of record and account and maintain all fiscal records related to this Agreement, the Project, and the Facility in accordance with generally accepted accounting principles, generally accepted government accounting standards, the requirements of the Governmental Accounting Standards Board, and state minimum standards for audits of municipal corporations. The Borrower must maintain separate Project accounts in accordance with generally accepted government accounting standards promulgated by the Governmental Accounting Standards Board. The Borrower will permit DEQ and the Oregon Secretary of State and their representatives to inspect its properties, and all work done, labor performed and materials furnished in and about the Project, and DEQ, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have access to the Borrower's fiscal records and other books, documents, papers, plans and writings that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts and take copies.

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

(3) Audit. Federal enabling legislation and applicable regulations require an audit of each CWSRF Loan. The Borrower agrees to provide to DEQ the following which DEQ agrees to accept as adequate to meet this federal audit requirement.

(a) As soon as possible, but in no event later than six (6) months following the Project Completion Date, a full and complete accounting of the Costs of the Project, including but not limited to documentation to support each cost element and a summary of the Costs of the Project and the sources of funding; and

(b) As soon as possible, but in no event later than nine (9) months after the end of each fiscal year, a copy of the Borrower's annual audit report, if requested by DEQ.

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

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

subrecipient(s), contractor(s), or subcontractor(s) of the Borrower responsible for the financial management of funds received under this Agreement.

(b) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If the Borrower did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the Loan.

(c) The Borrower shall save, protect and hold harmless DEQ from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Agreement. The Borrower acknowledges and agrees that any audit costs incurred by the Borrower as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between the Borrower and the State of Oregon.

(G) DBE GOOD FAITH EFFORT. Pursuant to the good faith efforts described in APPENDIX C, the Borrower shall make a good faith effort to promote fair share awards to Minority Business Enterprises (“MBE”), Women's Business Enterprises (“WBE”), and Small Businesses in Rural Areas (“SBRA”) on all contracts and subcontracts awarded as part of the Project. The Borrower agrees to include, in its contract(s) with its prime contractor(s), the following language, which must not be altered in any way:

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

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

(1) A prime contractor must pay its subcontractor(s) no more than 30 days from the prime contractor’s receipt of payment from the Borrower.

(2) The Borrower must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

(3) If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the Six Good Faith Efforts as described in 40 C.F.R. 33.301 if soliciting a replacement subcontractor.

(4) A prime contractor must employ the Six Good Faith Efforts even if the prime contractor has achieved its Fair Share Objectives under Subpart D of 40 C.F.R. Part 33.

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

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

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

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

(1) The Borrower represents and warrants to DEQ that, as of the date of this Loan Agreement, the Costs of the Project actually incurred by the Borrower for construction, do not exceed \$400,000.

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

(B) CONDITION TO DISBURSEMENTS. DEQ'S OBLIGATION TO MAKE DISBURSEMENTS HEREUNDER IS FURTHER CONDITIONED ON THE FOLLOWING:

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

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

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

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

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

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

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

(4) Inspections; Reports. The Borrower shall provide inspection reports during the construction of the Project as required by DEQ to ensure that the Project complies with approved plans and specifications. Qualified inspectors shall conduct these inspections under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate. DEQ or its representative(s) may enter property owned or controlled by the Borrower to conduct interim inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with the Loan Agreement, as appropriate.

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

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

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

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

(9) Project Initiation of Operations.

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

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

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

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

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

(E) RESERVED

ARTICLE 7: DISCLAIMERS BY DEQ; LIMITATION OF DEQ'S LIABILITY

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

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

(C) NONLIABILITY OF STATE.

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

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

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

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

ARTICLE 8: DEFAULT AND REMEDIES

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

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

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

(3) The Borrower becomes insolvent or admits in writing an inability to pay its debts as they mature or applies for, consents to, or acquiesces in the appointment of a trustee

or receiver for the Borrower or a substantial part of its property; or in the absence of such application, consent, or acquiescence, a trustee or receiver is appointed for the Borrower or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement or moratorium or any dissolution or liquidation proceeding is instituted by or against the Borrower and, if instituted against the Borrower, is consented to or acquiesced in by the Borrower or is not dismissed within twenty (20) days;

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

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

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

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

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

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

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

(4) Set and collect utility rates and charges;

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

(6) Direct the State Treasurer to withhold any amounts otherwise due to the Borrower from the State of Oregon and, to the extent permitted by law, direct that such funds be applied to the amounts due DEQ under this Loan Agreement and be deposited into the SRF; and

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

ARTICLE 9: DEFINITIONS

“BORROWER” MEANS THE PUBLIC AGENCY (AS DEFINED IN ORS 468.423(2)) SHOWN AS THE **“BORROWER”** IN ARTICLE 1(A) OF THIS AGREEMENT.

“COMPLETION DATE” MEANS THE DATE ON WHICH THE PROJECT IS COMPLETED. IF THE PROJECT IS A PLANNING PROJECT, THE COMPLETION DATE IS THE DATE ON WHICH DEQ ACCEPTS THE PLANNING PROJECT. IF THE PROJECT IS A DESIGN PROJECT, THE COMPLETION DATE IS THE DATE ON WHICH THE DESIGN PROJECT IS READY FOR THE CONTRACTOR BID PROCESS. IF THE PROJECT IS A CONSTRUCTION PROJECT, THE COMPLETION DATE IS THE DATE ON WHICH THE CONSTRUCTION PROJECT IS SUBSTANTIALLY COMPLETE AND READY FOR INITIATION OF OPERATION.

“COSTS OF THE PROJECT” MEANS EXPENDITURES APPROVED BY DEQ THAT ARE NECESSARY TO CONSTRUCT THE PROJECT IN COMPLIANCE WITH DEQ’S REQUIREMENTS AND MAY INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING ITEMS:

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

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

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

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

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

(H) “FINAL LOAN AMOUNT” means the total of all Loan proceeds disbursed to the Borrower under the Loan Agreement, determined on the date on which the Borrower indicates that no further Loan funds will be requested, all eligible expenditures have been reimbursed

from the Loan proceeds, or all Loan proceeds have been disbursed hereunder, whichever occurs first.

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

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

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

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

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

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

(O) **“LOBBYING”** means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above.

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

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

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

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

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

(U) “**REPAYMENT PERIOD**” means the repayment period ending on the date specified in ARTICLE 1(H) which date shall not in any event be later than twenty (20) years after the Completion Date.

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

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

ARTICLE 10: MISCELLANEOUS

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

Clean Water State Revolving Fund Loan Program
Water Quality Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-1390
Fax (503) 229-6037

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

WAIVERS AND RESERVATION OF RIGHTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

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

(3) Notwithstanding ARTICLE 10(M)(2), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This ARTICLE 10(M)(3) applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This ARTICLE 10(M)(3) is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

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

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

CITY OF NEWPORT

By: _____
Authorized Officer

Date

Printed Name: _____

Title: _____

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

By: _____
Lydia Emer, Operations Division Administrator

Date

APPENDIX A: PRELIMINARY REPAYMENT SCHEDULE

Due Date	Pmt#	----- PAYMENT -----				Principal Balance
		Principal	Interest	Fees	Total	
						4,158,454
6/1/2019	1	0	48,379	0	48,379	4,158,454
12/1/2019	2	96,834	20,792	20,792	138,418	4,061,620
6/1/2020	3	97,318	20,308	0	117,626	3,964,302
12/1/2020	4	97,804	19,822	19,822	137,448	3,866,498
6/1/2021	5	98,294	19,332	0	117,626	3,768,204
12/1/2021	6	98,785	18,841	18,841	136,467	3,669,419
6/1/2022	7	99,279	18,347	0	117,626	3,570,140
12/1/2022	8	99,775	17,851	17,851	135,477	3,470,365
6/1/2023	9	100,274	17,352	0	117,626	3,370,091
12/1/2023	10	100,776	16,850	16,850	134,476	3,269,315
6/1/2024	11	101,279	16,347	0	117,626	3,168,036
12/1/2024	12	101,786	15,840	15,840	133,466	3,066,250
6/1/2025	13	102,295	15,331	0	117,626	2,963,955
12/1/2025	14	102,806	14,820	14,820	132,446	2,861,149
6/1/2026	15	103,320	14,306	0	117,626	2,757,829
12/1/2026	16	103,837	13,789	13,789	131,415	2,653,992
6/1/2027	17	104,356	13,270	0	117,626	2,549,636
12/1/2027	18	104,878	12,748	12,748	130,374	2,444,758
6/1/2028	19	105,402	12,224	0	117,626	2,339,356
12/1/2028	20	105,929	11,697	11,697	129,323	2,233,427
6/1/2029	21	106,459	11,167	0	117,626	2,126,968
12/1/2029	22	106,991	10,635	10,635	128,261	2,019,977
6/1/2030	23	107,526	10,100	0	117,626	1,912,451
12/1/2030	24	108,064	9,562	9,562	127,188	1,804,387
6/1/2031	25	108,604	9,022	0	117,626	1,695,783
12/1/2031	26	109,147	8,479	8,479	126,105	1,586,636
6/1/2032	27	109,693	7,933	0	117,626	1,476,943
12/1/2032	28	110,241	7,385	7,385	125,011	1,366,702
6/1/2033	29	110,792	6,834	0	117,626	1,255,910
12/1/2033	30	111,346	6,280	6,280	123,906	1,144,564
6/1/2034	31	111,903	5,723	0	117,626	1,032,661
12/1/2034	32	112,463	5,163	5,163	122,789	920,198
6/1/2035	33	113,025	4,601	0	117,626	807,173
12/1/2035	34	113,590	4,036	4,036	121,662	693,583
6/1/2036	35	114,158	3,468	0	117,626	579,425
12/1/2036	36	114,729	2,897	2,897	120,523	464,696
6/1/2037	37	115,303	2,323	0	117,626	349,393
12/1/2037	38	115,879	1,747	1,747	119,373	233,514
6/1/2038	39	116,458	1,168	0	117,626	117,056
12/1/2038	40	117,056	585	585	118,226	0

APPENDIX B: ESTIMATED CWSRF LOAN DISBURSEMENT SCHEDULE

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

Disb. Number	Disb. Amount	Disb. Date
1	890,680	8/1/2014
2	890,680	9/5/2014
3	890,680	10/10/2014
4	890,680	11/14/2014
5	890,680	12/19/2014
6	890,680	1/23/2015
7	890,680	2/27/2015
8	890,680	4/3/2015
9	890,680	5/8/2015
10	890,680	6/12/2015

APPENDIX C: DBE GOOD FAITH EFFORTS

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

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

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

Additional resources available to recipients and contractors include the following:

EPA Office of Small and Disadvantaged Business Utilization:

Phone: 206 – 553 – 2931

Web Site: www.epa.gov/osdbu

Oregon Office of Minority, Women and Emerging Small Business

350 Winter Street N.E., Room 300

Salem, OR 97301-3878

Phone: 503 – 947 – 7922

Web Site: www.cbs.state.or.us/omwesb

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

ENVIRONMENTAL LEGISLATION:

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

ECONOMIC LEGISLATION:

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

SOCIAL LEGISLATION:

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

MISCELLANEOUS AUTHORITY:

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

APPENDIX E: DAVIS-BACON PROVISIONS

Part 1

(1) Minimum wages.

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

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

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

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

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

(3) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees--

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

4. Contract Provision for Contracts in Excess of \$100,000.

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

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed

on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

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

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

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Oregon Department of Environmental Quality and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

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

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

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

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

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

APPENDIX F

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

Signed _____

Title _____

Date _____

Recipient _____

APPENDIX H
Information required by 2 CFR § 200.331(a)(1)

Federal Award Identification:

- (i) Subrecipient name (which must match registered name in DUNS): _____
- (ii) Subrecipient's DUNS number: _____
- (iii) Federal Award Identification Number (FAIN): _____
- (iv) Federal Award Date: _____
- (v) Sub-award Period of Performance Start and End Date: From _____ to _____
- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$ _____
- (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement: \$ _____
- (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$ _____
- (ix) Federal award project description: _____
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the pass-through entity:
 - (a) Name of Federal awarding agency: _____
 - (b) Name of pass-through entity: Oregon Department of Environmental Quality

 - (c) Contact information for awarding official of the pass-through entity:

- (xi) CFDA Number and Name: _____
Amount: _____
- (xii) Is Award R&D? _____
- (xiii) Indirect cost rate for the Federal award: ____%



Agenda #: 7.D.
Meeting Date: 2-1-2016

Agenda Item:

Termination of Dark Fiber Lease with Lincoln County

Background:

On November 15, 2004, the City entered into a fiber optic facilities lease agreement with Lincoln County for fiber optics running to the County's Health Department offices in South Beach. With the closure of these offices, the County no longer needs this connection. Please note that the agreement provides for a six month of notice for termination of the agreement. It is my recommendation to the Council this be waived for the County in this particular event.

Recommendation:

I recommend the City Council consider the following motion:

I move to approve the termination of the Fiber Optics Facilities Lease Agreement with Lincoln County for the Dark Fiber Lease, which runs from the former location of the Lincoln County Communications Agency (LinCom) at 815 SW Lee Street to fiber vault FHH15 near 4822 S. Coast Highway as requested by Lincoln County, and waiving the six month notification requirements of the lease.

Fiscal Effects:

These payments of \$338.79 will cease with the termination of the lease.

Alternatives:

Do not waive the six month notification requirements or as suggested by the City Council.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel".

Spencer R. Nebel
City Manager



**STAFF REPORT
CITY COUNCIL AGENDA ITEM**

Prepared by: Peggy Hawker, City Recorder/Special Projects Director

Title: Termination of Dark Fiber Lease with Lincoln County

Recommended Motion:

I move to approve the termination of the fiber optic facilities lease agreement with Lincoln County for the dark fiber lease which runs from the former location of the Lincoln County Communications Agency (LINCOM) (815 SW Lee Street) to Fiber Vault FHH 15 near 4822 South Coast Highway, as requested by Lincoln County.

Background Information:__

On November 15, 2004, former City Manager Sam Sasaki entered into a fiber optic facilities lease agreement with Lincoln County for fiber optics running to the County's Health Department offices in South Beach.

Lincoln County has recently consolidated its Health Department offices at its Nye Street location and no longer has a need for this lease. Therefore, the County has requested cancellation of the dark fiber lease. Since this is a lease of city property, it requires Council action.

Fiscal Notes:

Lease payments to the city of \$338.79 monthly will end if the request to terminate the lease is approved.

Alternatives: None.

Attachments: Letter from Lincoln County Requesting Cancellation of Lease
Copy of Lease dated November 15, 2004



COUNTY OF LINCOLN

Todd Richmond
Director
Information Technology Department

225 West Olive, Rm. 101
Newport, OR 97365
(541) 265-0131
trichmond@co.lincoln.or.us

To Whom It May Concern:

Lincoln County requests the cancelation of the dark fiber lease referenced in the attached agreement. As per the agreements in the requirement please cancel the lease and our access to the fiber 180 days from receipt of this request.

All questions can be directed to the Lincoln County Information Technology Department.

IT Director

County Council
Counsel

APPROVED BY LINCOLN COUNTY
ORDER NO. 12-04-345

FIBER OPTIC FACILITIES LEASE AGREEMENT

THIS AGREEMENT, made and entered into as of the 1st day of December, 2004, by and between **City of Newport**, a political subdivision of the State of Oregon, hereafter referred to as "City", and **Lincoln County**, a political subdivision of the State of Oregon, hereinafter referred to as "County,"

WITNESSETH:

WHEREAS, City is the owner of a fiber optic cable containing multiple fibers, connecting the City owned fiber vault located on the west side of Highway 101 labeled FHH 15 near 4822 S Coast Highway to Lincoln County Communications Agency, 815 SW Lee Street, Newport, Oregon, along a route generally outlined in the schematic drawing marked Exhibit "A", attached, and by this reference incorporated herein; and

WHEREAS, County desires to utilize, and City is willing to lease to the County, one pair of fibers located within the above-described cable, and allow the County use of the fiber pair; and also to install a fiber optic splice enclosure in the aforementioned vault by means of which County can utilize the fiber, and

WHEREAS, City agrees to lease to County, and County agrees to lease from City, one pair of fibers (two fibers),

NOW, THEREFORE, each in consideration of the other and of the mutual covenants expressed herein, the parties agree as follows:

Grant of Use City grants to County, through the term of this agreement, the right to use exclusively one fiber optic pair along the route shown on the schematic drawings attached to this agreement and marked as Exhibit "A".

Points of Access City hereby gives access to County to use the facilities at the points where the City controls access as necessary or convenient to fully utilize the facilities. County will have all necessary access to the facilities in order to fully utilize them as stated in this agreement.

Lease Rate As consideration for the use of said facilities, County shall pay to City, annually (on a fiscal year basis) and in advance, a fee equal to \$338.79 per month as determined by the fee schedule marked as "Exhibit B", and by this reference incorporated herein. If the first year does not commence on July 1, or if the last year does not end on June 30, the fee shall be prorated for the period of such partial year.

Lease Term The term of this lease shall be for a period of five years, commencing December 1, 2004 and ending June 30, 2009, and thereafter this Lease shall be renewed from year to year until and unless terminated, but subject to the termination provisions below. The terms of the Lease shall be subject to review and good faith renegotiation after five years, and every other year thereafter, upon the written request of either party. Notwithstanding any other provision herein, either party may terminate this Lease, during the initial term or any renewal, upon not less than 180

days written notice to the other. This Lease also shall terminate in the event the Facilities shall be destroyed and not replaced, or otherwise shall cease to exist, if no replacement or similar alternate facilities shall be planned or available. Such termination shall likewise apply if, in its sole discretion, City elects to remove or abandon the Facilities, but in such event City shall endeavor to provide reasonable notice to County. In the case of any Lease termination, there shall be no further obligation by City to provide, or County to pay for, fiber access.

Default In the event of a default by either party in performance of any obligation under this agreement, both parties shall have such rights and remedies as are available at law, in equity, or under this agreement, and the following provisions of this section shall not be deemed a limitation or an exclusion of such rights and remedies except as may be expressly provided. However, in such event, either party may cancel this agreement, but only as herein provided. If either party shall default in a material element of performance of any obligation under this agreement, and the other party fails to cure or commence to cure such default within thirty (30) days after written notice of default, specifying the nature of the default and the steps required to cure the default. However, if such default cannot reasonably be cured within such period, it shall be sufficient if the defaulting party shall commence to cure the default within such period and prosecute the cure diligently to completion..

Remedies upon Default - Arbitration If any dispute arises between the parties, either party may request arbitration and said matter shall be submitted to arbitration as provided in ORS 36.300 et. Seq. and any amendments thereto. Said arbitration shall be binding and said arbitrator shall only have the authority to award compensatory damages, and shall not have authority to award punitive damages, other non-compensatory damages or any other form of relief; the parties hereby waive all right to and claims for relief other than compensatory damages, as so specified herein. The award of the arbitrator shall have the effect provided under Oregon law. The arbitration shall take place in Lincoln City. Costs of the arbitration shall be shared equally by the parties but each party shall pay its own attorney's fees in connection with said arbitration.

Service Obligation City warrants that it will maintain its fiber optic cable facilities leased to County in accordance with reasonable and prudent practices, and replace any faulty fibers with good fibers, of a quality as good as or better than those now in place.

Connections At its own expense, County shall perform the physical work to connect its fiber terminal equipment to the fiber pair leased from City.

Mutual Service Obligations Each party agrees to exercise reasonable and prudent care of the other's property and to not in any manner damage or destroy such. Each party shall cooperate with each other and provide reasonable notice for scheduling of activities which require the participation or knowledge of the other party.

Liability and Indemnity Each party shall indemnify and hold the other harmless from any claim or demand for damages to person or to property arising directly or indirectly from any negligence, act, or omission of said party; its agents, its contractors, or its

employees. Each party shall at all times during the term hereof, at its expense, maintain, keep in effect, and furnish to the other proof of liability insurance with limits of not less than \$1,000,000 combined single limit.

Notices All notices are required to be given under this agreement and all other communications related to this agreement shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed, by registered, overnight, or certified mail, return receipt requested, as follows:

To County:

Attn: Wayne Belmont
Lincoln County
255 W East Olive Street
Newport, Oregon 97385

To City:

Attn: Sam Sasaki
City of Newport
189 SW Coast Highway
Newport OR 97385

Either party may change such address or change said designation or title of the individuals by written notice issued and delivered as above.

Ownership of Facilities All right, title, and interest in all of the facilities provided by a party shall remain the property of the party providing such subject to the leasehold rights stated in this agreement.

Status of Parties The parties recite that this is an agreement for the right and use of facilities for a fee and that the parties are not partners.

Non-Waiver Waiver by either party of strict performance of any provision of this agreement shall not be a waiver of or prejudice the party's rights to require strict performance of the same provision in the future or any other provision.

Governing Law All questions relative to the execution, validity, interpretation, and performance of this agreement shall be governed by the laws of the State of Oregon.

Entire Agreement This document is the entire, final, and complete agreement of the parties pertaining to the parties' relationship with regard to this matter and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as this matter is concerned. Any amendments to this agreement must be in writing and signed by the parties in order to become effective.

Severance If any provision of this document shall be held to be invalid, illegal, or

unenforceable, such invalidity, illegality, or unenforceability shall not affect any of the other provisions of this agreement, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provisions had never been contained in said agreement.

The following signatures represent the parties' acknowledgment and acceptance of the Fiber Optic Facilities Lease Agreement, expiring June 30, 2009, by and between City of Newport and Lincoln County

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as subscribed, the day and year first above written.

CITY OF NEWPORT

Signed: *Sam Sasaki*

Name: SAM SASAKI

Date: 11/15/04

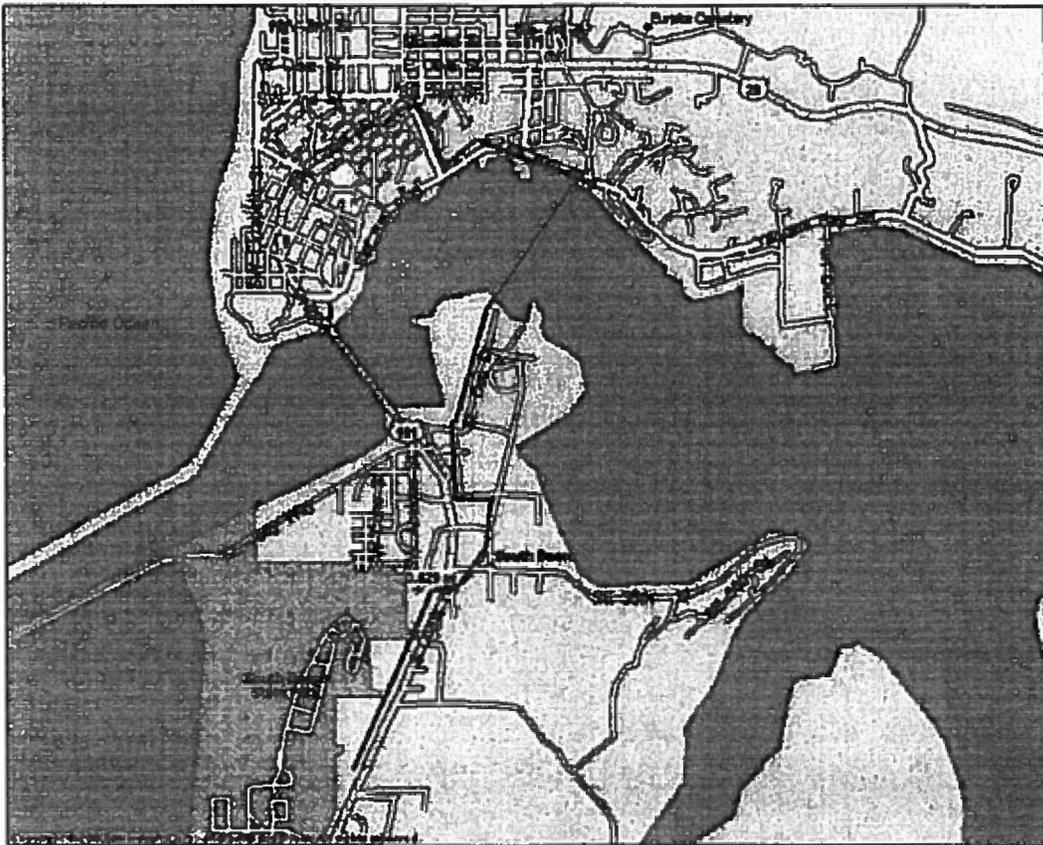
LINCOLN COUNTY

Signed: *Den Lindly*

Name: DEN LINDLY

Date: 12/29/04

Exhibit A



Newport, Oregon
Lincoln County Communications Agency to
Fiber Vault FHH 15 near 4822 S Coast Highway

Exhibit B

Monthly Dark Fiber Lease to City of Newport	Feet	Cost/Mile	Total
911 to Bay Front Pump Station	6048	75	85.88
Fiber Across Bay to Hatfield Pump Station	3300	185	115.63
Hatfield Pump Station to Vault FHH 15 near 4822 S Coast Hwy	9885	75	137.29
Monthly Total			338.79



Agenda Item:

Acceptance of the Contribution for the Newport Aquatics Facility

Background:

Last month Parks & Recreation Director, Jim Protiva, was contacted by Ken Doerfler, Jr., Trustee of the Ken & Judy Revocable Living Trust, in regards to a possible contribution to the City of Newport for the construction of the Newport Aquatic Center from the Trust. City Attorney, Steve Rich, Public Works Director, Tim Gross, Parks and Recreation Director, Jim Protiva and I met with Mr. Doerfler to discuss the possible contribution to the City. Mr. Doerfler indicated that the trust was willing to make a contribution of \$300,000 for the pool project, with a minimum of \$25,000 of this amount being used to fund aquatic facilities scholarships for annual passes and memberships.

We met with Mr. Doerfler to give him an overview of where the project was from a financial standpoint. Please note that we are preparing a report for the City Council for the February 16, 2016, City Council meeting and the financial status of this project. The most significant issue that we have had to deal with, outside of the original scope of the project, was a significantly greater amount of undercutting and fill needed due to unsuitable materials being used in the past to fill the ravine where the new Aquatic Center will be located. Our preliminary cost estimate for the undercutting and filling will be approximately \$150,000 over the contract quantities originally included for this work. We informed Mr. Doerfler that this contribution will likely allow us to keep a number of other features that were slated for possible elimination as part of the pool construction project.

This is a very exciting gift for the citizens of the City, and will help make the Aquatic Center a key piece of recreational infrastructure for the citizens of this community for many years to come. From a City standpoint, we have offered to recognize this contribution by naming the lap pool in honor of Ken Doerfler, Sr., as well as recognition in the building to memorialize this very generous contribution from the Ken and Judy Revocable Living Trust.

Long time Newport resident and businessman Kenneth M. Doerfler was born on February 28, 1929, in Renova, Montana. As a child he moved to Salem, Oregon, in the early 1930's where he graduated from Salem High School in 1938 and married Judy Mitchell in June of 1940. He served in the Navy during World War II as a gunner's mate third class aboard the USS President Hayes. In 1950, Ken moved his wife and three children to Newport, Oregon, where he owned and operated several businesses, and in 1955 he opened the Ken Doerfler Insurance Agency. Judy passed away in 1999, with Ken passing away eleven years later, on October 28, 2010. The Doerflers were very philanthropic with the establishment of the Ken and Judy Doerfler Newport High Scholarship. Furthermore, Mr. Doerfler left a Trust to benefit the community for a number of legacy projects that will benefit the community for many years in the future. We are very grateful to the Ken and Judy Revocable Living Trust and Ken Doerfler, Jr. and his siblings for selecting the Newport Aquatic Center for this very generous gift.

Recommendation:

I recommend the City Council consider the following motion:

I move to accept the generous contribution from the Ken and Judy Revocable Living Trust contribution to the City of Newport of \$300,000, for use in the construction and development of the Newport Aquatic Center, with a minimum of \$25,000 of said sum being used to fund Aquatic Facility scholarships for annual passes and membership, and formally extend the City's profound appreciation to the Doerfler family for this generous gift to the City of Newport.

Fiscal Effects:

\$275,000 of this amount will go into the construction fund for the project, with \$25,000 being made available for scholarships for use of the Aquatic Center. Any amount of the \$275,000 not used for construction activities will be used for scholarships. A detailed report on the status of finances for the Aquatic Center will be provided to the City Council at their February 16, 2016, City Council meeting.

Alternatives:

None

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel", is written over the typed name.

Spencer R. Nebel
City Manager

PROPOSAL FOR CONTRIBUTION AND GRANT OF AUTHORIZATION

Kenneth M. Doerfler Jr., Trustee, on behalf of THE KEN AND JUDY REVOCABLE LIVING TRUST proposes to make a contribution to the City of Newport from said Trust Three Hundred Thousand dollars (\$300,000.00) for use in the construction and development of the City of Newport Aquatic Center, with a minimum of Twenty-five Thousand dollars (\$25,000.00) of said sum to be used to fund aquatic facility scholarships for annual passes/membership. Contribution shall be tendered upon the acceptance of same by the City of Newport, as evidenced by the execution of the Acceptance below.

The Trust does hereby authorize the City of Newport to recognize, for attribution, THE KEN AND JUDY REVOCABLE LIVING TRUST as the donor of the contribution described above. Further, the City of Newport is authorized to designate a "lap-pool" within the aquatic center as the "Ken Doerfler Sr. Lap-Pool". The design and placement of signage suitable to identify and memorialize the contribution shall be at the discretion of the City of Newport after consultation with the Trust.


Kenneth M. Doerfler, Jr., Trustee
Ken and Judy Revocable Living Trust

1-27-15
Date

ACCEPTED.

Sandra Roumagoux, Mayor
City of Newport

Date



Agenda #:7.F.
Meeting Date: 2-1-2016

Agenda Item:

Rescheduling of the Annual Goal Setting Session and Possible Cancelation of February 29, 2016 Town Hall Meeting

Background:

The goal setting session was originally scheduled for Monday, February 8, 2016, at 10 A.M. in the Council Chambers. Due to an unanticipated work load caused by several events in December, and being out of the office on vacation in January, I will need additional time to prepare for the meeting. I want to move the goal setting session to Tuesday, February 23 starting at 10 A.M. and running to 3 P.M. This will give me adequate time to prepare for the goal setting session and will leave appropriate time period from the budget processes. Again I apologize for not being able to be ready for our originally scheduled date. Furthermore, I am requesting that the Council cancel the proposed Town Hall meeting for February 29. This month we are trying to schedule a Farmer's Market work session, as well as have a joint meeting with the County Commission on February 10, and I will be ramping up on various aspects of the budgeting process.

Recommendation:

I recommend the City Council Consider the following motion:

I move to reschedule the goal setting session to Tuesday, February 23, 2016 from 10 A.M. to 3 P.M. in the City Council Chambers.

I move to cancel the February 29, 2016, Town Hall meeting due other meeting obligations during the month of February.

Fiscal Effects:

None.

Alternatives:

Monday February 22, 2016 could be an alternate date for the goal setting session or as suggested by the City Council. Furthermore, if the Council would like to go forward with the Town Hall meeting on February 29 we could do that as well.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Spencer R. Nebel".

Spencer R. Nebel
City Manager



Agenda #: 7.G.
Meeting Date: 2-1-2016

Agenda Item:

Financial Reports for the First Six Months of the 2015-16 Fiscal Year

Background:

Attached is a report from Finance Director, Mike Murzynsky, regarding operations over the first six months of the 2015-16 Fiscal Year. Overall our cost centers are generally operating within parameters. A good threshold for those operations that have even expenditures throughout the course of the year is that the budget should be expended at or near 50% at the close of the financial statements on December 31. Please note there are seasonal variations in some operating funds that affect this flow. Furthermore, at the next Council meeting, the Council will approve transfers of contingency funds to cover the settlement of the three bargaining unit contracts. Please note these appropriations are not included in the current budget line items for those departments affected by the contract settlements. I appreciate the efforts of the Finance Department to continue getting timely financial reports out on the status of the finances.

Recommendation:

None

Fiscal Effects:

None

Alternatives:

None

Respectfully Submitted,

Spencer R. Nebel
City Manager



Agenda Item # _____

Meeting Date February 1, 2016

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Agenda Title: Financial reports for the quarter ended December 31, 2015

Prepared By: MM Dept Head Approval: MM City Mgr Approval:

Issue before the Council:

Attached are the financial statements for the quarter ended December 31, 2015 for your review.

Staff notes on the 2015-16 Year-End reports:

Attached are the City of Newport's 2015-16 2nd Quarter Financial reports for Council review and discussion. The City operations are 50 percent into the current fiscal year and this is noted in the top right part of each sheet. Any revenue below that mark is not a good thing while an expenditure over the mark is not a good thing. My process will be to review the budgeted revenues versus actual are discussed and then a brief overview on are the expenditures used to date. Exceptions will be discussed as they come up.

A quick (repeat) overview on the attached reports. The reports are divided into operational revenue and operational expenditures, both are summarized and this is noted by a Total Revenue and Total Expenditure line item. The expenditures are further divided into Programs and this is divided into Operational Units. For example, the General Fund is divided by Programs like City Administration and then Police, Fire and so on. Within the City Administration it is further divided into operating units, like City Manager, Information Technology and so on which are then totaled into a Total Expenditure line.

Finally, there is an additional box of information showing the Original Appropriation Number or Adopted Budget effected by any Supplemental Budget along with the respective resolution(s) number.

General Fund:

The total actual revenue received were \$8,470,458; Property Taxes (now being collected) and Room Tax and Business License make up more than 65% of this number. For expenditures, the actual expenditures were \$5,037,365, which is 44.46% expended as of the end of the quarter. Within the individual programs/departments in the General Fund the City Manager, Court, Fire, Finance Customer Service, Custodial and Non-Departmental total budgets spent are above the 50% base line. Yet City Manager, Court and Finance Customer Service are part of the City Administration bottom line, this total program has spent 45.85% of its budget so the program is fine. Fire is over due to the time spent on their Conflagration duties and the new Union contract and this will be rectified shortly by a supplemental budget. Non- Departmental is beyond the 25% due to payment of the annual insurance bills and support transfer. The payment of the annual insurance comes in early in the fiscal year and skews the departments until time passes it up and the budgets self-correct. The insurance payment has a major effect throughout the budgets and will be noted as it comes up.

Parks and Recreation:

The total actual revenue received were \$320,930, 52.43% of anticipated revenues with Fees representing 53.97% of the total, Parks and Receptions appear to be on pace to collect their overall projected revenues. For expenditures, the actual expenditures were \$665,928 for the quarter which is 38.9% of budget. Within the individual programs/departments in the Parks department only the Parks Administration and Recreation Programs spent beyond the 25% baseline.

Public Parking:

The total actual revenue received were \$25,900, 81.1% of the anticipated budget, the majority of the "fees in lieu of" were collected this quarter. For expenditures, the actual expenditures were minimal, \$1,818, well below scheduled spending.

Housing:

The total revenues received were \$265, mainly interest income. For expenditures, the actual expenditures were \$2,924 and are spent as needed.

Airport:

The total revenues received were \$150,825, 43.85% of expected revenues. Jet fuel is at 33.1% of expected receipts while AvGas is at 38.5% and rents collected are 64.9% collected. For expenditures, the actual expenditures were \$278,948, 40.03% of the anticipated budget. The Operational category budgets are within the 50% baseline with the exception of the Other Services area. The Other Service area is still over due to the allocation of the insurance payment so it will be reviewed monthly.

Room Tax:

The total actual revenue received were \$893,356, which is 67.61% of expected budgeted revenues. For expenditures, the actual expenditures were \$514,698, 54.45% of the anticipated budget. The Other Service area was over 70.8%, the allocation of the insurance payment and payment of Advertising & Marketing costs make up the majority of this amount, a supplemental budget will correct the advertising and market while the insurance will self-correct by year-end.

Building Inspection:

The total actual revenue received were \$161,259 which is 96.56% of expected budgeted revenues. For expenditures, the actual expenditures to date were \$131,577, or 50.24, right at the 50% baseline. A supplemental budget will be applied to bring the expenditures below the baseline.

Street:

The total actual revenue received were \$712,045 which is 72.50% of expected budgeted revenues. For expenditures, the actual expenditures to date \$531,950, just below the 50% baseline.

Line Undergrounding:

The total actual revenue received were \$50,380 and the actual operating expenditures are barely spent and are always carefully monitored.

SDC fund:

The total actual SDC revenues collected were \$277,297, or 111.33% of expected budget. The expenditures are used as needed and also only transferred as needed.

Agate Beach Closure:

The total actual revenue received to date is \$0.00 while expenditures are only used as need, year to date used were \$7,542.

Newport Urban Renewal:

The total actual revenue received to date was \$1,099, which represents interest income. The Beginning Fund Balance is the main revenue source besides rentals from the South Beach property. The expenditures used to date, \$33,662, were for payroll for Community Development staff who monitor the Renewal Area and utilities related to the South Beach property.

Debt Service funds:

All debt service are not presented but they were within planned budgets.

Capital Projects – General and Proprietary:

The revenues and expenditures, actual totals, are coming in as expected or spent as expected. All projects are within the 50% benchmark with regards to spending.

Water:

The total actual revenue received to date were \$2,003,871, 50.83% of planned budget....mainly in the miscellaneous area plus the fees and charges. For expenditures, the actual expenditures were \$1,330,031, 41.6% of planned expenses. Within the individual programs/department in the Water fund no program spent above the 50% baseline.

Wastewater:

The total actual revenue received to date was \$1,922,148, 49.63% of planned budget... again, mainly miscellaneous area plus the fees and charges. For expenditures, the actual expenditures were \$1,338,937, 39.22% of planned expenses. Within the individual programs/department in the Wastewater fund only the Non-Departmental unit spent above the 25% baseline, main reason was again the insurance payment allocation.

Public Works Fund:

The total actual revenue received to date was \$514,700, 50.0% of planned budgeted revenues. We will discuss the reduction of the monthly allocation between Streets, Water and Wastewater with the Public Works Director, the allocation is too high and should be reduced. For expenditures, the actual expenditures were \$305,645, 30.6% of planned expenses. Within the individual programs/department in the Wastewater fund no unit spent above the 50% baseline.

Overall:

With the exceptions noted above in each fund the City is operating within the constructed budget. The City Manager and Department Directors have been monitoring their respective budget and the budgets currently show no sign of overages.

Proposed Motion:

None – for Council information

Attachment List:

Financial data as of September 30, 2015

**CITY OF NEWPORT
GENERAL FUND - FISCAL YEAR 2016**

	For Period Ending:				12/31/15	Percent of Year 0.50%
	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Property Taxes	6,151,747	6,151,747	571,160	5,636,543	515,204	91.63%
Other Taxes	2,004,000	2,004,000	127,636	1,252,759	751,241	62.51%
Franchises	945,600	945,600	39,371	342,979	602,621	36.27%
Federal Sources	55,000	55,000	18,028	18,028	36,972	32.78%
State Sources	150,200	150,200	10,105	10,105	140,095	6.73%
Miscellaneous Sources	690,471	690,471	263,932	362,016	328,455	52.43%
Services Provided for	1,073,843	1,073,843	89,487	536,921	536,922	50.00%
Fee, Fines & Forfeitures	413,600	413,600	20,915	295,778	117,822	71.51%
Investments	9,700	9,700	2,081	5,733	3,967	59.11%
Miscellaneous	36,600	36,600	(649)	9,595	27,005	26.22%
TOTAL REVENUES:	11,530,761	11,530,761	1,142,066	8,470,458	3,060,303	73.46%
EXPENDITURES:						
City Administration						
Mayor & Council	98,150	98,150	541	48,271	49,879	49.18%
City Manager	348,049	353,171	28,880	178,785	174,386	50.62%
Information Technology	525,198	528,565	79,310	214,257	314,308	40.54%
Court	57,258	58,179	4,812	29,704	28,475	51.06%
Legal	153,200	155,730	12,230	73,459	82,271	47.17%
Finance	557,624	563,842	42,118	269,191	294,651	47.74%
Human Resources	114,918	116,230	13,931	50,203	66,027	43.19%
Safety Coordinator	104,533	105,159	5,584	39,606	65,553	37.66%
Finance Customer Service	36,500	36,500	3,175	20,655	15,845	56.59%
Total City Administration	1,995,430	2,015,526	190,581	924,129	1,091,397	45.85%
Police	3,603,480	3,616,339	357,498	1,771,460	1,844,879	48.98%
Fire	1,892,439	1,896,948	238,770	1,076,929	820,019	56.77%
Emergency Coordinator	107,000	107,000	-	1,975	105,025	1.85%
Library	1,225,857	1,239,088	72,652	492,427	746,661	39.74%
Community Development	315,380	319,161	17,055	99,695	219,466	31.24%
Facilities & Grounds:						
Facilities Operations	263,035	265,306	19,727	117,945	147,361	44.46%
Facilities Capital Projects	416,000	416,000	3,286	37,735	378,265	9.07%
Grounds Operations	413,503	416,370	20,155	170,312	246,058	40.90%
Grounds Capital Projects	10,000	10,000	-	-	10,000	0.00%
Custodial Operations:	123,826	124,609	10,288	62,612	61,997	50.25%
Total Facilities & Grounds	1,226,364	1,232,285	53,456	388,603	843,682	31.54%
Non Departmental	421,488	421,488	33,921	282,146	139,342	66.94%
Contingency	541,322	480,925				
TOTAL EXPENDITURES:	11,328,760	11,328,760	963,933	5,037,365	5,810,470	
Excess of Revenue over (under)						
Expenditures	202,001	202,001	178,132	3,433,093	(2,750,167)	
OTHER FINANCING SOURCES						
Transfer In	53,500	53,500	4,458	26,750	26,750	
Transfer Out	(1,248,432)	(1,448,432)	(289,397)	(737,517)	(710,915)	
Total Other Financing Sources (Uses)	(1,194,932)	(1,394,932)	(284,938)	(710,767)	(684,165)	
Net Changes in Fund Balance	(992,931)	(1,192,931)	(106,806)	2,722,326	(3,434,332)	
FUND BALANCE - BEGINNING OF YEAR	2,595,226	2,795,226		3,035,351		
FUND BALANCE - END OF YEAR	1,602,295	1,602,295		5,757,676	(1,082)	

	Appropriations	UEFB	Total Requirements	
Adopted Budget	12,577,192	1,602,295	14,179,487	-
Supplemental Budget Resolution # 3726	50,000		50,000	
Total Amended Budget:	12,627,192	1,602,295	14,229,487	-

**CITY OF NEWPORT
PARKS & RECREATION FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Fee, Fines & Forfeitures	566,365	566,365	51,417	305,640	260,725	53.97%
Investments	2,000	2,000	194	904	1,096	45.22%
Miscellaneous	43,800	43,800	1,689	14,386	29,414	32.84%
TOTAL REVENUES:	612,165	612,165	53,301	320,930	291,235	52.43%
EXPENDITURES:						
Parks Administration	164,626	166,728	14,143	90,475	76,253	54.27%
60+ Activity Center	168,321	169,753	11,226	63,463	106,290	37.39%
Swimming Pool	392,466	394,897	29,399	184,318	210,579	46.67%
Recreation Center	545,606	547,094	32,079	192,337	354,757	35.16%
Recreation Programs	176,944	176,944	7,437	76,148	100,796	43.03%
Sports Programs	122,266	122,266	9,642	59,187	63,079	48.41%
Contingency	139,308	131,855				
TOTAL EXPENDITURES:	1,709,537	1,709,537	103,925	665,928	911,754	
Excess of Revenue over (under) Expenditures	(1,097,372)	(1,097,372)	(50,625)	(344,997)	(620,520)	
OTHER FINANCING SOURCES						
Transfer In	749,502	749,502	62,459	374,751	374,751	
Transfer Out	-	-	-	-	-	
Total Other Financing Sources (Uses)	749,502	749,502	62,459	374,751	374,751	
Net Changes in Fund Balance	(347,870)	(347,870)	11,834	29,754	(245,769)	
FUND BALANCE - BEGINNING OF YEAR	347,870	347,870		417,005		
FUND BALANCE - END OF YEAR	-	-		446,759	-	

	Appropriations	UEFB	Total Requirements	
Adopted Budget	1,709,537	-	1,709,537	-
Total Amended Budget:	1,709,537	-	1,709,537	-

**CITY OF NEWPORT
PUBLIC PARKING FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Fee, Fines & Forfeitures	31,265	31,265	185	25,355	5,911	81.10%
Investments	1,045	1,045	106	546	499	52.24%
TOTAL REVENUES:	32,310	32,310	291	25,900	6,410	80.16%
EXPENDITURES:						
Public Parking -General	-	-	-	-	-	
Public Parking -Nye Beach	12,722	12,722	85	511	12,211	4.02%
Public Parking -City Center	6,896	6,896	33	198	6,698	2.87%
Public Parking - Bay Blvd	22,218	22,218	185	1,109	21,109	4.99%
Contingency	274,207	274,207				
TOTAL EXPENDITURES:	316,043	316,043	303	1,818	40,018	
Excess of Revenue over (under)						
Expenditures	(283,733)	(283,733)	(13)	24,082	(33,608)	
OTHER FINANCING SOURCES						
Transfer In	-	-	-	-	-	
Transfer Out	(40,000)	(40,000)	-	-	(40,000)	
Total Other Financing Sources (Uses)	(40,000)	(40,000)	-	-	(40,000)	
Net Changes in Fund Balance	(323,733)	(323,733)	(13)	24,082	(73,608)	
FUND BALANCE - BEGINNING OF YEAR	323,733	323,733		318,536		
FUND BALANCE - END OF YEAR	-	-		342,618	40,000	

	Appropriations	UEFB	Total Requirements
Adopted Budget	356,043	-	356,043
Total Amended Budget:	356,043	-	356,043

**CITY OF NEWPORT
HOUSING FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Investments	530	530	57	265	265	50.05%
TOTAL REVENUES:	530	530	57	265	265	50.05%
EXPENDITURES:						
Housing	139,449	139,449	486	2,924	136,525	2.10%
Contingency	32,132	32,132				
TOTAL EXPENDITURES:	171,581	171,581	486	2,924	136,525	
Excess of Revenue over (under)						
Expenditures	(171,051)	(171,051)	(430)	(2,659)	(136,261)	
OTHER FINANCING SOURCES						
Transfer In	13,200	13,200	1,100	6,600	6,600	
Transfer Out	-	-	-	-	-	
Total Other Financing Sources (Uses)	13,200	13,200	1,100	6,600	6,600	
Net Changes in Fund Balance	(157,851)	(157,851)	670	3,942	(129,661)	
FUND BALANCE - BEGINNING OF YEAR	157,851	157,851		156,334		
FUND BALANCE - END OF YEAR	-	-		160,275	-	

	Appropriations	UEFB	Total Requirements
Adopted Budget	171,581	-	171,581
Total Amended Budget:	171,581	-	171,581

**CITY OF NEWPORT
AIRPORT FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Services Provided for	30,704	30,704	2,559	15,352	15,352	50.00%
Fee, Fines & Forfeitures	258,420	258,420	4,704	99,485	158,935	38.50%
Investments	561	561	69	521	40	92.80%
Miscellaneous	54,280	54,280	7,830	35,467	18,813	65.34%
TOTAL REVENUES:	343,965	343,965	15,161	150,825	193,140	43.85%
EXPENDITURES:						
Airport	693,941	696,784	49,968	278,948	417,836	40.03%
Contingency	71,691	68,848				
TOTAL EXPENDITURES:	765,632	765,632	49,968	278,948	417,836	
Excess of Revenue over (under)						
Expenditures	(421,667)	(421,667)	(34,807)	(128,124)	(224,695)	
OTHER FINANCING SOURCES						
Transfer In	335,288	335,288	27,941	167,644	167,644	
Transfer Out	(161,039)	(161,039)	154,293	160,106	(321,145)	
Total Other Financing Sources (Uses)	174,249	174,249	182,234	327,749	(153,500)	
Net Changes in Fund Balance	(247,418)	(247,418)	147,427	199,626	(378,196)	
FUND BALANCE - BEGINNING OF YEAR	353,254	353,254		312,146		
FUND BALANCE - END OF YEAR	105,836	105,836		511,772	320,211	

	Appropriations	UEFB	Total Requirements	
Adopted Budget	926,671	105,836	1,032,507	-
Total Amended Budget:	926,671	105,836	1,032,507	-

**CITY OF NEWPORT
ROOM TAX FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Taxes	1,307,300	1,307,300	81,051	886,801	420,499	67.83%
Fees, Fines & Forfeitures	12,000	12,000	225	5,303	6,697	44.19%
Investments	2,000	2,000	132	1,252	748	62.59%
TOTAL REVENUES:	1,321,300	1,321,300	81,408	893,356	427,944	67.61%
EXPENDITURES:						
Room Tax	1,145,246	945,246	36,176	514,698	430,548	54.45%
Contingency	126,381	66,381				
TOTAL EXPENDITURES:	1,271,627	1,011,627	36,176	514,698	430,548	
Excess of Revenue over (under)						
Expenditures	49,673	309,673	45,231	378,658	(2,604)	
OTHER FINANCING SOURCES						
Transfer In	-	-	-	-	-	
Transfer Out	(744,651)	(1,076,651)	(755,007)	(849,724)	(226,927)	
Total Other Financing Sources (Uses)	(744,651)	(1,076,651)	(755,007)	(849,724)	(226,927)	
Net Changes in Fund Balance	(694,978)	(766,978)	(709,775)	(471,067)	(229,530)	
FUND BALANCE - BEGINNING OF YEAR	778,488	850,488		850,362		
FUND BALANCE - END OF YEAR	83,510	83,510		379,296	-	

	Appropriations	UEFB	Total Requirements	
Adopted Budget	2,016,278	83,510	2,099,788	-
Supplemental Budget Resolution # 3726	72,000		72,000	
Total Amended Budget:	2,088,278	83,510	2,171,788	-

CITY OF NEWPORT
BUILDING INSPECTION FUND - FISCAL YEAR 2016

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Fees, Fines & Forfeitures	162,740	162,740	18,625	158,574	4,166	97.44%
Investments	1,600	1,600	189	845	755	52.84%
Miscellaneous	2,670	2,670	1,252	1,839	831	68.88%
TOTAL REVENUES:	167,010	167,010	20,066	161,259	5,751	96.56%
EXPENDITURES:						
Building Inspection	258,868	261,897	22,265	131,577	130,320	50.24%
Contingency	25,887	22,858				
TOTAL EXPENDITURES:	284,755	284,755	22,265	131,577	130,320	
Excess of Revenue over (under)						
Expenditures	(117,745)	(117,745)	(2,200)	29,681	(124,568)	
OTHER FINANCING SOURCES						
Transfer In	3,000	3,000	250	1,500	1,500	
Transfer Out	-	-	-	-	-	
Total Other Financing Sources (Uses)	3,000	3,000	250	1,500	1,500	
Net Changes in Fund Balance	(114,745)	(114,745)	(1,950)	31,181	(123,068)	
FUND BALANCE - BEGINNING OF YEAR	469,943	469,943		475,695		
FUND BALANCE - END OF YEAR	355,198	355,198		506,876	-	

	Appropriations	UEFB	Total Requirements	
Adopted Budget	284,755	355,198	639,953	-
Total Amended Budget:	284,755	355,198	639,953	-

**CITY OF NEWPORT
STREETS FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Other Taxes	571,487	571,487	45,859	276,688	294,799	48.42%
State Sources				217,477	(217,477)	
Fee, Fines & Forfeitures	408,000	408,000	35,861	217,022	190,978	53.19%
Investments	2,000	2,000	274	1,218	782	60.90%
Miscellaneous	1,200	1,200	-	-	1,200	0.00%
TOTAL REVENUES:	982,687	982,687	81,994	712,405	270,283	72.50%
EXPENDITURES:						
Streets Maintenance	655,041	655,920	41,582	324,682	331,238	49.50%
Storm Drain Maintenance	426,956	427,835	30,772	207,268	220,567	48.45%
Contingency	109,156	107,398				
TOTAL EXPENDITURES:	1,191,153	1,191,153	72,354	531,950	551,805	
Excess of Revenue over (under) Expenditures	(208,466)	(208,466)	9,640	180,454	(281,522)	
OTHER FINANCING SOURCES						
Transfer In	70,000	70,000	5,833	35,000	35,000	
Transfer Out	(77,768)	(77,768)	(64,049)	(66,374)	(11,394)	
Total Other Financing Sources (Uses)	(7,768)	(7,768)	(58,216)	(31,374)	23,606	
Net Changes in Fund Balance	(216,234)	(216,234)	(48,577)	149,081	(257,917)	
FUND BALANCE - BEGINNING OF YEAR	588,769	588,769		670,591		
FUND BALANCE - END OF YEAR	372,535	372,535		819,672	-	

	Appropriations	UEFB	Total Requirements	
Adopted Budget	1,268,921	372,535	1,641,456	-
Total Amended Budget:	1,268,921	372,535	1,641,456	-

CITY OF NEWPORT
LINE UNDERGROUNDING FUND - FISCAL YEAR 2016

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Franchises	170,000	170,000	13,799	49,151	120,849	28.91%
Investments	2,800	2,800	202	1,229	1,571	43.91%
TOTAL REVENUES:	172,800	172,800	14,001	50,380	122,420	29.16%
EXPENDITURES:						
Line Undergrounding	400	400	26	233	167	58.14%
Contingency	645,580	645,580				
TOTAL EXPENDITURES:	645,980	645,980	26	233	167	
Excess of Revenue over (under)						
Expenditures	(473,180)	(473,180)	13,975	50,148	122,252	
OTHER FINANCING SOURCES						
Transfer In						
Transfer Out	(259,435)	(259,435)	(251,211)	(251,211)	(8,224)	
Total Other Financing Sources (Uses)	(259,435)	(259,435)	(251,211)	(251,211)	(8,224)	
Net Changes in Fund Balance	(732,615)	(732,615)	(237,236)	(201,063)	114,028	
FUND BALANCE - BEGINNING OF YEAR	732,615	732,615		758,129		
FUND BALANCE - END OF YEAR	-	-		557,066	-	

	Appropriations	UEFB	Total Requirements
Adopted Budget	905,415		905,415
Total Amended Budget:	905,415	-	905,415

**CITY OF NEWPORT
SDC FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Fee, Fines & Forfeitures	245,800	245,800	1,689	275,206	(29,406)	111.96%
Investments	3,270	3,270	419	2,091	1,179	63.94%
TOTAL REVENUES:	249,070	249,070	2,108	277,297	(28,227)	111.33%
EXPENDITURES:						
SDC - Streets	50,000	50,000	-	-	50,000	0.00%
SDC - Water	-	-	-	-	-	0.00%
SDC - Wastewater	-	-	-	-	-	0.00%
SDC - Parks	-	-	-	-	-	0.00%
SDC - Storm Drain	-	-	-	-	-	0.00%
SDC - Administration	25,000	25,000	-	-	25,000	0.00%
Contingency	1,088,800	1,028,800				
TOTAL EXPENDITURES:	1,163,800	1,103,800	-	-	75,000	
Excess of Revenue over (under) Expenditures	(914,730)	(854,730)	2,108	277,297	(103,227)	
OTHER FINANCING SOURCES						
Transfer In						
Transfer Out	(197,500)	(257,500)	-	(248,762)	(8,738)	
Total Other Financing Sources (Uses)	(197,500)	(257,500)	-	(248,762)	(8,738)	
Net Changes in Fund Balance	(1,112,230)	(1,112,230)	2,108	28,535	(111,965)	
FUND BALANCE - BEGINNING OF YEAR	1,112,230	1,112,230		1,151,935		
FUND BALANCE - END OF YEAR	-	-		1,180,470	-	

	Appropriations	UEFB	Total Requirements	
Adopted Budget	1,361,300		1,361,300	-
Total Amended Budget:	1,361,300	-	1,361,300	-

CITY OF NEWPORT
AGATE BEACH CLOSURE FUND - FISCAL YEAR 2016

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Fee, Fines & Forfeitures	12,000	12,000	-	-	12,000	0.00%
Investments	6,000	6,000	-	-	6,000	0.00%
TOTAL REVENUES:	18,000	18,000	-	-	18,000	0.00%
EXPENDITURES:						
Agate Beach Closure	60,327	60,327	(27)	7,542	52,785	12.50%
Contingency	1,362,257	1,362,257				
TOTAL EXPENDITURES:	1,422,584	1,422,584	(27)	7,542	52,785	
Excess of Revenue over (under)						
Expenditures	(1,404,584)	(1,404,584)	27	(7,542)	(34,785)	
OTHER FINANCING SOURCES						
Transfer In						
Transfer Out						
Total Other Financing Sources (Uses)	-	-	-	-	-	
Net Changes in Fund Balance	(1,404,584)	(1,404,584)	27	(7,542)	(34,785)	
FUND BALANCE - BEGINNING OF YEAR	1,404,584	1,404,584		1,397,838		
FUND BALANCE - END OF YEAR	-	-		1,390,296	-	

	Appropriations	UEFB	Total Requirements
Adopted Budget	1,422,584		1,422,584
Total Amended Budget:	1,422,584	-	1,422,584

**CITY OF NEWPORT
NEWPORT URBAN RENEWAL AGENCY FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Federal Sources	358,857	358,857	-	-	358,857	0.00%
Investments	-	-	144	1,099	(1,099)	
Miscellaneous	72,000	72,000	-	-	72,000	0.00%
TOTAL REVENUES:	430,857	430,857	144	1,099	429,758	0.26%
EXPENDITURES:						
Newport URA	200,423	200,423	5,389	33,662	166,761	16.80%
Contingency	704,687	704,687				
TOTAL EXPENDITURES:	905,110	905,110	5,389	33,662	166,761	
Excess of Revenue over (under)						
Expenditures	(474,253)	(474,253)	(5,245)	(32,563)	262,997	
OTHER FINANCING SOURCES						
Transfer In						
Transfer Out	(300,000)	(300,000)	(300,000)	(300,000)		
Total Other Financing Sources (Uses)	(300,000)	(300,000)	(300,000)	(300,000)	-	
Net Changes in Fund Balance	(774,253)	(774,253)	(305,245)	(332,563)	262,997	
FUND BALANCE - BEGINNING OF YEAR	774,253	774,253		739,806		
FUND BALANCE - END OF YEAR	-	-		407,242	-	

	Appropriations	UEFB	Total Requirements
Adopted Budget	1,205,110		1,205,110
Total Amended Budget:	1,205,110	-	1,205,110

**CITY OF NEWPORT
CAPITAL PROJECTS GENERAL - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Other Taxes	170,000	170,000	17,147	114,921	55,079	67.60%
Federal Sources	350,000	350,000	-	166,188	183,812	47.48%
State Sources	1,600,455	1,600,455	-	-	1,600,455	0.00%
Miscellaneous Sources	229,871	229,871	-	16,000	213,871	6.96%
Fee, Fines & Forfeitures	580,000	580,000	49,330	295,822	284,178	51.00%
Investments	15,415	15,415	5,325	28,278	(12,863)	183.45%
Miscellaneous				585	(585)	
Loan Proceeds	2,919,088	2,919,088	-	-	2,919,088	0.00%
TOTAL REVENUES:	5,864,829	5,864,829	71,802	621,794	5,243,035	10.60%
EXPENDITURES:						
Capital Projects - General	10,674,520	10,794,520	(275,979)	1,798,297	8,996,223	16.66%
Capital Projects - Swim Pool	8,225,884	8,697,884	343,889	741,917	7,955,967	8.53%
Capital Projects - Airport	2,683,189	2,683,189	40,209	104,352	2,578,837	3.89%
Capital Projects - VAC/PAC	365,089	365,089	5,000	5,000	360,089	1.37%
Contingency	58,458	58,458				
TOTAL EXPENDITURES:	22,007,140	22,599,140	113,118	2,649,567	19,891,115	
Excess of Revenue over (under) Expenditures	(16,142,311)	(16,734,311)	(41,316)	(2,027,773)	(14,648,080)	
OTHER FINANCING SOURCES						
Transfer In	1,412,806	2,004,806	1,854,806	1,854,806	150,000	
Transfer Out	-	-	-	-	-	
Total Other Financing Sources (Uses)	1,412,806	2,004,806	1,854,806	1,854,806	150,000	
Net Changes in Fund Balance	(14,729,505)	(14,729,505)	1,813,490	(172,967)	(14,498,080)	
FUND BALANCE - BEGINNING OF YEAR	14,729,505	14,729,505		11,944,792		
FUND BALANCE - END OF YEAR	-	-		11,771,825	-	

	Appropriations	UEFB	Total Requirements
Adopted Budget	22,007,140	-	22,007,140
Supplemental Budget Resolution # 3726	322,000		322,000
Supplemental Budget Resolution # 3706	120,000		120,000
Total Amended Budget:	22,449,140	-	22,449,140

CITY OF NEWPORT
CAPITAL PROJECTS PROPRIETARY - FISCAL YEAR 2016

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
State Sources	1,000,000	1,000,000	-	-	1,000,000	0.00%
Investments	-	-	2,846	14,029	(14,029)	#DIV/0!
Loan Proceeds	8,448,986	8,448,986	-	327,278	8,121,708	3.87%
TOTAL REVENUES:	9,448,986	9,448,986	2,846	341,307	9,107,679	3.61%
EXPENDITURES:						
Capital Projects - Water	5,303,808	5,303,808	116,446	1,456,621	3,847,187	27.46%
Capital Projects - Wastewater	6,474,417	6,474,417	268,437	667,698	5,806,719	10.31%
Contingency	-	-				
TOTAL EXPENDITURES:	11,778,225	11,778,225	384,883	2,124,319	9,653,906	
Excess of Revenue over (under) Expenditures	(2,329,239)	(2,329,239)	(382,037)	(1,783,012)	(546,227)	
OTHER FINANCING SOURCES						
Transfer In	1,474,661	1,474,661	1,474,661	1,474,661	-	
Transfer Out						
Total Other Financing Sources (Uses)	1,474,661	1,474,661	1,474,661	1,474,661	-	
Net Changes in Fund Balance	(854,578)	(854,578)	1,092,624	(308,351)	(546,227)	
FUND BALANCE - BEGINNING OF YEAR	854,578	854,578		3,122,890		
FUND BALANCE - END OF YEAR	-	-		2,814,538	-	

	Appropriations	UEFB	Total Requirements
Adopted Budget	11,778,225	-	11,778,225
Total Amended Budget:	11,778,225	-	11,778,225

**CITY OF NEWPORT
RESERVE FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Investments	2,050	2,050	211	929	1,121	45.31%
TOTAL REVENUES:	2,050	2,050	211	929	1,121	45.31%
EXPENDITURES:						
Reserve - Police	40,000	40,000	-	-	40,000	0.00%
Reserve - Fire	425,000	425,000	-	-	425,000	0.00%
Reserve - Library	-	-	-	-	-	0.00%
Contingency	-	-	-	-	-	-
TOTAL EXPENDITURES:	465,000	465,000	-	-	465,000	-
Excess of Revenue over (under)						
Expenditures	(462,950)	(462,950)	211	929	(463,879)	-
OTHER FINANCING SOURCES						
Transfer In	180,000	180,000	15,000	90,000	90,000	-
Transfer Out	-	-	-	-	-	-
Total Other Financing Sources (Uses)	180,000	180,000	15,000	90,000	90,000	-
Net Changes in Fund Balance	(282,950)	(282,950)	15,211	90,929	(373,879)	-
FUND BALANCE - BEGINNING OF YEAR	501,938	501,938	-	502,138	-	-
FUND BALANCE - END OF YEAR	218,988	218,988	-	593,067	-	-

	Appropriations	UEFB	Total Requirements
Adopted Budget	465,000	218,988	683,988
Total Amended Budget:	465,000	218,988	683,988

**CITY OF NEWPORT
WATER FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Fee, Fines & Forfeitures	3,885,000	3,885,000	184,888	1,963,946	1,921,054	50.55%
Investments	5,200	5,200	243	2,390	2,810	45.96%
Miscellaneous	52,000	52,000	8,958	37,535	14,465	72.18%
TOTAL REVENUES:	3,942,200	3,942,200	194,089	2,003,871	1,938,329	50.83%
EXPENDITURES:						
Water Plant	1,067,465	1,069,272	63,941	446,398	622,874	41.75%
Water Distribution	938,418	940,154	80,392	422,523	517,631	44.94%
Water Non Departmental	930,412	930,412	65,213	461,110	469,302	49.56%
Contingency	259,917	256,374				
TOTAL EXPENDITURES:	3,196,212	3,196,212	209,547	1,330,031	1,609,807	
Excess of Revenue over (under)						
Expenditures	745,988	745,988	(15,457)	673,840	328,522	
OTHER FINANCING SOURCES						
Transfer In	-	-	-	-	-	
Transfer Out	(1,685,342)	(1,685,342)	(1,202,402)	(1,544,923)	(140,419)	
Total Other Financing Sources (Uses)	(1,685,342)	(1,685,342)	(1,202,402)	(1,544,923)	(140,419)	
Net Changes in Fund Balance	(939,354)	(939,354)	(1,217,859)	(871,083)	188,103	
FUND BALANCE - BEGINNING OF YEAR	1,174,476	1,174,476		1,634,175		
FUND BALANCE - END OF YEAR	235,122	235,122		763,093	-	

	Appropriations	UEFB	Total Requirements	
Adopted Budget	4,881,554	235,122	5,116,676	-
Total Amended Budget:	4,881,554	235,122	5,116,676	-

**CITY OF NEWPORT
WASTEWATER FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Fee, Fines & Forfeitures	3,865,680	3,865,680	276,631	1,919,778	1,945,902	49.66%
Investments	2,000	2,000	181	1,202	798	60.08%
Miscellaneous	5,000	5,000	-	1,169	3,832	23.37%
TOTAL REVENUES:	3,872,680	3,872,680	276,812	1,922,148	1,950,532	49.63%
EXPENDITURES:						
Wastewater Plant	1,536,391	1,538,200	112,118	562,431	975,769	36.56%
Wastewater Distribution	601,914	601,914	50,325	250,212	351,702	41.57%
Wastewater Non Departmental	995,704	995,704	75,976	526,294	469,410	52.86%
Contingency	279,425	277,616				
TOTAL EXPENDITURES:	3,413,434	3,413,434	238,420	1,338,937	1,796,881	
Excess of Revenue over (under) Expenditures	459,246	459,246	38,393	583,211	153,651	
OTHER FINANCING SOURCES						
Transfer In	-	-	-	-	-	
Transfer Out	(1,148,086)	(1,148,086)	(522,984)	(543,005)	(605,081)	
Total Other Financing Sources (Uses)	(1,148,086)	(1,148,086)	(522,984)	(543,005)	(605,081)	
Net Changes in Fund Balance	(688,840)	(688,840)	(484,591)	40,206	(451,430)	
FUND BALANCE - BEGINNING OF YEAR	892,737	892,737		968,152		
FUND BALANCE - END OF YEAR	203,897	203,897		1,008,358	(0)	

	Appropriations	UEFB	Total Requirements	
Adopted Budget	4,561,520	203,897	4,765,417	-
Total Amended Budget:	4,561,520	203,897	4,765,417	-

**CITY OF NEWPORT
PUBLIC WORKS FUND - FISCAL YEAR 2016**

For Period Ending: **12/31/15** **0.50%**

	Adopted Budget	Amended Budget	Current Month Activity	Actual Year to Date Activity	Budget Remaining	% of Actual To Budget
REVENUES:						
Services Provided for	1,028,376	1,028,376	85,698	514,188	514,188	50.00%
Investments	1,000	1,000	145	502	498	50.22%
Miscellaneous	99	99	328	10	89	10.10%
TOTAL REVENUES:	1,029,475	1,029,475	86,170	514,700	514,775	50.00%
EXPENDITURES:						
Public Works - Admin	290,723	294,154	22,980	142,233	151,921	48.35%
Engineering	533,554	537,572	30,537	163,412	374,160	30.40%
Fleet Management	88,282	89,164	-	-	89,164	0.00%
Contingency	86,606	78,275				
TOTAL EXPENDITURES:	999,165	999,165	53,517	305,645	615,245	
Excess of Revenue over (under)						
Expenditures	30,310	30,310	32,653	209,056	(100,471)	
OTHER FINANCING SOURCES						
Transfer In	-	-	-	-	-	
Transfer Out	-	-	-	-	-	
Total Other Financing Sources (Uses)	-	-	-	-	-	
Net Changes in Fund Balance	30,310	30,310	32,653	209,056	(100,471)	
FUND BALANCE - BEGINNING OF YEAR	189,102	189,102		183,477		
FUND BALANCE - END OF YEAR	219,412	219,412		392,532	(328)	

	Appropriations	UEFB	Total Requirements	
Adopted Budget	999,165	219,412	1,218,577	-
Total Amended Budget:	999,165	219,412	1,218,577	-