

RESOLUTION NO. 2011-2926

**A RESOLUTION ACCEPTING AN INTERIM FINANCING LOAN FROM
THE CLEAN WATER STATE REVOLVING FUND BY ENTERING INTO
AN AGREEMENT WITH THE STATE OF OREGON ACTING BY AND
THROUGH THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

RECITALS:

1. The City of Newberg is a ‘municipality’ (“City”) within the meaning of Oregon Revised Statutes 285B.410(4).
2. The City has filed an application with the State of Oregon through the Department of Environmental Quality to obtain financial assistance from the Clean Water State Revolving Fund (CWSRF) to complete portions of the Wastewater Treatment Plant Repair, Renovation and Expansion (WWTP RRE) Project as defined by the 2007 Newberg Wastewater Treatment Facilities Plan Update. A detailed list of the individual projects is attached as Exhibit “A”, which is hereby attached and by this reference incorporated.
3. The Department has approved the City’s application for financial assistance.
4. The City is required to sign the Loan Agreement as shown in Exhibit “B”, which is hereby attached and by this reference incorporated.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Interim Financing Loan Authorized. The City Council, as governing body, authorizes the City Manager to execute the Interim Financing Loan Agreement required to obtain CWSRF financial assistance. The loan shall not be in excess of \$11,409,645 at the interest rate of 2.88% to 3.38%. The proceeds of the CWSRF loan shall be applied solely to the costs of the WWTP RRE Project as defined in the Loan Agreement attached as Exhibit “B” and by this reference adopted.
2. Security. Amounts payable by the City shall be payable from the sources described in Article 1 (J) of the Loan Agreement which states “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.”
3. Additional Documents. The City Manager is hereby authorized to enter into any agreements and to execute any documents or certificates, which may be required to obtain financial assistance from CWSRF for the WWTP RRE Project pursuant to the Loan Agreement.

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

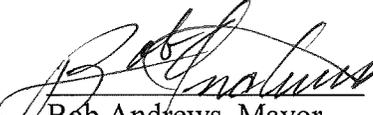
➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 8, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 7th day of February 2011.



Norma I. Alley, City Recorder

ATTEST by the Mayor this 10th day of February 2011.



Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through Citizens' Rate Review Committee at their December 9, 2009 meeting.

What we might fund if we had \$ 11.4M

| Task Orders and Delivery Orders | Description | Actual Costs/ Estimated Costs | Balance | Start | Complete |
|---|--|--|----------------|--------------|-----------------|
| Initial Newberg Draw on the \$11.4 M | | \$7,600,000 | \$7,600,000 | | |
| Past TO's 1 | Reimburse for prior WWTP-RRE Project Costs (CM/GC Solicitation) | \$148,315 | \$7,451,685 | Completed | |
| Past TO's 3 | Reimburse for prior WWTP-RRE Project Costs (Concept Design Review) | \$76,550 | \$7,375,135 | Completed | |
| Past TO's 4A | Reimburse for prior WWTP-RRE Project Costs (Initial Clarifier Design) | \$100,000 | \$7,275,135 | Completed | |
| Past TO's 5 | Reimburse for prior WWTP-RRE Project Costs (Flow Monitoring Phase 1) | \$31,510 | \$7,243,625 | Completed | |
| HDR - TO # 5.1 | Flow Monitoring (Phase 2) | \$25,000 | \$7,218,625 | Nov-11 | Jan-12 |
| HDR - TO # 4B | Restart Clarifier # 4 Design | \$490,407 | \$6,728,218 | Feb-11 | Jun-11 |
| HDR - TO # 4C | Misc. Rprs. Design | \$50,000 | \$6,678,218 | Feb-11 | Jun-11 |
| HDR - TO # 10 | Disinfection/De-chlor. Design | \$190,000 | \$6,488,218 | Feb-11 | Jun-11 |
| HDR - TO # 17 | Prelim. Design Report (DEQ) | \$380,000 | \$6,108,218 | Feb-11 | Jun-11 |
| HDR - TO # 16.1 | CM/GC Contract Oversight | \$100,000 | \$6,008,218 | Feb-11 | Jun-11 |
| Mortenson CM/GC (1.1) | Preconstruction Services | \$80,000 | \$5,928,218 | Feb-11 | Jun-11 |
| Mortenson - DO # 3 | Clarifier # 4 & Misc Rprs Construction | \$4,470,000 | \$1,458,218 | May-11 | Dec-11 |
| Mortenson - DO # 7 | Disinfection/De-chlorination Construction | \$1,675,000 | -\$216,782 | Jul-11 | Dec-11 |
| N/A | Permits, Fees, & Special Consultants | \$60,000 | -\$276,782 | May-11 | Dec-11 |
| Second Newberg Draw on the \$11.4 M | | \$900,000 | \$623,218 | | |
| HDR - TO # 7A | Headworks Design | \$800,000 | -\$176,782 | Oct-11 | Apr-12 |
| HDR - TO # 16.2 | CM/GC Contract Oversight | \$10,000 | -\$186,782 | Oct-11 | Apr-12 |
| Mortenson CM/GC (1.2) | Preconstruction Services | \$50,000 | -\$236,782 | Oct-11 | Apr-12 |
| Final Newberg Draw on the \$11.4 M | | \$2,900,000 | \$2,663,218 | | |
| HDR - TO # 7B | Pump Station Design (Wynooski) | \$533,000 | \$2,130,218 | Apr-12 | Sep-12 |
| HDR - TO # 8 | Oxidation Ditch # 3 & Repairs Design | \$650,000 | \$1,480,218 | Apr-12 | Sep-12 |
| HDR - TO # 9 | Dewatering Design | \$420,000 | \$1,060,218 | Apr-12 | Sep-12 |
| HDR - TO # 11 | Outfall, In-Plant Work Design | \$120,000 | \$940,218 | Jul-12 | Nov-12 |
| HDR - TO # 12 | Admin Bldg, etc. Design | \$130,000 | \$810,218 | Jul-12 | Nov-12 |
| HDR - TO # 13 | Clarifier # 5 Design | \$570,000 | \$240,218 | Apr-12 | Sep-12 |
| HDR - TO # 16.3 | CM/GC Contract Oversight | \$30,000 | \$210,218 | Apr-12 | Nov-12 |
| Mortenson CM/GC (1.3) | Preconstruction Services | \$150,000 | \$60,218 | Apr-12 | Nov-12 |
| HDR - TO # 14 | Oxidation Ditch # 4 (N Removal) Design | \$460,000 | -\$399,782 | Nov-12 | May-13 |
| N/A | Wynooski Property (Not eligible DEQ funding) | \$146,500 | N/A | Jul-11 | Mar-12 |
| N/A | In-House Expenses (DEQ Reimbursable, but policy has been not to borrow for in-house costs) | \$75,000 | N/A | Dec-10 | Jun-12 |

**EXHIBIT "A" TO
RESOLUTION NO. 11-2926**

**CLEAN WATER STATE REVOLVING FUND
LOAN AGREEMENT
No. R68820**

BETWEEN

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

AND

CITY OF NEWBERG

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THIS LOAN 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. R68820.

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 Newberg.
- (B) **BORROWER'S ADDRESS:** City of Newberg
414 E. First Street
Newberg, Oregon 97132
Fax 503-537-1277
- (C) **LOAN AMOUNT:** \$11,409,645.
- (D) **TYPE AND PURPOSE OF LOAN.** The Loan is a "Revenue Secured Loan" made by DEQ pursuant to OAR Section 340-054-0065(2) for the purpose of financing the Project.
- (E) **PROJECT TITLE:** Wastewater Treatment Upgrades.
- (F) **DESCRIPTION OF THE PROJECT:** Design and construction of improvements to the Borrower's wastewater treatment facility, including a secondary clarifier, disinfection, dechlorination, headworks and influent pump station.
- (G) **INTEREST RATE:** Two and 88/100 percent (2.88%) per annum. Calculation of interest is also discussed in ARTICLE 2(E) and in ARTICLE 2(F)(4) of this Agreement.
- (H) **REPAYMENT PERIOD:** Subject to ARTICLE 1(I), twenty (20) years commencing the Completion Date.
- (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 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 and with the loans number G04002 and B07007, with 10/01/2010 balances of \$1,851,105 and \$7,951,148, respectively, from the Oregon Business Development Department; provided, however, that this provision shall not affect the priority that such 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. 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. 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 October 1, 2012. The Borrower agrees to complete the Project by the estimated Completion Date.

(11) The estimated total Costs of the Project are \$ 11,500,000.

(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 March 30, 2011, 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) 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 Net Operating Revenues used as security for the Loan will **not** constitute taxes that are limited by Section 11b, Article XI of the Oregon Constitution; and

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

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

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

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

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

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

(1) there is insufficient money available in the SRF and CWSRF Program for the Project; or

(2) 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.

(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 (attached hereto and by this reference made a part hereof) and 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 United States 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; provided, however, the amount required under (i) shall include any amounts required by DEQ to provide coverage satisfactory to DEQ on prior lien obligations or new lien obligations the Borrower may incur that DEQ determines are inadequately secured or otherwise may adversely affect the ability of the Borrower to repay the Loan.

(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 whether the Borrower satisfied 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 \$379,856. 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 three (3) 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 the Borrower's annual audit report.

(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 CWSRF Program is subject to the U.S. Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" implementing the Single Audit Act Amendments of 1996 ("Circular A-133"). As a sub-recipient of a federal grant, the Borrower is subject to Circular A-133 to the extent that Loan proceeds include federal capitalization grant funds. DEQ will notify the Borrower of the sources of the Loan funds at the end of each fiscal year, and to the extent required, the Borrower is responsible for compliance with the requirements of Circular A-133.

(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 with its prime contractor(s), the following language, which cannot 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."

(H) **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 \$-0-.

(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.

(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.

(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 current version of the Manual. 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 prior to any disbursement of Loan proceeds hereunder.

(3) Change Orders. The Borrower shall submit all change orders to DEQ. 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 rate 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 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).

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;
- (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 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 specified in ARTICLE 1(H) which shall not in any event exceed 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 Contract, 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 Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(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 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 NEWBERG

By: _____
Authorized Officer

_____ Date

Typed Name: _____

Title: _____

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

By: _____
Neil Mullane, Water Quality Administrator

_____ Date

Approved as to Legal Sufficiency by
The Attorney General's Office _____

Lynn T. Nagasako, Senior AAG
E-mail approval 10/28/10
LN

_____ Date

APPENDIX A: REPAYMENT SCHEDULE

| Due Date | Pmt# | ----- PAYMENT ----- | | | | Principal Balance |
|-------------------------------|------|---------------------|-------------------|----------------|-------------------|-------------------|
| | | Principal | Interest | Fees | Total | |
| | | | | | | 11,409,645 |
| 12/1/2011 | 1 | 0 | 202,600 | 0 | 202,600 | 11,409,645 |
| 6/1/2012 | 2 | 220,102 | 164,299 | 57,048 | 441,449 | 11,189,543 |
| 12/1/2012 | 3 | 223,272 | 161,129 | 0 | 384,401 | 10,966,271 |
| 6/1/2013 | 4 | 226,487 | 157,914 | 54,831 | 439,232 | 10,739,784 |
| 12/1/2013 | 5 | 229,748 | 154,653 | 0 | 384,401 | 10,510,036 |
| 6/1/2014 | 6 | 233,056 | 151,345 | 52,550 | 436,951 | 10,276,980 |
| 12/1/2014 | 7 | 236,412 | 147,989 | 0 | 384,401 | 10,040,568 |
| 6/1/2015 | 8 | 239,817 | 144,584 | 50,203 | 434,604 | 9,800,751 |
| 12/1/2015 | 9 | 243,270 | 141,131 | 0 | 384,401 | 9,557,481 |
| 6/1/2016 | 10 | 246,773 | 137,628 | 47,787 | 432,188 | 9,310,708 |
| 12/1/2016 | 11 | 250,327 | 134,074 | 0 | 384,401 | 9,060,381 |
| 6/1/2017 | 12 | 253,932 | 130,469 | 45,302 | 429,703 | 8,806,449 |
| 12/1/2017 | 13 | 257,588 | 126,813 | 0 | 384,401 | 8,548,861 |
| 6/1/2018 | 14 | 261,297 | 123,104 | 42,744 | 427,145 | 8,287,564 |
| 12/1/2018 | 15 | 265,060 | 119,341 | 0 | 384,401 | 8,022,504 |
| 6/1/2019 | 16 | 268,877 | 115,524 | 40,113 | 424,514 | 7,753,627 |
| 12/1/2019 | 17 | 272,749 | 111,652 | 0 | 384,401 | 7,480,878 |
| 6/1/2020 | 18 | 276,676 | 107,725 | 37,404 | 421,805 | 7,204,202 |
| 12/1/2020 | 19 | 280,660 | 103,741 | 0 | 384,401 | 6,923,542 |
| 6/1/2021 | 20 | 284,702 | 99,699 | 34,618 | 419,019 | 6,638,840 |
| 12/1/2021 | 21 | 288,802 | 95,599 | 0 | 384,401 | 6,350,038 |
| 6/1/2022 | 22 | 292,960 | 91,441 | 31,750 | 416,151 | 6,057,078 |
| 12/1/2022 | 23 | 297,179 | 87,222 | 0 | 384,401 | 5,759,899 |
| 6/1/2023 | 24 | 301,458 | 82,943 | 28,799 | 413,200 | 5,458,441 |
| 12/1/2023 | 25 | 305,799 | 78,602 | 0 | 384,401 | 5,152,642 |
| 6/1/2024 | 26 | 310,203 | 74,198 | 25,763 | 410,164 | 4,842,439 |
| 12/1/2024 | 27 | 314,670 | 69,731 | 0 | 384,401 | 4,527,769 |
| 6/1/2025 | 28 | 319,201 | 65,200 | 22,639 | 407,040 | 4,208,568 |
| 12/1/2025 | 29 | 323,798 | 60,603 | 0 | 384,401 | 3,884,770 |
| 6/1/2026 | 30 | 328,460 | 55,941 | 19,424 | 403,825 | 3,556,310 |
| 12/1/2026 | 31 | 333,190 | 51,211 | 0 | 384,401 | 3,223,120 |
| 6/1/2027 | 32 | 337,988 | 46,413 | 16,116 | 400,517 | 2,885,132 |
| 12/1/2027 | 33 | 342,855 | 41,546 | 0 | 384,401 | 2,542,277 |
| 6/1/2028 | 34 | 347,792 | 36,609 | 12,711 | 397,112 | 2,194,485 |
| 12/1/2028 | 35 | 352,800 | 31,601 | 0 | 384,401 | 1,841,685 |
| 6/1/2029 | 36 | 357,881 | 26,520 | 9,208 | 393,609 | 1,483,804 |
| 12/1/2029 | 37 | 363,034 | 21,367 | 0 | 384,401 | 1,120,770 |
| 6/1/2030 | 38 | 368,262 | 16,139 | 5,604 | 390,005 | 752,508 |
| 12/1/2030 | 39 | 373,565 | 10,836 | 0 | 384,401 | 378,943 |
| 6/1/2031 | 40 | 378,943 | 5,457 | 1,895 | 386,295 | 0 |
| TOTALS | | 11,409,645 | 3,784,593 | 636,509 | 15,830,747 | |
| REQUIRED LOAN RESERVE: | | | \$ 379,856 | | | |

APPENDIX B: ESTIMATED CWSRF LOAN DISBURSEMENT SCHEDULE

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

- 10/10 - 12/10: \$2,852,411
- 1/11 - 3/11: \$2,852,411
- 4/11 - 6/11: \$2,852,411
- 7/11 - 9/11: \$2,852,412

APPENDIX C: DBE GOOD FAITH EFFORT

At a minimum a recipient or prime contractor must make a good faith effort to utilize minority (MBE), women-owned (WBE) and small (SBE) businesses. The six steps are:

- 1) The bidder includes qualified small, minority and women's businesses on solicitation lists;
- 2) The bidder assures that small, minority, women's businesses are solicited whenever they are potential sources;
- 3) The bidder divides total requirements, whenever economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority or women's businesses;
- 4) The bidder establishes delivery schedules whenever the requirements of the work permit, which will encourage participation by small, minority and women's businesses;
- 5) The bidder uses the services and assistance of the Small Business Administration (<http://pro-net.sba.gov>) and the Minority Business Development Agency of the U.S. Department of Commerce (<http://www.mbda.gov>) to identify appropriate small, minority and women businesses; and
- 6) If the bidder awards contracts/procurements, the bidder will require the subcontractors to take all of the affirmative action steps described above. (*40 CFR Section 35.3145(d)*)

Forms for documenting compliance with these requirements may be found at Tab 6 of the Manual for Construction Projects. Please note that these requirements apply to any procurement of construction, supplies, equipment or services.

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

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 PROVISION

Part 1

(1) Minimum wages.

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

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

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

(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 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/esa/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.

Part 2

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

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

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

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

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

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

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve 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. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for 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/esa/contacts/whd/america2.htm>.