



Falls City Oregon City Council Meeting

Monday, March 4, 2024 at 6:00 pm

Meeting Location

320 N Main St • Falls City, OR 97344

How to Attend and/or Participate

1. In Person: 320 N Main St. Falls City, OR 97344
2. Call-in: a. 1-253-215-8782 b. Meeting ID: 878 7406 4319
You will be muted but may “raise your hand” to indicate you wish to comment.
3. Web Application: Zoom Webinar <https://us06web.zoom.us/j/87874064319>
You will be muted but may “raise your hand” to indicate you wish to comment during Public Comments.
4. Write-In: Using regular mail or email. a. info@fallscityoregon.gov; 299 Mill St. Falls City, OR 97344

The City of Falls City does not discriminate in providing access to its programs, services, and activities on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, physical or mental disability, or any other inappropriate reason prohibited by law or policy of the state or federal government. Should a person need special accommodations or interpretation services, contact the City at 503.787.3631 at least one working day prior to the need for services and every reasonable effort to accommodate the need will be made.

1. CALL TO ORDER & ROLL CALL

Mayor TJ Bailey, Council President Houghtaling, Councilor Nick Backus, Councilor Martha Jirovec, Councilor Tony Meier, Councilor Dennis Sickles, Councilor Lori Jean Sickles

2. PLEDGE OF ALLEGIANCE

3. ANNOUNCEMENTS, APPOINTMENTS, APPRECIATIONS, & PROCLAMATIONS

4. PUBLIC COMMENTS & LETTER COMMUNICATIONS

In order to encourage an environment of openness, courtesy and respect for differing points of view, please refrain from behavior that is disruptive to the meeting such as making loud noises, clapping, shouting, booing, or any other activity that disrupts the orderly conduct of the meeting. Abusive language will not be tolerated.

Please limit your commentary to 3 minutes or less.

5. PUBLIC HEARINGS

Public comment will be allowed in items appearing on the section of the agenda following a brief staff report representing the item and action requested.

6. CONSENT AGENDA

a. February 5, 2024 Minutes

Attachments:

- **Minutes** (2024.02.05_Council_Minutes.pdf)

b. Historic Landmark Application

Attachments:

- **Natascha Adams** (Natascha_Adams_Application.pdf)

7. REPORTS OR COMMENTS FROM MAYOR AND COUNCIL MEMBERS

a. Mayor's Report

b. Councilor Comments

c. Public Works Committee Report

Attachments:

- **Minutes** (PW_Minutes.pdf)

8. REPORTS FROM CITY MANAGER & STAFF

a. City Manager's Report

Attachments:

- **Report** (2024.03.04_Monthly_Manager_s_Report.pdf)

9. RESOLUTIONS

Attachments:

- **Staff Report** (Item_1_Res_05-2024_SR_S24003_Business_Oregon_Loan_Agreement_Water_Lines_Replacement_Project.pdf)
- **Res 05-2024** (Item_1a_4_Res_05-2024_S24003_Falls_City_Borrowing_Resolution.pdf)
- **Exhibit B** (Item_1b_Exhibit_B_S24003_Falls_City_Contract_full_doc_for_digital_agenda.pdf)

10. ORDINANCES

Attachments:

- **Staff Report** (Ordinance__565-2024_-_SR.pdf)
- **Ord 565-2024** (Ordinance__565-2024_-_Garbage.pdf)

11. GOOD OF THE ORDER

12. ADJOURN

Posted for Public at the City Hall Bulletin Board, Community Center, Falls City Website, Frink's

Contact: Jeremy Teal, City Recorder (jteal@fallscityoregon.gov 503.787.3631) | Agenda published on 02/28/2024 at
3:49 PM

FALLS CITY CITY COUNCIL		MONDAY, FEBRUARY 5, 2024	
The Falls City City Council met in regular session on Monday, February 5, 2024 at 6:01 p.m. in the Community Center located at 320 N. Main Street			
Council Members Present: Council President Amy Houghtaling, Councilor Nick Backus, Councilor Martha Jirovec, Councilor Tony Meier, Councilor Dennis Sickles and Councilor Lori Jean Sickles arrived at 6:03 p.m.			
Staff Present: City Manager AJ Foscoli, City Recorder Jeremy Teal			
AGENDA		ACTION	
Polk County Presentation		<p>Commissioner Jeremy Gordon and Ryan Pollard from the Polk County Resource Center presented the Polk County 5-year strategic plan information regarding preventing and addressing homelessness in Polk County. He mentioned the goal was to start weekly street outreach in Falls City as well as continuing the monthly service integration meetings.</p> <p>Debbie Zeitner asked how many people were turned away. Mr. Pollard stated there were 80 beds for tribal members and there were no other shelters in the area.</p> <p>Tina Thompson asked if the person was white could they go to the tribal shelter. Mr. Pollard stated the shelter was for tribal members only.</p> <p>Boyd Lamprecht asked who pays for the shelters. Commissioner Gordon stated there were multiple funding sources including federal and state funding as well as Oregon housing funds. He noted there were very few resources in rural Polk County.</p> <p>Brent DeMoe explained that there were millions of dollars for homelessness. He noted the new resource center in Independence can help with utilities, rent and other services. He stated the resource center in Falls City would be at no cost to the city.</p> <p>Brent DeMoe presented the new resource center information and update. He noted the schedule was to be completed in May and open in June 2024. He stated the goal was to have medical and dental providers in Falls City. He mentioned</p>	

	<p>that among the possibilities would be a community garden, covered areas, and a 30 and 50 amp electrical plug for food trucks in future. He noted they were open to all ideas.</p>
<p>Announcements, Appointments, Appreciations & Proclamations</p>	<p>There were no comments.</p>
<p>Public Comment</p>	<p>Mayor Bailey opened the public comments at 6:37 p.m.</p> <p>Jim Miner asked about the project on Mitchell and the easement that was given to Polk County for free. Mr. Foscoli stated that Polk County was a recurring partner to the City and lieu of payment for the easement the City would receive road improvements inside the city limits as in kind work.</p> <p>Mr. Miner asked the dollar amount the easement. Mr. Foscoli noted the benefits of the City having a good relationship with the County was worth the easement.</p> <p>Mr. Miner asked if Mr. Foscoli could bring the paperwork he signed donating the easement. Mr. Foscoli noted he could.</p> <p>Councilor Jirovec suggested comparing the Polk County in-kind road improvements with the cost of the easement.</p> <p>Tracy Young reported there was an incident regarding the warming center employee smoking meth in woman’s bathroom and the fumigation would cost \$2500 and asked who paid for it. Mayor Bailey explained the partner was contacted and they would be paying for the damage.</p> <p>Patrick “Dusty” McKibben noted the Council claimed his house as a dangerous building, but he explained he had fixed everything inside. He stated he came to Falls City to be left alone.</p> <p>Debbie Zeitner stated the Dayton house was not the only bad house in Falls City. She noted that all of them should be on the agenda.</p>

Tina Thompson stated the choice to abate 171 Dayton when Ellis Street had been an issue over the last 15 years. She noted the Council was performing nepotism. She noted the decisions were in favor of the ex-mayor and councilors instead of considering the kids. She mentioned that at the last council meeting Council President Houghtaling stated that Jeremy's house almost caught on fire. Council President Houghtaling advised that she never said Jeremy Gordon's name. Ms. Thompson explained that the Council chose to fix something that had only been an issue for 6-8 months instead of 15 years. She noted the house on Ellis Street was dangerous for kids and just caught fire again the previous weekend.

Cory Ellis, School District, stated the City and School District were connected as community partners. He noted a few things had come up with sewer project, but something always happens to delay projects and get in the way. He asked if the City could be collaborative with the School District regarding the football field. He stated football started in a month and they would be in Kings Valley for practice. He mentioned the seismic grant for high school would take place during spring break. He reported that Micke Kidd was charged with talking to the City Manager on a weekly basis to work together and come up with solutions.

Eric Iker noted that 171 Dayton wasn't that bad. He mentioned he grew up in a small town and he wanted to keep the big city away from small towns. He stated he wanted it nice for the kids.

Steve McKee stated the Council doesn't listen to the people and they were only in the position for themselves.

Rick Lamprecht stated he proposed to buy logs off the Mitchell Street project from City and would bring the City a check for \$2900.

Mayor Bailey closed the public comments at 7:00 p.m.

<p>Consent Agenda</p> <p>a) January 9, 2024 Minutes</p>	<p>It was moved by Council President Houghtaling to approve the Consent Agenda as presented. The motion was duly seconded by Councilor Backus and CARRIED with a vote of 6-0 with Councilors Backus, Jirovec, Meier, D sickles, LJ Sickles and Council President Houghtaling voting YES.</p>
<p>Reports or Comments from Mayor and Council Members</p> <p>a) Mayor’s Report</p> <p>b) Councilor Comments</p> <p>c) Historic Landmark Committee Report</p>	<p>Mayor Bailey reported the skate park meetings had to change due to scheduling conflicts and would reconvene soon. He noted the fundraising efforts were in progress and updates would be available in the City newsletter and on the Skate Park Facebook page.</p> <p>Council President Houghtaling thanked the City’s public works and fire department for their diligent work with all the weather. She noted that regarding dangerous building there was no one person making decisions on properties and that a lot of factors go into decisions. She mentioned that the Council recognized a lot of properties that need support and that the renters were not the problem.</p> <p>Councilor LJ Sickles noted that Easter was early this year the hunt would be March 30 and the basket filling would be March 29.</p> <p>Council President Houghtaling noted the grant the committee was working on was due for the oral history recording. She mentioned they would hopefully start recording this summer.</p>
<p>Reports from City Manager & Staff</p> <p>a) Falls City Fire Report</p> <p>b) Public Works Reports</p> <p>c) City Manager’s Report</p>	<p>Mayor Bailey noted 2023 was a very busy year.</p> <p>There were no comments.</p> <p>Mr. Foscoli gave his report regarding the wastewater treatment plant, towing services, the Pacific Power E-Mobility grant, the Mitchell Street project, and the Resource Center project.</p> <p>Mayor Bailey asked who was in need for rides with the new car. Mr. Foscoli suggested acquiring the original survey from Polk County for some direction. Mayor Bailey noted he would sign up</p>

<p>d) City Financial Audit</p>	<p>for a specific day to drive. Council President Houghtaling asked that the City check with insurance before use for transportation.</p> <p>Mr. Foscoli reported that the conclusion was nothing came to attention except three items. He noted the input by Manager Foscoli in Quickbooks was an oversight but there were no losses. He mentioned the Street Fund was a legacy mistake from previous years that needed to be added to a supplemental.</p> <p>Councilor Jirovec reported the City was in a better overall cash position. She noted there was not much shift and no major issues.</p>
<p>Resolutions</p> <p>a) Resolution 04-2024 – 171 Dayton Dangerous Building</p>	<p>Mr. Foscoli noted he felt that Mr. McKibben’s rebuttal was needed for clarification. Mayor Bailey stated the Council would go through the findings and then he could speak on those items.</p> <p>Council President Houghtaling asked if the owner would be allowed to rebut the information. Mr. Foscoli noted he reached out and got no response but invited Mr. McKibben to speak.</p> <p>Mr. Foscoli reported the items listed that compiled the building as a dangerous building comply with the City Code. He noted that correspondence with the Polk County building inspector revealed that with the house having no services it deemed it not a “dwelling” and people should not be living there. He stated the definitions of a dangerous building regarding City Code 90.35 sections 2, 15, 18 and 20. He advised that a notice would be posted on the building and one to the owner with a 10-days compliance requirement.</p> <p>Mayor Bailey stated on the record that the Council received a printout of incidents that had transpired at the address.</p> <p>Mr. McKibben invited the Council to come to the house and see all the work he had completed. He noted he would bring the rental agreement down to city hall for Mr. Foscoli.</p>

Mayor Bailey stated Mr. McKibben had a deadbeat landlord that was failing to provide a safe home for everyone there. He mentioned there was no electricity, no water, no sewer and the landlord needs to get them fixed. He asked Mr. McKibben if he was continuing to pay rent. Mr. McKibben stated he always pays rent.

Mayor Bailey stated the home had no certificate of occupancy due to the age of the home. He noted to Mr. McKibben the plan wasn't to get rid of him but to get everything fixed.

Mr. Foscoli explained that his conversations with the Polk County Building Inspector Blaine Curry outlined that a building with no power, no water, and no sewer doesn't meet the definition of a "dwelling".

Mayor Bailey noted that this process would help with the absent landlord.

Councilor D Sickles stated that the landlord needed to have permits and get things fixed and inspected. Mr. McKibben noted that the landlord pulled a permit for the power but never got it inspected. Councilor D Sickles advised that this was not the City Council doing this to him, but the landlord. He stated Mr. McKibben was paying rent and nothing was getting fixed. Mr. McKibben stated the landlord didn't want to fix anything. Councilor D Sickles noted the City didn't want Mr. McKibben out, just wanted him to have a safe home to live in.

Councilor Jirovec noted to call the resource center and have a tenant landlord dispute. Mr. McKibben noted that after the fire he just didn't want to get kicked out. Councilor Jirovec stated the owner was the one in trouble and it was all about the owner taking responsibility.

Mr. McKibben asked what the plan was. Mr. Foscoli stated the process stipulates that if the owner doesn't do the abatement the City can do the abatement and charge the landlord. He advised that the City needed to be able to

contact Mr. McKibben so he could help with information and with inspections.

Mr. McKibben asked if the landlord had contacted the City. Mr. Foscoli stated not lately.

Mayor Bailey asked Mr. McKibben if he had paid rent. Mr. McKibben answered every month for the last five years. Councilor Backus asked if Mr. McKibben had a rental agreement. Mr. McKibben answered yes and that he would bring it to City Hall. Mayor Bailey asked what Mr. McKibben paid in rent every month. Mr. McKibben answered \$1000 a month. Mayor Bailey thanked Mr. McKibben for coming in and helping us with this.

Councilor D Sickles asked the effort it takes to contact the landlord. Mr. Foscoli stated contact was very intermittent with the landlord. He noted the City had several addresses for him and we send anything to all addresses to try and get to him. Councilor D Sickles stated it sounded like Mr. Foscoli was doing his due diligence in contacting the landlord and with no answer.

Councilor Backus stated someone from the City should go check out the house and see his progress. He noted his biggest concern was getting Mr. McKibben kicked out because of retaliation on the tenant from the landlord.

Council President Houghtaling stated she met monthly with the service integration commission and had referred a lot of tenants to them. She noted Mr. McKibben needed to be willing to accept the help. Mr. Foscoli noted that he had been reluctant in the past. He mentioned one of the services could be legal help.

Councilor Meier asked if the resolution could be put off until next meeting to give Mr. McKibben a list of things to do and check on services and give him a chance to comply. Mayor Bailey advised that the resolution needed to go through to get the tenant the support they need to deal with the landlord.

	<p>Councilor D Sickles asked what happened after 10 days. Mayor Bailey stated there would be liens put on the property. Mr. Foscoli advised that as long as the process was open with no certificate of occupancy and no authority to remove Mr. McKibben the property would receive lien upon lien and fines upon fines.</p> <p>It was moved by Council President Houghtaling to approve Resolution 04-2024. The motion was duly seconded by Councilor D Sickles. The motion was carried with a ROLL CALL vote of 6-0 with Councilors Backus, Jirovec, Meier, D Sickles, LJ Sickles, and Council President Houghtaling voting YES.</p> <p>Mayor Bailey stated the Council needed to make sure the tenant gets the resources he needs. Council President Houghtaling noted she would get Mr. McKibben the information after the service integration meeting.</p>
<p>Ordinances a) Ordinance 565-2024 - Garbage</p>	<p>Mr. Teal reported that Mr. Gilbert came to the City and needed help with people rummaging in trash cans at the fire department and the schools. The ordinance was taken from the City of Salem and approved by Mr. Gilbert and Superintendent Cory Ellis.</p> <p>Mayor Bailey declared Ordinance 565-2024 to have passed its first reading.</p>
<p>Good of the Order</p>	<p>Councilor Jirovec advised that the board game night at the LCB was a success. She noted that 15 people attended and there were a lot of games. She mentioned she was Looking forward to stitching night. She stated that due to the tree cutting for the Mitchell Street project she got some wood for the sign at the LCB and it was a nice piece of cedar for carving. She asked if the carving was over \$500 if the City would help. Ms. Thompson stated if she could get the wood she would carve it.</p> <p>Councilor D Sickles noted the basketball season for the high school teams was wrapping up and</p>

	<p>both teams were playing in district playoffs games at home.</p> <p>Councilor Backus thanked Councilor Jirovec for all her hard work on the budget.</p> <p>Mayor Bailey stated the Council needed to set a date for goal setting. Council President Houghtaling asked if the City clerk could send out a doodle poll. Mr. Teal agreed.</p>
<p>Executive Session ORS 192.600.2.a: The governing body of a public body may hold an executive session to consider the employment of a public officer, employee, staff member or individual agent.</p>	<p>Mayor Bailey opened the Executive Session at 8:28 p.m.</p> <p>Mayor Bailey closed the Executive Session at 8:43 p.m.</p>
<p>Adjourn</p>	<p>There being no further business the meeting was adjourned at 8:43 p.m.</p>
<p>Read and approved this ____ day of _____ 2024.</p> <p>Mayor: _____</p> <p>ATTEST:</p> <p>City Recorder: _____</p>	



City of Falls City

299 Mill St • Falls City, Oregon • 97344
Ph. (503) 787-3631 • www.fallscityoregon.gov

Instructions: Fill out both sides of form and submit to City Hall.

Contact Information

Name: Natascha Adams
Street Address: 407/409 Main Street
Mailing Address:
City/State/Zip Code: Falls City, OR 97344
Home Phone: 503.798.2181
Work Phone: 503.838.4948
E-Mail Address: 503adams@gmail.com

Background

Years of Residence in Falls City: 4 months
Place of Employment: City of Independence: Heritage Museum
Occupation: Museum Director
Educational Background: BA in Anthropology and Gender Studies
 MA in Museum Studies

Prior Civic Activities: For 8 years I was a commission member on the Independence Planning Commission. I currently am the board president for the Independence Downtown Association. I am a founding board member of the non-profit The Thoughts & Gifts Project. I have been the board president of the Monmouth-Independence Chamber of Commerce.

Committees of Interest

Please check all of the following Committees that interest you:

- Budget Review Committee
- Parks and Recreation Committee
- Public Works Committee
- Historic Landmark Commission
- Planning Commission

*Please continue to reverse side of form for completion.

Special Skills or Qualifications

Summarize any special training, skills or experience you may have pertinent to the Committees to which you are applying.

I have a Masters Degree in museum studies, specifically focusing on exhibit design. I am currently the Director of the Independence Heritage Museum, and was instrumental in creating the new museum, it's exhibits, the design, reinterpretation of our exhibits, and managing staff and volunteers. I have experience in grant writing and large event planning. I am passionate about history, the preservation of history, and sharing history (especially with youth).

I am also the co-founder of a new group, The Willamette Valley Museum Alliance. Our goal is to bring local museums and historical societies together through quarterly meetings to discuss and share our successes and struggles. It is an effort to bring the community together and potentially devise a plan to share resources.

Motivation

Discuss your motivation for serving on this Committee.

I have spent my adult life volunteering in whichever community I call home. Although new to Falls City, I would like to volunteer in some capacity, and this committee fits my skill set well.

Special Notice

Please be advised that members of the City Council and Planning Commission are required to file an annual Statement of Economic Interest with the State of Oregon.

Agreement and Signature

By submitting this application, I affirm that the facts set forth in it are true and complete. I understand that if, I am accepted as a volunteer, any false statements, omissions, or other misrepresentations made by me on this application may result in my immediate dismissal.

Name (printed)

Natascha Adams

Signature



Date

2/9/2024

Thank you for completing this application form and for your interest in volunteering with us.

City of Falls City
Public Works Committee Meeting
Thursday February 22, 2024 6:00PM
Meeting Location: 320 N. Main Street

Committee Members Present

Tony Meier, Tracy Young, Cliff Lauder, Jeff Propp Guy Mack, Gordon Hanson arrived at 6:08.

1) Call to Order

Vice-Chair Meier called the meeting to order at 6:00 PM, took roll call.

2) Pledge of Allegiance

Vice-Chair Meier led the Committee in the Pledge of Allegiance.

3) Motion to Adopt the entire Agenda

Member Young moved and member Mack seconded: **that we approve the entire agenda.** Motion carried 4-0-0. Ayes: Tony Meier, Cliff Lauder, Tracy Young, Guy Mack.

4) Consent Agenda: Motion Action Approving Consent Agenda Items

Member Mack moved and member Young seconded: **that we approve Consent Agenda Item, PWC Minutes December 21, 2023.** Motion carried 4-0-0. Ayes: Tony Meier, Tracy Young, Cliff Lauder, Guy Mack.

5) Public Comment - None

6) New Business

a. Dutch Creek/Mitchell Street Project Updates

PWC reviewed and discussed the information provided by City Staff. Vice-Chair Meier informed the Committee that City Council agreed to the tree harvesting and right of way donation but had no other involvement in the execution of the Agreement. The consensus of the Committee was that City Council should have had greater input and approval of the Agreement.

b. Infrastructure Projects Updates

PWC appreciated update and member Young mentioned that better (bigger?) signage might be needed to deter car passage when work in progress.

7) Old Business - None

8) Correspondence, Comments and Ex-Officio Reports

a. Member Lauder is concerned about the water that flows across, and along the north side, of east North Main from Frink's' driveway and west. PWC recommends that the City address this situation as soon as possible with either a drainage ditch, culvert or other solution.

b. Member Propp mentioned his concern about homeless encampment(s), garbage, etc. on the north side of the Little Luckiamute River, between the City's Park and the McAllister property, on private property owned by Mr. Dieter Wehner. Repeated calls to Mr. Wehner haven't done any good and the PWC wondered if the City, County or State could provide a solution. The property is not only unsightly but also unsanitary and needs attention and removal. Perhaps the City could sponsor and organize a volunteer Clean Up day of homeless encampments or provide other solutions to this ongoing problem. A long term housing solution would be preferable.

9) Committee Announcements

Next meeting to be held March 21, 2024 at 6:00pm.

10) Adjourn

Member Mack moved and member Lauder seconded: **that we adjourn**. Motion carried 6-0-0 Ayes. Tony Meier, Cliff Lauder, Tracy Young, Jeff Propp, Gordon Hanson, Guy Mack. Meeting adjourned at 6:45.

_____ Public Works Committee Chair McConnell

Attested: _____ Public Works Committee Member



City of Falls City
299 Mill Street
Falls City, OR 97344
Ph 503.787.3631

City Manager's Report March 4, 2024

Introduction

February this year was slightly longer than usual, but more uneventful than in recent memory, from an operations standpoint. There was a water line leak that took up a fair amount of staff time to repair, but eventually was dealt with. This situation will always be a part of our operations due to the age of the water system with its pressure challenges related to the topography of Falls City. The upcoming water line replacement project, due to begin its design phase in 2024 and go into construction in 2025 will go a long way to reducing service interruptions. Within the project, the city hopes to add a vacuum trailer to the equipment available to the city for future repairs, to aid staff in tackling line breaks more efficiently. The resolution for this water project will be the official kickoff for a project that will see 4 strategic water line upgrade projects, as well as smart meter replacement projects. Our hope is to be able to include water reservoir maintenance within the scope of the federal funds at our disposal, in order to safeguard the long-term viability of the reservoir.

Wastewater Project – The biweekly meetings with Strider Construction and our contract engineers, have been back on schedule the past couple of weeks. At the last meeting in-ground work on Fair Oaks and Ellis, was discussed. Aside from some abandoned underground lines that were found during the digging, Strider was able to get through the new wastewater line work well within the timeframe that they set out for themselves. The work will now shift to the lagoon site where concrete work on the compliance manholes will begin when the weather allows it. As for the paving work on Fair Oaks and Ellis, the paving company is scheduled for a 1-day project the last week of February (weather dependent). As far as the decommission of the pump station on Fair Oaks, that will not happen until later in the project. The current schedule for the in-ground pipeline work on Main Street is scheduled for mid-spring, and we have been assured that the community will receive ample notice to accommodate any traffic impacts. As far as the school district's ability to use the football field, staff has been in contact with DEQ regarding doing additional water filtration to bring the level of treatment up to Class A recycled water, which could be applied directly to the field with no adverse effects on human health. This mitigation strategy will entail regulatory approval and additional equipment on site. While the city pursues this alternative, work is going into ensuring that the school districts athletic teams have the upper ball park as a practice facility and we are working on field improvements to make sure that this is a viable option.

Note: If you have questions/concerns, please respond to me individually by email, phone, or in person. This way we avoid violating any public meetings laws with a "reply all" response, or multiple councilors discussing on the same thread.

Towing Services – Since City staff placed No-Parking signs on N. Main Street between Ellis and the city limits in order to enhance health and safety of pedestrian traffic in the school zone, there have been no illegally parked vehicles. The Dallas Towing signs that have been placed on the No-Parking signposts have had the added benefit of reminding residents of the consequences of non-compliance, so we are very pleased with the No-Parking signage efforts. The smaller RV that is still on N. Main Street across from the high school is our next challenge, so we will be focusing our efforts on that in the next couple of weeks. As before, if council members notice any vehicles that have been parked for an extended period of time, please let staff know and we will coordinate with Dallas Towing to have those removed.

Mitchell Street Road Improvement Project – The Polk County road work being done on Mitchell Street is progressing well. Though at the last council meeting there were some residents who questioned some of the decision making from the city as to its partnership with Polk County on this project happening within city limits, here are some of the financial highlights of the project for consideration:

Dutch Creek Bridge/Mitchell Street project:

- Complicated funding stream including ODOT funds and Infrastructure Funds from the State of Oregon as well as the Federal Highway Administration funds from the Federal Lands Access Program that the city did NOT have to spend staff time working on.
- The City will receive around **\$2.4 million** worth of infrastructure improvements
- In exchange, the city contributed **\$10,000** in cash and a portion of land donated for right of way.
- The City's potential legal obligation for a local match for these two projects could have been **\$336,000** since both portions of the projects fall under the municipal jurisdiction being inside city limits.
- All logs harvested from City property were given to the City to sell (this will offset a portion of the City's actual contribution of land and cash), estimated at **\$2-3,000**
- The city spends **\$ 1,575** in gravel (82 tons) to maintain Mitchell Street every year.
- The city spends **\$ 965** in fuel and staff time to grade Mitchell Street every year.
- The cost savings from having Mitchell Street paved are **\$ 2,539 per year**. (this does NOT include the wear/tear on our equipment)

Community Resource Center Project – The city is continuing to work with the Willamette Health Council, Polk County's Family & Community Outreach, Falls City Thrives as well as several other resident volunteers to ensure that a Community Resource Center will be built in Falls City. Work to procure a building, contract with a construction company to place it and connected to infrastructure, and to enter into agreements with service providers to have office hours is ongoing. On Feb. 1, the **Community Resource Center Open House** gave the community's residents the opportunity to voice their requests for the types of services to be represented in the building and it was well attended.

MINET Franchise Agreement – The city has been approached by MINET/Willamette Valley Fiber about a possible future franchise fee agreement. The impetus for this initial conversation stems from the fact that MINET/Willamette Valley Fiber are putting lines on Falls City Highway to the end of Oakdale Road, thus making a connection to the future wastewater treatment facility an option. With the new electronic monitoring equipment going into the facility, having a fiber connection would be beneficial. This “stub” could then be used as a bridging point to bring in limited fiber service to Falls City’s Main Street. As MINET/Willamette Valley Fiber have done a feasibility study to bring fiber to the community of Falls City, with help from Polk County, the price tag for connecting all of the city is still financially challenging, but limited service to some of the more accessible properties off of Main Street is a possibility. When the connection plan becomes solidified, MINET/Willamette Valley Fiber will bring a franchise fee agreement, which is in line with the other Polk County municipalities, to the city council for consideration.

Sincerely,



Clerk’s Report

City Hall

- Fire Chief Bob Young’s retirement party was held on Saturday, February 24 and was a huge success.
- Agendas are posted at these locations and will be from this point forward:
Community Center, City Hall, Frinks Market, Falls City Market, Post Office, LCB Bulletin Board, City Website and Facebook page.

STAFF REPORT

TO: HONORABLE MAYOR, AND CITY COUNCIL
FROM: CITY MANAGER, AJ FOSCOLI
SUBJECT: OREGON INFRASTRUCTURE FINANCE AUTHORITY LOAN AGREEMENT
DATE: 3/5/2024

BACKGROUND

The City needs to enter into a loan agreement with the Oregon Infrastructure Finance Authority to access the State's Safe Drinking Water Revolving Loan Fund dollars. These funds are dedicated to assisting municipalities to replace vital ageing water infrastructure systems. Falls City, as a small, rural community with a Low-to-Moderate median income qualifies for financial assistance in carrying out large scale projects on this nature, as in the current wastewater treatment facility construction project. This project's initial impetus came out of a Letter of Interest that the city submitted to Business Oregon to access funds that the Federal Government made available to states through the Bipartisan Infrastructure Bill

SUMMARY

City staff spends a significant amount of its staff time and resources working on failing water distribution lines. Some of those lines, especially the oldest ones in areas of town with high pressure due to the topography of Falls City are very prone to breakage, and interrupt the city's ability to deliver potable water. The proposed project would address these vulnerable water distribution lines, ensuring that staff can more adequately allocate their time, as well as purchasing equipment (among others a vacuum trailer, enabling more efficient repair to affected lines) to address future breaks. The Estimated Project Cost for the project is \$2,367,300. This figure was based on the maximum allowed Forgivable Loan Amount of \$1,292,082, and a Loan Amount of \$1,075,218. This water infrastructure project is being paired with a grant from the Oregon Water Resources Department in the sum of \$593,000, which is being used to upgrade the city's water meters. In total, the city will be doing roughly \$3 million worth of water infrastructure upgrades while only having commit a \$1 million contribution.

RELEVANT COUNCIL ACTION

The City must authorize and approve the SAFE DRINKING WATER REVOLVING LOAN FUND FINANCING CONTRACT S24003 loan amount of \$1,075,218 for financing the design, engineering, permitting and construction of this project.

STAFF RECOMMENDATION

Adopt the resolution as presented Res 05-2024.

ATTACHMENTS

Exhibit A – Resolution 05-2024

Exhibit B – Safe Drinking Water Revolving Loan Fund Financing Contract

RESOLUTION 05-2024

RESOLUTION 05-2024 OF THE CITY OF FALLS CITY AUTHORIZING A LOAN FROM THE SAFE DRINKING WATER REVOLVING LOAN FUND BY ENTERING INTO A FINANCING CONTRACT WITH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY

The City Council (the “Governing Body”) of the City of Falls City (the “Recipient”) finds:

- A. The Recipient is a community or nonprofit non-community water system as defined in Oregon Administrative Rule 123-049-0010.
- 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 (“OBDD”) to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund.
- C. The Recipient 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 Recipient’s application for financial assistance.
- D. The Recipient is required, as a prerequisite to the receipt of financial assistance from the OBDD, to enter into a Financing Contract with the OBDD, number S24003, substantially in the form attached hereto as Exhibit 1. The project is described in Exhibit C to that Financing Contract (the “Project”).
- E. Notice relating to the Recipient’s consideration of the adoption of this [Ordinance/Resolution/Order] was published in full accordance with the Recipient’s charter and laws for public notification.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the Recipient as follows:

1. Financing Loan Authorized. The Governing Body authorizes the [Title of Officer] to execute the Financing Contract (the “Financing Documents”) and such other documents as may be required to obtain financial assistance including a loan from the OBDD on the condition that the principal amount of the loan from the OBDD to the Recipient is not more than \$2,367,300 with \$1,292,082 eligible for principal forgiveness if contract conditions are met and the interest rate is not more than 1%. 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 Recipient 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 Recipient’s water system, 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 this subsection; or
 - (e) Any other source.
3. Additional Documents. The [Title of Officer] 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 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 [name of officer] 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 may be required by the OBDD or their bond counsel to protect the tax-exempt status of such interest.

5. Reimbursement Bonds. The Recipient may make certain expenditures on the Project prior to the date the Financing Contract is executed with OBDD or the date the State of Oregon issues any bonds to fund the loan. The Recipient hereby declares its intent to seek reimbursement of such expenditures with amounts received from the OBDD pursuant to the Financing Contract, but only as permitted by OBDD policy, the Financing Contract, and federal tax regulations. Additionally, the Recipient understands that the OBDD may fund or reimburse itself for the funding of amounts paid to the Recipient pursuant to the Financing Documents with the proceeds of bonds issued by the State of Oregon pursuant to the Act. This [Ordinance/Resolution/Order] constitutes “official intent” within the meaning of 26 C.F.R. §1.150-2 of the income tax regulations promulgated by the United States Department of the Treasury.

DATED this 4th day of February, 2024.

City of Falls City

[TJ Bailey, Mayor]

ATTEST:

[Jeremy Teal, City Clerk, City Recorder]

SAFE DRINKING WATER REVOLVING LOAN FUND
FINANCING CONTRACT

Project Name: Water Main Line Replacement

Project Number: S24003

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 Falls City (“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
- Exhibit G Wage Rate Requirements Under the Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e)

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

“Estimated Project Cost” means \$2,367,300.

“Forgivable Loan Amount” means \$1,292,082.

“Section 2A. Loan Amount” means \$1,075,218.

“Interest Rate” means 1.00% per annum.

“Maturity Date” means the 29th 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

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. 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. 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. 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

SECTION 4 - LOAN PAYMENT; PREPAYMENT; FORGIVENESS

- A. Promise to Pay. 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.

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 Page 24

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. Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract.
- (2) Optional Prepayment. 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, incorporated by this reference, and 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 \$39.55 per 7,500 gallons, then the amount due under the Section 2.A. Loan will, at OBDD's discretion and after notice to Recipient, accrue interest from the Project Completion Date at the rate of 1.00% 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. 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) 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) 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) 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) 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.
- (8) Prior to final disbursement, Recipient must ensure the following are completed:
 - a. Operator Certification:
 - Acquire a certified cross connection control specialist as required for water systems serving 300 or more service connections (OAR 333-061-0070(10)(d)).
 - b. Water System Policies and Programs:
 - Prepare and submit a cross connection control Annual Summary Report as required. Submit the report to the Oregon Health Authority, annually, at the end of March according to OAR 333-061-0070(10)(c)).
 - Update the water system's written emergency response plan and operations manual to include infrastructure improvements associated with this Project.

SECTION 6 - USE OF FINANCIAL ASSISTANCE

A. Use of Proceeds. Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit D. Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of OBDD.

- B. Costs of the Project. 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. 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

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. 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) 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) 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. 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. 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. 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) 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. 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

Recipient covenants as follows:

A. Notice of Adverse Change. 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. 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) 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 (2002) and more particularly described in Exhibit G – Wage Rate Requirements Under the Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e).

(3) Signage Requirements:

(a) Recipient will ensure that a sign is placed at construction sites supported under this award displaying the official "Investing in America" emblem and must identify the project as a "project funded by President Biden's Bipartisan Infrastructure Law. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

(b) Recipient will ensure compliance with the guidelines and design specifications for using the official Investing in America emblem and corresponding logomark available at:

<https://www.whitehouse.gov/wp-content/uploads/2023/02/Investing-in-America-Brand-Guide.pdf>.

(c) Recipient will ensure that a sign is in place at construction sites supported under this award displaying the 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 the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/grants/epa-logo-seal-specifications/signage-produced-epa-assistance-agreement-recipients>. If the EPA logo is displayed along with the logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project. As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects and use of the EPA seal requires prior approval from the EPA. To obtain the appropriate EPA logo or seal graphic file, Recipient should send a request directly to OPA and include the EPA Project Officer in the communication. Instructions for contacting OPA are available on the Using the EPA Seal and Logo page.

(d) Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable

(e) Public or Media Events: OBDD encourages Recipient to notify the Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement and provide the opportunity for attendance and participation by OBDD representatives with at least ten (10) working days' notice.

- (4) **SAFE DRINKING WATER IN OREGON:** Sections 3, 4, and 5 and Appendixes A & B of the Program Guidelines & Applicant's Handbook for the Federally Funded Safe Drinking Water Revolving Fund & Drinking Water Protection Loan Fund (June 2023) ("[Safe Drinking Water Handbook](https://www.oregon.gov/biz/Publications/SDWhandbook.pdf)"), available at <https://www.oregon.gov/biz/Publications/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"). Section 5.5 of the Safe Drinking Water Handbook contains a link to a list of the Cross-Cutting Authorities.
- (6) 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 OBDD 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 OBDD, the federal government or their representatives. 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 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. 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. Recipient will maintain documentation in a Project file and submit the required forms, as described in 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 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) Comply with all federal requirements applicable to the assistance received (including those imposed by the Infrastructure Investment and Jobs Act (“IIJA”), Public Law No. 117-58) which includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States (“Build America, Buy America Requirements”) unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) all of the contributing Agencies have otherwise advised the Participant in writing that the Build America, Buy America Requirements are not applicable to the Project.
- (13) Comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the funding authority (such as EPA and the State of Oregon), such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of the assistance agreement in advance of the maturity of the Bonds, termination and repayment of grants, cooperative agreements, direct assistance or other types of financial assistance, and/or other remedial actions.
- (14) Comply with the applicable EPA general terms and conditions available at: https://www.epa.gov/system/files/documents/2022-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2022_or_later.pdf
- (15) Comply with all requirements that OBDD is subject to under EPA Grant Number 02J27501, including, but not limited to:
 - (a) Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
 - (b) Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition of the EPA agreement entitled “Reporting Subawards and Executive Compensation.”
 - (c) Limitations on individual consultant fees as set forth in 2 CFR 1500.9 and the General Condition of EPA agreement entitled “Consultant Fee Cap.”
 - (d) EPA’s prohibition on paying management fees as set forth in General Condition of the EPA agreement entitled “Management Fees.”
- (16) 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) 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. Contributory Liability and Contractor Indemnification.
- (1) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (“Third Party Claim”) against a party (the “Notified Party”) with respect to which the other party may have liability, the Notified Party must promptly notify the other party in writing and deliver a copy of the claim, process, and all legal pleadings related to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. The foregoing provisions are conditions precedent for either party’s liability to the other in regards to the Third Party Claim.
- If the parties are jointly liable (or would be if joined in the Third Party Claim), the parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable in such proportion as is appropriate to reflect their respective relative fault. The relative fault of the parties shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Each party’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if that party had sole liability in the proceeding. This Section shall survive termination of this Contract.
- (2) Recipient shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Recipient’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims. This Section shall survive termination of this Contract.
- P. Further Assurances. 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) 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) 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) 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) 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) 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. 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. 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. 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.
- (9) Recipient may use the Financing Proceeds to reimburse itself for Project expenditures made prior to the funding of the Project only if permitted by Exhibit C and only if such reimbursement is allowed under one of the following four categories pursuant to 26 C.F.R. § 1.150-2:
 - (a) Preliminary expenditures such as architectural, engineering, surveying, soil testing, bond issuance and similar costs that, in the aggregate, are not in excess of 20% of the Financing Proceeds. Costs of land acquisition, site preparation and similar costs incident to commencement of construction are not preliminary expenditures.
 - (b) Expenditures for issuance costs.
 - (c) Expenditures that are described in a reimbursement resolution or other declaration of official intent that satisfies the requirements of 26 C.F.R. § 1.150-2 and paid no earlier than 60 days prior to the adoption of such resolution or official intent.
 - (d) Expenditures paid within 60 days prior to the date the Loan is funded.

SECTION 9 - DEFAULTS

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

- A. Recipient fails to make any Loan payment when due.
- B. 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 OBDD. 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. OBDD is not required to provide any notice in order to exercise any right or remedy, other than OBDD 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. 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) 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. 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) 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. Recipient agrees that:
- (1) 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 Recipient's email system that the notice has been received by Recipient's email system or 2) 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: Deputy Director
Oregon Business Development Department
775 Summer Street NE Suite 200
Salem, OR 97301-1280

If to Recipient: City Manager
City of Falls City
299 Mill Street
Falls City, OR 97344

- 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. 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.

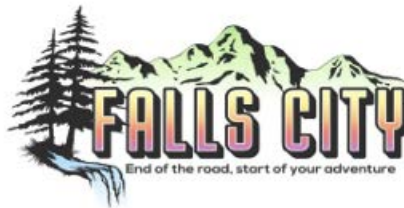
Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent 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.

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 Business Development Department



CITY OF FALLS CITY

By: _____
 Chris Cummings, Deputy Director

By: _____
 The Honorable TJ Bailey, Mayor

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

 /s/ David Berryman as per email dated 06 September 2023
 David Berryman, 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 27 July 2023.

“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. 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"). 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. 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) Recipient shall not 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 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 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) 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 on parity with OBDD Lien. Recipient shall provide OBDD documentation sufficient to demonstrate compliance with this requirement upon request by OBDD.
 - (5) 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 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 on parity with OBDD Lien (including any obligations described in subsection 3 above) for the 12-month period after such deposit.

EXHIBIT C - PROJECT DESCRIPTION

Recipient will, with the assistance of an engineer licensed in Oregon, complete the following improvements to Recipient's water system:

- Replace existing waterlines to relieve pressure differences between areas of Falls City that are at varying elevations, including but not limited to:
 - Forest Lane and Clark Street; Hopkins Street; Alley North of Main Street; and Pine Street.
- Replace approximately 450 water meters.
- Complete minor structural improvements to the existing concrete water reservoir located at the water treatment plant.

Recipient will use financing proceeds for reimbursement of pre-award engineering expenses for the Project in the amount of \$2,500.

EXHIBIT D - PROJECT BUDGET

Line Item Activity	OBDD Funds
Pre-Award Engineering	\$2,500
Design/Engineering	\$276,500
Construction	\$1,803,900
Construction Contingency	\$174,400
Labor Standards	\$15,000
Environmental Review	\$30,000
Project Management/Federal Requirements Assistance	\$15,000
Legal Fees	\$20,000
Cultural Resource Report(s) and Monitoring	\$5,000
Permitting and Regulatory Fees	\$25,000
Total	\$2,367,300

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

Federal Award Identification:

- (i) Subrecipient* name (which must match registered name in SAM): City of Falls City
 - (ii) Subrecipient's Unique Entity Identifier (SAM): NV8NAZVJNH87
 - (iii) Federal Award Identification Number (FAIN): 02J27501
 - (iv) Federal Award Date: 24 May 2023
 - (v) Sub-award Period of Performance Start and End Date: 36 months after the date of this Contract
 - (vi) Sub-award budget period start and end dates: 36 months after the date of this Contract
 - (vii) Total Amount of Federal Funds Obligated by this contract action: \$2,367,300
 - (viii) Total Amount of Federal Funds Obligated by the initial Contract and any amendments: \$2,367,300
 - (ix) Total Amount of Federal Award committed to the Subrecipient: \$2,367,300
 - (x) Federal award project description: Oregon's Drinking Water State Revolving Fund: This grant 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.
 - (xi) 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: Jon Unger, Infrastructure Programs Manager, 503-507-7107
 - (xii) CFDA Number, Title, Amount: 66.468 Safe Drinking Water State Revolving Fund, Amount: \$2,367,300
 - (xiii) Is Award R&D? No
 - (xiv) 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 OR RESERVED

(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 _____

Exhibit G – Wage Rate Requirements Under the Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e)

For purposes of this Exhibit G only, “recipient” or “recipient State” or “State recipient” refers to OBDD, and “sub recipient” refers to the Recipient of this Contract.

1. Applicability of the DB prevailing wage requirements.

Davis Bacon (“DB”) prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub recipient shall monitor <https://sam.gov/> weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

(ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor <https://sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument.

(c) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project carried out in whole or in part with assistance made available by the DWSRF, and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the Safe Drinking Water Act, Section 1452(a)(5), the following clauses:

(1) Minimum wages.

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

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

Sub recipients may obtain wage determinations from DOL's website, <https://sam.gov/>.

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall

approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) and supporting materials to WHD-CBACONFORMANCE_INCOMING@dol.gov and to the EPA DB Regional Coordinator concurrently. The DOL Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) which indicates the State award official's disagreement and supporting materials to WHDCBACONFORMANCE_INCOMING@dol.gov and to the EPA DB Regional Coordinator concurrently. The DOL Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

(2) Withholding. The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DB prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the EPA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

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

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the DOL for Page 49

purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

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

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

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

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

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

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

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

(4) Apprentices and trainees

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

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

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

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

5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract Page 53

or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB.

Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

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

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

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/agencies/whd/contact/local-offices>.

STAFF REPORT

TO: HONORABLE MAYOR, AND CITY COUNCIL
FROM: CITY RECORDER, JEREMY TEAL
SUBJECT: GARBAGE ORDINANCE
DATE: 3/04/2024

SUMMARY

This ordinance would enforce detouring people from entering, rummaging, throwing, or stealing items from the garbage receptacle.

BACKGROUND

Mr. Gilbert approached City Hall regarding an on-going issue with people rummaging, throwing, and stealing garbage out of the receptacles at the Fire Hall and the School District. This ordinance would allow Polk County Sheriffs to enforce the law and refrain people from bothering trash receptacles in Falls City.

FINANCIAL IMPLICATIONS

None.

STAFF RECOMMENDATION

Staff recommends the City Council to support the proposed Ordinance No. 565-2024

PROPOSED MOTION

Recommend a motion to support the proposed Ordinance No. 565-2024

EXHIBIT

A- ORDINANCE NO. 565-2024

ORDINANCE #565-2023

AN ORDINANCE ADOPTING A NEW HEALTH AND SANITATION AMENDMENT TO THE FALLS CITY
MUNICIPAL CODE CHAPTER 90: DISTURBANCE OF SOLID WASTE IN RECEPTACLES PROHIBITED

NOW THEREFORE THE CITY OF FALLS CITY ORDAINS AS FOLLOWS:

Section 14:

No person shall remove the lid from any solid waste receptacle OR remove, disturb, collect or scatter solid waste placed in such receptacle OR deposit solid waste into such receptacle, unless the person is authorized to do so by the generator.

READ FIRST TIME by the Council of the City of Falls City this 5th day of February, 2024.

AYES: NAYES: ABSTAIN: ABSENT:

READ SECOND TIME AND ADOPTED by the Council of the City of Falls City this 4th day of March, 2024.

AYES: NAYES: ABSTAIN: ABSENT:

TJ Bailey, Mayor

Jeremy Teal, City Recorder