

RESOLUTION #12/13-15
CITY OF DAYTON, OREGON

A Resolution authorizing a loan from the Safe Drinking Water Revolving Loan Fund to be documented in a contract with the Oregon Infrastructure Finance Authority

WHEREAS, the Dayton City Council (the “Governing Body”) of the City of Dayton (the “Recipient”) finds:

- A.** The Recipient is a community or nonprofit non-community water system as defined in Oregon Administrative Rule 123-049-0010; and
- B.** The Safe Drinking Water Act Amendments of 1996, Pub.L, 104-182, as amended (the “Act”), authorize any community or nonprofit non-community water system to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department (“the IFA”) to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund; and
- C.** The Recipient has filed an application with the IFA to obtain financial assistance for a “safe drinking water project” within the meaning of the Act, and the IFA has approved the Recipient’s application for financial assistance from the Safe Drinking Water Revolving Loan Fund; and
- D.** The Recipient is required, as a prerequisite to the receipt of financial assistance from the IFA, to enter into a Financing Contract with the IFA, substantially in the form attached hereto as Exhibit A; and
- E.** Notice relating to the Recipient’s consideration of the adoption of this Resolution was published in full accordance with the Recipient’s Charter and laws for public notification.

The City of Dayton resolves as follows:

1. Financing Loan Authorized. The Governing Body authorizes the Mayor to execute the Financing Contract and a Promissory Note (the “Financing Documents”) and such other documents as may be required to obtain financial assistance including a loan from the IFA on the condition that the principal amount of the loan from the IFA to the Recipient is not more than \$910,000 (with \$455,000 eligible for principal forgiveness if Financing Contract conditions are met), and the interest rate is not more than 1% if Financing Contract conditions are met (and 2.98% if not met). The proceeds of the loan from the IFA shall be applied solely to the “Costs of the Project” as such term is defined in the Financing Contract.
2. Security. Amounts payable by the Recipient shall be 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 any water system project of the Recipient, including special assessment revenue;
 - (b) Amounts withheld under subsection 285A.213(6);
 - (c) The general fund of the Recipient;
 - (d) Any combination of sources listed in paragraphs (a) to (c) of the subsection; or
 - (e) Any other source.
3. Additional Documents. The Mayor is hereby authorized to enter into any additional agreements and to execute any additional documents which may be required to obtain financial assistance from the IFA for the Project pursuant to the Financing Documents.

4. Tax-Exempt Status. The Recipient covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Recipient 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 Mayor of the Recipient may enter into covenants on behalf of the Recipient to protect the tax-exempt status of the interest paid by the Recipient pursuant to the Financing Documents and may execute any Tax Certificate, Internal Revenue Service forms or other documents as shall be required by the IFA or their bond counsel to protect the tax-exempt status of such interest.

5. Effective Date. This resolution shall take effect immediately upon adoption

ADOPTED this 7th day of January, 2013.

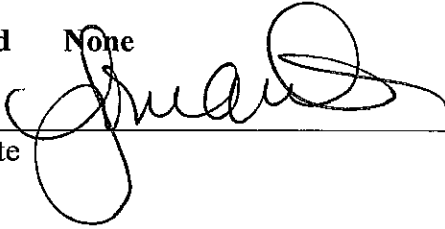
In Favor **Bixler, Blackburn, Collins, Frank, Utt, White, Wytoski**

Opposed **None**

Absent **None**

Abstained **None**

Jolie White
Mayor



1/11/13
Date of Signing

ATTESTED BY:

Peggy Selberg,
City Recorder



1/7/2013
Date of Enactment

Attachment: Exhibit A

SAFE DRINKING WATER REVOLVING LOAN FUND
FINANCING CONTRACT

Project Name: Dayton Water Supply and Distribution Upgrades

Project Number: S13001

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 the Oregon Infrastructure Finance Authority (“IFA”), and the City of Dayton (“Recipient”) for financing of the project referred to above and described in Exhibit D (“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 Security; Special Terms and Conditions Related to Forgiveness
- Exhibit C Form of Section 2.A. Promissory Note
- Exhibit C-1 Form of Forgivable Promissory Note
- Exhibit D Project Description
- Exhibit E Project Budget
- Exhibit F Certification Regarding Lobbying

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

Estimated Project Cost: \$910,000.

Forgivable Loan Amount: \$455,000.

Loan Amount: \$455,000.

Maturity Date: The 29th anniversary of the Repayment Commencement Date.

Note Interest Rate: 1% per annum, computed on the basis of a 360-day year, consisting of twelve 30-day months.

Payment Date: December 1.

Project Closeout Deadline: 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

Project Completion Deadline: 36 months after the date of this Contract.

Repayment Commencement Date: The first Payment Date to occur after the earlier of the Project Completion Date or the Project Closeout Deadline.

SECTION 2 - FINANCIAL ASSISTANCE

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

- A. A non-revolving loan in an aggregate principal amount not to exceed the 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. If the Project is completed for less than the amount of the Estimated Project Cost, the availability under the Section 2.A. Note will be reduced accordingly.

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 IFA-provided or IFA-approved disbursement request form ("Disbursement Request").
- B. Financing Availability. The IFA's obligation to make, and Recipient's right to request, disbursements under this Contract terminates on the Financing Availability Termination Date.
- C. Payment to Contractors. The IFA, 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. Recipient authorizes IFA to determine whether disbursements will be drawn from the Loan Amount or the Forgivable Loan Amount, and record the date and amount of each such disbursement. Absent manifest error, such notations will be conclusive evidence for determining accrual of interest on the principal balance of the Loan and the remaining Loan Amount and Forgivable Loan Amount available for disbursement.

SECTION 4 - LOAN PAYMENT; PREPAYMENT; FORGIVENESS

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract and the Note in accordance with their 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 IFA 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 IFA or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues on the Loan at the Note 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.

- 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 required by this Contract or the Note.
 - (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 IFA, 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, IFA 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 B, 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, IFA shall, 90 days after the Project Completion Date, forgive repayment of the Forgivable Loan Amount and any interest accrued thereon and cancel the Forgivable Note.

SECTION 5 - CONDITIONS PRECEDENT

- A. Conditions Precedent to IFA's Obligations. The IFA's obligations are subject to the receipt of the following items, in form and substance satisfactory to IFA and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
 - (2) The Section 2.A. Note and the Forgivable Note duly signed by an authorized officer of Recipient.
 - (3) 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, the Note and the other Financing Documents, certified by an authorized officer of Recipient.
 - (4) An opinion of Recipient's Counsel.
 - (5) Such other certificates, documents, opinions and information as IFA may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, IFA has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or 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 IFA, 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 IFA (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 IFA 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.
- (5) Recipient has delivered documentation satisfactory to IFA that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
- (6) 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 D and according to the budget in Exhibit E. Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of IFA.
- 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 D.
- 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 from another State of Oregon agency or any third party.

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to IFA:

- 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. 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, the Note 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 IFA, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to IFA 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, the Note 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 the Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to IFA 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, the Note and the other Financing Documents.
- E. No Defaults.
- (1) No Defaults or 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, the Note 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, the Note 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.⁴ Notice of Adverse Change. Recipient shall promptly notify IFA 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, the Note 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.
- (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 (2002).
- (3) SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant's Handbook for the Federally Funded Safe Drinking Water Revolving Fund & Drinking Water Protection Loan Fund (July 2009), as amended from time to time ("Safe Drinking Water Handbook"), including but not limited to the Federal Crosscutting Requirements in Appendix F of the Safe Drinking Water Handbook.
- (4) Lobbying. 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. Recipient shall submit to IFA a Certification Regarding Lobbying, the form of which is attached as Exhibit F, and any applicable quarterly disclosure statement of covered lobbying activity. 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. Recipient shall retain such certifications and make them available for inspection and audit by IFA, the federal government or their representatives. Recipient shall forward any disclosure statements to IFA.
- (5) 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." If Recipient expends \$500,000 or more of federal funds in a fiscal year, it must conduct an audit in accordance with the Single Audit Act Amendments of 1984, 31 U.S.C. §§7501-7507 (1994) *as amended by* Pub. L. 104-156, §§1-3, 110 Stat. 1397 (1996) as implemented by the U.S. Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" ("OMB Circular A-133"). Recipient agrees to comply with all requirements imposed on a subrecipient under OMB Circular A-133.

- (6) Disadvantaged Business Enterprises. Recipient will implement the good faith efforts for solicitation and contracting with Disadvantaged Business Enterprises (“DBE”) described in Appendix G of 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. Recipient will maintain documentation in a Project file and submit the required forms, as described in Appendix G of the Safe Drinking Water Handbook. 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. Recipient agrees to apply the current regional fair share objectives.

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.”

- (7) 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. Recipient shall:

- (1) Provide IFA with copies of all plans and specifications relating to the Project, and a timeline for the bidding/award process, at least ten (10) days before advertising for bids.
- (2) Provide a copy of the bid tabulation and notice of award to IFA within ten (10) days after selecting a construction contractor.
- (3) 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.
- (4) Permit IFA to conduct field engineering and inspection of the Project at any time.
- (5) 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.
- (6) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the IFA in writing.
- (7) No later than the Project Closeout Deadline, provide IFA with a final project completion report on a form provided by IFA, including Recipient’s certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, IFA will be the final judge of the Project’s completion.
- (8) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.

(9) Meters. Prior to final disbursement of the Loan, Recipient shall

- (i) In the case of construction projects, install necessary source meters and service meters on all connections throughout the System.
- (ii) In the case of planning, preliminary engineering and final design and specification projects, adopt a plan for the installation of 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. 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 Date, Recipient shall adopt a plan acceptable to IFA for the on-going operation and maintenance of the Project without reliance on IFA financing and furnish IFA, 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 exerting a defense against any party other than IFA, including a defense of immunity. If the Project or any portion is destroyed, any insurance proceeds will be paid to IFA and applied to prepay the outstanding balance on the Loan in accordance with Section 4.D.(1), unless IFA 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 D, 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, IFA 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 IFA's costs related to such assumption, and receipt by IFA 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 IFA 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 IFA agrees otherwise in writing. If Recipient abandons the Project, Recipient shall prepay the entire outstanding balance of the Loan immediately upon demand by IFA.

- H. Condemnation Proceeds. If the Project or any portion is condemned, any condemnation proceeds will be paid to IFA 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. 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 IFA and any party designated by IFA: (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 IFA may reasonably require. In addition, Recipient shall, upon request, provide IFA 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. 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 until the date that is three years following the later of the final maturity of the Lottery Bonds, or the final maturity or redemption date of any obligation, or series of obligations, that refinanced the Lottery Bonds, or such longer period as may be required by other provisions of this Contract or applicable law. Such documentation includes, but may not be limited to, all documentation necessary to establish the uses and investment of the Loan proceeds, all construction contracts and invoices detailing the costs paid from Loan proceeds, and all contracts related to the uses of the Project, including leases, management contracts, and service contracts that relate to the use of the Project.
- L. Economic Benefit Data. The IFA 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 IFA.
- L. 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. 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.
- M. Notice of Default. The Recipient shall give IFA prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.

N. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless IFA 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.

O. Further Assurances. The Recipient shall, at the request of IFA, 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.

P. 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. IFA 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 IFA, 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 IFA, 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 IFA 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 IFA such amounts as may be directed by IFA 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 IFA 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 IFA's request, Recipient shall furnish written information regarding its investments and use of Financing Proceeds, and of any facilities financed or refinanced therewith, including providing IFA with any information and documentation that IFA 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) 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) 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) 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) Recipient takes any action for the purpose of effecting any of the above.
- E. Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. 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 IFA. The IFA 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, IFA may pursue any or all remedies in this Contract, the Note 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 IFA's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
 - (2) Declaring all payments under the Note 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; however, this provision is not to be construed in a way that Recipient's obligations would constitute debt that violates Section 10, Article XI of the Oregon Constitution.
 - (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 IFA pursuant to section 10.A will be applied first, to pay any attorneys fees and other fees and expenses incurred by IFA; 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 IFA 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 IFA 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 IFA. In the event IFA 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 IFA's obligations.

SECTION VI. MISCELLANEOUS

- A. Time is of the Essence. 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 IFA, Recipient, and their respective successors and permitted assigns.
- (4) 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 IFA. The IFA 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 IFA, any fees or costs incurred because of such assignment, including but not limited to attorneys fees of IFA's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of IFA 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) Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that IFA deems to be necessary.

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

- (1) The IFA 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 IFA 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.

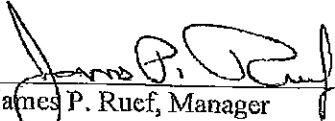
J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

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.

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.



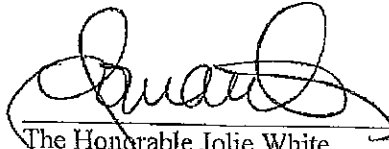
STATE OF OREGON
acting by and through the
Oregon Infrastructure Finance Authority
of the Business Development Department

By: 
James P. Ruef, Manager
Program Services Division

Date: 2/5/13



CITY OF DAYTON

By: 
The Honorable Jolie White
Mayor of Dayton

Date: 1/11/13

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Lynn T. Nagasako as per email dated 18 December 2012
Lynn T. Nagasako, Sr. Assistant Attorney General

EXHIBIT A - GENERAL DEFINITIONS

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

“Act” means the Safe Drinking Water Act Amendments of 1996, Public Law 104-182, as amended.

“Award” means the award of financial assistance to Recipient by IFA dated 12 December 2012.

“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, IFA or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates (including but not limited to all promissory notes) executed pursuant to or in connection with IFA’s financing of the Project.

“Financing Proceeds” means the proceeds of the Loan (described in Section 2.A.) and the forgivable Loan.

“Forgivable Note” means the promissory note evidencing the forgivable Loan.

“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(8).

“Note” means, collectively and individually without distinction, the Section 2.A. Note and the Forgivable Note, signed by Recipient in favor of IFA, as amended, extended or renewed from time to time.

“ORS” means the Oregon Revised Statutes.

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

“Section 2.A. Note” means the promissory note evidencing the Loan described in Section 2.A. of this Contract.

“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.

I. Security

A. **General Fund 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 and the Note. This Contract and the Note are payable from all legally available funds of Recipient.

B. **Pledge of Net Revenues of the System**

1. All payment obligations under this Contract, the Note 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 IFA a security interest in the Net Revenues to pay all of its obligations under this Contract, the Note 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 or further act, and the lien of this pledge is superior to 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, pursuant to ORS 287A.310.

2. The Recipient shall not incur any obligation payable from or secured by a lien on and pledge of the Net Revenues that is superior to or on parity with the Loan unless the annual Net Revenues exceed one hundred twenty percent (120%) of the annual debt service on the Loan and any other obligations superior to or issued or deemed to be on a parity with the Loan. Prior to the issuance of any obligation to be issued superior to or on parity with the Loan, Recipient shall deliver to IFA a certificate demonstrating that the requirements of this paragraph are satisfied.

3. Notwithstanding the requirements of subsection 2 of this section B, liens on the Net Revenues that secure loans previously made and loans made in the future by IFA to Recipient shall be deemed to be on a parity with the lien on such Net Revenues that secures the Loan; provided that nothing in this paragraph will adversely affect the priority of any of IFA'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 the Net Revenues each fiscal year at least equal to one hundred twenty percent (120%) of the annual debt service due in the fiscal year on the Loan, any outstanding senior lien obligations and all obligations issued or deemed to be on parity with the Loan.

5. The Recipient may establish a debt service reserve fund to secure repayment of obligations that are issued on parity with the Loan, 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 senior and parity obligations (including any obligations described in subsection 3 above) for the 12-month period after such deposit.

II. Special Terms and Conditions Related to Forgiveness

Notwithstanding anything to the contrary, if, at the Project Completion Date or at any time thereafter, the average monthly residential water rates for the water supplied by the System are not at or above the affordability rate of \$52.77 per 7,500 gallons, the amount due under the Forgivable Note will not be forgiven. Further, the Note evidencing the Loan described in paragraph (1) of Section 2 and the Forgivable Note shall, at IFA's discretion and after notice to Recipient, be modified as follows:

- (1) Interest shall accrue at the rate of Two and 98/100ths percent (2.98%) per annum.
- (2) The annual payments shall be adjusted to an amount to fully amortize the then outstanding balance of each Loan by the 20th anniversary of the Repayment Commencement Date, on which date any amounts outstanding under each Loan shall be due and payable in full.

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

EXHIBIT C - FORM OF SECTION 2.A. PROMISSORY NOTE

City of Dayton
PROMISSORY NOTE

Dated XXXXXXXXXXXXXXXXXX, XXXX

Dayton, Oregon

FOR VALUE RECEIVED, the City of Dayton, 416 Ferry Street / PO Box 339, Dayton, OR 97114 ("Recipient"), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY OF THE BUSINESS DEVELOPMENT DEPARTMENT ("IFA"), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of Four Hundred Fifty-Five Thousand Dollars (\$455,000) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of One percent (1.0%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number S13001, between IFA and Recipient (as amended from time to time, the "Contract"). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

Recipient shall make level installment payments of principal and interest, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount 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. Notwithstanding the above, the first such installment payment will be adjusted to include actual unpaid interest that accrued to the Repayment Commencement Date. On the Maturity Date, the entire outstanding principal balance and all accrued unpaid interest will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment, Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. Recipient authorizes IFA to record the date and amount of each such disbursement, the date and amount of each payment and prepayment by Recipient, and the amount of interest accrued and paid. Absent manifest error, such notations will be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of this Note (including principal, interest and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to IFA by its attorneys. Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA in the collection of Loan payments.

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 Note, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Notice to Recipient: Do not sign this Note before you read it.

CITY OF DAYTON

By:

XXXXXXXXXXXXXXXXXXXXXXXXXX

Title:

XXXXXXXXXXXXXXXXXXXXXXXXXX

SAMPLE

EXHIBIT C-1 - FORM OF FORGIVABLE PROMISSORY NOTE

City of Dayton

FORGIVABLE PROMISSORY NOTE

Dated XXXXXXXXXXXXXXXXXX, XXXX

Dayton, Oregon

FOR VALUE RECEIVED, the City of Dayton, 416 Ferry Street / PO Box 339, Dayton, OR 97114 ("Recipient"), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY OF THE BUSINESS DEVELOPMENT DEPARTMENT ("IFA"), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of Four Hundred Fifty-Five Thousand Dollars (\$455,000) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of One percent (1.0%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number S13001, between IFA and Recipient (as amended from time to time; the "Contract"). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

Recipient shall make level installment payments of principal and interest, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount 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. Notwithstanding the above, the first such installment payment will be adjusted to include actual unpaid interest that accrued to the Repayment Commencement Date. On the Maturity Date, the entire outstanding principal balance and all accrued unpaid interest will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment, Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. Recipient authorizes IFA to record the date and amount of each such disbursement, the date and amount of each payment and prepayment by Recipient, and the amount of interest accrued and paid. Absent manifest error, such notations will be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of this Note (including principal, interest and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to IFA by its attorneys. Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA in the collection of Loan payments.

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 Note, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

THIS NOTE IS SUBJECT TO FORGIVENESS PURSUANT TO SECTION 4.F. OF THE CONTRACT.

Notice to Recipient: Do not sign this Note before you read it.

CITY OF DAYTON

By:

XXXXXXXXXXXXXXXXXXXXXXX

Title:

XXXXXXXXXXXXXXXXXXXXXXX

SAMPLE

EXHIBIT D - PROJECT DESCRIPTION

The Recipient will procure engineering and construction services to complete the following improvements:

- Watershed spring improvements including reconstruction of the spring collection area and replacement of the existing spring boxes with a below grade collection system protected by a 60 mil HDPE cover and soil cap.
- Watershed waterline replacement including an 8-inch watershed springs transmission main (springs to watershed reservoirs) and a 12-inch transmission main (watershed reservoirs to McDougal Road).
- In-town waterline replacement including an 8-inch distribution line on Main Street from 2nd to 3rd Street and 3rd to 4th Street; a 10-inch distribution line on 3rd Street from Church Street to Main Street; and an 8-inch distribution line on 3rd Street from Main Street to Ferry Street.

EXHIBIT F - CERTIFICATION REGARDING LOBBYING

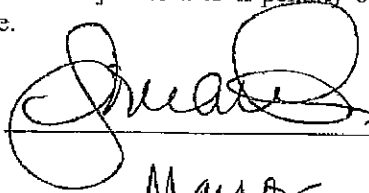
(Awards in excess of \$100,000)

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

Mayor

Date

1/11/13



City of Dayton
PROMISSORY NOTE

Dated _____,

Dayton, Oregon

FOR VALUE RECEIVED, the City of Dayton, 416 Ferry Street / PO Box 339, Dayton, OR 97114 ("Recipient"), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY OF THE BUSINESS DEVELOPMENT DEPARTMENT ("IFA"), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of Four Hundred Fifty-Five Thousand Dollars (\$455,000) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of One percent (1.0%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number S13001, between IFA and Recipient (as amended from time to time, the "Contract"). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

Recipient shall make level installment payments of principal and interest, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount 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. Notwithstanding the above, the first such installment payment will be adjusted to include actual unpaid interest that accrued to the Repayment Commencement Date. On the Maturity Date, the entire outstanding principal balance and all accrued unpaid interest will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment; Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. Recipient authorizes IFA to record the date and amount of each such disbursement, the date and amount of each payment and prepayment by Recipient, and the amount of interest accrued and paid. Absent manifest error, such notations will be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of this Note (including principal, interest and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to IFA by its attorneys. Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA in the collection of Loan payments.

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 Note, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Notice to Recipient: Do not sign this Note before you read it.

CITY OF DAYTON

By:



Title:

Mayor



City of Dayton
FORGIVABLE PROMISSORY NOTE

Dated _____,

Dayton, Oregon

FOR VALUE RECEIVED, the City of Dayton, 416 Ferry Street / PO Box 339, Dayton, OR 97114 ("Recipient"), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY OF THE BUSINESS DEVELOPMENT DEPARTMENT ("IFA"), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of Four Hundred Fifty-Five Thousand Dollars (\$455,000) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of One percent (1.0%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number S13001, between IFA and Recipient (as amended from time to time; the "Contract"). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

Recipient shall make level installment payments of principal and interest, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount 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. Notwithstanding the above, the first such installment payment will be adjusted to include actual unpaid interest that accrued to the Repayment Commencement Date. On the Maturity Date, the entire outstanding principal balance and all accrued unpaid interest will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment; Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. Recipient authorizes IFA to record the date and amount of each such disbursement, the date and amount of each payment and prepayment by Recipient, and the amount of interest accrued and paid. Absent manifest error, such notations will be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of this Note (including principal, interest and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to IFA by its attorneys. Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA in the collection of Loan payments.

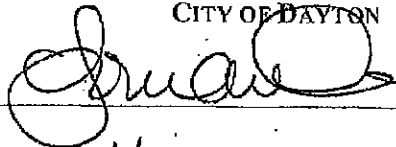
The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Note, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

THIS NOTE IS SUBJECT TO FORGIVENESS PURSUANT TO SECTION 4.F. OF THE CONTRACT.

Notice to Recipient: Do not sign this Note before you read it.

CITY OF DAYTON

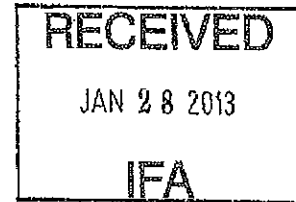
By:



Title:

Mayor

RESOLUTION #12/13-15
CITY OF DAYTON, OREGON



A Resolution authorizing a loan from the Safe Drinking Water Revolving Loan Fund to be documented in a contract with the Oregon Infrastructure Finance Authority

WHEREAS, the Dayton City Council (the "Governing Body") of the City of Dayton (the "Recipient") finds:

- A. The Recipient is a community or nonprofit non-community water system as defined in Oregon Administrative Rule 123-049-0010; and
- B. The Safe Drinking Water Act Amendments of 1996, Pub.L, 104-182, as amended (the "Act"), authorize any community or nonprofit non-community water system to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department ("the IFA") to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund; and
- C. The Recipient has filed an application with the IFA to obtain financial assistance for a "safe drinking water project" within the meaning of the Act, and the IFA has approved the Recipient's application for financial assistance from the Safe Drinking Water Revolving Loan Fund; and
- D. The Recipient is required, as a prerequisite to the receipt of financial assistance from the IFA, to enter into a Financing Contract with the IFA, substantially in the form attached hereto as Exhibit A; and
- E. Notice relating to the Recipient's consideration of the adoption of this Resolution was published in full accordance with the Recipient's Charter and laws for public notification.

The City of Dayton resolves as follows:

1. Financing Loan Authorized. The Governing Body authorizes the Mayor to execute the Financing Contract and a Promissory Note (the "Financing Documents") and such other documents as may be required to obtain financial assistance including a loan from the IFA on the condition that the principal amount of the loan from the IFA to the Recipient is not more than \$910,000 (with \$455,000 eligible for principal forgiveness if Financing Contract conditions are met), and the interest rate is not more than 1% if Financing Contract conditions are met (and 2.98% if not met). The proceeds of the loan from the IFA shall be applied solely to the "Costs of the Project" as such term is defined in the Financing Contract.

2. Security. Amounts payable by the Recipient shall be 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 any water system project of the Recipient, including special assessment revenue;
- (b) Amounts withheld under subsection 285A.213(6);
- (c) The general fund of the Recipient;
- (d) Any combination of sources listed in paragraphs (a) to (c) of the subsection; or
- (e) Any other source.

3. Additional Documents. The Mayor is hereby authorized to enter into any additional agreements and to execute any additional documents which may be required to obtain financial assistance from the IFA for the Project pursuant to the Financing Documents.

4. Tax-Exempt Status. The Recipient covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Recipient 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 Mayor of the Recipient may enter into covenants on behalf of the Recipient to protect the tax-exempt status of the interest paid by the Recipient pursuant to the Financing Documents and may execute any Tax Certificate, Internal Revenue Service forms or other documents as shall be required by the IFA or their bond counsel to protect the tax-exempt status of such interest.

5. Effective Date. This resolution shall take effect immediately upon adoption

ADOPTED this 7th day of January, 2013.

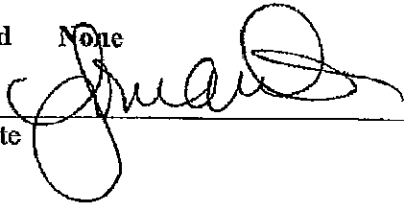
In Favor **Bixler, Blackburn, Collins, Frank, Utt, White, Wytoski**

Opposed **None**

Absent **None**

Abstained **None**

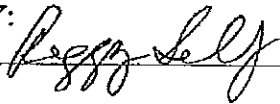
Jolie White
Mayor



1/11/13
Date of Signing

ATTESTED BY:

Peggy Selberg,
City Recorder

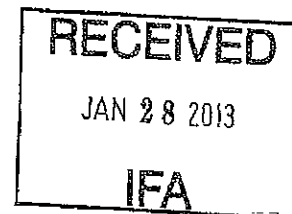


1/7/2013
Date of Enactment

Attachment: Exhibit A



Beery Elsner
& Hammond LLP



22 JAN AM 10:13

January 18, 2013

SENT VIA MAIL

Oregon Infrastructure Finance Authority
755 Summer Street NE, Suite 200
Salem, OR 97301-1280

Re: S13001 Safe Drinking Water Revolving Loan Fund Financing Contract
for the City of Dayton

This firm acts as City Attorney for the City of Dayton (the "Recipient"), which has entered into a financing Contract (as hereinafter defined) with the Oregon Infrastructure Finance Authority of the Business Development Department (the "IFA" or the "State"), and have acted as such in connection with the authorization, execution and delivery by the Recipient of such contract. Capitalized terms not otherwise defined in this letter shall have the meanings assigned to them by the Contract.

In so acting, I have examined the Constitution and the laws of the State of Oregon and the Recipient's Charter. I have also examined originals, or copied certified or otherwise indentified to my satisfaction of the following:

- A. The S13001 Safe Drinking Water Revolving Loan Fund Financing Contract (the "Contract"), dated as of _____, 2013 by and between the IFA and the Recipient and the Section 2.A Promissory Note dated _____, 2013 in the principal loan amount of \$455,000; and the Forgivable Promissory Note dated _____, 2013 in the principal forgiveness loan amount of \$455,000.
- B. Proceedings of the governing body of the Recipient relating to the approval of the Contract and the execution, issuance and delivery thereof on behalf of the Recipient, and the authorization of the undertaking and completion of the Project as defined in the Contract.
- C. All outstanding instruments related to bonds, notes or other indebtedness of or relating to the Recipient.

I have also examined and relied upon originals or copies certified or otherwise authenticated to my satisfaction, of such other records, documents, certificates and other instruments, and made

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t 503.226.7191
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e info@gov-law.com

1750 SW Harbor Way Suite 380
Portland OR 97201-5106
www.gov-law.com

BEH
BEH

such investigation of law as in my judgment I have deemed necessary or appropriate to enable me to render the opinions expressed below.

Based on the foregoing, I am of the opinion that:

1. The Recipient is a duly formed and operating municipality with the legal right to own and operate a publicly owned drinking water system.
2. The Recipient has full legal right and authority to execute and deliver the Contract and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project.
3. Amounts due the IFA pursuant to the Contract and the Promissory Note are payable from the sources of payment described in the Contract.
4. An ordinance of the Recipient approving the Contract and authorizing its execution, issuance and delivery on behalf of the Recipient, and authorizing the Recipient to undertake and complete the Project have been duly and lawfully adopted and authorized in accordance with the Recipient's Charter and other applicable Oregon Law (the "Ordinance") and the Ordinance was adopted at a meeting or meeting which was duly called with public notice and held in accordance with the Recipient's Charter and applicable Oregon Law and at which quorums were present and acting throughout.
5. The Contract has been duly authorized, executed and delivered by the authorized officers of the Recipient and constitutes the legal, valid and binding obligation of the Recipient, enforceable in accordance with its terms; subject however, to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights or remedies generally heretofore or hereafter enacted and the application of equitable principles.
6. To the best of my knowledge, after such investigation as I deemed appropriate, the authorization, execution and delivery of the Contract by the Recipient, the observation and performance by the Recipient of its duties, covenants, obligations, and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of the Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Recipient or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, resolution, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Recipient is a party or by which it, the Project, or its property or assets is bound.
7. To the best of my knowledge after such investigation as I have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority, or person required to date on the part of the

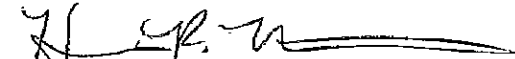
January 18, 2013
Page 3

Recipient in connection with the authorization, execution, delivery and performance of the Contract and the undertaking and completion of the Project have been obtained or made.

8. To the best of my knowledge after such investigation as I have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction questioning the creation, organization or existence of the Recipient or of the validity, legality, or enforceability of the Contract, of the undertaking or completion of the Project.

This opinion is rendered on the basis of the laws of the State of Oregon as enacted and construed on the date hereof and is based on the information and documents available to me as of the date listed above. I express no opinion as to any matter not set forth in the numbered paragraphs herein.

Sincerely,



Heather R. Martin

HRM/sb

Enclosure

cc: Peggy Selberg, Interim City Manager