

**AGENDA**

**REGULAR CITY COUNCIL MEETING**

**NOVEMBER 22, 2021**

**5:30 p.m.**

**VIA ZOOM**

<https://zoom.us/j/93160851764?pwd=VVhUVkpSb1h2aFBhbUtsMEY2bnZHQT09>

Meeting ID: 931 6085 1764

Passcode: 216856

Dial +1 346 248 7799 or +1 669 900 6833

1. CALL TO ORDER
2. ROLL CALL OF COUNCIL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. PRESENTATIONS/PROCLAMATIONS

A. Preparing Our Community for a Changing Climate: An Opportunity

6. AUDIENCE PARTICIPATION

During this portion of the meeting, anyone may speak on any subject which does not later appear on the agenda. Five minutes per person will be allowed. If a response by the City is requested, the speaker will be referred to the City Manager for further action. The issue may appear on a future meeting agenda for City Council consideration.

7. CITY MANAGER REPORT
8. CITY COUNCIL REPORTS
9. PUBLIC HEARINGS

A. General Ordinance No. 21-1386, an Ordinance Adding the Total Maximum Daily Load Implementation Plan to Volume II: Background Documents of The Dalles Comprehensive Land Use Plan

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**CITY OF THE DALLES**

"By working together, we will provide services that enhance the vitality of The Dalles."

10. ACTION ITEMS

- A. Resolution No. 21-029 Adopting a Supplemental Budget for Fiscal Year 2021-22, Making Appropriations and Authorizing Expenditures From and Within the General Fund of The City of The Dalles Adopted Budget
- B. Resolution No. 21-030 Authorizing a Loan from the Safe Drinking Water Revolving Loan Fund
- C. Request to hire Police Officers to Fill Vacancies

11. ADJOURNMENT

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This meeting conducted VIA Zoom

Prepared by/  
Izetta Grossman, CMC  
City Clerk

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**CITY OF THE DALLES**

"By working together, we will provide services that enhance the vitality of The Dalles."



# Preparing Our Community for a Changing Climate: **An Opportunity**

A presentation for The Dalles City Council

Climate Action Committee,  
Protect Oregon's Progress  
November 22, 2021

# Protect Oregon's Progress – Climate Committee



- Local citizens engaged in local, state and national issues
- Climate Change Action is one of our top priorities.
- We presented a statement back in September, encouraging the Council to take seriously the threat that climate change poses to our community, and to consider future decisions through a lens of climate change.



# Our Committee's Mission....

To move our community from one that is largely uncertain about Climate Change to a community that is actively addressing it as an opportunity to build a healthier, more vibrant, and more resilient community for us all.



# Climate Change in Ten Words

It's real.

It's us.

It's bad.

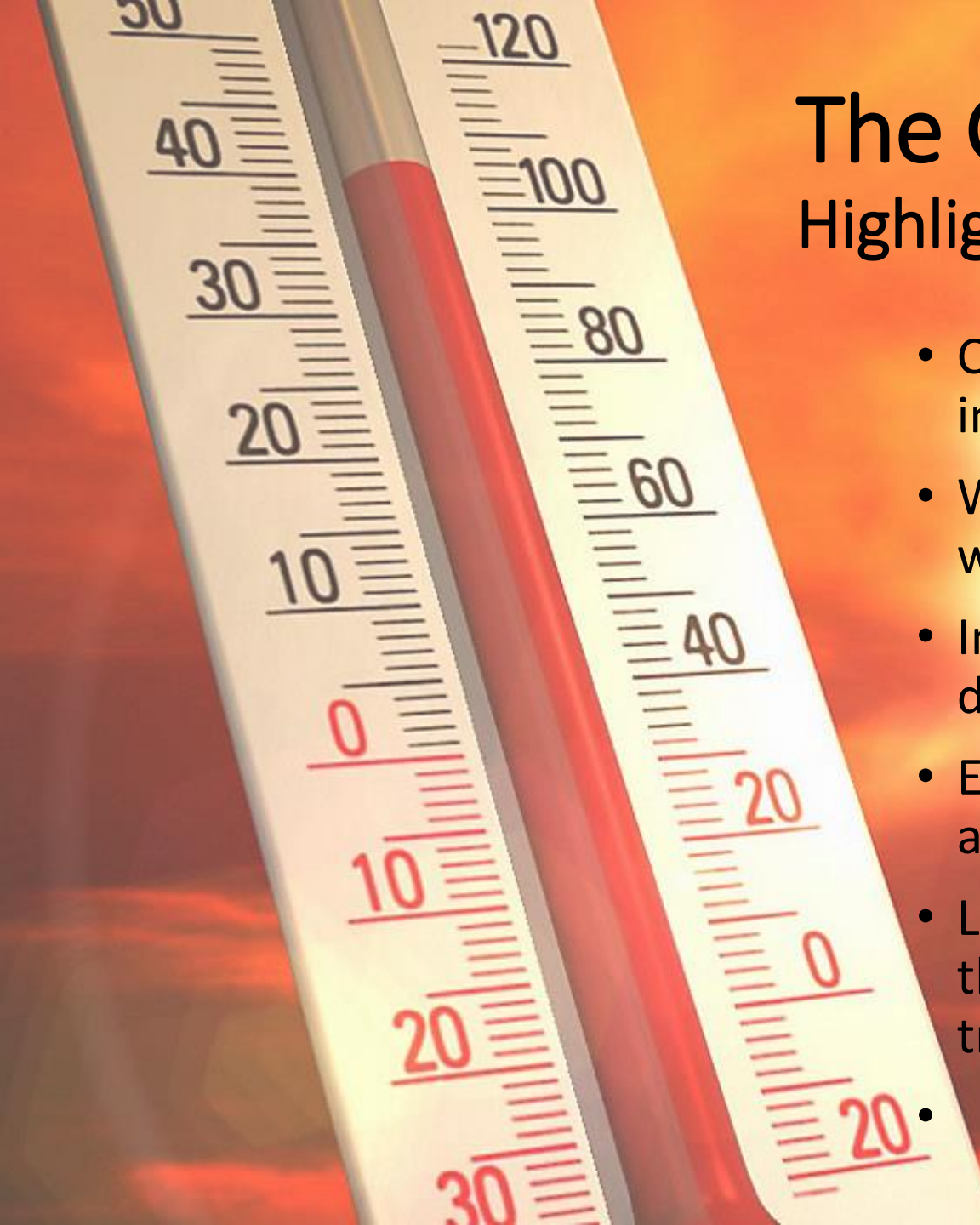
Experts agree.

There's hope.

Source: [YPCCC](#)







# The Global Situation

## Highlights from the latest IPCC Report

- Climate change is widespread, rapid, and intensifying.
- We're on a course to reach 1.5 degrees of warming within the next two decades
- Impacts will include heatwaves, heavy precipitation, droughts, fires, tropical cyclones and flooding.
- Every fraction of a degree leads to more dangerous and more costly impacts.
- Limiting global warming to 1.5 degrees by the end of the century is still possible, but will require transformational change.

# The Local Situation

## Mapping Climate Vulnerability

Vulnerability = Risk of experiencing wildfire, flooding or extreme heat + Prevalence of poverty, rental housing, racial minorities and elderly

Communities at risk of

- Climate-fueled wildfires - 152
- Floods – 60
- Extreme heat – 75

- Two communities are identified as being at risk for all three:
  - Grand Coulee, WA
  - The Dalles, OR
- Additionally, The Dalles has a higher than average prevalence of the additional socioeconomic risk factors.

<https://www.invw.org/2021/02/24/mapping-climate-vulnerability/>



# Two Choices

Both will have costs

## Inaction

- Increased fires
- Increased temperature
- More severe storms
- Drought and impacts on Ag
- Flooding
- Increased deaths
- Loss of species
- Poverty and displacement

## Action

- Research and Development
- Implementation of change
- Subsidizing to jump start new technologies
- **These costs are INVESTMENTS**

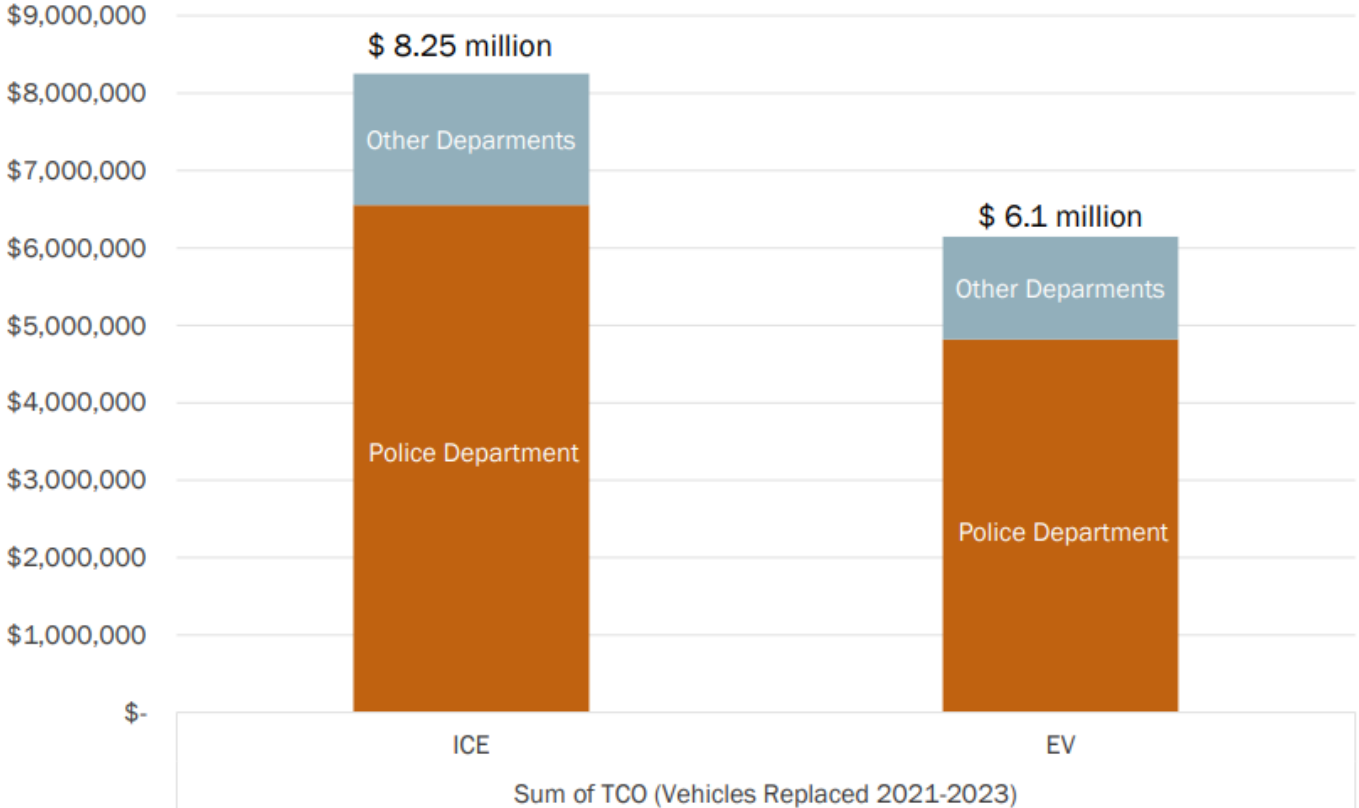
# It's in every jurisdiction's own best interest to address climate change

## Local and immediate co-benefits of decarbonization:

- Lower fuel costs
- Lower maintenance costs
- Much lower toxic emissions
- Keep energy spending in the region
- More efficient grid
- More resilient energy sources



# TOTAL COST OF OWNERSHIP (VEHICLE PURCHASES, 2024 – 2030)



ICE = internal combustion engine    EV = electric vehicle



# How Solar Powered Street Lighting Saves Your City Money

Posted by Stephen Shickadance in Most Popular.



# Green Energy = Savings

- Since 2018, it's been [cheaper to build and operate](#) a wind or solar farm than to operate a coal or nuclear plant in many parts of the US.
- Electric cars have been [cheaper to operate](#), and will also be [cheaper to purchase within a few years](#).
- Electric pickups are coming next year and will immediately be cheaper to operate and then cheaper to purchase.
- Electric heat pumps are [cheaper than gas options](#) and induction cooktops don't cause [toxic indoor emissions](#).
- Using a \$3.00 gallon of gas in Oregon requires about \$3.50 of [powertrain maintenance](#), causes at least \$2.00 of [health costs](#), drains about \$5.00 [away from Oregon jobs](#), and causes about \$0.50 of long-term [climate damage in the US alone](#) (add \$3.50 for global climate impacts). The equivalent costs for an electric vehicle total about \$1.50 per gallon.
- In 2019, Oregon exported [\\$9.8 billion](#) for fossil fuel purchases (an average of \$5940 per household), a major job drain for Oregon.

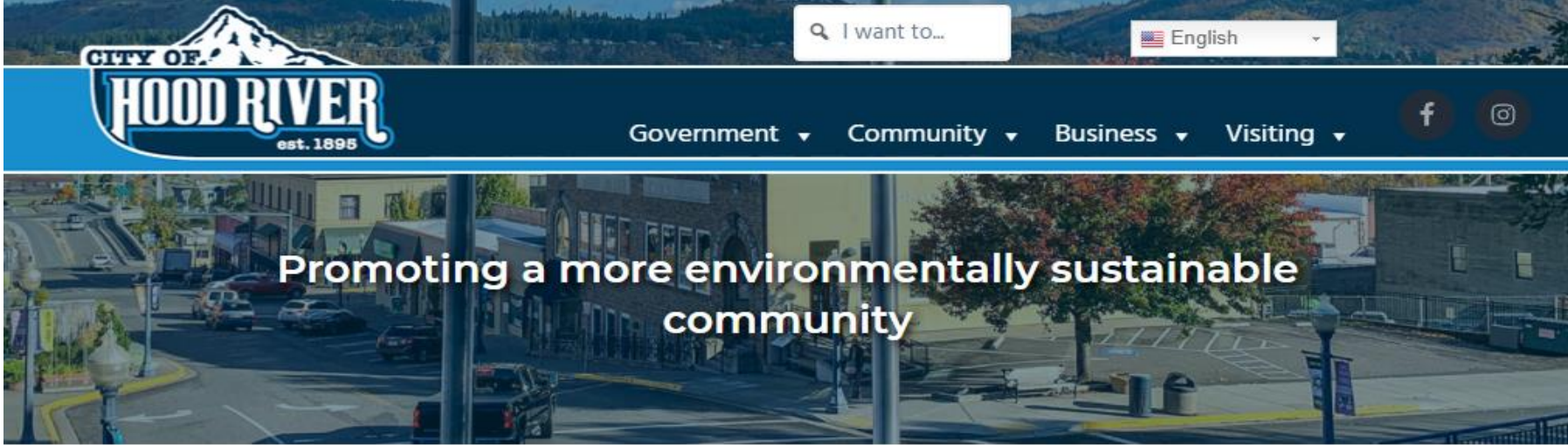




**What are our neighbors doing?**

- Hood River
- White Salmon
- Lyle
- Mosier
- Columbia River Gorge Commission





[Home](#) :: [Latest News](#) :: Promoting a more environmentally sustainable community

December 2, 2019

Progress continues on a City Council goal to be an environmentally sustainable community, including reducing the City's contribution of greenhouse gasses into the environment and its impact on climate change. In 2018, the City adopted the Hood River County Energy Plan, a blueprint to improve the community's resilience and increase energy independence and economic benefits related to energy use in the county.

The city's prior, on-going and planned energy saving actions or projects include:

- changing City streetlights from incandescent bulbs to LED
- providing permanent funding for a portion of the Hood River County Energy Coordinator position
- exploring hydro-electric power generation in the City's waterline
- purchasing first-generation hybrid-electric police interceptors
- installing solar panels on the Hood River Fire Station, Public Works building, Waterfront Park restrooms, and authorizing the installation of solar panels next to the Wastewater Treatment Plant in 2020



<https://cityofhoodriver.gov/environmentally-sustainable-community/>

# HOOD RIVER COUNTY

FRUIT RECREATION INDUSTRY

*Oregon*

Home

Government ▼

Departments ▼

Services ▼

Community ▼

COVID-19 ▼



County Health Department Solar System

## Hood River County Health Department - Solar System

This solar system was made possible thanks to a nearly \$70,000 grant from Pacific Power's Blue Sky customers. It was supported by the Hood River County Energy Plan Steering Committee, the Oregon Clean Power Cooperative and Sustainable Northwest.

Hood River County is a forward-thinking community with a long history of investing in energy efficiency and renewable energy projects. In 2016, the community rallied together around our biggest energy effort yet: the development of the Hood River County Energy

# Lyle – Voting December 4 on Climate Emergency Resolution to guide future planning.

## Highlights

- Take steps to 1) reduce reliance on fossil fuels in municipal operations and to pursue local policies (e.g., adopt municipal code) and reforms that promote environmental stewardship and sustainability; 2) reduce municipal net greenhouse gas emissions as quickly as possible with a target of reaching net zero by 2050i with appropriate financial and regulatory assistance from Hood River County, the region, and State and Federal authorities, and 3) initiate efforts to formulate adaptation and resilience strategies in preparation for intensifying climate impacts;
- Review progress and update implementation strategies annually to allow for adaptive management;
- Partner to educate our residents about steps that are needed to limit the magnitude and effects of global warming;
- underscore the need for community participation, inclusion, and support, in efforts to rapidly reduce greenhouse-gas emissions and the county's climate impact;
- commit to keeping the concerns of vulnerable communities central to all climate change mitigation planning processes and to inviting and encouraging such joins a nation-wide call to limit or reverse climate change at all levels of government;
- Call on the State of Washington, the United States of America, and all governments and peoples worldwide to recognize the global climate crisis; and to 1) initiate efforts to reverse global warming by restoring near pre-industrial global average temperatures and greenhouse gas concentrations, 2) discourage the development of new fossil fuel infrastructure, 3) rapidly phase out all fossil fuels and the technologies which rely upon them, 4) end greenhouse gas emissions as quickly as possible, 5) initiate an effort to safely draw down carbon from the atmosphere, 6) transition to regenerative agriculture that aims to capture carbon in soil and aboveground biomass, and 7) create high-quality, good-paying jobs with comprehensive benefits for those who will be impacted by this transaction.



# Mosier

- [Passed an ordinance](#) that bans single use plastics, styrofoam and straws;
- Forged an agreement to change all **street lights** to LED bulbs as they expire;
- Committed to building Mosier's new city hall/fire station/community center as a **'Net Zero' facility**;
- Plans to implement **on-site stormwater facilities** in Mosier streetscapes include bioswales, tree canopy and vegetation, and reducing impervious surfaces in town; and
- [Completed a strategic plan](#) that sets these values of sustainability in motion.

<https://www.climatesolutions.org/mosier-small-city-big-vision>

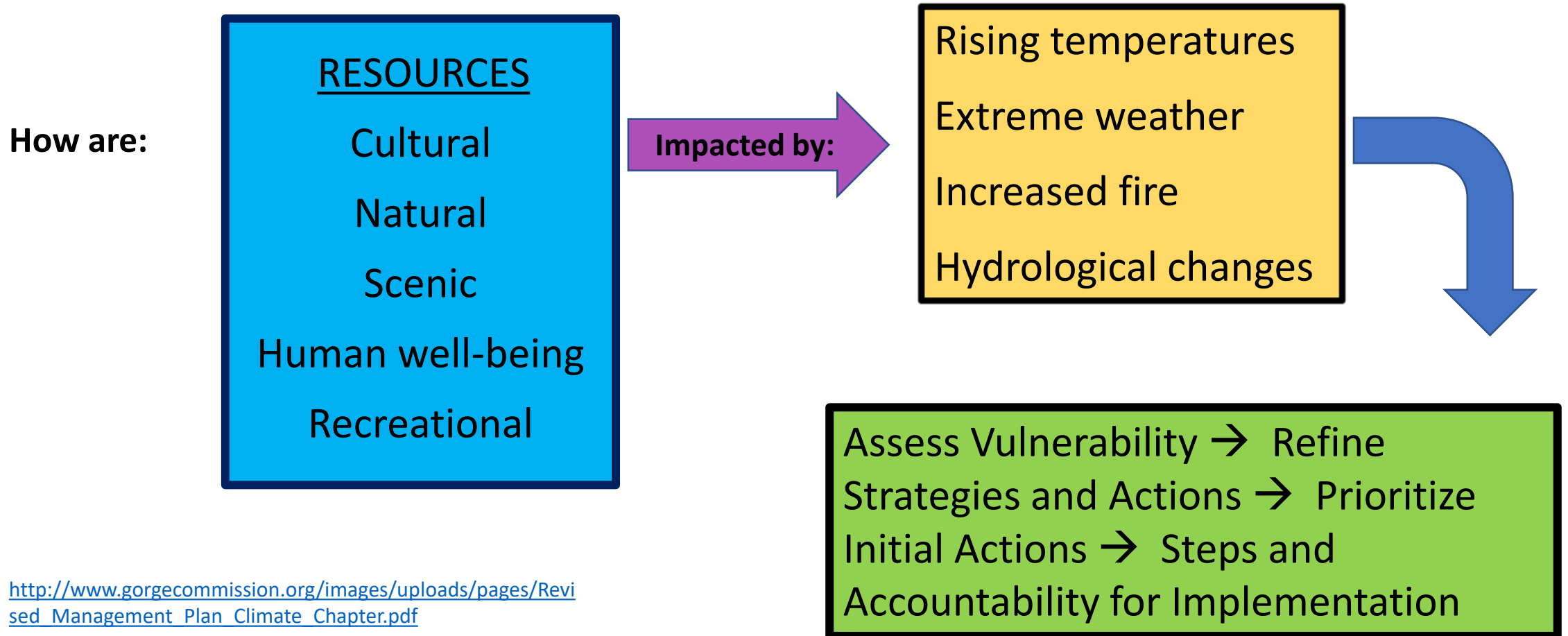
# White Salmon

NOW, THEREFORE BE IT RESOLVED BY THE CITY OF WHITE SALMON AS FOLLOWS:

1. The City of White Salmon declares that a climate crisis threatens our community, our region and planet.
2. The City of White Salmon commits to take steps to:
  - a. Reduce reliance on fossil fuels in municipal operations;
  - b. Pursue local policies and reforms that promote environmental stewardship and overlapping economic sustainability;
  - c. Identify current municipal greenhouse emissions in pursuit of a target reduction in municipal net greenhouse gas emissions of at least 45% by 2030 and net zero by 2050;
  - d. Initiate efforts to formulate adaptation and resilience strategies in preparation for intensifying climate impacts such as wildfires, drought, reduced water availability, and stormwater runoff;
  - e. Work on climate issues in conjunction with diverse communities within the city and neighboring communities, with whom we share our fragile resources.
3. The City of White Salmon recognizes the need for community education, participation, inclusion, and support, in efforts to reduce greenhouse-gas emissions and the city's climate impacts.
4. The City of White Salmon will continue to consider opportunities and funding to address the climate and ecological emergency and its impacts through existing hazard mitigation and emergency management programs.
5. The City of White Salmon commits to keeping the concerns of vulnerable communities and impacts to tribal treaty resources central to all climate change mitigation planning processes and to proactively seek participation of such communities.
6. The City of White Salmon joins a call for a regional, tribal and native, national, and international climate emergency mobilization effort.

# Columbia River Gorge Commission CCAP

## Building Climate Change Resiliency for the NSA





# Columbia River Gorge Commission CCAP – Exploring GHG Reduction in the Region

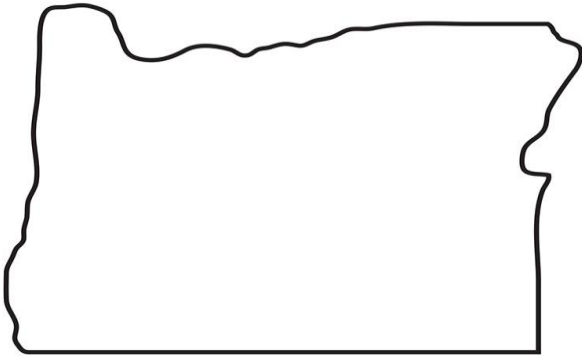
- Support regional transportation planning and projects
- Transit and traffic reduction
- Electric vehicle infrastructure
- Bicycle and pedestrian connections
- Protect and enhance carbon storage
- Protect forests from wildfire
- Maintain woodlands and grasslands
- Promote carbon storage solutions on agricultural lands

# Other Exemplary CCAPs in the Northwest



Port Townsend, WA. This project was launched in 2007 and the plan was completed in 2011. Port Townsend has a population similar to The Dalles, and they are more than 10 years ahead of us.

<https://test.co.jefferson.wa.us/WebLinkExternal/0/edoc/1727088/FINAL%20CAP%20-%20adopted%2011-14-2011.pdf?AspxAutoDetectCookieSupport=1>).



copyright©worldmapblank.com

The City of Bend appointed a 13-person Climate Action Steering Committee to develop the strategies and actions for their plan. The committee represented diverse interests and stakeholders across the community, including the business community, environmental organizations, government agencies and institutions, youth, subject matter experts, and at-large community members.

<https://www.bendoregon.gov/home/showpublisheddocument/43462/637073547937400000>



# Common Components of Successful CCAPs

- Joint City/County effort
- Task Force / Climate Action Committees that include community members and stakeholders in the process
- Staff person(s) to coordinate the effort
- Commitment to goals
  - GHG Reductions
  - Resilience strategies
  - Clean energy targets
  - Economic and social goals





# Examples of Actions

- Solar panel installation – home/business/city/county
- City street lighting - LEDs
- Charging stations for electric vehicles
- Electric vehicles for upgrades to city/county vehicle fleet and to take advantage of tax advantages
- Prepare transit plan to reduce city traffic
- Bicycle/pedestrian routes to reduce vehicular traffic
- Trees for open spaces
- Composting centers
- Utility rebates (net-metering) for reduced carbon emissions
- Re-cycling
- Identify needs for upgrading or repairing city water treatment equipment
- Promoting sustainable organic farming
- Study other sources electrical production – e.g. White River
- Be in position to get state or federal dollars with "shovel ready" projects we've identified
- Identify additional uses for water being discharged from Google before being emptied into Columbia River
- Be in a position to take advantage of new technology as it becomes available
- Consider improved and heat resistant materials for roads

# What We're Asking For...

- 1. Form a Task Force** in coordination with the County Commission, Port of The Dalles, other cities in the area, and other stakeholders such as PUD, MCEDD, and community members to develop a Community Climate Action Plan that will
  - **MITIGATE** the impacts of Climate Change
  - Help the community **ADAPT** to the impacts of Climate Change
  - **REDUCE** our own greenhouse gas emissions/carbon footprint
- 2. Provide a staff person** (possibly a RARE Intern shared by other stakeholders) to coordinate and help lead this task force.
- 3. Adopt our Mission** – To move our community from one that is largely uncertain about Climate Change to a community that is actively addressing it as an opportunity to build a healthier, more vibrant, and more resilient community for us all.









## AGENDA STAFF REPORT

### AGENDA LOCATION: Public Hearing Item #9A

**MEETING DATE:** November 22, 2021

**TO:** Honorable Mayor and City Council

**FROM:** Dawn Marie Hert, Senior Planner  
Community Development Department

**ISSUE:** Public Hearing to consider General Ordinance No. 21-1386 adding the Total Maximum Daily Load Implementation Plan to Volume II: Background Documents of The Dalles Comprehensive Plan.

**BACKGROUND:** In 2009, the Oregon Department of Environmental Quality (DEQ) completed a comprehensive study of streams in the region around The Dalles, called the Middle Columbia-Hood (Miles Creeks) Subbasin. The study can be found on DEQ's website under Total Maximum Daily Load (TMDL) for the Middle Columbia-Hood Subbasin, Miles Creeks. As a result of that study, the City of The Dalles was identified as a "Designated Management Agency" (DMA), with responsibilities for water quality management in portions of the Miles Creeks drainage area, including the creation of an Implementation Plan.

DEQ is required under the federal Clean Water Act and Oregon Administrative Rules (OAR) to develop TMDLs for water bodies that fail to meet state water quality standards. A number of streams in the Miles Creek Subbasin failed to meet state water quality standards for temperature. Salmonids and other fish and aquatic species are sensitive to high water temperatures. The TMDL includes a Water Quality Management Plan (WQMP) with a goal of ensuring all water bodies in the basin attain and maintain water quality standards for temperature. The WQMP has a variety of management strategies including establishing and protecting riparian area vegetation.

The Dalles does not currently have an adopted TMDL Implementation Plan. Upon approval of the Middle Columbia-Hood (Miles Creeks) Subbasin TMDL, the City developed and received DEQ approval for an Implementation Plan to achieve load allocations as established by the TMDL. The Plan incorporates existing management strategies, as well as an assessment of ways City operations could be modified to better

meet TMDL load allocations. Management strategies include education about riparian protection, evaluation of roads located along perennial streams for impediments to load allocation attainment, restoration of river shading and/or channel condition on City owned properties, and consideration of riparian protection ordinances and low impact development building practices.

The Miles Creeks Subbasin includes roughly 587 square miles and is one of three areas in the Middle Columbia-Hood Subbasin. The Miles Creeks area consists of several watersheds originating from Mount Hood and draining into the Columbia River. The watersheds within the jurisdiction of the City of The Dalles include Chenoweth Creek, Mill Creek, and Threemile Creek within the UGB of the City of The Dalles.

OAR 340-042-0080(4) requires:

*Persons, including DMAs other than the Oregon Department of Forestry or the Oregon Department of Agriculture, identified in a WQMP as responsible for developing and revising sector-specific or source-specific implementation plans must:*

*(a) Prepare an implementation plan and submit the plan to the Department for review and approval according to the schedule specified in the WQMP. The implementation plan must:*

*(A) Identify the management strategies the DMA or other responsible person will use to achieve load allocations and reduce pollutant loading;*

*(B) Provide a timeline for implementing management strategies and a schedule for completing measurable milestones;*

*(C) Provide for performance monitoring with a plan for periodic review and revision of the implementation plan;*

*(D) To the extent required by ORS 197.180 and OAR chapter 340, division 18, provide evidence of compliance with applicable statewide land use requirements; and*

*(E) Provide any other analyses or information specified in the WQMP.*

*(b) Implement and revise the plan as needed.*

*(5) For sources subject to permit requirements in ORS 468B.050, waste load allocations and other management strategies will be incorporated into permit requirements.*

The main goal of the City of The Dalles TMDL Implementation Plan is to reduce all stream pollutants to comply with the requirements of the Clean Water Act. At this time, temperature was the only identified pollutant source exceeding the maximum levels; therefore, the Plan's primary focus will be to reduce temperature. However, the following management strategies will be beneficial not only to reducing temperature but also to help reduce stream erosion and sediment within the streams and help maintain bacteria and oxygen at appropriate levels.

Staff is proposing this addition to The Dalles Comprehensive Plan (the existing text is shown below in **bold text**, the amended addition is shown underlined text as follows:

## **Comprehensive Land Use Plan Organization**

### **Supporting Documents**

#### **Volume II: Background Documents**

##### *K. The Dalles Total Maximum Daily Load Implementation Plan, 2021*

On September 16, 2021, the City Planning Commission conducted a public hearing regarding the proposed addition of the Total Maximum Daily Load Implementation Plan to Volume II: Background Documents of the City's Comprehensive Plan and voted unanimously to recommend approval of Comprehensive Plan Amendment #50-21. The Planning Commission staff report, with findings, is attached for reference.

**BUDGET IMPLICATIONS:** None.

**COUNCIL ALTERNATIVES:**

1. **Staff recommendation:** *Move to adopt General Ordinance No. 21-1386 revising The Dalles Comprehensive Plan, Volume II: Background Documents to include the following:*
  - K. Middle Columbia-Hood (Miles Creeks) Subbasin Total Maximum Daily Load (TMDL) Implementation Plan, 2021*
2. Decline adoption of General Ordinance No. 21-1386.



**GENERAL ORDINANCE NO. 21-1386**

**AN ORDINANCE ADDING THE TOTAL MAXIMUM DAILY LOAD IMPLEMENTATION PLAN TO VOLUME II: BACKGROUND DOCUMENTS OF THE DALLES COMPREHENSIVE PLAN**

**WHEREAS**, in 2009 the Oregon Department of Environmental Quality (DEQ) completed a comprehensive study of streams in the region around The Dalles, called the Middle Columbia-Hood (Miles Creeks) Subbasin. As a result of the study, the City of The Dalles was identified as a “Designated Management Agency” (DMA), with responsibilities for water quality management in portions of the Miles Creeks drainage area, including the creation of an Implementation Plan;

**WHEREAS**, DEQ is required under the federal Clean Water Act and Oregon Administrative Rules (OAR) to develop Total Maximum Daily Loads (TDMLs) for water bodies that fail to meet state water quality standards. A number of streams in the Miles Creek Subbasin failed to meet state water quality standards for temperature. Salmonids and other fish and aquatic species are sensitive to high water temperatures;

**WHEREAS**, the TMDL includes a Water Quality Management Plan (WQMP) with a goal of ensuring all water bodies in the basin attain and maintain water quality standards for temperature. The WQMP has a variety of management strategies including establishing and protecting riparian area vegetation;

**WHEREAS**, The Dalles does not currently have an adopted TMDL Implementation Plan. Upon approval of the Middle Columbia-Hood (Miles Creeks) Subbasin TMDL, the City developed and received DEQ approval for an Implementation Plan to achieve load allocations as established by the TMDL. The Plan incorporates existing management strategies, as well as includes an assessment of ways City operations could be modified to better meet TMDL load allocations;

**WHEREAS**, OAR 340-042-0080(4) requires:

*Persons, including DMAs other than the Oregon Department of Forestry or the Oregon Department of Agriculture, identified in a WQMP as responsible for developing and revising sector-specific or source-specific implementation plans must:*

- (A) Identify the management strategies the DMA or other responsible person will use to achieve load allocations and reduce pollutant loading;*
  - (B) Provide a timeline for implementing management strategies and a schedule for completing measurable milestones;*
  - (C) Provide for performance monitoring with a plan for periodic review and revision of the implementation plan;*
  - (D) To the extent required by ORS 197.180 and OAR chapter 340, division 18, provide evidence of compliance with applicable statewide land use requirements; and*
  - (E) Provide any other analyses or information specified in the WQMP.*
- (b) Implement and revise the plan as needed.*

*(5) For sources subject to permit requirements in ORS 468B.050, waste load allocations and other management strategies will be incorporated into permit requirements;*

**WHEREAS**, the main goal of the City of The Dalles TMDL Implementation Plan is to reduce all stream pollutants to comply with the requirements of the Clean Water Act;

**WHEREAS**, on September 16, 2021, the City Planning Commission conducted a public hearing regarding the proposed addition of the Total Maximum Daily Load Implementation Plan to Volume II: Background Documents of the City’s Comprehensive Plan and voted unanimously to recommend approval of Comprehensive Plan Amendment #50-21; and

**WHEREAS**, the City Council conducted a public hearing on November 22, 2021, to consider the Planning Commission’s recommendation and, following the close of the public hearing, the City Council conducted deliberations and the Council members voted to approve the addition of the Total Maximum Daily Load Implementation Plan to Volume II: Background Documents of the City’s Comprehensive Plan set forth below, based upon the following findings:

1. Goal #6 of the 19 Statewide Land Use Planning Goals is in regards to Air, Water, and Land Resources and instructs jurisdictions to consider protecting resources from pollution and pollutants when composing a Comprehensive Plan. At a federal level, Goal #6 corresponds to both the Clean Water Act and the Clean Air Act. Statewide, Goal #6 covers many areas regulated by the Oregon Department of Environmental Quality (DEQ). By submitting the TMDL Implementation Plan to DEQ and receiving approval, The Dalles has complied with state and federal law.

2. Goal #6 of the City's Comprehensive Plan is to maintain and improve the quality of the air, water, and land resources of the state. The goal includes references to meeting state and regional plans to protect water quality: Goal #6 Background states “Government, business and private citizens are all responsible for maintaining a livable environment and for improving air and water quality and noise levels where pollution and deterioration exist. Federal, state and local laws and agencies have worked in the public interest to halt environmental deterioration. Continued vigilance is necessary to ensure that natural systems and resources are not threatened or unduly burdened by urban and rural development, and to maintain and balance a high quality human and natural environment. It is desirable to blend the human environment and the natural setting together in a way that reduces adverse effects. Our objectives should be: to minimize pollution and maintain established environmental quality standards; to resolve grievances whenever air, water and noise problems occur; and to ensure a healthful human environment in balance with a high quality natural environment.” Policy #1 requires that the City “Support and participate in the implementation of state and regional plans and programs to reduce pollution levels.” Policy #5 states that the City “Ensure that all State and Federal regulations for air, water and noise quality are met.” The process that led to the preparation of the TMDL Implementation Plan, and subsequent approval by the Oregon DEQ, is demonstration of a concerted effort to meet the water quality needs of the citizens of the state and visitors, and is consistent with Goal #6.

The proposed amendment does not affect any other goals in the Comprehensive Plan or create any inconsistency within the Comprehensive Plan.

3. The TMDL Implementation Plan contains specific goals that address public health, safety, and general welfare, by providing strategies to aid in reducing temperatures of Mill Creek, Chenoweth Creek and Three Mile Creek. These strategies will assist the City in lowering the stream pollutants and comply with the Clean Water Act. The proposed amendment enables adoption of the TMDL, as a background document to the Comprehensive Plan. The inclusion of the Plan and its supporting goal and policy direction in the Comprehensive Plan framework will further public health, safety, and welfare interests.

4. The proposed amendment will provide a guiding document with strategies to ensure compliance with the Clean Water Act. Approval of the TMDL Implementation as a background document is not site-specific but has specific changes identified that may affect properties located in the Stream Corridor District. Recommended changes to the Municipal Code, Title 10-Land Use and Development included in the TMDL Implementation Plan will require a separate application process, Ballot Measure 56 mail-out and public hearings. Any specific effects will be detailed through those land use processes.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF THE DALLES ORDAINS AS FOLLOWS:**

Section 1. **The Dalles Comprehensive Plan, Volume II: Background Documents** *shall be revised to read as follows:*

- K. Middle Columbia-Hood (Miles Creeks) Subbasin Total Maximum Daily Load (TMDL) Implementation Plan, 2021.

**PASSED AND ADOPTED THIS 22ND DAY OF NOVEMBER, 2021.**

Voting Yes, Councilors: \_\_\_\_\_  
Voting No, Councilors: \_\_\_\_\_  
Abstaining, Councilors: \_\_\_\_\_  
Absent, Councilors: \_\_\_\_\_

**AND APPROVED BY THE MAYOR THIS 22ND DAY OF NOVEMBER, 2021.**

\_\_\_\_\_  
Richard A. Mays, Mayor

Attest:

\_\_\_\_\_  
Izetta Grossman, CMC, City Clerk



## AGENDA STAFF REPORT

### AGENDA LOCATION: Action Item #10A

**MEETING DATE:** November 22, 2021

**TO:** Honorable Mayor and City Council

**FROM:** Angie Wilson, Finance Director

**ISSUE:** Resolution No. 21-029 Adopting a Supplemental Budget for Fiscal Year 2021/2022, Making Appropriations and Authorizing Expenditures from and within The General Fund of The City Of The Dalles Adopted Budget.

**BACKGROUND:** Oregon Budget Law recognizes that after the beginning of the fiscal year, changes in appropriations in the budget sometimes become necessary, and so allows for those changes via supplemental budgets and budget amendments. Supplemental budgets add funds to existing budgets, while budget amendments move already budgeted funds between categories of the same fund without adding to the fund's total budget.

A Public Hearing is required for any supplemental budget that changes a fund by more than 10%. The proposed supplemental budget is less than 10% of the operating budget of either of the affected funds, so a Public Hearing is not required.

A notice of the Supplemental Budget is required to be published, and that notice is scheduled to be printed in The Columbia Gorge News on Wednesday, November 10, 2021.

Resolution No. 21-029 is for a Supplemental Budget for the General Fund.

The City's General Fund (001) has realized an additional \$74,750 in the General Fund revenue, with \$74,750 to be allocated to the Police Department to facilitate accreditation of the Police Department through the Oregon Accreditation Alliance. The grant requires no matching funds. The grant funds will be used to support accreditation of the Dalles Police Department, which ensures independent evaluation and confirmation of best practices in policy, training, operations, management and more.



**BUDGET IMPLICATIONS:** The Supplemental Budget Resolution No. 21-029 increases the General Fund budget by \$74,750.

**COUNCIL ALTERNATIVES:**

1. ***Staff Recommendation: Move to Adopt Resolution No. 21-029 Adopting a Supplemental Budget for Fiscal Year 2021/2022, Making Appropriations and Authorizing Expenditures within the General Fund of the City Of The Dalles Adopted Budget.***
  
2. Council may choose to decline to make any changes to the adopted budget at this time.

**RESOLUTION NO. 21-029**

**A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR  
FISCAL YEAR 2021/2022, MAKING APPROPRIATIONS AND  
AUTHORIZING EXPENDITURES FROM AND  
WITHIN THE GENERAL FUND OF THE CITY OF THE DALLES  
ADOPTED BUDGET**

**WHEREAS**, the City’s General Fund (001) has realized an additional \$74,750 in Grant Revenue, with \$74,750 to be allocated to the Police Department for completing the study for the Community Policing Development Accreditation.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

Section 1. The City Council hereby adopts the Supplemental Budget for FY 21/22, increasing revenues and making appropriations as follows:

<b>Summary of Supplemental Budget-Line Item Detail</b>				
<b>Fund</b>	<b>Resource</b>	<b>Amount</b>	<b>Requirement</b>	<b>Amount</b>
General Fund (001)	Community Policing Development Accreditation Grant	74,750	Police Department General Fund	74,750
	<b>Total New Police Department</b>			<b>4,650,142</b>
	<b>Total New Resources</b>	<b>74,750</b>	<b>Total New Requirements</b>	<b>74,750</b>
	<b>New Total all Fund 001 Resources</b>	<b>14,506,355</b>	<b>New Total All Fund 001 Expenditures</b>	<b>14,506,355</b>

Section 2. This Resolution shall become effective upon adoption by the City Council and shall remain in effect until receipt and acceptance of the FY 21/22 audit report.

**PASSED AND ADOPTED THIS 22ND DAY OF NOVEMBER, 2021.**

Voting Yes, Councilors: \_\_\_\_\_

Voting No, Councilors: \_\_\_\_\_

Absent, Councilors: \_\_\_\_\_

Abstaining, Councilors: \_\_\_\_\_

**AND APPROVED BY THE MAYOR THIS 22ND DAY OF NOVEMBER, 2021.**

SIGNED:

ATTEST:

\_\_\_\_\_  
Richard A. Mays, Mayor

\_\_\_\_\_  
Izetta Grossman, CMC, City Clerk





## AGENDA STAFF REPORT

### AGENDA LOCATION: Action Item #10B

**MEETING DATE:** November 22, 2021

**TO:** Honorable Mayor and City Council

**FROM:** Dave Anderson, Public Works Director

**ISSUE:** Approval of Resolution No. 21-030 Authorizing a Loan from the Safe Drinking Water Revolving Loan Fund by Entering into a Financing Contract with the Oregon Infrastructure Finance Authority

**BACKGROUND:** The Dog River Pipeline Replacement Project, which is currently in final design, is being funded from a number of sources including City utility rate revenues and System Development Charges, a \$1,000,000 grant from the Oregon Water Resources Department, and a \$4,030,000 loan from the Oregon Safe Drinking Water Revolving Loan Fund (SDWRLF). As a condition of receiving the SDWRLF funding, the City must adopt a borrowing resolution authorizing the Mayor to sign the funding contract. In addition, and separate from this item, the City Attorney will provide an Opinion to the Oregon Infrastructure Financing Authority that the loan is being undertaken legally.

Attached for the Council's consideration is Resolution No. 21-030 authorizing acceptance of the proposed loan; the financing contract for the loan is provided as Exhibit 1 to the Resolution. The loan is for \$4,030,000, \$530,000 of which is forgivable as long as the terms of the loan are met. The interest rate on the loan is 1% and the term is 30 years; these are the most generous terms available through this funding source. If the City were to subsequently lower its utility water rates below identified levels before the project is completed, the interest rate would increase to 1.7% and \$400,000 of the forgivable portion of the loan would need to be paid back. The annual payments on the loan would be about \$139,000 per year. These are very good terms which are more favorable to the City than would be the issuance of a bond.

SDWRLF monies are considered federal funding which is allocated through the state. As such, the project must comply with federal requirements such as paying workers the higher of the state prevailing wage or federal Davis-Bacon rates, purchase of iron and

steel materials which are manufactured in the United States, and making good faith efforts to engage Disadvantaged Business Enterprises in the project.

It is anticipated that staff will be recommending a future amendment or revision to the attached Financing Contract within the coming months. The estimated cost of the Dog River Pipeline Replacement Project was estimated to be \$9,093,128 at time of application for funding based largely upon a 10-year-old cost projection. After having completed the 20% design, the total cost of the project is now estimated to be closer to \$17,000,000. This increase in cost is largely reflective of the inflation that has occurred over the last decade and which has been quite significant in recent months. Examples of the increased costs include award of an engineering contract for \$1,822,422 compared to \$856,014 previously estimated, and fish passage and screening system costs currently estimated at about \$1,500,000 compared to a prior estimate of about \$500,000; other project costs have also increased similarly.

Staff is already working to allocate additional existing City funds to the project such as was done with the October 25, 2021 Supplemental Budget approved by Council which allocated an additional \$701,746 to the project. Staff is also exploring options of using some of the City's American Rescue Plan Act (ARPA) funds for the project. Following completion of an updated cost estimate with the 50% design, staff is considering seeking an additional \$5,000,000 in SDWRLF funding. An increase in the repayable loan amount to \$8,500,000 would result in annual payments of about \$330,000.

**BUDGET ALLOCATION:** With the adoption of Resolution No. 21-030, the City would receive a \$4,030,000 loan for the Dog River Pipeline Replacement Project; \$530,000 of this loan would be forgiven. To repay the loan, the City would have annual payments of \$139,000 for 30 years. The City's projected water utility revenues are adequate to make these payments.

**COUNCIL ALTERNATIVES:**

1. **Staff Recommendation:** *Move to adopt Resolution No. 21-030 authorizing a loan from the Safe Drinking Water Revolving Loan Fund by entering into a Financing Contract with the Oregon Infrastructure Finance Authority.*
2. Deny authorization of Resolution No. 21-030 and provide additional direction to staff.

**RESOLUTION NO. 21-030**

**A RESOLUTION AUTHORIZING A LOAN FROM THE  
SAFE DRINKING WATER REVOLVING LOAN FUND  
BY ENTERING INTO A FINANCING CONTRACT WITH THE  
OREGON INFRASTRUCTURE FINANCE AUTHORITY**

**WHEREAS**, the City of The Dalles (“City”) is a community water system as defined by Oregon Administrative Rule 123-049-0010;

**WHEREAS**, the Safe Drinking Water Act Amendments of 1996 (Pub.L. 104-182, as amended) (the “Act”), authorize any community water system to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department (“OBDD”) to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund;

**WHEREAS**, the City has filed an application with the OBDD to obtain financial assistance for a “safe drinking water project” within the meaning of the Act, and the OBDD has approved the City’s application for financial assistance;

**WHEREAS**, the City is required, as a prerequisite to the receipt of financial assistance from the OBDD, to enter into that certain Financing Contract with the OBDD, number S21013, substantially in the form attached to and made part of this Resolution as Exhibit 1. The project is described in Exhibit C to and made part of that Financing Contract (the “Project”); and

**WHEREAS**, notice relating to the City’s consideration of the adoption of this Resolution was published in full accordance with the City Charter and laws for public notification.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF THE DALLES  
RESOLVES AS FOLLOWS:**

1. Financing Loan Authorized. The City Council authorizes the Public Works Director to execute the Financing Contract and such other documents (the “Financing Documents”) as may be required to obtain financial assistance including a loan from the OBDD on the condition the principal amount of the loan from the OBDD to the City is not more than \$4,030,000, with \$530,000 eligible for principal forgiveness if contract conditions are met, and the interest rate is not more than 1% if contract conditions are met (and 1.70% if not met). The proceeds of the loan from the OBDD must be applied solely to the “Costs of the Project” as such term is defined in the Financing Contract.



2. Sources of Repayment. Amounts payable by the City are payable from the sources described in Section 4 of the Financing Contract and the Oregon Revised Statutes Section 285A.213(5), which include:

- (a) Revenue from the City’s water system, including special assessment revenue;
- (b) Amounts withheld under subsection 285A.213(6);
- (c) The general fund of the City;
- (d) Any combination of sources listed in paragraphs (a) to (c) of this subsection; or
- (e) Any other source.

3. Additional Documents. The Public Works Director is hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to obtain financial assistance from the OBDD for the Project pursuant to the Financing Documents.

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

**PASSED AND ADOPTED ON THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2021.**

Voting Yes, Councilors: \_\_\_\_\_  
Voting No, Councilors: \_\_\_\_\_  
Abstaining, Councilors: \_\_\_\_\_  
Absent, Councilors: \_\_\_\_\_

**AND APPROVED BY THE MAYOR THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2021.**

\_\_\_\_\_  
Richard A. Mays, Mayor

Attest:

\_\_\_\_\_  
Izetta Grossman, CMC, City Clerk

**Exhibit 1 – Financing Contract No. S21013 with the OBDD**  
Resolution No. 21-030 OBDD safe water loan

# Exhibit 1

## SAFE DRINKING WATER REVOLVING LOAN FUND FINANCING CONTRACT

Project Name: The Dalles Municipal Watershed Dog River Pipeline Replacement Project

Project Number: S21013

This financing contract (“Contract”), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through its Oregon Infrastructure Finance Authority of the Oregon Business Development Department (“OBDD”), and the City of The Dalles (“Recipient”) for financing of the project referred to above and described in Exhibit C (“Project”). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Loan Security
Exhibit C	Project Description
Exhibit D	Project Budget
Exhibit E	Information Required by 2 CFR § 200.332(a)(1)
Exhibit F	Certification Regarding Lobbying

### SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

“Estimated Project Cost” means \$9,093,128.

“Forgivable Loan Amount” means \$530,000.

“Section 2A. Loan Amount” means \$3,500,000.

“Interest Rate” means 1% per annum.

“Maturity Date” means the 29<sup>th</sup> anniversary of the Repayment Commencement Date.

“Payment Date” means December 1.

“Project Closeout Deadline” means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

“Project Completion Deadline” means 36 months after the date of this Contract.

“Repayment Commencement Date” means the first Payment Date to occur after the Project Closeout Deadline.

### SECTION 2 - FINANCIAL ASSISTANCE

The OBDD shall provide Recipient, and Recipient shall accept from OBDD, financing for the Project specified below:

- A. A non-revolving loan in an aggregate principal amount not to exceed the Section 2.A. Loan Amount.
- B. A non-revolving loan in an aggregate principal amount not to exceed the Forgivable Loan Amount.

“Loan” means, collectively and individually without distinction, as the context requires, the loans described in this section 2.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract shall not exceed the Costs of the Project.

### SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds shall be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an OBDD-provided or OBDD-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. The OBDD’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.
- C. Payment to Contractors. The OBDD, in its sole discretion, may make direct payment to suppliers, contractors and subcontractors and others for sums due them in connection with construction of the Project, instead of reimbursing Recipient for those sums.
- D. Order of Disbursement. OBDD shall allocate any disbursement equally between the Section 2.A. Loan and the Forgivable Loan. Notwithstanding the preceding sentence, those portions of the Forgivable Loan indicated in the budget line-items for Labor Standards Compliance and Project Management remain dedicated to those specific line-item activities and not affected by any equal division allocation.

### SECTION 4 - LOAN PAYMENT; PREPAYMENT; FORGIVENESS

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with its terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of OBDD to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against OBDD or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues at the Interest Rate on each disbursement from the date of disbursement until the Loan is fully paid. All unpaid interest accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date. Interest is computed by counting the actual days occurring in a 360-day year.

The Recipient authorizes OBDD to calculate accrued interest as necessary under this Contract, including for purposes of determining a loan amortization schedule or determining the amount of a loan prepayment or loan payoff. Absent manifest error, such calculations will be conclusive.

- C. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal and interest, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.
- D. Loan Prepayments.
- (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as may be required by this Contract.
  - (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.
- E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of OBDD, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, OBDD will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal 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.
- F. Forgiveness. Subject to satisfaction by Recipient of any special conditions in Exhibit C, if Recipient completes the Project by the Project Completion Deadline in accordance with the terms of this Contract, and provided that no Event of Default has occurred, OBDD shall, 90 days after the Project Completion Date, forgive repayment of the Forgivable Loan Amount and any interest accrued thereon and cancel the Forgivable Loan. The Forgivable Loan Amount and any interest forgiven remain subject to the requirements of OAR 123-049-0050, which survive payment of the Loan.

Notwithstanding the preceding paragraph, if, at the Project Completion Date, the average monthly residential water rates for the water supplied by the System are not at or above the affordability rate of \$50.74 per 7,500 gallons, then \$400,000 of the amount due under the Forgivable Loan will not be forgiven. Further, the Section 2.A. Loan and the Forgivable Loan will, at OBDD's discretion and after notice to Recipient, be modified as follows:

Interest accrues from the Project Completion Date at the rate of 1.70% per annum.

The above-described modification will be effective without the necessity of executing any further documents. However, at OBDD's request, Recipient shall execute and deliver to OBDD such additional agreements, instruments and documents as OBDD deems necessary to reflect such modification, including but not limited to an amendment to the Contract.

## SECTION 5 - CONDITIONS PRECEDENT

- A. Conditions Precedent to OBDD's Obligations. The OBDD's obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
  - (2) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract and the other Financing Documents.



- (3) An opinion of Recipient's Counsel.
- (4) Such other certificates, documents, opinions and information as OBDD may reasonably require.

B. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:

- (1) There is no Event of Default.
- (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
- (3) The OBDD, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
- (4) The Recipient delivers to OBDD an estimated schedule for Disbursement Requests for Project design, covering anticipated number, submission dates, and amounts. Prior to beginning construction, Recipient must also deliver to OBDD an estimated schedule for Disbursement Requests for construction, covering anticipated number, submission dates, and amounts.
- (5) The OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBDD may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
- (6) The Recipient has delivered documentation satisfactory to OBDD that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
- (7) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

**SECTION 6 - USE OF FINANCIAL ASSISTANCE**

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit D. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of OBDD.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit C.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project, whether from OBDD or from another State of Oregon agency or any third party.

**SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT**

The Recipient represents and warrants to OBDD:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
- (1) The Recipient (a) is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon, and (b) owns a community water system, as defined in the Act and OAR 123-049-0010.
  - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
  - (3) This Contract and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
  - (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by OBDD, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.
- E. No Events of Default.
- (1) No Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
  - (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which

Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

- G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and the other Financing Documents, for the financing or refinancing and undertaking and completion of the Project.

## SECTION 8 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, the Project and the operation of the System of which the Project is a component. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C. Oregon state procurement regulations will satisfy federal procurement requirements of 2 CFR part 200, subpart D.
  - (2) State labor standards and wage rates found in ORS chapter 279C, and federal prevailing wage provisions in accordance with the federal Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 to 3144, 3146 and 3147.
  - (3) The Recipient is required to place a sign at construction sites supported under this Loan displaying the U.S. Environmental Protection Agency (“EPA”) logo in a manner that informs the public that the Project is funded in part or wholly by the EPA. The sign must be placed in a visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period. Recipient is required to comply with EPA signage requirements at: [http://www2.epa.gov/sites/production/files/2015-01/documents/signage\\_required\\_tc.pdf](http://www2.epa.gov/sites/production/files/2015-01/documents/signage_required_tc.pdf)
  - (4) SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant’s Handbook for the Federally Funded Safe Drinking Water Revolving Fund & Drinking Water Protection Loan Fund (August 2018 update), as amended from time to time (“Safe Drinking Water Handbook”), available at <https://www.orinfrastructure.org/assets/docs/IFA/SDWhandbook.pdf>.
  - (5) Federal Crossing-Cutting Authorities. All federal laws, executive orders and government-wide policies that apply by their terms to projects and activities receiving federal financial assistance, regardless of whether the Act makes them applicable (“Cross-Cutting Authorities”). The Safe Drinking Water Handbook contains a link to a list of the Cross-Cutting Authorities.
  - (6) Lobbying. The Recipient acknowledges and agrees that the Costs of the Project will not include any Lobbying costs or expenses incurred by Recipient or any person on behalf of Recipient, and that Recipient will comply with federal restrictions on lobbying at 40 C.F.R. Part 34 and will not request payment or reimbursement for Lobbying costs and expenses. “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. The Recipient shall submit to OBDD a Certification Regarding Lobbying, the form of which is attached as Exhibit F, and any applicable quarterly disclosure statement of covered lobbying activity. The Recipient will cause any entity, firm or person receiving a contract or subcontract utilizing Loan proceeds in excess of \$100,000 to complete the same certification and any applicable disclosure statement, and submit them to Recipient. The Recipient shall retain such certifications and make them available for inspection and audit by OBDD, the federal government or their representatives. The Recipient shall forward any disclosure statements to OBDD.

- (7) Federal Audit Requirements. The Loan is federal financial assistance, and the Catalog of Federal Domestic Assistance (“CFDA”) number and title is “66.468, Capitalization Grants for Drinking Water State Revolving Funds.” Recipient is a sub-recipient.
- (a) If Recipient receives federal funds in excess of \$750,000 in the Recipient’s fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to OBDD a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to OBDD the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.
- (b) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient 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 Contract.
- (c) Recipient shall save, protect and hold harmless OBDD 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 Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.

- (8) Disadvantaged Business Enterprises. The Recipient will implement the good faith efforts for solicitation and contracting with Disadvantaged Business Enterprises (“DBE”) described in the Safe Drinking Water Handbook. This applies to all solicitation and contracting for construction, equipment, supplies, engineering or other services that constitute the Project financed by this Contract. The Recipient will maintain documentation in a Project file and submit the required forms, as described in the Safe Drinking Water Handbook. The Recipient will ensure that all prime contractors implement the good faith efforts for solicitation and contracting, and comply with all DBE procurement forms, statements, and reporting requirements. The Recipient agrees to apply the current regional fair share objectives.

The Recipient will ensure that each procurement contract includes the following term and condition:

“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.”

- (9) Property Standards. Recipient shall comply with 2 CFR 200.313 which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
- (10) Contract Provisions. The contract provisions listed in 2 CFR Part 200, Appendix II are obligations of Recipient, as applicable, and must be included, as applicable, by Recipient in its contracts related to the Project.
- (11) Iron and Steel Products. Pursuant to the 2016 Consolidated Appropriations Act (P.L. 114-113), none of the Financing Proceeds may be used for any part of the Project unless all of the iron and steel products used in the project are produced in the United States. “Iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- (12) Incorporation by Reference. The above state and federal laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. The Recipient shall:

- (1) When procuring professional consulting services, provide OBDD with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
- (2) Provide OBDD with copies of all Oregon Health Authority – approved plans and specifications relating to the Project, and a timeline for the construction bidding / award process, at least ten (10) days before advertising for bids.
- (3) Provide a copy of the bid tabulation, notice of award, and contract to OBDD within ten (10) days after selecting a construction contractor.
- (4) Complete an environmental review in accordance with the state environmental review process and in compliance with state and federal environmental laws prior to any construction work on the Project.
- (5) Permit OBDD to inspect the Project at any time.
- (6) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (7) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by OBDD in writing.
- (8) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.
- (9) In the case of construction projects, prior to final disbursement of the Loan, Recipient shall install necessary source meters and service meters on all connections throughout the System.

D. Ownership of Project. During the term of the Loan, the Project is and will continue to be owned by Recipient. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient. Any such management contract or operating agreement will be structured as a “qualified management contract” as described in IRS Revenue Procedure 97-13, as amended or supplemented.

- E. Operation and Maintenance of the Project. The Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements during term of the Loan. On or before the Project Closeout Deadline, Recipient shall adopt a plan acceptable to OBDD for the on-going operation and maintenance of the Project without reliance on OBDD financing and furnish OBDD, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.
- F. Insurance, Damage. The Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from asserting a defense against any party other than OBDD, including a defense of immunity. If the Project or any portion is destroyed, any insurance proceeds will be paid to OBDD and applied to prepay the outstanding balance on the Loan in accordance with section 4.D.(1), unless OBDD agrees in writing that the insurance proceeds may be used to rebuild the Project.
- G. Sales, Leases and Encumbrances. Except as specifically described in Exhibit C, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project or any system that provides revenues for payment or is security for the Loan, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, OBDD may consent to such disposition if it has received 90 days' prior written notice from Recipient. Such consent may require assumption by transferee of all of Recipient's obligations under the Financing Documents and payment of OBDD's costs related to such assumption, and receipt by OBDD of an opinion of Bond Counsel to the effect that such disposition complies with applicable law and will not adversely affect the exclusion of interest on any Lottery Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. The term "Bond Counsel" means a law firm determined by OBDD to have knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds. In the case of sale, exchange, transfer or other similar disposition, Recipient shall, within 30 days of receipt of any proceeds from such disposition, prepay the entire outstanding balance on the Loan in accordance with section 4.D.(1), unless OBDD agrees otherwise in writing. If Recipient abandons the Project, Recipient shall prepay the entire outstanding balance of the Loan immediately upon demand by OBDD.
- H. Condemnation Proceeds. If the Project or any portion is condemned, any condemnation proceeds will be paid to OBDD and applied to prepay the outstanding balance of the Loan in accordance with section 4.D.(1).
- I. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.
- J. Inspections; Information. The Recipient shall permit OBDD, and any party designated by OBDD, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records,

including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as OBDD may reasonably require. In addition, Recipient shall, upon request, provide OBDD with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.

- K. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- L. Economic Benefit Data. The OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.
- M. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for the design and construction of the Project. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. The Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.
- N. Notice of Event of Default. The Recipient shall give OBDD prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.
- O. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- P. Further Assurances. The Recipient shall, at the request of OBDD, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.
- Q. Exclusion of Interest from Federal Gross Income and Compliance with Code.
- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. OBDD may decline to disburse

the Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.

- (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be “private activity bonds” within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of OBDD, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute “private business use” within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be “disproportionate related business use” or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of OBDD, Recipient shall not directly or indirectly use any of the Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
- (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.
- (4) The Recipient shall not cause any Lottery Bonds to be treated as “federally guaranteed” for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as “federally guaranteed” if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.
- (5) The Recipient shall assist OBDD to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to OBDD such amounts as may be directed by OBDD to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Financing Proceeds or other amounts held in a reserve fund. The Recipient further shall reimburse OBDD for the portion of any expenses it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.
- (6) Upon OBDD’s request, Recipient shall furnish written information regarding its investments and use of the Financing Proceeds, and of any facilities financed or refinanced therewith, including providing OBDD with any information and documentation that OBDD reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.
- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the payment of the Loan and the Lottery Bonds, and the interest thereon, including the application of any unexpended Financing



Proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.

- (8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. § 1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Loan.

## SECTION 9 - DEFAULTS

Any of the following constitutes an “Event of Default”:

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.
- C. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project or in regard to compliance with the requirements of section 103 and sections 141 through 150 of the Code.
- D. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
- (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
- (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
- (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
- (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. The OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

## SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
- (1) Terminating OBDD's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
  - (2) Declaring all payments under the Contract and all other amounts due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
  - (3) Barring Recipient from applying for future awards.
  - (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, pursuant to ORS 285A.213(6) and OAR 123-049-0040.
  - (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.
  - (6) Exercising any remedy listed in OAR 123-049-0040.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; next, to pay interest due on the Loan; next, to pay principal due on the Loan, and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

## SECTION 11 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
  - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.

- (3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.
- (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of OBDD. The OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.
- (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that OBDD deems to be necessary.

C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:

- (1) The OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
- (2) In no event are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

D. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or OBDD at the addresses set forth below, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

If to OBDD:                                     Assistant Director, Economic Development  
    Oregon Business Development Department  
    775 Summer Street NE Suite 200  
    Salem OR 97301-1280

If to Recipient:                                 Public Works Director  
    City of The Dalles  
    313 Court Street  
    The Dalles, OR 97058

E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.

F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.

- G. Amendments, Waivers. This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to OBDD by its attorneys. The Recipient shall, on demand, pay to OBDD reasonable expenses incurred by OBDD in the collection of Loan payments.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

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

Notwithstanding the prior paragraph, 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 paragraph 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 paragraph 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.

- J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS



The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



**STATE OF OREGON**  
acting by and through its  
Oregon Infrastructure Finance Authority  
of the Oregon Business Development  
Department



**CITY OF THE DALLES**

By: \_\_\_\_\_  
Chris Cummings, Assistant Director  
Economic Development

By: \_\_\_\_\_  
Richard A. Mays, Mayor

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

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

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

\_\_\_\_\_  
/s/ Wendy Johnson as per email dated 21 Oct 2021  
Wendy Johnson, Senior Assistant Attorney General

## EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means “Safe Drinking Water Act,” 42 U.S.C. Sec. 300f, and all subsequent amendments, including the Amendments of 1996, Public Law 104-182.

“Award” means the award of financial assistance to Recipient by OBDD dated 4 June 2021.

“C.F.R.” means the Code of Federal Regulations.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates executed pursuant to or in connection with OBDD’s financing of the Project.

“Financing Proceeds” means the proceeds of the Section 2.A. Loan and the Forgivable Loan.

“Forgivable Loan” means the forgivable Loan described in section 2.B.

“Section 2.A. Loan” means the Loan described in section 2.A. of this Contract.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon, payable from unobligated net lottery proceeds, the interest on which is exempt from federal income taxation, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

“Municipality” means any entity described in ORS 285B.410(9).

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

“System” means Recipient’s drinking water system, which includes the Project or components of the Project, as it may be modified or expanded from time to time.

## EXHIBIT B – LOAN SECURITY

- A. Full Faith and Credit Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract. This Contract is payable from and secured by all lawfully available funds of Recipient.
- B. Pledge of Net Revenues of the System
- (1) All payment obligations under this Contract and the other Financing Documents are payable from the revenues of Recipient’s System after payment of operation and maintenance costs of the System (“Net Revenues”). The Recipient irrevocably pledges and grants to OBDD a security interest in the Net Revenues to pay all of its obligations under this Contract and the other Financing Documents. The Net Revenues pledged pursuant to the preceding sentence and received by Recipient will immediately be subject to the lien of this pledge without physical delivery, filing or any other act, and the lien of this pledge is superior to and has priority over all other claims and liens, except as provided in subsections 2 and 3 of this section B, to the fullest extent permitted by ORS 287A.310. The Recipient represents and warrants that this pledge of Net Revenues complies with, and is valid and binding from the date of this Contract as described in, ORS 287A.310. The lien of the pledge made under this subsection 1 is hereinafter referred to as the “OBDD Lien”.
  - (2) OBDD acknowledges City of The Dalles 2018 Water Bonds as pre-existing debt with a superior lien priority. The Recipient shall not further incur, without the prior written consent of OBDD, any obligation payable from or secured by a lien on and pledge of the Net Revenues that is on parity or superior to the OBDD Lien.
  - (3) Notwithstanding the requirements of subsection 2 of this section B, loans previously made and loans made in the future by OBDD to Recipient that are secured by the Net Revenues may have a lien on such Net Revenues on parity with the OBDD Lien; provided that nothing in this paragraph will adversely affect the priority of any of OBDD’s liens on such Net Revenues in relation to the lien(s) of any third party(ies).
  - (4) The Recipient shall charge rates and fees in connection with the operation of the System which, when combined with other gross revenues, are adequate to generate Net Revenues each fiscal year at least equal to 120% of the annual debt service due in the fiscal year on the Loan and any outstanding obligation payable from or secured by a lien on and pledge of Net Revenues that is superior to or on parity with the OBDD Lien.
  - (5) The Recipient may establish a debt service reserve fund to secure repayment of obligations that are payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien, provided that no deposit of the Net Revenues of the System into the debt service reserve fund is permitted until provision is made for the payment of all debt service on the Loan and any other obligations payable from or secured by a lien on and pledge of Net Revenues that is superior to or on parity with the OBDD Lien (including any obligations described in subsection 3 above) for the 12-month period after such deposit.

**EXHIBIT C - PROJECT DESCRIPTION**

Recipient will replace (final design and construction) its 3.5 mile Dog River pipeline with a new 24-inch diameter pipe to increase water capacity from 8 million gallons per day (MGD) to 17 MGD. The Recipient will install fish screens on the pipeline intake, fish passage structures, and flow metering systems. The Project will also provide bypass flows for aquatic species during the critical months of August, September and October. The Recipient will install an arch culvert on an unimproved Forest Service road where vehicles currently ford a small stream.

**EXHIBIT D - PROJECT BUDGET**

	<b>OBDD Funds</b>	<b>Other / Matching Funds</b>
Activity	Approved Budget	Approved Budget
Design / Engineering	\$300,000	\$1,522,442
Construction	\$3,700,000	\$2,793,624
Construction Contingency	\$0	\$649,362
Labor Standards	\$15,000	\$0
Project Management	\$15,000	\$3,432
Permitting and Regulatory Fees	\$0	\$94,268
<b>Total</b>	<b>\$4,030,000</b>	<b>\$5,063,128</b>

**EXHIBIT E - INFORMATION REQUIRED BY 2 CFR § 200.332(A)(1)**

Federal Award Identification:

- (i) Subrecipient\* name (which must match registered name in DUNS): City of The Dalles
  - (ii) Subrecipient's DUNS number: 082618893
  - (iii) Federal Award Identification Number (FAIN): 98009020
  - (iv) Federal Award Date: 9 September 2020
  - (v) Sub-award Period of Performance Start and End Date: «SubawardPeriodofPerformance»
  - (vi) Total Amount of Federal Funds Obligated by this Contract: \$4,030,000
  - (vii) Total Amount of Federal Funds Obligated by this initial Contract and any amendments: \$4,030,000
  - (viii) Total Amount of Federal Award to the pass-through entity: \$14,487,000
  - (ix) Federal award project description: Oregon's Drinking Water State Revolving Fund: This fund increases the capacity of Oregon to ensure that its public water systems continue to provide safe drinking water. This is done by (1) continuing loan financing to public water systems and support for newly proposed priority projects, (2) providing grant support for covering administrative expenses, small public water system technical assistance, State program management and local assistance, and (3) continuation of the loan fund to finance source water protection project initiatives, including acquiring conservation easements.
  - (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: U.S. Environmental Protection Agency
    - (b) Name of pass-through entity: Oregon Business Development Department
    - (c) Contact information for awarding official of the pass-through entity: Ed Tabor, Programs & Incentives Manager, 503-949-3523
  - (xi) CFDA Number and Name: 66.468 Safe Drinking Water State Revolving Fund  
Amount: \$4,030,000
  - (xii) Is Award R&D? No
  - (xiii) Indirect cost rate for the Federal award: N/A
- \* For the purposes of this Exhibit E, "Subrecipient" refers to Recipient and "pass-through entity" refers to OBDD.



**EXHIBIT F - CERTIFICATION REGARDING LOBBYING**

(Awards in excess of \$100,000)

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 undersigned, 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 \_\_\_\_\_



## AGENDA STAFF REPORT

**AGENDA LOCATION:** Action Item #10C

**MEETING DATE:** November 22, 2021

**TO:** Honorable Mayor and City Council

**FROM:** Daniel Hunter, City Manager Pro Tem

**ISSUE:** Appointment of Personnel

**BACKGROUND:** Since April the City has been actively recruiting for Police Officers. The Department is currently down three personnel with another two anticipated before the end of the month. The City currently has several candidates undergoing background checks and another two that would be lateral officers.

**BUDGET IMPLICATIONS:** The Police Department Budget has sufficient funds to make these appointments due to savings from earlier resignations.

### **COUNCIL ALTERNATIVES:**

1. **Staff recommendation:** *Move to approve the City Manager Pro Tem's request to hire Police Officer candidates to fill current vacancies.*
2. Move to Approve one lateral candidate who has completed the background investigation and been given a conditional offer pending Council approval.
3. Decline