



CITY OF COOS BAY CITY COUNCIL MEETING

September 21, 2021 - 7:00 PM

Council Chambers, 500 Central Avenue, Coos Bay, Oregon

All citizens addressing the City Council under regular agenda items or public comments are required by City Council Rule 2.9.4 to sign-in on the forms provided on the agenda table.

If you require a listening enhancement device, please contact the City Recorder.
Please silence electronic devices - Thank you.

Meeting Live Link/Video

1. Flag Salute
2. Public Comments
 - a. Public Comment Form
3. Consent Calendar
 - a. Approval of September 7, 2021 Minutes
4. Presentation of the Semi-Annual Bay Area Chamber Activities Report
5. Council Flag Policy
6. Council Discussion of CBMC Section 17.316 Empire Waterfront Settlement Design Review
7. Council Review of 3rd and Central Parking Lot Concept Plan
8. Adoption of Resolution 21-27 to Amend the DEQ State Revolving Fund Loan for the Englewood School Brownfield Project
9. Council Letter of Support for a Department of Land Technical Assistance Grant Conservation and Development
10. City Manager's Report
11. Council Comments
12. Adjourn



City of Coos Bay PUBLIC COMMENT FORM

The City of Coos Bay values our citizen's input and participation in our various councils, boards, and commissions. In an effort to encourage access to participation, we have established a process by which the public can provide written comments in advance which allows for potential timely addition to the agenda topics of interest to the public. Each council meeting provides for a public comment period, as well as when a public hearing is held. Public comment is an opportunity to share information or concern with the council. Public comment is limited to three (3) minutes, per individual.

If you wish to provide public comment at an upcoming meeting, please fill out this form and submit to publiccomment@coosbay.org. You may also mail or hand deliver your completed form to 500 Central Avenue, Coos Bay, OR 97420; fax to 541-267-5912; or leave in the drop box at the front doors at City Hall. Completed forms must be received by 1:00 pm the day of the meeting to be added to Public Comment List.

Public Comment Rules:

- Public Comment Form must be completed before speaking.
- Limited to three (3) minutes per speaker.
- Coos Bay residents and business will be given preference for addressing the council during the time allotted for public comment.
- Speakers may not convey/donate their time to another speaker.
- Council cannot engage in question/answer conversations with the speaker.
- Questions/concerns about operations should be handled by city staff during regular business hours.
- The presiding officer has responsibility of enforcement of these rules, and may alter the order of speakers for efficiency.

Name: _____

Address: _____

Phone: _____ Email: _____

I wish to speak to the City Council on the following agenda item/issue:

I have previously addressed the City Council on this issue.

In lieu of speaking, I request the City Recorder to include my written comments into the public record (comment area provided on page two).

By signing below, I acknowledge the above public comment rules. Pursuant to ORS 192.420, this document is considered a public record and disclosure may be required upon request.

SIGNATURE REQUIRED

DATE

[illegible]

CITY OF COOS BAY CITY COUNCIL

MEETING DATE	AGENDA ITEM NUMBER
September 21, 2021	3.a.

TO: Mayor Benetti and City Councilors

FROM: Melissa Olson, Deputy Finance Director

THROUGH: Rodger Craddock, City Manager

ISSUE: Approval of September 7, 2021 Minutes

ATTACHMENT(S):

- ▣ September 7, 2021 City Council Minutes

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL

September 7, 2021

The minutes of the proceedings of a regular meeting of the City Council of the City of Coos Bay, Coos County, Oregon, held at 7:00 pm in the Council Chambers, 500 Central Avenue, Coos Bay, Oregon.

Those Attending

Those present were Mayor Joe Benetti and Councilors Lucinda DiNovo, Drew Farmer, Stephanie Kilmer, Carmen Matthews, Rob Miles, and Sara Stephens. City staff present were City Manager Rodger Craddock, City Attorney Nate McClintock, Assistant City Manager/Finance Director Nichole Rutherford, Deputy Finance Director Melissa Olson, Public Works and Community Development Director Jim Hossley, Library Fire Chief Mark Anderson, Police Chief Chris Chapanar, and Library Director Sami Pierson. City staff attending remotely by teleconference was Community Development Administrator Carolyn Johnson.

Flag Salute

Mayor Benetti opened the meeting and led the council and assembly in the salute to the flag.

Public Comments

No public comments were made.

Public Comment Form

No public comment forms were received.

Oath of Office

Administration of the Oath of Office for Newly Appointed Councilor Sara Stephens

The oath of office was administered to Councilor Sara Stephens by City Recorder / Assistant City Manager / Finance Director Nichole Rutherford.

Consent Calendar

Mayor Benetti reviewed the consent calendar which consisted of:

3a: Approval of August 17, 2021 Minutes

3b: Approval of August 24, 2021 Minutes

3c: Acceptance of July 2021 Financial Reports and Check Registers

3d: Consideration of Adoption of Resolution 21-25 Authorizing the Acceptance of the Tidegate Loan and Grant from Business Oregon

The city identified seven tide gates in need of repair. Business Oregon offered

a funding program for tide gate planning level projects. The city applied for and was awarded a \$100,000 grant and \$100,000 loan. Business Oregon also required a resolution be passed.

3e: Acceptance of FEMA Grant for Exercise Equipment and Appropriating Grant Funds - Would Require Adoption of Resolution 21-26

The Coos Bay Fire Department wanted to utilize FEMA's Assistance to Firefighters Grant funding for the replacement of exercise equipment for the fire department.

Councilor DiNovo moved to approve the consent calendar as presented. Councilor Matthews seconded the motion which carried. Ayes: Benetti, DiNovo, Farmer, Kilmer, Matthews, Miles, Stephens.

Election of Council President

City Manager Rodger Craddock stated with the vacation of Councilor Marler's position there was an opening for Council President. Mayor Benetti moved to nominate Councilor Miles as Council President for a term ending with the next general biennium election. No further nominations were made.

Councilor DiNovo moved to appoint Councilor Miles as Council President and suspend the Council rules for ballot vote. Councilor Kilmer seconded the motion which carried. Ayes: Benetti, DiNovo, Farmer, Kilmer, Matthews, Miles, Stephens.

Consideration of Appointment to the Homeless Work Group

City Manager Rodger Craddock stated the Council established a Homeless Workgroup on November 21, 2017, and eighteen members were appointed to the committee on February 20, 2018. The committee had not met since February 13, 2020 due in large part to COVID restrictions, but they had met 14 times in the previous two years. The committee was instrumental in the implementation of the following: Housing Receivership Ordinance, Exclusionary Ordinance, creation of a Community Services Officer position, Vacant Property Registration Ordinance, Temporary Lodging Facilities Ordinance, Warming Shelter Policy, Property Watch Program, revisions and expansion of the Camping Ordinance, and revisions and expansion of the Towing Ordinance. A number of the original committee members were no longer members of the committee or no longer in the position of the organization they represented which occasionally required Council to appoint new representatives on the committee. Recently, one of the Homeless Workgroup representatives from the Coquille Indian Tribe has requested that Jessica Hamner, the current member, be replaced by Alyssa Severson. In addition, Representative Boomer Wright was interested as well.

Councilor Kilmer moved to appoint Alyssa Severson as a representative of the Coquille Indian Tribe to the Homeless Workgroup along with Representative Boomer Wright. Councilor Farmer seconded the motion which carried. Ayes: Benetti, DiNovo, Farmer, Kilmer, Matthews, Miles, Stephens.

Public Hearing to be Held to Consider Approval of Proposed Towing of Illegal Vehicles Ordinance - Approval Would Require Enactment of Ordinance

Police Chief Chapandar stated over the past month, staff had been working on the revision of

Coos Bay's "Towing of Illegal Vehicle" ordinance. The revision expanded the abandon vehicle definition by including the term "Unlawful Vehicle" and defined what constitutes an "Unlawful or Abandon" vehicle. The revised ordinance also included definitions for "Park or Parking" and "Recreational Vehicle", as well as, clear guidance in accordance to Oregon's new law under (House Bill 3124), on the legal requirements of municipalities and counties when property is seized/towed. It defined the retention requirement of thirty days, allowing reasonable time and opportunity for the property to be retrieved by the owner. The revised ordinance was been reviewed by Coos Bay's City Attorney and the ordinance was presented to the City of Coos Bay's Homeless Work Group Committee, who voted unanimously in support of the revisions.

Mayor Benetti opened the public hearing. No public comments were made and the hearing was closed.

Councilor Farmer moved to enact the proposed Towing of Illegal Vehicle Ordinance. Councilor Matthews seconded the motion which carried. Deputy Finance Director Melissa Olson read the ordinance by title only and Ordinance 546 was enacted by the following vote:

Aye: Benetti, DiNovo, Farmer, Kilmer, Matthews, Miles, Stephens.

Nay: None.

Absent: None.

Approval of Intergovernmental Agreement in Support of Community Development Block Grant

City Manager Rodger Craddock stated the management team from the City of North Bend asked for support of their effort to successfully apply for a CDBG to aid Coos County residents with emergency rental assistance. If awarded, Oregon Coast Community Action would administer the grant for the City of North Bend. The proposed Intergovernmental Agreement, if approved, would provide access to rental assistance funds for Coos Bay residents, as well as potentially increase the amount of the award. The CDBG allows for additional partners in the award, thereby extending the assistance into each partner's community, and potentially increase the total grant award. In order to be included as a partner, providing for emergency rental assistance for Coos Bay residents who meet program qualifications, the City of Coos Bay must enter into an IGA with the City of North Bend (applicant) and Oregon Coast Community Action (administrator).

Councilor Kilmer moved to authorize the City Manager, or designee, to sign the Intergovernmental Agreement with the City of North Bend and Oregon Coast Community Action, supporting the CDBG application and potential subsequent grant award for Coos Bay residents. Councilor Miles seconded the motion which carried. Ayes: Benetti, DiNovo, Farmer, Kilmer, Matthews, Miles, Stephens.

Consideration of Request to Purchase Jetter/Vacuum Vehicle

Public Works and Community Development Director Jim Hossley stated a Jetter/Vacuum truck was utilized frequently throughout the Water Quality asset. Most importantly a Jetter/Vacuum truck was used in the regular cleaning and maintenance of the conveyance system. On average, 9,000 feet of the City's Sewer and Storm conveyance systems was cleaned monthly to keep the system free flowing and in good working condition. A

Jetter/Vacuum truck was also utilized to help investigate sinkholes, line breaks, citizen concerns, clean spills and hydro excavate for repairs and new installs. The Water Quality Division utilized the Jetter/Vacuum trucks at the twenty-five lift stations to clean wet wells, controlling flows for wet well entries for maintenance and repair, and for emergency response. Plant 1 used a Jetter/Vacuum truck for cleaning, entry and maintenance for fifteen different process areas annually. Plant 2 used a Jetter/Vacuum truck for cleaning, entry and maintenance for nine different process areas annually.

Currently there were two Jetter/Vacuum vehicles in the city's rolling stock inventory; The oldest one was a 1995 Ford LNT 3000 Sewer Cleaner Jetter/Vacuum truck, designated vehicle number 916. This vehicle was the second oldest in the Water Quality's rolling stock inventory, next to a 1990 International tanker truck, and has 9,150 hours on the main drive motor which equates to 457,000 miles. This vehicle has been out of service for several months due to multiple mechanical and safety issues including manufacturing a new pitman arm, jetter hose replacement, hydraulic pump replacement, all ten tires replaced, debris body replacement, boom control wiring harness, blower replacement, and numerous electrical repairs. These minimum necessary repairs must be made to make the vehicle road worthy and safe to use and are estimated to be \$159,000. The useful life for a Jetter/Vacuum truck was recommended ten years, which places this vehicle sixteen years past its useful service life. The other Jetter/Vacuum vehicle was a 2009 model with 7,500 hours. Currently it was in fair working condition but past the recommended useful life of ten years.

Due to the frequency of utilization and criticality of this asset, the immediate replacement of the 1995 Jetter/Vacuum truck was recommended. A quote was provided for a replacement vehicle. Per Resolution 17-14 (Public Contracting Rules) which references the Oregon Revised Statutes (in particular Section 5.(b) paragraph (2)), the City can purchase this vehicle through a Cooperative Purchase Agreement with Sourcwell. The cost to replace said equipment was quoted for \$437,588 with several lease to own purchasing options available. There may not be budget to outright purchase the vehicle with the anticipated/planned rolling stock needs over the next one to three years and the planned capital improvement projects. As a result, there were several other purchase options that were provided:

- Option 1 – Purchase outright for \$437,588
- Option 2 – Three-year lease at \$155,466 Annually (\$28,810 interest payment)
- Option 3 – Four-year lease at \$11,932 Annually
- Option 4 – Five-year lease at \$95,766 Annually (\$41,242 interest payment)
- Option 5 – Six-year lease at \$82,359 Annually
- Option 6 – Seven-year lease at \$70,347 Annually (\$54,841 interest payment)

The city received a quote from US Bank to finance the cost of the Jetter/Vacuum. The interest rate for a 5-year term was 1.65%. The interest paid over the life of the 5-year term would be approximately \$22,000. The interest rate for a 7-year term was 1.9% with total interest over the 7-year term being approximately \$34,000. Staff analyzed purchase options that were consist of purchasing it outright, a 3-5 year lease to own option identified above, or coordinating with our local banks on finance options. At most, a 5-year lease to own option would involve 5 annual payments of \$95,766 for a total purchase price of \$478,830. In addition, \$10,000 would be needed to upgrade the brakes, install a city logo, and outfit the vehicle with safety equipment for a maximum purchase price of \$488,830. Staff would investigate the options and move forward on the options that best fits with the City's budgetary needs. The maximum purchase price is \$488,830 and the allocations are as

follows: 03-351-530-3300 - 23.5%, 03-352-530-3300 - 23.5%, 03-353-530-3300 - 42.5%, 03-355-530-3300 - 10.5%.

Councilor DiNovo moved to approve the purchase a new Jetter/Vacuum vehicle for an amount not to exceed \$488,830. Councilor Matthews seconded the motion which carried. Ayes: Benetti, DiNovo, Farmer, Kilmer, Matthews, Miles, Stephens.

Consideration of Entering Into Grant Agreements to Replace Floating Docks at Empire and Eastside Boat Ramps

Public Works and Community Development Director Jim Hossley stated the Empire and Eastside Boat Ramps were both in need of replacement of dock floats. At the February 16, 2021, Council approved Resolution 21-05 authorizing submittal of a grant application to the Oregon State Marine Board (OSMB) to fund these dock replacements. As a result of the application, two grant funding sources were provided: \$203,250 from Oregon Department of Fish and Wildlife (ODF&W) and \$67,750 from the OSMB. In addition, OSMB also prepared plans and technical specifications and regulatory permits/approvals have been obtained. In the OSMB grant there was a Project Timeline (Exhibit A) with a completion date of January 2022. However, based on coordination with OSMB, this timeline could be extended. Due to delays in materials, the unstable bidding market, and the lack of availability of aluminum OSMB recommended the city bid this project in the Fall. It was anticipated once the bid was awarded, it would take six months for the materials to be onsite. OSMB approved this updated schedule and once the agreement was signed, they would provide an amendment to change the Project Timeline. Staff recommended entering into these two agreements and bidding this project in fall 2021.

Councilor Miles moved to enter into the grant agreement from the Oregon Department of Fish and Wildlife for \$203,250 and a grant agreement from the Oregon State Marine Board for \$67,750 for a total of \$271,000 to replace dock floats at the Empire and Eastside Boat Ramps. Councilor Kilmer seconded the motion which carried. Ayes: Benetti, DiNovo, Kilmer, Matthews, Miles, Stephens. Absent: Farmer.

City Manager's Report

City Manager Rodger Craddock stated commend Chief Chapanar and staff as over a month ago worked on the camping ordinance, have spent large amounts of time educating and providing resources to those camping in the city, and have seen a great improvement. Over a year ago Measure 110 was passed limiting the work of the city's two drug dogs; can work in the school, by parole and probation, search warrants, but day to day patrol cannot be used; one dog was assigned to the school; and the other dog ownership was transferred to Coos County Parole and Probation. The wastewater treatment process produces sludge, staff was trying to lower the limit of sludge to the Eastside pond and ground apply it to local farmers instead, and in less than ninety days have ground applied over 500 yards of sludge.

Council Comments

Councilor Farmer stated various groups spoke at a listening session regarding mental health and consequences of Oregon law; the right to assist people in need will be part of next legislative session. Councilor Matthews welcomed Councilor Stephens and thanked the city for their hard work on the 4th Street project. Councilor DiNovo congratulated and welcomed Councilor Stephens. Councilor Miles welcomed Councilor Stephens, thanked Council for electing him as Council President, and on September 10, 2021 was Dutch Brothers Buck for

Kids day. Councilor Kilmer stated the Coos Bay Downtown Association had to cancel the Bay Area Fun Festival this summer with other activities having been cancelled as well, Farmer's Market would continue as a masked market on Wednesdays through October 2021, thanked the Police Department for all their work on the towing ordinance, brush pick-up was scheduled to begin the week of September 6, 2021, and the Speeders were scheduled to be in Coos Bay October 8, 2021 which would kick off the Bus Jam Toy and Food Drive scheduled for December 2021. Councilor Stephens stated she was there to serve the community, was interested in hearing from citizens, and thanked everyone for letting her serve on the council. Mayor Benetti welcomed Councilor Stephens, 4th Street LED lights had not been working and ODOT would switch the boxes on September 8, 2021, League of Oregon Cities Conference was cancelled, asked about the Mingus Park grant which had previously been delayed due to COVID, and asked if the Police Department were enforcing the camping ordinance. Public Works and Community Development Director Jim Hossley stated Community Development Administrator Carolyn Johnson was working on the Mingus Park grant, the grant consultant has been continuing work on the grant, and should have processes to apply to in 2022. Police Chief Chris Chapanar stated they were enforcing the camping ordinance, it began September 3, 2021, the education process began thirty days prior, and they were getting compliance.

Adjourn

There being no further business to come before the council, Mayor Benetti adjourned the meeting. The next regular council meeting was scheduled for September 21, 2021.

CITY OF COOS BAY CITY COUNCIL

Agenda Staff Report

MEETING DATE	AGENDA ITEM NUMBER
September 21, 2021	4.

TO: Mayor Benetti and City Councilors

FROM: Jackie Mickelson, Executive Assistant

THROUGH: Rodger Craddock, City Manager

ISSUE: Presentation of the Semi-Annual Bay Area Chamber Activities Report

SUMMARY:

The Bay Area Chamber of Commerce and the City of Coos Bay work together to support local businesses and to improve the economy. Having open and regular communication between the two entities is important in maintaining our partnership.

ACTION REQUESTED:

No action required by the city council.

BACKGROUND:

The Bay Area Chamber of Commerce (BACC) was established in 1980. It is a non-profit, professional organization made up of the Coos Bay, North Bend, and Charleston business communities. They work together to create a strong business voice, promote businesses, and improve the economy of the Bay Area. The BACC continues to be recognized as a vital link between the cities, state, and regional parties of leadership, and act as the promoting entity for community spirit within the Bay Area.

The Chamber's strength lies in the number and diversity of its membership. The activities of the BACC vary by the needs of the business community. Much of the Chamber's work is accomplished through the volunteered time and efforts of its members, primarily through committees, providing community leadership in the areas of economic development, government affairs, leadership development, natural resources, tourism and transportation.

BUDGET IMPLICATIONS:

None.

ATTACHMENT(S):

CITY OF COOS BAY CITY COUNCIL

Agenda Staff Report

This item was previously discussed at on 7/27/2021

MEETING DATE	AGENDA ITEM NUMBER
September 21, 2021	5.

TO: Mayor Benetti and City Councilors

FROM: Rodger Craddock, City Manager

THROUGH:

ISSUE: Council Flag Policy

SUMMARY:

During the August 24, 2021 work session, the Council reviewed a draft Flag Policy. Per the direction provided at the meeting, the attached policy has been amended and is ready for further consideration by the Council and possible adoption of the policy. If adopted would allow the Council to grant permission to display commemorative or ceremonial flags on a city owned flag pole or poles.

ACTION REQUESTED:

If it pleases the Council, adopt the Council Flag Policy.

BACKGROUND:

Earlier this year, a citizen approached the city requesting to have the Pride flag placed on a city flag pole during the month of June which was recognized as Pride Month. The request was not granted as the City lacked a policy to assist in determining if such requests should be granted and what criteria would be used in assessing what flags would be appropriate to allow and which would not.

Councilor Farmer asked to have the matter scheduled for discussion at a Council work session. The City Attorney was asked to undertake some research and present his findings / advice at the June 28, 2021 work session. On July 27, 2021, the City Attorney presented his research findings. On August 24, 2021 the Council reviewed and discussed a draft flag policy prepared by the City Attorney. The draft flag policy has been amended based on direction provided by the Council.

The proposed policy addresses a key concern by noting that any commemorative or ceremonial flags displayed are being done so in order to express the City's sentiment concerning a particular issue or matter, and as such, the public at large does not have a constitutional right to have their particular flag displayed.

BUDGET IMPLICATIONS:

Potential budget implications have not been calculated, but there could be costs associated with the installation and removal of flags due to staff time necessary to complete such tasks.

ATTACHMENT(S):

- ▢ Flag Policy

CITY OF COOS BAY POLICY FOR THE DISPLAY OF FLAGS AT CITY FACILITIES

Section 1: PURPOSE

The purpose of this policy is to establish clear guidelines regarding the display of flags at City facilities.

Section 2: POLICY

2.1 Conformance with Federal and State Regulations. Flags shall be displayed in accordance with federal and state regulations, including, but not limited to Title 4, Chapter 1 of the United States Code, and Oregon Revised Statute section 186.110.

2.2 City Manager Authority. The City Manager is authorized to order the City flag(s) to be lowered to half-staff as listed below. The flag will be lowered as soon as practicable following notification of the death, and will remain lowered until internment or up to two weeks, whichever is shorter.

2.2.1 A City employee killed in the line of duty.

2.2.2 Death of a current or former City Council Member or Mayor.

2.3 Ceremonial or Commemorative Flags.

2.3.1 Non-Public Forum. The City's flagpoles are not intended to be a forum for free expression by the public. Ceremonial or commemorative flags shall be displayed as an expression of the City's official sentiments. A request to display a commemorative or ceremonial flag shall be supported by at least one members of the City Council in order to be placed on a City Council meeting's agenda for consideration by the Council. All requests to display commemorative flags must be listed as a "Regular Item" on the Council agenda. Council must present requests to display a commemorative or ceremonial flag at least sixty (60) days prior to the date requested for display of the flag. A Council resolution authorizing the display of a commemorative or ceremonial flag must be approved by a majority vote of the City Council. Changes to this policy shall require a supermajority vote (five-sevenths) of the City Council.

2.3.2 Commemorative or ceremonial flags may only be displayed on one of the three available flag poles located along the Boardwalk. Commemorative or ceremonial flags may only be displayed for one week (seven days) if displayed during the normal City workweek. If the day of commemoration occurs on a weekend or City holiday, the flag will be posted on the last working day before the weekend or holiday, and removed seven days thereafter. The Council may extend the period a commemorative or ceremonial flag may be displayed for up to a total time of one month (maximum of 31 days), by resolution.

2.3.4 The City will not display a commemorative or ceremonial flag based upon the request of a third party, nor will the City use its flagpoles to sponsor the expression of a third party.

2.3.5 Any commemorative or ceremonial flag displayed on a City flagpole, shall be displayed in the last position of honor, in the event that such flag pole is also displaying the flag(s) of the United States, the State or Oregon, and/or the City of Coos Bay.

2.3.6 If the Council Member(s) requesting the display of the commemorative or ceremonial flag also wish a flag ceremony, the latter request must be made at the time of the former request, in accordance with Section 2.3.1. Any such flag ceremony shall consist of (1) publicity on the City's website and social media accounts, a press release, and audio support (podium with speaker and microphone).

2.4 Implementation of Policy. The Public Works Director, or his designee, is authorized to develop standard operating procedures to implement this Policy.

CITY OF COOS BAY CITY COUNCIL

Agenda Staff Report

This item was previously discussed at Urban Renewal meeting on 9/7/2021

MEETING DATE	AGENDA ITEM NUMBER
September 21, 2021	6.

TO: Mayor Benetti and City Councilors

FROM: Carolyn Johnson, Community Development Administrator

THROUGH: Jim Hossley, Public Works and Community Development Director

ISSUE: Council Discussion of CBMC Section 17.316 Empire Waterfront Settlement Design Review

SUMMARY:

On September 7, 2021, the Urban Renewal Agency Board inquired as to the background and value of CBMC section 17.316 Empire Waterfront Settlement Design Review. The Council's questions stemmed from review of an Urban Renewal building improvement grant application that required a Type II Administrative Architectural review land use permit for a proposed mural. Council asked whether a re-visit to the guidelines was in order to determine their value.

ACTION REQUESTED:

Discuss the matter and consider the following:

- 1) Direct Design Assistance Team (DAT) and Planning Commission review the section requirements and make recommendations on moving forward or
- 2) Direct DAT and Planning Commission public hearings on the section requirements with the intent of requirement modifications or
- 3) Take no action or
- 4) Some other direction.

BACKGROUND:

The Empire Settlement guidelines were discussed extensively by Council between around 2011/2012 and beyond that time frame. February 2012 minutes are attached identifying the 2012's Council's position of no action on the guidelines. There was subsequent Council discussion on the guidelines, culminating in a Council meeting of July 15, 2014 about a re-write of the Development Code. The meeting minutes note: *Community Development*

Director Eric Day noted the main goals of the development code re-write were". Mr. Day stated unless otherwise directed by the Planning Commission or City Council, staff was not proposing to modify the following components of the Code changing the Empire Design standards" "Mr. Day noted that the process was already underway and anticipated presenting the draft to PC and Council in January 2015." The Development Code re-write went through the public hearing process before the Planning Commission and Council and was adopted in February of 2016 with no changes to the Empire Settlement guidelines.

CBMC section 17.316 Empire Waterfront Settlement Design Review "Purpose" notes: *The provisions of this chapter are intended to:*

- a) provide a mechanism to promote the educational, cultural, economic, and general welfare of the community;*
- b) provide an opportunity to reclaim the waterfront heritage setting and to guide development in a direction that strengthens a relationship with that setting; and*
- c) guide the construction of private and public development to evoke the architectural styles which existed in Empire from the mid-to-late 1800s. Common architectural styles of the time period include Cascadian rustic, plank styles, false front, salt box, Queen Anne and Victorian.*

Council discussion should consider the purpose and value of the design guidelines. Council discussion should also consider, in the context of the amount of development activity underway and expected in Empire, whether revisiting the guidelines is warranted in light of other Council goals and other pending projects with limited staffing and funds.

If the revisit to the guidelines is a Council choice, two issues are suggested for consideration:

- 1) Seek review of the guidelines by the Design Assistance Team and Planning Commission with opportunity for public comment and
- 2) Determine what staff work underway on other projects should be set aside for work needed for the re-visit to the guidelines. Alternatively, consider funding and hire of a contract planner to re-evaluate and go through the public process to determine any guideline changes.

Regardless of Council's choice at this time, timing and sequencing for both URA building improvement grant applications and the type II architectural review land use application will be solidified with an order of application submittal requiring the land use permit process to be complete prior to acceptance of a URA building improvement application. In the case of 657 Newmark, the applicant received the building improvement grant application and land use application at the same time, submitted the grant application timely but held off on the land use application; thus delaying the architectural review permit land use action. Due to the requirement of the Design Assistance Team review and the land use notification requirements, the entire matter was a process timing issue, not an inefficiency or for lack of value for the land use process. In the future, unless alternative direction is provided, URA building improvement grant applications will only be accepted following the any land use review process in the Empire Design area. Until the referenced applications regarding the recent case earlier noted, there have not been timing problems for previous grant applications.

BUDGET IMPLICATIONS:

Budget implications are unclear at this time.

ATTACHMENT(S):

- ▢ February 21, 2012 Council minutes

City Council Minutes – February 21, 2012

\$829,581 in the Downtown District. Councilor Kramer inquired what the money would be used for. City Manager Rodger Craddock identified several different projects which included the Dolphin Theatre, Improvement of S. Empire Boulevard, and the Egyptian Theatre. Councilor Kramer moved to adopt Resolution 12-07 approving an IGA between City of Coos Bay and the Coos Bay Urban Renewal Agency authorizing up to \$1,557,794 of Du Jour loans to finance projects up to \$728,083 in the Empire District and up to \$829,581 in the Downtown District. Councilor Groth seconded the motion which carried with Mayor Shoji and Councilors Groth, Hanson, Kramer, Melton, Muenchrath, and Vaughan voting aye.

Discussion on the Empire Design Standards

Planning Administrator Laura Barron stated Coos Bay Municipal Code (CBMC) Chapter 17.240, Empire Waterfront Settlement Design review set forth goals and standards to review the exterior of structures and signage along Newmark Avenue between Ocean and S. Empire Boulevards. Ms. Barron stated the standards were based on an architectural style from the late 1800's and noted concerns that the standards were difficult to implement. Staff requested direction on the various aspects of the Empire design standards. Ms. Barron reviewed a staff report memo on Empire Design Standards received from John Morgan of Morgan CPS Group, Inc. City Attorney Nate McClintock agreed with Mr. Morgan's assessment that in order to comply with Oregon law, design standards needed to be clear and objective; advised changing some of the current standards. Councilor Muenchrath inquired about the design/decision making process for the urban renewal façade program. Mr. McClintock advised the urban renewal's façade program was administered using urban renewal funds and was separate from design standards. Councilor Kramer inquired if the City was still considering hiring Mr. Morgan to complete the design standards. City Manager Rodger Craddock advised that was a consideration if the Council's intent was to have standards.

Butch Schroeder, North Bend: stated he had a project he wanted to work on in the Empire district and expressed the need for quick resolution. Hillary Baker, Coos Bay: stated as Chair of the Design Review Committee she agreed with Mr. Morgan's feedback on the design standards and the two pronged approach; suggested the current standards were no longer relevant and was hopeful the Council would address continuity and consistency citywide. Christine Coles, Coos Bay: stated as Chair of the Planning Commission she agreed with Ms. Baker's comments and encouraged implementation of consistent design standards. Ms. Barron pointed out a section of Mr. Morgan's letter which addressed the legal issue of providing a system of clear and objective standards as required by Oregon law; further noting the two-prong approach would resolve legal issues raised against processes based on standards that were subjective and arbitrary.

In consideration of the current design standards in Empire, Councilor Muenchrath suggested some of the successful businesses noted as meeting design standards did not actually conform to 1800's standards; and was in favor of abandoning the 1800's requirement. Councilor Vaughan suggested continuity within a given block and surrounding buildings with regards to texture and use of materials was the most significant consideration. Councilor Groth and Councilor Melton agreed with Councilor Muenchrath and Vaughan's assessments. Councilor Kramer did not want to abandon all of the design standards within Empire but had no objection with doing away with the 1800's design standards. Councilor Hanson suggested standards should not be prohibitive to development. Mayor Shoji stated she did not see any point in

City Council Minutes – February 21, 2012

maintaining existing standards that were not clear and objective. Councilor Groth inquired if it was Council's position to revise or direct new standards whereby City Manager Rodger Craddock advised it was Council's decision to either place a moratorium on the existing standards or leave the existing standards in place until a new ordinance could be developed and voted on.

Councilor Muenchrath expressed concern about freedom of choice for property owners. Councilor Groth suggested there were aspects of the existing framework that were worth saving. Councilor Vaughan stated standards provided assurances to future investors and existing property owners. Councilor Muenchrath noted there was an appeals process in place which allowed applicants to appeal the design standards. Mayor Shoji stated she was not opposed to placing a moratorium on the current standards until new standards were developed; noting downtown Coos Bay did not have design standards. Councilor Muenchrath inquired if there was something in the current design criteria in which the Council was opposed. Ms. Barron advised if the Council was to place a moratorium on the current design standards that there would not be any standards in place related to the design of a building; and noted the area in question was located in the general commercial (C-2) zoning district which had no requirements for set-backs, off street parking, or height restrictions. Councilor Groth stated the section of Empire that design standards covered was evolving into a core area and felt there were several elements within the standards that were important. Mr. Craddock estimated it would take six months for the development and implementation of new standards.

Councilor Groth moved to keep the design standards as they currently existed until staff had time to develop clear and objective standards which would include removing references to the 1800's. Councilor Melton seconded the motion. Councilor Muenchrath suggested implementing the two-pronged approach into the revised standards. Councilor Groth revised the motion to keep the design standards as they currently existed until staff had time to develop new standards which would include removing references to the 1800's, making the standards more clear and objective, and implementing the two pronged approach. Councilor Melton re-seconded the revised motion. Councilor Hanson suggested gathering input from building owners in the Empire area as part of the process for developing the revised standards. Mayor Shoji expressed concern about new business having to meet the existing 1800's design standards. Mr. McClintock advised against ignoring the existing ordinance through an appeals process and recommended placing a moratorium on the ordinance if the existing design standards were not going to be upheld. A call for the question was made which carried with Councilors Groth, Kramer, Melton, Muenchrath, and Vaughan voting aye and Mayor Shoji and Councilor Hanson voting nay.

Approval of a Contract for the 2012 Timber Management Services

Public Works and Development Director Jim Hossley stated the City and Coos Bay-North Bend Water Board (Water Board) jointly owned 3,000 acres of forest land within the Pony Creek Watershed. As such, planning and conducting a timber sale involved a joint collaboration with the Water Board and required a qualified forester consultant to assist with the collaborative effort, prepare prospectus for the future 2012 timber sale, and conduct and manage the timber sale. In the past Stuntzner Engineering & Forestry, LLC provided timber management services to the City and Water Board. Mr. Hossley stated due to the timing of the timber sale it was essential the selected consultant had working knowledge of the watershed and was familiar with

CITY OF COOS BAY CITY COUNCIL

Agenda Staff Report

This item was previously discussed at Joint URA/Council Worksession on 5/25/2021

MEETING DATE	AGENDA ITEM NUMBER
September 21, 2021	7.

TO: Mayor Benetti and City Councilors

FROM: Carolyn Johnson, Community Development Administrator

THROUGH: Jim Hossley, Public Works and Community Development Director

ISSUE: Council Review of 3rd and Central Parking Lot Concept Plan

SUMMARY:

One of the Council's adopted goals is to "Develop a parking lot on the property formerly known as the Lockhart building located at S 3rd St. and Central Ave." The parking lot project design work has been underway for the past several months. A draft of the parking lot concept is attached for Council's review. The electrical, landscaping, structural and design features are 95% complete.

Much of staff's time on this project has been devoted to significant effort related to state and federal funding requirements. The project design has evolved since Council's last review on May 25. The Background section of this report provides further information.

While Council comments are requested on the updated concept plan, specific direction is requested on: 1) the design of the center piece of the entry to the site from 3rd Street, a clock feature, tree or art are options for consideration; 2) the bench design whether to include bench arms and 3) any other key features where alternative options would be desired.

ACTION REQUESTED:

Council review and comment is requested before the plans are finalized and a bid and construction schedule established.

BACKGROUND:

Design professionals, Dyer Partnership, and Dougherty Landscape Architects have been working with staff on the project design. The Coos Bay Downtown Association (CBDA) and the Coos Watershed Council have engaged in the project design for electrical service and locations and ideas for horizontal art depicting watershed value respectively.

This project is a "green" parking lot designed with:

- Permeable pavers and vegetation

- Pre bike racks (like the CBDA funded Visitor's Information Center and PreWay racks);
- A community clock
- Interpretive signage
- Locations for public art; this feature has evolved to include locations for horizontal art by the Coos Bay Watershed Council related to watershed preservation.
- Trash enclosure to serve local businesses.
- Enhanced electrical service for CBDA events and seating around and near trees.
- DC Fast Charger for electric vehicles.

BUDGET IMPLICATIONS:

At the writing of this report, the Department of Environmental Quality (DEQ) Sponsorship Option (SO) is considered a funding option for the bulk of the parking lot improvements. Portions of the project design for which other funding sources are to be considered include:

- Fast charger; word on whether grant funding for the charger will be available by the end of October. The value of the charger and related electrical improvements is approximately \$99,384.
- Community Clock: This feature would require identification of funds, estimated at about \$38,800. Alternatively staff has been exploring the option of another tree at this location or simply an open paver area with a feature design, such as a compass or other horizontal art feature.
- Pre bike racks: Six are identified on the project concept plan. Estimated cost of the legs is \$9,000.

The above costs are estimates. Please note that material and construction costs these days are difficult to determine due to rapid escalation.

ATTACHMENT(S):

- ▣ 09.21.2021 3rd.Central Parking lot concept Plan

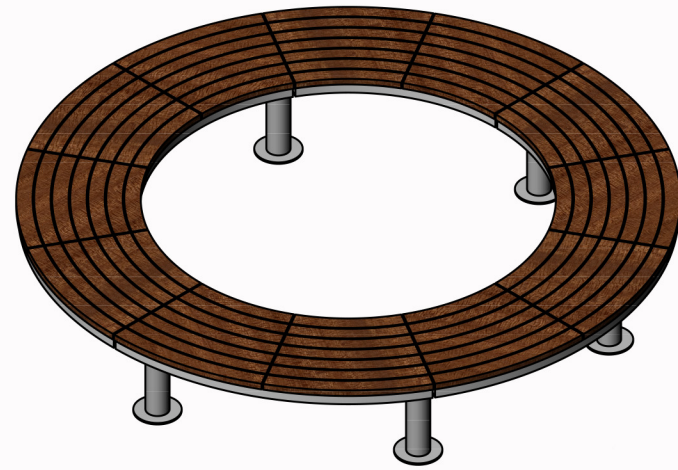
PLAN KEY

A CUSTOM BIKE RACKS
City of Coos Bay
Running Bike Rack Legs



B CIRCULAR BENCH

Manufacturer: Maglin
Product / Model: Ogden Series
Material / Finish: IPE Wood Slats
Black Powder Coast Base



C PERMEABLE PAVERS

Manufacturer: Willamette Graystone
Product / Model: SF Rima
Material / Finish: Walnut Color;
Gray at Parking Stripes



D PLAZA PAVER

Manufacturer: Willamette Graystone
Product / Model: Holland Plaza Paver
(Half Holland Size Shown)
Material / Finish: Walnut Color



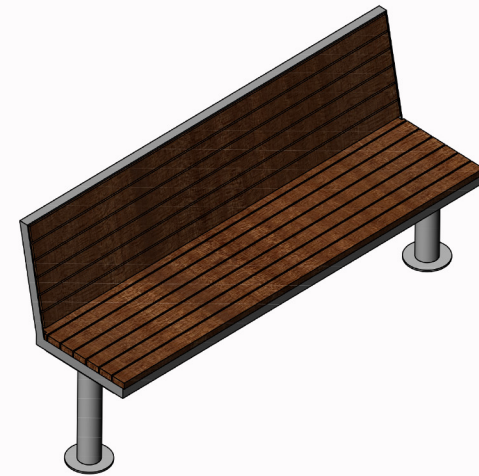
E CLOCK

Manufacturer: Electric Time
Product / Model: Concourse Two-Dial
Material: Black Painted Finish



F STRAIGHT BENCH

Manufacturer: Magline
Product / Model: Ogden Series
Material / Finish: IPE Wood Slats
Black Powder Coat Base



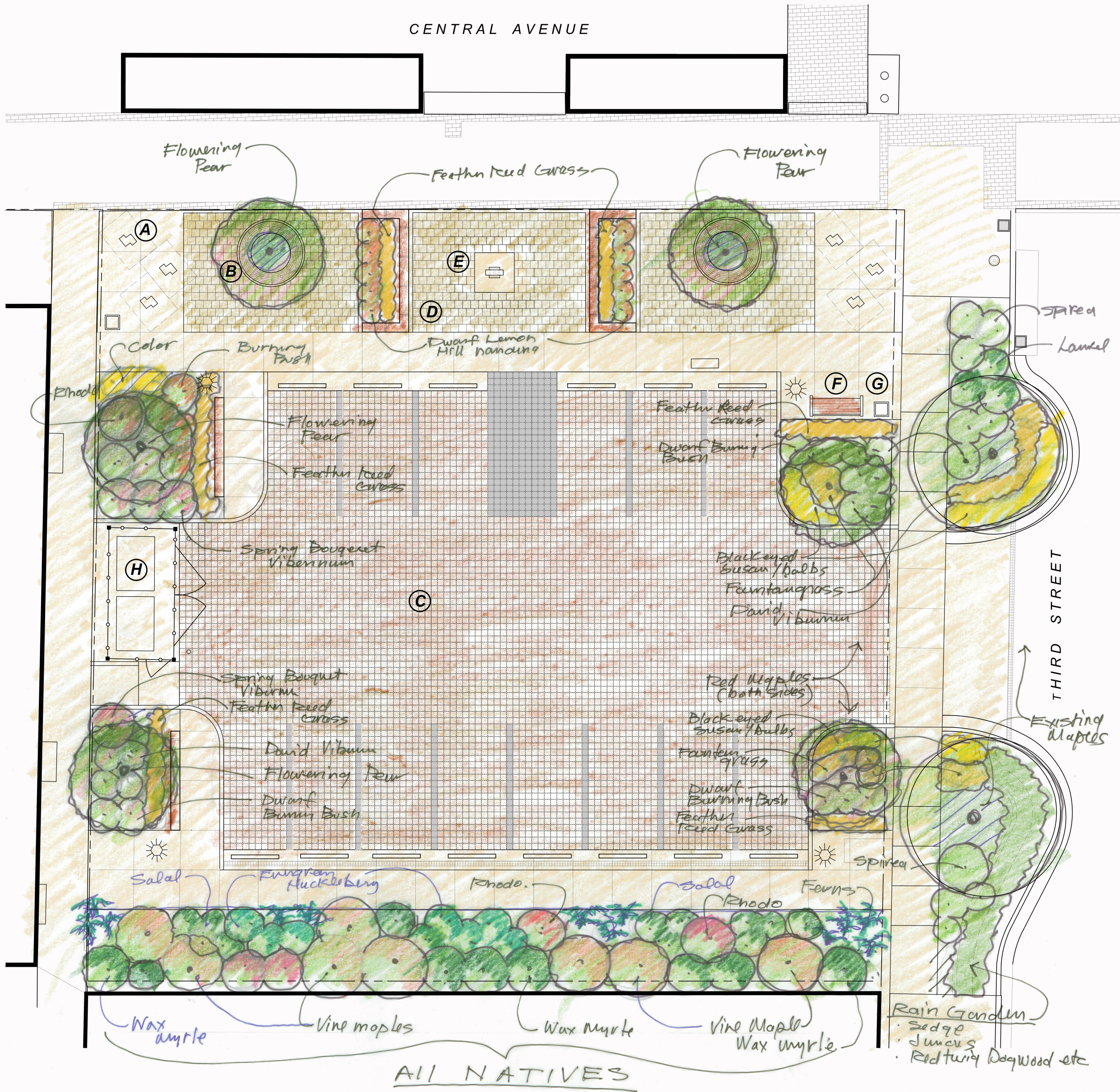
G LITTER RECEPTACLE

Manufacturer: Maglin
Product / Model: 1000 Series
Material / Finish: IPE Wood Slats
Silver Powder Coat Frame



H TRASH ENCLOSURE

Manufacturer: Romtek or Covrit
Material / Finish: Wood Gate SLats



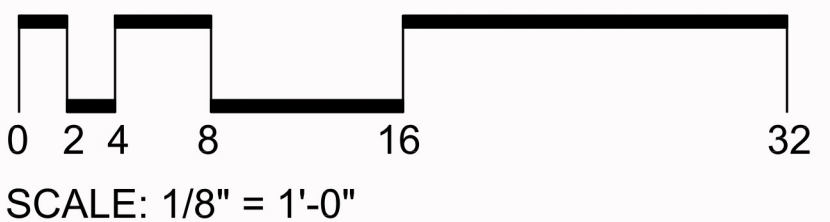
PLANT SCHEDULE

BOTANICAL NAME	COMMON NAME
TREES	
<i>Acer circinatum</i>	Vine Maple
<i>Acer rubrum</i> 'Red Sunset'	Red Sunset Maple
<i>Pyrus calleryana</i> 'Aristocrat'	Aristocrat Pear

SHRUBS	
<i>Cornus sericea</i>	Red-Osier Dogwood
<i>Cornus sericea</i> 'Kelsey'	Dwarf Redtwig Dogwood
<i>Euonymus alata</i> 'Compacta'	Compact Burning Bush
<i>Gaultheria shallon</i>	Salal
<i>Myrica californica</i>	Pacific Wax Myrtle
<i>Nandina domestica</i> 'Lemon Hill'	Lemon Hill Nandina
<i>Polystichum munilum</i>	Sword Fern
<i>Prunus laurocerasus</i> 'Otto Luyken'	Otto Luyken English Laurel
<i>Rhododendron</i> 'Anah Krusche'	Anah Krusche Rhododendron
<i>Spiraea japonica</i> 'Anthony Waterer'	Anthony Waterer Spiraea
<i>Vaccinium ovatum</i>	Evergreen Huckleberry
<i>Viburnum davidii</i>	David Viburnum
<i>Viburnum tinus</i> 'Spring Bouquet'	Spring Bouquet Viburnum

GRASSES AND PERENNIALS	
<i>Calamagrostis acutiflora</i> 'Karl Foerster'	Feather Reed Grass
<i>Carex obovata</i>	Slough Sedge
<i>Juncus patens</i>	Spreading Rush

ILLUSTRATIVE SITE PLAN



CITY OF COOS BAY CITY COUNCIL

Agenda Staff Report

This item was previously discussed at City Council meeting on 7/16/2019

MEETING DATE	AGENDA ITEM NUMBER
September 21, 2021	8.

TO: Mayor Benetti and City Councilors

FROM: Jennifer Wirsing, City Engineer

THROUGH: Jim Hossley, Public Works and Community Development Director

ISSUE: Adoption of Resolution 21-27 to Amend the DEQ State Revolving Fund Loan for the Englewood School Brownfield Project

SUMMARY:

The city has secured funding through the State Revolving Fund program. Engineering and predesign have been completed for the Englewood Brownfield site. In order to remediate the site, a resolution must be adopted to amend the loan to a construction loan.

ACTION REQUESTED:

If it pleases the City Council, staff recommends adopting Resolution 21-27 authorizing and approving an amendment to the State Revolving Fund loan agreement to finance the construction and remediation of the Englewood School Brownfield Project.

BACKGROUND:

The State Revolving Fund program allows a public agency who is applying for a point source loan to take advantage of a Sponsorship Option (SO). This SO encourages communities to pursue water restoration or protection projects in conjunction with traditional wastewater projects by offering financial incentives (reduce interest rate of the point source loans). This means the city can complete Sponsorship Option projects without additional impacts to ratepayers. The City was awarded a sponsorship option loan (associated with the WWTP1 Point Source Loan) for two projects for a total of \$1,476,276; S 2nd Green Parking Lot and the Englewood School Brownfield project. DEQ has created a two-phase approach to the SO loans. The first phase loan amount was to complete the pre-design, State and Federal environmental cross cutters, final design, and bidding documents. This was approved in July 2019. At this time these efforts have been completed for the Englewood School Brownfield project but not the S. 2nd Green Parking Lot project. Once construction is completed for Englewood, staff will better understand funds remaining and can then scope the limits of design for the S. 2nd project.

At this time, the loan must be amended to include funding for construction/remediation (second phase) of the Englewood School Brownfield project, which will bring the loan amount to \$991,000. In order to enter into this amendment a resolution must be adopted. It is anticipated that the project will be advertised for bid at the end of the month.

BUDGET IMPLICATIONS:

No budget implications.

ATTACHMENT(S):

- ▣ Original Loan Agreement
- ▣ Loan Amendment
- ▣ Resolution 21-27

**CLEAN WATER STATE REVOLVING FUND
LOAN AGREEMENT
No. R24005**

BETWEEN

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

AND

CITY OF COOS BAY

TABLE OF CONTENTS

ARTICLE 1: THE LOAN - SPECIFIC TERMS	3
ARTICLE 2: GENERAL LOAN PROVISIONS.....	4
ARTICLE 3: GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS.....	7
ARTICLE 4: CONDITIONS TO LOAN	8
ARTICLE 5: COVENANTS OF BORROWER.....	9
ARTICLE 6: RESERVED	14
ARTICLE 7: DISCLAIMERS BY DEQ; LIMITATIONS ON DEQ'S LIABILITY.....	14
ARTICLE 8: DEFAULT AND REMEDIES.....	15
ARTICLE 9: DEFINITIONS	17
ARTICLE 10: MISCELLANEOUS	19
APPENDIX A: REPAYMENT SCHEDULE.....	23
APPENDIX B: ESTIMATED CWSRF LOAN DISBURSEMENT SCHEDULE.....	24
APPENDIX C: DBE GOOD FAITH EFFORTS	25
APPENDIX D: APPLICABLE FEDERAL AUTHORITIES AND LAWS ("CROSS CUTTERS")	26
APPENDIX E: RESERVED	27
APPENDIX F: EQUAL EMPLOYMENT OPPORTUNITY	28
APPENDIX G: CERTIFICATION REGARDING LOBBYING.....	30
APPENDIX H: RESERVED	31
APPENDIX I: INFORMATION REQUIRED BY 2 C.F.R. § 200.331 (A)(1)	32

THIS LOAN AGREEMENT (“**Agreement**”) is made and entered into as of the date (“**Effective Date**”) it is fully executed by both parties (and in the case of the State, approved by the Attorney General's Office, if required) and is by and between the **State of Oregon, acting by and through its Department of Environmental Quality (“DEQ”)**, and the **Borrower** (as defined below). Unless the context requires otherwise, capitalized terms not defined below shall have the meanings assigned to them by ARTICLE 9 of this Loan Agreement. The reference number for the Loan made pursuant to this Loan Agreement is Loan No. R24005.

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 Coos Bay
- (B) **BORROWER'S ADDRESS:** 500 Central Avenue
Coos Bay, Oregon 97420
- (C) **LOAN AMOUNT:** \$165,000

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

(E) **PROJECT TITLE:** Engineering and predesign for South 2nd Street Green Parking Lot and the Englewood School Brownfield Project

(F) **DESCRIPTION OF THE PROJECT:**
The project will include **pre-design through final design** of the low impact development including permeable pavement, bioretention and trees for the 2nd Street Parking and remediation and revitalization of the Englewood School Brownfield site.

(G) **INTEREST RATE:** Two and 27/100 percent (2.27%) per annum. Calculation of interest is also discussed in ARTICLE 2(E) and in ARTICLE 2(F)(4) of this Agreement. Borrower intends to enter into a sponsorship loan agreement with DEQ and, in the event that DEQ and Borrower execute such a sponsorship loan agreement, the interest rate in this section will be reduced according to DEQ's then-current guidelines.

(H) **REPAYMENT PERIOD:** Ending no later than twenty (20) years after the earlier of the Completion Date or the estimated Project Completion Date set forth in ARTICLE 3(A)(10).

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

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

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

ARTICLE 2: GENERAL LOAN PROVISIONS

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

(B) AVAILABILITY OF FUNDS. DEQ's obligation to make the Loan described in this Agreement is subject to the availability of funds in the Water Pollution Control Revolving Fund for its CWSRF program, and DEQ shall have no liability to the Borrower or any other party if such funds are not available or are not available in amounts sufficient to fund the entire Loan described herein, as determined by DEQ in the reasonable exercise of its administrative discretion. Funds may not be available ahead of the estimated schedule of disbursement requests submitted by the Borrower, which is attached as APPENDIX B. This schedule may be revised from time to time by the parties without the necessity of an amendment by replacing the then current APPENDIX B with an updated APPENDIX B which is dated and signed by both parties. Furthermore, DEQ's obligation to make any disbursement hereunder shall terminate on June 30, 2022.

(C) DISBURSEMENT OF LOAN PROCEEDS.

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

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

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

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

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

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

(F) LOAN REPAYMENT.

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

(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 30 days prior written notice. Any prepayment made hereunder will be applied in accordance with ARTICLE 2(F)(4).

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

(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) None of the execution of this Loan Agreement, the consummation of the transactions contemplated hereby, or 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 that 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 June 30, 2022. The Borrower agrees to commence the Project no later than two (2) years from the Effective Date and complete the Project by the estimated Completion Date.

(11) The estimated total Costs of the Project are \$165,000.

(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 and adversely affect either (i) the Borrower's ability to conduct its activities or undertake or complete the Project or (ii) 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 the Agreement contemplates.

ARTICLE 4: CONDITIONS TO LOAN

(A) CONDITIONS TO CLOSING. DEQ's obligations hereunder are subject to the condition that on or prior to July 31, 2019, the Borrower will duly execute and deliver to DEQ the following items, each in form and substance satisfactory to DEQ and its counsel:

- (1) this Agreement duly executed and delivered by an authorized officer of the Borrower;
- (2) a copy of the ordinance, order or resolution of the governing body of the Borrower authorizing the execution and delivery of this Agreement, certified by an authorized officer of the Borrower;
- (3) Certification Regarding Lobbying, substantially in the form of APPENDIX G, duly executed and delivered by an authorized officer of the Borrower;
- (4) an opinion of the legal counsel to the Borrower to the effect that:

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

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

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

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

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

(B) CONDITIONS TO DISBURSEMENTS.

(1) Notwithstanding anything in this Agreement to the contrary, DEQ shall have no obligation to make any disbursement to the Borrower under this Agreement unless:

(a) Neither an Event of Default nor any 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;

(b) 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

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

(2) DEQ shall be under no obligation to make any disbursement if:

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

(b) 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 Revenues without DEQ's prior written approval, which approval may be withheld for any reason. Upon sale, transfer or encumbrance of the Facility or the Project, in whole or in part, to a private person or entity, this Loan shall be immediately due and payable in full.

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

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

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

(8) The Borrower shall keep the Facility in good repair and working order at all times and operate the Facility in an efficient and economical manner. The Borrower shall

provide the necessary resources for adequate operation, maintenance and replacement of the Project and retain sufficient personnel to operate the Facility.

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

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

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

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

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

(C) LOAN RESERVE REQUIREMENT; LOAN RESERVE ACCOUNT.

(1) Loan Reserve Requirement. The Loan reserve requirement equals one-half of the average annual debt service based on the final repayment schedule. Until the Final Loan Amount is calculated, the Loan reserve requirement is \$5,308. 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 DEQ a security interest in and irrevocably pledges amounts in the Loan Reserve Account to pay the amounts due under this Loan Agreement. The funds in the 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 under this Agreement until the principal, interest, fees, and any other amounts due have been fully paid.

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

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

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

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

(1) Financial Records. The Borrower shall keep proper and complete books of record and account and maintain all fiscal records related to this Agreement, the Project, and the Facility in accordance with generally accepted accounting principles,

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

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

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

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

(a) Subrecipients receiving federal funds in excess of \$750,000 in the subrecipient's fiscal year are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. The Borrower, if subject to this requirement, shall at its own expense submit to DEQ a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted to DEQ the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of the Borrower responsible for the financial management of funds received under this Agreement. The Borrower must submit copies of all audits to DEQ within 30 days of completion.

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

(c) The Borrower shall save, protect and hold harmless DEQ from the cost of any audits or special investigations performed by the federal awarding agency or any federal agency with respect to the funds expended under this

Agreement. The Borrower acknowledges and agrees that any audit costs incurred by the Borrower as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between the Borrower and the State of Oregon.

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

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

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

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

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

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

ARTICLE 6: RESERVED

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

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

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

(C) NONLIABILITY OF STATE.

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

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

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

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

ARTICLE 8: DEFAULT AND REMEDIES

(A) EVENTS OF DEFAULT. The occurrence of one or more of the following events constitutes an event of default (“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, DEQ shall be subrogated, to the extent of the amount of such payment, to all the rights, powers, privileges, and remedies of the holder of the encumbrance, lien, claim, or demand, as the case may be. Any such subrogation rights shall be additional, cumulative security for the amounts due under this Loan Agreement;

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

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

ARTICLE 9: DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

(H) **“FINAL LOAN AMOUNT”** means the total of all Loan proceeds disbursed to the Borrower under the Loan Agreement, as determined on the earliest of the following: (i) the date on which the Borrower indicates that no further Loan funds will be requested; (ii) the date when all eligible expenditures have been reimbursed from the Loan proceeds; or (iii) the date when all Loan proceeds have been disbursed under the Loan Agreement.

(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 under this Loan Agreement.

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

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

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

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

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

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

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

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

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

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

ARTICLE 10: MISCELLANEOUS

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

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

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

(B) WAIVERS AND RESERVATION OF RIGHTS.

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

(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 it contemplates 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.

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

(L) ATTORNEYS' FEES AND EXPENSES. To the extent permitted by Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to DEQ by its attorneys. Borrower shall, on demand, pay DEQ's reasonable expenses incurred by DEQ in the collection of Loan payments.

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

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

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


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

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

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

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

CITY OF COOS BAY

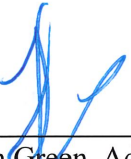
By:  _____
Authorized Officer

7/16/19
Date

Typed Name: Joe Benetti

Title: Mayor

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

By:  _____
Justin Green, Administrator
Water Quality Division

7-29-19
Date

APPENDIX A: PRELIMINARY REPAYMENT SCHEDULE

Due Date	Pmt#	PAYMENT				Principal Balance
		Principal	Interest	Fees	Total	
						165,000
2/1/2023	1	0	8,785	0	8,785	165,000
8/1/2021	2	3,353	1,955	0	5,308	161,647
2/1/2022	3	3,392	1,916	0	5,308	158,255
8/1/2022	4	3,433	1,875	0	5,308	154,822
2/1/2023	5	3,473	1,835	0	5,308	151,349
8/1/2023	6	3,515	1,793	0	5,308	147,834
2/1/2024	7	3,556	1,752	0	5,308	144,278
8/1/2024	8	3,598	1,710	0	5,308	140,680
2/1/2025	9	3,641	1,667	0	5,308	137,039
8/1/2025	10	3,684	1,624	0	5,308	133,355
2/1/2026	11	3,728	1,580	0	5,308	129,627
8/1/2026	12	3,772	1,536	0	5,308	125,855
2/1/2027	13	3,817	1,491	0	5,308	122,038
8/1/2027	14	3,862	1,446	0	5,308	118,176
2/1/2028	15	3,908	1,400	0	5,308	114,268
8/1/2028	16	3,954	1,354	0	5,308	110,314
2/1/2029	17	4,001	1,307	0	5,308	106,313
8/1/2029	18	4,048	1,260	0	5,308	102,265
2/1/2030	19	4,096	1,212	0	5,308	98,169
8/1/2030	20	4,145	1,163	0	5,308	94,024
2/1/2031	21	4,194	1,114	0	5,308	89,830
8/1/2031	22	4,244	1,064	0	5,308	85,586
2/1/2032	23	4,294	1,014	0	5,308	81,292
8/1/2032	24	4,345	963	0	5,308	76,947
2/1/2033	25	4,396	912	0	5,308	72,551
8/1/2033	26	4,448	860	0	5,308	68,103
2/1/2034	27	4,501	807	0	5,308	63,602
8/1/2034	28	4,554	754	0	5,308	59,048
2/1/2035	29	4,608	700	0	5,308	54,440
8/1/2035	30	4,663	645	0	5,308	49,777
2/1/2036	31	4,718	590	0	5,308	45,059
8/1/2036	32	4,774	534	0	5,308	40,285
2/1/2037	33	4,831	477	0	5,308	35,454
8/1/2037	34	4,888	420	0	5,308	30,566
2/1/2038	35	4,946	362	0	5,308	25,620
8/1/2038	36	5,004	304	0	5,308	20,616
2/1/2039	37	5,064	244	0	5,308	15,552
8/1/2039	38	5,124	184	0	5,308	10,428
2/1/2040	39	5,184	124	0	5,308	5,244
8/1/2040	40	5,244	62	0	5,306	0
TOTALS		165,000	50,795	0	215,795	

APPENDIX B: ESTIMATED CWSRF LOAN DISBURSEMENT SCHEDULE

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

Number	Amount	Date
1	41,250	8/1/2019
2	41,250	10/1/2019
3	41,250	12/1/2019
4	41,250	2/1/2020

APPENDIX C: DBE GOOD FAITH EFFORTS

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

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

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

Additional resources available to recipients and contractors include the following:

EPA Office of Small and Disadvantaged Business Utilization:

Phone: 206 – 553 – 2931

Web Site: <https://www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu>

Oregon Certification Office for Business Inclusion and Diversity (COBID)

775 Summer Street N.E.

Salem, OR 97301-1280

Phone: 503-986-0123

Web Site: <http://www.oregon4biz.com/How-We-Can-Help/COBID/>

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

SOCIAL LEGISLATION:

The Age Discrimination Act of 1975, Pub. L. No. 94-135, 89 Stat. 713, 42 U.S.C. §6102 (1994).

Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 252, 42 U.S.C. §2000d (1988).

Section 13 of PL 92-500; Prohibition against Sex Discrimination under the Federal Water Pollution Control Act.

Rehabilitation Act of 1973, Pub. L. No. 93-1123, 87 Stat. 355, 29 U.S.C. §794 (1988), including Executive Orders 11914 and 11250).

Executive Order 12898, Environmental Justice in Minority Populations Exec. Order No. 11246, 30 F.R. 12319 (1965), *as amended by* Exec. Order No. 11,375, 32 F.R. 14303 (1967), *reprinted in* 42 U.S.C. §2000e (1994), and its regulations at 41 C.F.R. §§60-1.1 to 60-999.1.

APPENDIX E: RESERVED

APPENDIX F
EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

Signed _____

Title _____

Date _____

Recipient _____

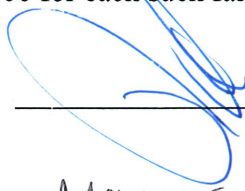
APPENDIX G: CERTIFICATION REGARDING LOBBYING
(Contracts in Excess of \$100,000.00)

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

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

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

Signed



Joe Benetti

Title

Mayor

Date

7/25/19

Recipient

City of Coos Bay

APPENDIX H: RESERVED

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

Federal Award Identification:

- (i) Subrecipient name (which must match registered name in DUNS): _____
- (ii) Subrecipient's DUNS number: _____
- (iii) Federal Award Identification Number (FAIN): _____
- (iv) Federal award date: _____
- (v) Sub-award period of performance, start and end date: from _____ to _____
- (vi) Total Amount of Federal funds obligated by this Agreement: \$ _____
- (vii) Total Amount of Federal funds obligated by this initial Agreement and any amendments: \$ _____
- (viii) Total amount of Federal award committed to the Subrecipient by the pass-through entity²: \$ _____
- (ix) Federal award project description: _____
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the pass-through entity:
 - (a) Name of Federal awarding agency: _____
 - (b) Name of pass-through entity: Oregon Department of Environmental Quality
 - (c) Contact information for awarding official of the pass-through entity: _____
- (xi) CFDA number and name: _____
Amount: _____
- (xii) Is award R&D? _____
- (xiii) Indirect cost rate for the Federal award: ____%

¹ For the purposes of this Appendix I, "Subrecipient" refers to the Borrower and the "pass-through entity" refers to DEQ

² The total amount of Federal funds obligated to the Subrecipient by the pass-through entity is the total amount of Federal funds obligated to the Subrecipient by the pass-through entity during the current State fiscal year.



CORRIGALL & McCLINTOCK
ATTORNEYS AT LAW

936 Central
P.O. Box 1178
Coos Bay, Oregon 97420-0309
Telephone: (541) 269-1123
Fax: (541) 269-1126



Nathan B. McClintock
Email: nmcclintock@epuerto.com

Legal Assistant: Raquel Wood, PLS
Email: raquelwood@epuerto.com

July 16, 2019

State of Oregon
Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100

Re: Loan R24005

Ladies and Gentlemen:

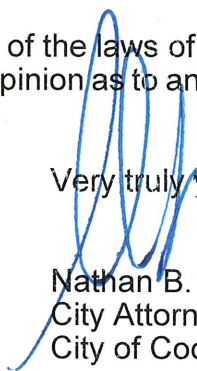
I am the attorney for the City of Coos Bay, which has entered into a loan agreement with the Oregon Department of Environmental Quality ("DEQ"), identified as loan R24005, which is to be used by the City of Coos Bay for engineering and pre-design for South 2nd Street Green Parking Lot and the Englewood School Brownfield Project.

In so acting, I offer the following opinions with regard to loan R24005:

1. The City of Coos Bay has the power and authority to execute, deliver and perform its obligations under the Loan Agreement;
2. This Loan Agreement has been duly executed and acknowledged where necessary by the City of Coos Bay's authorized representative, 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 City of Coos Bay in accordance with its terms, except as such enforcement is affected by bankruptcy, insolvency, moratorium, or other laws affecting creditors' rights generally;
3. To my knowledge, this Loan Agreement does not violate any other agreement, statute, court order, or law to which the City of Coos Bay is a party or by which it or any of its property or assets is bound; and
4. The Gross Revenues from which the Net Revenues are derived and that are used as security for the Loan will not constitute taxes that are limited by Section 11b, Article XI of the Oregon Constitution.

This opinion is rendered on the basis of the laws of the State of Oregon, as enacted and construed on the date hereof. I express no opinion as to any matter not set forth in the numbered paragraphs herein.

Very truly yours,


Nathan B. McClintock
City Attorney
City of Coos Bay

rw

City of Coos Bay

Resolution 19-17

A RESOLUTION AUTHORIZING AND APPROVING A STATE REVOLVING FUND LOAN AGREEMENT TO FINANCE THE ENGINEERING AND PREDESIGN FOR SOUTH 2ND STREET GREEN PARKING LOT AND THE ENGLEWOOD SCHOOL BROWNFIELD PROJECT.

WHEREAS, the City of Coos Bay has applied for a revenue secured loan in the amount of \$165,000.00 which has been approved by the Oregon Department of Environmental Quality (DEQ) State Revolving Loan Fund (SRF) program pursuant to OAR Section 340-054-0065(2) for the purpose of financing the wastewater facilities projects (Project); and,

WHEREAS, the revenue secured loans have been approved at Two and 27/100 percent (2.27%) per annum; in the event that DEQ and the City execute a sponsorship loan agreement, the interest rate in this section will be reduced according to DEQ's then-current guidelines; and,

WHEREAS, the DEQ SRF program requires an annual fee of 0.5% of the outstanding loan amount (as determined prior to the posting of the payment due on that date) to be paid during the repayment period commencing with the second payment date and annually thereafter; and,

WHEREAS, the wastewater facilities project requires a loan reserve requirement of \$5,308.00; and

WHEREAS, the loan will end no later than (a) twenty (20) years after the earlier of the completion date or the estimated completion date set forth in loan documents ARTICLE 3(A)(10) or (b) June 30, 2022, whichever date is earlier; and,


WHEREAS, an interest-only payment will be due 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 the loan agreement; and,

WHEREAS, the City of Coos Bay grants to DEQ a security interest in and irrevocably pledges its net operating revenues to secure payment of and to pay the amounts due under the loan agreement; and,


WHEREAS, as a condition of the loan, the City of Coos Bay debt service coverage requirement provides the City shall maintain wastewater rates and charge fees in connection with the operation of the facility that are adequate to generate net revenues in each fiscal year sufficient to pay (i) all debt service (excluding debt service on the loan), (ii) all other financial obligations imposed in connection with prior lien obligations, and (iii) an amount equal to the debt service coverage factor of 105% multiplied by the debt service payments due under the loan agreement in that fiscal year.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Coos Bay authorizes and approves of the SRF loan agreement for financing the Projects. The City Council authorizes and approves the establishment and funding of a designated reserve account to meet the loan reserve requirements and establishes the loan reserve.

The foregoing resolution was duly adopted by the City Council of the City of Coos Bay, Coos County, Oregon, this 16th day of July 2019.



Joe Bennetti, Mayor

Attest: 

Nichole Rutherford, City Recorder

**CLEAN WATER STATE REVOLVING FUND
LOAN AGREEMENT NO. R24005
AMENDMENT NO. 1
CITY OF COOS BAY**

This Amendment No. 1 (“Amendment”) to Loan Agreement No. R24005 (the “Loan Agreement”) is executed between the STATE OF OREGON ACTING BY AND THROUGH ITS DEPARTMENT OF ENVIRONMENTAL QUALITY (“DEQ”) and City of Coos Bay (the “Borrower”), effective as of the Effective Date indicated below. Capitalized terms used in this Amendment which are not defined herein have the meanings assigned to them in the Loan Agreement.

The purpose of this Amendment is to increase the loan amount by \$826,000 and update the Loan Reserve Requirement accordingly as well as update the project description to include construction

Date of Loan Agreement: July 29, 2019

The parties agree as follows:

1. **EFFECTIVE DATE.** This Amendment is effective on the date that it is fully executed and approved as required by applicable law.
2. **AMENDMENTS TO AGREEMENT.**

- a. ARTICLE 1(C) is amended and restated as follows:

“(C) LOAN AMOUNT: \$991,000.”

1. The second sentence of ARTICLE 5(C)(1) is amended and restated as follows:

“Until the Final Loan Amount is calculated, the Loan Reserve Requirement is \$24,775.”

2. The attached “Appendix A: Repayment Schedule” replaces the current “Appendix A: Repayment Schedule” in its entirety.

3. ARTICLE 1(F) is amended and restated as follows:

Project Description: The City plans to tear down the Englewood School building, remove the existing pavement, and revegetate the site. The purpose of the proposed action is to remediate a contaminated site, protect the community against asbestos exposure, and generate clean water benefits related to improved storm water runoff water quality. The proposed action includes asbestos abatement by haul off, site grading and vegetation installation.

3. **COUNTERPARTS.** This Amendment may be executed in two or more counterparts, each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **ORIGINAL AGREEMENT.** Except as expressly amended above, the terms and conditions of the Loan Agreement shall remain in full force and effect. The Borrower certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

BORROWER: CITY OF COOS BAY

By: _____

Date: _____

Typed Name: _____

Title: _____

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

By: _____

Date: _____

Justin Green, Administrator
Water Quality Division

APPENDIX A: PRELIMINARY REPAYMENT SCHEDULE

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE REVOLVING FUND LOAN PROGRAM

REPAYMENT SCHEDULE

BORROWER:	City of Coos Bay	ANNUAL INTEREST RATE:	2.37%
SRF LOAN NO.:	R24005	TERM IN YEARS:	20
LOAN AMOUNT:	\$ 991,000	PAYMENT AMOUNT:	\$ 31,880
		ANNUAL FEE:	0.0%

Due Date	Pmt#	Principal	Interest	Fees	Total	Principal Balance
						991,000
2/1/2023	1	0	4,942	0	4,942	991,000
8/1/2023	2	20,137	11,743	0	31,880	970,863
2/1/2024	3	20,375	11,505	0	31,880	950,488
8/1/2024	4	20,617	11,263	0	31,880	929,871
2/1/2025	5	20,861	11,019	0	31,880	909,010
8/1/2025	6	21,108	10,772	0	31,880	887,902
2/1/2026	7	21,358	10,522	0	31,880	866,544
8/1/2026	8	21,611	10,269	0	31,880	844,933
2/1/2027	9	21,868	10,012	0	31,880	823,065
8/1/2027	10	22,127	9,753	0	31,880	800,938
2/1/2028	11	22,389	9,491	0	31,880	778,549
8/1/2028	12	22,654	9,226	0	31,880	755,895
2/1/2029	13	22,923	8,957	0	31,880	732,972
8/1/2029	14	23,194	8,686	0	31,880	709,778
2/1/2030	15	23,469	8,411	0	31,880	686,309
8/1/2030	16	23,747	8,133	0	31,880	662,562
2/1/2031	17	24,029	7,851	0	31,880	638,533
8/1/2031	18	24,313	7,567	0	31,880	614,220
2/1/2032	19	24,601	7,279	0	31,880	589,619
8/1/2032	20	24,893	6,987	0	31,880	564,726
2/1/2033	21	25,188	6,692	0	31,880	539,538
8/1/2033	22	25,486	6,394	0	31,880	514,052
2/1/2034	23	25,788	6,092	0	31,880	488,264
8/1/2034	24	26,094	5,786	0	31,880	462,170
2/1/2035	25	26,403	5,477	0	31,880	435,767
8/1/2035	26	26,716	5,164	0	31,880	409,051
2/1/2036	27	27,033	4,847	0	31,880	382,018
8/1/2036	28	27,353	4,527	0	31,880	354,665
2/1/2037	29	27,677	4,203	0	31,880	326,988
8/1/2037	30	28,005	3,875	0	31,880	298,983
2/1/2038	31	28,337	3,543	0	31,880	270,646
8/1/2038	32	28,673	3,207	0	31,880	241,973
2/1/2039	33	29,013	2,867	0	31,880	212,960
8/1/2039	34	29,356	2,524	0	31,880	183,604
2/1/2040	35	29,704	2,176	0	31,880	153,900
8/1/2040	36	30,056	1,824	0	31,880	123,844
2/1/2041	37	30,412	1,468	0	31,880	93,432
8/1/2041	38	30,773	1,107	0	31,880	62,659
2/1/2042	39	31,137	743	0	31,880	31,522
8/1/2042	40	31,522	374	0	31,896	0
TOTALS		991,000	257,278	0	1,248,278	

REQUIRED LOAN RESERVE: \$ 24,775

City of Coos Bay

Resolution 21-27

A RESOLUTION AUTHORIZING AND APPROVING AN AMENDMENT TO THE STATE REVOLVING FUND LOAN AGREEMENT TO FINANCE THE CONSTRUCTION AND REMEDIATION OF THE ENGLEWOOD SCHOOL BROWNFIELD PROJECT.

WHEREAS, the City of Coos Bay has applied for a revenue secured loan in the amount of 991,000 which has been approved by the (DEQ) State Revolving Loan Fund (SRF) program pursuant to OAR Section 340-054-0065(2) for the purpose of financing the wastewater facilities projects (Project); and,

WHEREAS, the revenue secured loans have been approved at Two and 27/100 percent (2.27%) per annum; in the event that DEQ and the City execute a sponsorship loan agreement, the interest rate in this section will be reduced according to DEQ's then-current guidelines; and,

WHEREAS, the DEQ SRF program requires an annual fee of 0.5% of the outstanding loan amount (as determined prior to the posting of the payment due on that date) to be paid during the repayment period commencing with the second payment date and annually thereafter; and,

WHEREAS, the wastewater facilities project requires a loan reserve requirement of \$24,775; and

WHEREAS, the loan will end no later than (a) twenty (20) years after the earlier of the completion date or the estimated completion date set forth in loan documents ARTICLE 3(A)(10) or (b) June 30, 2022, whichever date is earlier; and,

WHEREAS, an interest-only payment will be due 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 the loan agreement; and,

WHEREAS, the City of Coos Bay grants to DEQ a security interest in and irrevocably pledges its net operating revenues to secure payment of and to pay the amounts due under the loan agreement; and,

WHEREAS, as a condition of the loan, the City of Coos Bay debt service coverage requirement provides the City shall maintain wastewater rates and charge fees in connection with the operation of the facility that are adequate to generate net revenues in each fiscal year sufficient to pay (i) all debt service (excluding debt service on the loan), (ii) all other financial obligations imposed in connection with prior lien obligations, and (iii) an amount equal to the debt service coverage factor of 105% multiplied by the debt service payments due under the loan agreement in that fiscal year.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Coos Bay authorizes and approves of the SRF loan agreement for financing the Projects. The City Council authorizes and approves the establishment and funding of a designated reserve account to meet the loan reserve requirements and establishes the loan reserve.

Joe Benetti, Mayor

ATTEST:

Nichole Rutherford, City Recorder

CITY OF COOS BAY CITY COUNCIL

Agenda Staff Report

MEETING DATE	AGENDA ITEM NUMBER
September 21, 2021	9.

TO: Mayor Benetti and City Councilors

FROM: Carolyn Johnson, Community Development Administrator

THROUGH: Jim Hossley, Public Works & Community Development Director

ISSUE: Council Letter of Support for a Department of Land Technical Assistance Grant Conservation and Development

SUMMARY:

With Council authorization, the City has an opportunity to apply for Department of Land Conservation and Development (DLCD) funding to update the City's Comprehensive Plan Economic Development element related to parks as an economic component of our City economy and an update of the City's Parks Master Plan. The work on both these city documents would support two of Council's FY 2021/2022 goals to support economic development and update the Parks Master Plan.

ACTION REQUESTED:

Discuss and consider authorizing the attached letter of support.

BACKGROUND:

As referenced in the attached letter, "The City's 2010 Comprehensive Plan Economic Development element requires an update to reflect the City's recreational gains and identification of future recreational policies to facilitate visitor financial contributions as a result of recreating in Coos Bay. The current Parks Master Plan requires work to address how the City can maximize visitor uses of City park facilities consistent with the Economic Development element. Our parks and related amenities are akin to State Planning Goal 8 guidelines which note that recreation facilities are to provide for human development and enrichment with open space, scenic landscapes, recreational lands; sports and cultural events; picnicking and recreational lodging; tourist facilities and accommodations; trails and waterway use facilities (among others)."

BUDGET IMPLICATIONS:

Staff time spent to manage contract services for the referenced update work but savings to the City budget with use of consultant services for technical expertise.

ATTACHMENT(S):

- Letter of Support



500 Central Ave, Coos Bay, Oregon, 97420
www.coosbay.org

Department of Land Conservation and Development
635 Capitol Street NE Suite 150
Salem, OR 97301

September 21, 2021

Subject: Coos Bay City Council support for 2021-2023 Technical Assistance (TA) grant

The opportunity to apply for a Department of Land Conservation and Development TA grant is much appreciated. The TA grant priorities are consistent with the Coos Bay Council's FY 2021/2022 economic development goal and as an extension of that goal, an update to the City's 2013-2023 Parks Master Plan (Plan) to reflect how recreational opportunities for residents and visitors can further enhance the City's economic vitality.

The South Coast Regional Solutions Team priority to "Build on Recreation Economy" is similar to the City's Comprehensive Plan's Economic Development element references. Consistent with State Planning Goal 8 to expand identification of recreation facilities and opportunities, we believe that the use of recreational facilities is an economic plus for the City of Coos Bay.

The City's 2010 Comprehensive Plan Economic Development element requires an update to reflect the City's recreational gains and identification of future recreational policies to facilitate visitor financial contributions as a result of recreating in Coos Bay. The current Parks Master Plan requires work to address how the City can maximize visitor uses of City park facilities consistent with the Economic Development element. Our parks and related amenities are akin to State Planning Goal 8 guidelines which note that recreation facilities are to provide for human development and enrichment with open space, scenic landscapes, recreational lands; sports and cultural events; picnicking and recreational lodging; tourist facilities and accommodations; trails and waterway use facilities (among others).

We believe that the update of these key City policy documents will also be consistent with State Planning Goal 9 to provide adequate opportunities for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens. The City Council strongly supports a \$70,000 TA grant application for contract services to update the City's Comprehensive Plan Economic Development element and Parks Master Plan as described herein. We respectfully request DLCD's affirmative consideration of the Coos Bay TA grant application.

Sincerely,

Joe Benetti
Mayor