



# City of Rockaway Beach

## City Council Workshop Agenda

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**Date:** Wednesday, October 9, 2024

**Time:** 4:30 P.M. – 5:40 P.M.

**Location:** Rockaway Beach City Hall, 276 HWY 101 – 2<sup>nd</sup> Floor Conference Room

**Watch live stream here:** [corb.us/live-stream](https://www.corb.us/live-stream)

**View meeting later here:** [corb.us/city-council](https://www.corb.us/city-council)

**Join here to attend remotely:**

<https://us06web.zoom.us/j/87304722462?pwd=0vxEPHlWMDziyaG7o1hDzRQxhUi05k.1>

Meeting ID: 873 0472 2462

Passcode: 083775

Dial by your location

253 215 8782 US (Tacoma)

***What is a City Council Workshop?*** Workshops are intended to allow for preliminary discussions by the City Council and staff. Workshops are held to present information to the Council so that the Council is prepared for upcoming regular meetings. Workshops are subject to Oregon’s public meeting law and must be noticed accordingly. No final City Council decisions are made during workshops. The public is encouraged to attend workshops but may not participate unless expressly asked.

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*Note: Agenda item times are estimates and are subject to change.*

**1. CALL TO ORDER (4:30 p.m.)**

**2. ROLL CALL**

**3. COUNCIL BRIEFING/DISCUSSION**

- a. **Discussion Regarding Conflicts of Interest/Impartiality in Quasi-Judicial Land Use Hearings - Armand Resto-Spotts, Local Government Law Group (4:31 p.m.)**
- b. **Review of Safe Drinking Water Revolving Loan Fund Financing Contract & Memo from Business Oregon Regarding the Infrastructure Finance Authority (IFA) Funding Assistance for Nedonna Beach Water System Improvements Project (5:15 p.m.)**
- c. **Review of Draft Resolution 2024-42 Adjusting Appropriations for the 2024-2025 Fiscal Year Budget for Attorney’s Fees (5:25 p.m.)**
- d. **Community Grant Program Updates (5:35 p.m.)**

**4. ADJOURNMENT (5:40 p.m.)**

## Memo

**To:** City Council, City of Rockaway Beach

**From:** Armand Resto-Spotts, Local Government Law Group, Legal Counsel

**Date:** October 1, 2024

**Re:** Summary of Conflicts of Interest/Impartiality; Draft Language for Councilors in Disclosure at Public Hearing

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For “quasi-judicial” land use hearings, the decision-making body reviews evidence before it against applicable criteria to determine whether an application can be approved. Prior to holding a quasi-judicial land use hearing, the decision-making body must “screen” itself from any potential conflicts, bias, or lack of impartiality. This is an essential piece of the process, as failure to do so can invalidate decisions and result in personal liability.

***RBZC 11.060(2)(a):** Procedural entitlements afforded at the public hearing: “An impartial review as free from conflicts of interest, personal bias, and pre-hearing ex parte contact as is reasonably possible.”*

Importantly, regardless of the “conflict” at issue, **each City Councilor needs to disclose their bias, conflicts, or ex parte contacts, and determine whether recusal is appropriate before the hearing.**

**Summary of Bias, Conflicts of Interest, and *Ex Parte* Contacts**

Conflict Category	Bias	Conflicts of Interest	<i>Ex parte</i> contacts
Defined	<p>Incapable of basing decision on evidence and argument presented</p> <p><i>I.e.</i>, you are unable to be fair and impartial</p>	<p>Decision (a vote) <u>will</u> or <u>could</u> result in financial benefit or detriment for the official, or a relative or business associated with official or relative.<sup>1</sup></p> <p>Primary question: Will you (or your family, or business) receive a financial benefit or detriment as a result of this decision (vote) on the appeal?</p>	<p>Verbal, written, visual contacts between one party and the decision-maker (City Council), not on the record (<i>i.e.</i>, outside knowledge of the parties and public)</p>
Examples	<ul style="list-style-type: none"> <li>• Prior connection/association with a party</li> <li>• Prior statements evidencing certain bias on the proposal</li> <li>• Relationship or familiarity with proposal or project, or the applicant</li> </ul>	<ul style="list-style-type: none"> <li>• You own the real property to be developed (actual conflict)</li> <li>• You own property within the area that received notice of this proposal or appeal (actual conflict)<sup>2</sup></li> <li>• Your company does electrical contracting for new developments</li> </ul>	<ul style="list-style-type: none"> <li>• Site visit</li> <li>• Conversations with applicant, neighbors, appellant</li> <li>• Prior knowledge or expertise in subject matter of the appeal or project (<i>e.g.</i>, you are a homebuilder sitting on an appeal for a subdivision) (<i>e.g.</i>, you are a forester and may have expertise outside the</li> </ul>

<sup>1</sup> Any action or decision or recommendation by person acting in capacity as public official, the effect of which would be to the private pecuniary benefit or detriment of the person or person’s relative or business.

<sup>2</sup> This is a unique conflict of interest in which Rockaway Beach Zoning Code requires recusal. **RBZC 11.060(2)(b)**: No member of a hearing body may participate in proposal or vote when (1) actual conflict exists, (2) member owns property within area entitled to receive notice of public hearing, (3) other valid reason(s) member has determined that they cannot be impartial.

		<p>in town (potential conflict)</p> <ul style="list-style-type: none"> <li>• Your sibling runs another homebuilding company in town (potential conflict)</li> </ul>	<p>record as it relates to trees on the subject property)</p> <ul style="list-style-type: none"> <li>• Knowledge about things outside of the record about this project, property, or applicant as a result of prior employment or relationship</li> </ul>
How to Disclose?	State on the record that you are able to make fair and impartial decision based on the record before you	<p>Disclose nature of the conflict, and whether you will recuse or not.</p> <p><i>When in doubt, shout it out.</i></p>	Disclose context and substance of <i>ex parte</i> contact. Then indicate ability to be impartial, or whether you will recuse yourself.
When to recuse?	Based on the bias, if you cannot make a fair and impartial decision based on the record.	<p>“Will” result = actual conflict. <u>You must recuse yourself.</u> Mute, do not participate, no talking.</p> <p>“Could” result = potential conflict. <u>Disclosure nature of potential conflict, clarify whether you believe you can participate impartially.</u></p>	Based on the <i>ex parte</i> contact, if you cannot make a fair and impartial decision based on the record.

## Sample Language for Disclosure of Conflicts

### General Template for Disclosure of Bias or *Ex Parte* Contacts

“I have previously made statements [*or, know specific information*] about this application. Those include [INSERT SPECIFIC STATEMENTS], which I made because [INSERT EXPLANATION – INCLUDING ANY EXPLANATION HOW THEY’VE SINCE BEEN TAKEN OUT OF CONTEXT].

I have not prejudged this application. I enter into this hearing with an open mind and understand that I must evaluate, discuss and vote solely based on the factual record developed below, any arguments presented before the Council this evening, and applicable land use criteria. When asked to make a decision on this application, I have the ability to set aside any personal views. I take my responsibility as a decisionmaker seriously. I am confident in my ability to sit impartially in this quasi-judicial setting and make decisions based only upon the facts and applicable land use criteria.”

### Template for Disclosure of Bias (Example Statement)

1. [Disclose nature of potential bias] “*I previously stated . . .*” or “*I have previously worked on . . .*”
2. [Then clarify whether you can be impartial] “*...however, I reviewed the record before me, and I am able to act as a fair and impartial decision-maker. I believe I can make a fair and impartial decision based on the facts, the record, and the criteria applicable to this matter.*”
3. [Or, if you cannot be fair and impartial] “*...given this, I do not believe I can render an impartial decision on this matter, and I will recuse myself from participation or voting on this matter.*”

### **Template for Disclosure of Ex Parte Contacts (Example Statement)**

1. **[Disclose nature of ex parte contact]** *"I visited the property at issue on [date] for the purposes of [reasons], or*

*"I had a conversation with the applicant on [date] regarding [substance of conversation]"; or,*

*"On [dates], at our regular City Council meeting, I heard public comment and testimony regarding [this property or project]"; or,*

*"I am familiar with this property and project proposal because [details of why you are familiar with the property or project]"*

2. **[Then, clarify whether you can be fair and impartial, or recuse yourself]**

*"Based on the nature of these aforementioned ex parte contacts, I believe it is appropriate that I recuse myself, and I will not participate or vote on this appeal.";*  
or,

*"I do not believe these ex parte contacts will affect or impair my ability to review this appeal and record before me. I am able to act as a fair and impartial decision-maker, and I can make a decision based on the facts, the record, and the criteria applicable to this matter."*

### **Template for Disclosure of Conflicts of Interest (Example Statement)**

#### **Actual Conflict of Interest**

1. **[Disclose type and nature of conflict of interest]** *"I have an actual conflict of interest in this matter, because [details of conflict of interest]."*
2. **[Then confirm that you will recuse yourself for this actual conflict]** *"Because this is an actual conflict of interest, I will recuse myself from participation or voting on this appeal."*

#### **Potential Conflict of Interest**

3. **[Disclose type and nature of conflict of interest]** *"I have a potential conflict of interest in this matter, because [details of potential conflict]."*

4. [Then clarify whether you can be impartial, or will recuse yourself for an actual conflict] *"I do not believe this potential conflict of interest will not affect or impair my ability to review this appeal and record before me. I am able to act as a fair and impartial decision-maker, and I can make a decision based on the facts, the record, and the criteria applicable to this matter."* or,

*"I believe that this potential conflict of interest may impair my ability to be fair and impartial in this appeal, and therefore, I will recuse myself from participation or voting on this appeal."*



**City of Rockaway Beach, Oregon**

276 S. Highway 101, PO Box 5  
Rockaway Beach, OR 97136  
503.374.1752

**STAFF REPORT**

**Date:** October 2, 2024  
**To:** City Council  
**From:** Luke Shepard, City Manager  
**Subject:** **RE: Staff Report - SDWRLF No. 235-18609 - Nedonna Beach Water System Improvements**

In March of 2024 the City submitted a Safe Drinking Water Revolving Loan Fund Application for the Nedonna Beach Water System Improvements project. Staff presented the project at the August 2<sup>nd</sup> Infrastructure Finance Authority Board meeting. The IFA board subsequently voted to approve funding for the project, and the city received the official notice of award on August 9<sup>th</sup>.

On September 26, the city received the Safe Drinking Water Revolving Loan Fund Financing documents from Business Oregon. These documents are still under review. Business Oregon requested that the city execute and return all documents within 60 days. To meet this deadline, staff expects to draft an authorizing resolution for Council consideration at the November 13 regular meeting.

Included in your workshop materials this month are the SDWRLF Financing Contract, and a Memorandum from Business Oregon’s Regional Project Manager and Finance Officer. This memo details Business Oregon’s Financial Findings, Debt Service Analysis, Conditions of Award and other related review findings. Staff requests that the Council submit any questions to staff prior to November 6<sup>th</sup>.

**Project Description/Loan Summary:**

City of Rockaway Beach will hire an engineer licensed in the state of Oregon to complete design for water system improvements and will subsequently procure a contractor to replace steel and asbestos concrete pipe along Beach Drive, Nedonna Avenue, and Geneva Avenue with C900 PVC or HDPE pipe.

Repayment Phase Loan Summary							
City of Rockaway Beach							
Program	Award Amount	Forgivable Loan Amount	SDWRLF Origination Fee	Loan Amount	Interest Rate	Amortized (in years)	Est. Annual Payment*
SDWRLF	\$2,805,555	\$1,463,276	\$0	\$1,342,279	2.69%	30	\$65,800
<i>* Actual payment will likely be different. Payment rounded to nearest \$100. Construction Period Interest is expected to be paid prior to or with the 1st scheduled P&amp;I payment date.</i>							



SAFE DRINKING WATER REVOLVING LOAN FUND  
FINANCING CONTRACT

Project Name: Nedonna Beach Water System Improvements

Project Number: S25001

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 Rockaway Beach (“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 \$3,068,086.

“Forgivable Loan Amount” means \$1,463,276.

“Section 2A. Loan Amount” means \$1,342,279.

“Interest Rate” means 2.69% 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 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 \$49.78 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 Insert rate that is 80% of the market interest rate 2.69% 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.

<b>SECTION 6 - USE OF FINANCIAL ASSISTANCE</b>
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- 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) Prevailing Wage Requirements.
    - (a) Recipient shall comply with state prevailing wage law as set forth in ORS 279C.800 through 279C.870, and the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) (collectively, state “PWR”). This includes but is not limited to imposing an obligation that when PWR applies to the Project, contractors and subcontractors on the Project must pay the prevailing rate of wage for workers in each trade or occupation in each locality as determined by the Commissioner of the Bureau of Labor and Industries (“BOLI”) under ORS 279C.815.
    - (b) When the federal Davis-Bacon Act applies to the Project, contractors and subcontractors on the Project must pay the prevailing rate of wage as determined by the United States Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*).
    - (c) Notwithstanding (3)(a) and (3)(b) above, when both PWR and the federal Davis-Bacon Act apply to the Project, contractors and subcontractors on the Project must pay a rate of wage that meets or exceeds the greater of the rate provided in (3)(a) or (3)(b) above.
    - (d) When PWR applies, Recipient and its contractors and subcontractors shall not contract with any contractor on BOLI’s current List of Contractors Ineligible to Receive Public Works Contracts.
    - (e) When PWR applies, Recipient shall be responsible for both providing the notice to the BOLI Commissioner required by ORS 279C.835 and the payment of any prevailing wage fee(s) required under ORS 279C.825 and BOLI’s rules, including OAR 839-025-0200 to OAR 839-025-0230. For avoidance of any doubt, Recipient contractually agrees to pay applicable prevailing wage fees for the Project rather than OBDD, the public agency

providing Financing Proceeds under this Contract.

- (f) Pursuant to ORS 279C.817, Recipient and any contractors or subcontractors may request that the BOLI Commissioner make a determination about whether the Project is a public works on which payment of the prevailing rate of wage is required under ORS 279C.840 (i.e. whether PWR applies).

These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

(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 (March 2024) ("Safe Drinking Water Handbook"), 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 the Federal Assistance Listing (formerly CFDA) Number and Name: "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 (“IJA”), 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](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.

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 Grant until the date that is three years following the later of the final maturity or earlier retirement of all of the Bonds (including the final maturity or redemption date of any obligations issued to refund the Bonds) or such longer period as may be required by other provisions of this Contract or applicable law. 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.

## 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 310  
Salem, OR 97301-1280

If to Recipient: Public Works Superintendent  
City of Rockaway Beach  
276 Highway 101  
PO Box 5  
Rockaway Beach, OR 97136

- 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 ROCKAWAY BEACH**

By: \_\_\_\_\_  
 Melisa Drugge, Business Services  
 Director

By: \_\_\_\_\_  
 Luke Shepard, City Manager

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

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

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

\_\_\_\_\_  
 /s/ David Berryman as per email dated 19 August 2024  
 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 02 August 2024.

“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.
  - (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. 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.
  - (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 design for water system improvements and will, with the assistance of a contractor licensed in Oregon, replace steel and asbestos concrete pipe along Beach Drive, Nedonna Avenue, and Geneva Avenue with C900 Polyvinyl Chloride or High-Density Polyethylene pipe.

**EXHIBIT D - PROJECT BUDGET**

<b>Line Item Activity</b>	<b>OBDD Funds</b>	<b>Estimated Other Funds</b>
Design/Engineering	\$112,510	\$262,531
Construction	\$2,334,586	\$0
Construction Contingency	\$233,459	\$0
Labor Standards	\$15,000	\$0
Environmental Review	\$5,000	\$0
Federal Requirements Assistance	\$15,000	\$0
Legal Fees	\$35,000	\$0
Permitting and Regulatory Fees	\$10,000	\$0
Administrative Costs	\$45,000	\$0
<b>Total</b>	<b>\$2,805,555</b>	<b>\$262,531</b>

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

Federal Award Identification:

- (i) Subrecipient\* name (which must match registered name in SAM): Rockaway City Hall
- (ii) Subrecipient's Unique Entity Identifier (SAM): ZJ9JU8FK6G89
- (iii) Federal Award Identification Number (FAIN): 02J27501
- (iv) Federal Award Date: 24 May 2023
- (v) Sub-award Period of Performance Start and End Date: beginning at Contract execution and ending on the last day of the month occurring 36 months after the date of this Contract.
- (vi) Sub-award Budget Period Start and End Dates: beginning at Contract execution and ending on the last day of the month occurring 36 months after the date of this Contract.
- (vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient: \$2,805,555
- (viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation: \$2,805,555
- (ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity: \$2,805,555.
- (x) Federal award project description as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA): Section 1452 of the Safe Drinking Water Act (SDWA) authorizes the state to utilize funds to further the health protection objectives of SDWA. This agreement will provide funds, authorized by the Infrastructure Investment and Jobs Act (IIJA) (PL 117-58), to capitalize the recipient's Drinking Water State Revolving Fund (DWSRF) to provide low interest financing for costs associated with the planning, design and construction of eligible drinking water improvement projects and activities to protect human health. As part of this agreement, the recipient ensures compliance with federal and state regulations, which are designed to protect public health. The bulk of the SRF will be used for loans and other authorized assistance to public water systems for eligible projects, including improving drinking water treatment, fixing leaky or old pipes (water distribution), improving source of water supply, replacing or constructing finished water storage tanks, and other infrastructure projects needed to protect public health. The recipient may also use some of the funding for specific "set-asides"; to provide technical assistance to small systems, program administration, state program management and other allowable uses. The benefits of this grant will be to capitalize the recipient's DWSRF. The Fund can then be used to increase technical, financial and managerial capacity of public water systems, and provide assurance of a cleaner and safer potable water supply by funding improvements to multiple water infrastructure projects. These public health benefits will be statewide. No subawards are included in this assistance agreement.
- (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) The Federal Assistance Listing (formerly CFDA) Number and Name: 66.468 Capitalization Grants for Safe Drinking Water State Revolving Fund,

Amount: \$2,805,555

(xiii) Is Award R&D? No

(xiv) Indirect cost rate for the Federal award: 10%

\* For the purposes of this Exhibit E, “Subrecipient” refers to Recipient and “pass-through entity” refers to OBDD.

\*\* The total amount of federal funds obligated to the Subrecipient by the pass-through entity is the total amount of federal funds obligated to the Subrecipient by the pass-through entity during the current state fiscal year.

**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 City Manager, City of Rockaway Beach

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 Recipient of this Contract.

**1. Applicability of the DB prevailing wage requirements.**

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](mailto: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 [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_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 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 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>.

# MEMORANDUM

July 3, 2024

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**TO:** Chris Cummings, Deputy Director, Economic Development

**THRU:** Mollie Croisan, Project & Services Manager *MC*

**THRU:** Jon Unger, Infrastructure Programs Manager *JU*

**FROM:** Melinda Hautala, Regional Project Manager  
John Hobbs, Finance Officer

**SUBJ:** Funding Opportunity of \$2,805,555 – Safe Drinking Water Revolving Loan Fund Program for City of Rockaway Beach, Nedonna Beach Water System Improvements, No. 235-15609

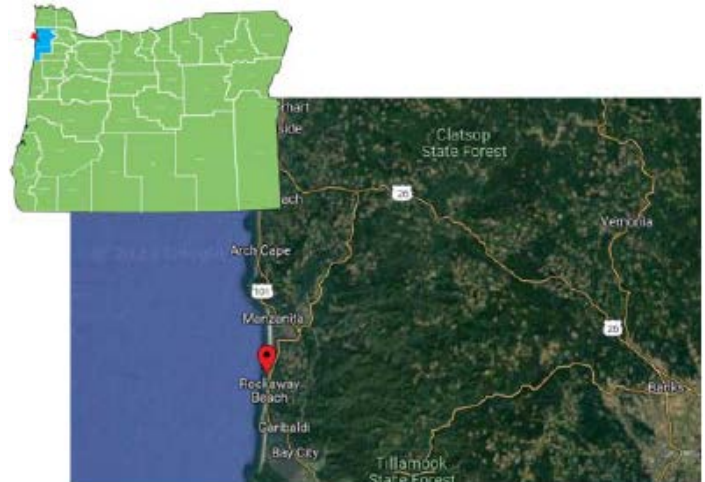
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Please accept this memorandum for the *Oregon Infrastructure Finance Authority (IFA)* for funding assistance. Business Oregon's (statutorily and by rule referred to as *Oregon Business Development Department*) staff administers the IFA. This memorandum will provide an application review, findings and analysis, and staff's recommendation for requested action. There may also be post approval follow-up instructions for staff.

## BACKGROUND:

Rockaway Beach is a city on the Oregon coast in Tillamook County, between Tillamook Bay and Nehalem Bay. Rockaway Beach is considered by Business Oregon to be both rural and distressed.

As of the 2020 Census, Rockaway Beach has a population of 1441. Its race/ethnicity profile is 94% White, 0.7% Native American, 0.4% African American, 1% from other races, and 2.7% from two or more races. Hispanic or Latino of any race are 3% of the population.



Funding Request: Loan & Principal Forgiveness

Project Type:

- Planning (technical)
- Design
- Construction

**Project Background:**

The existing distribution infrastructure in the City of Rockaway Beach water system is made up of steel and asbestos cement pipe that was installed in the 1950s and 60s. The poor condition of these pipes has led to regular breaks and leaks and in the coastal environment, the steel pipes especially have been subject to severe corrosion. While completing a Water Master Plan update in 2014, the City found that the water system was experiencing water losses of nearly 50%. Improvements to the distribution system were recommended in the Plan, not only because the current system lacks sufficient capacity to meet demand, but also because the failing pipes increase the risk of service interruptions, lower water pressure, and groundwater intrusion.

**Project Description:**

City of Rockaway Beach will hire an engineer licensed in the state of Oregon to complete design for water system improvements and will subsequently procure a contractor to replace steel and asbestos concrete pipe along Beach Drive, Nedonna Avenue, and Geneva Avenue with C900 PVC or HDPE pipe.

**Work Plan:** This project will not have a phased work plan; a description of each primary activity and anticipated dates are provided in the table below.

**Public Involvement Statement:** The project is recommended in the 2014 Water Master Plan, which was presented to the public prior to adoption and has been available on the City’s website since then. More recently, funding requests for this project have been discussed at City Council meetings, which are open to the public.

**FINDINGS AND ANALYSIS:**

This project helps implement the goals and objectives of the Safe Drinking Water Revolving Loan Fund *to provide public water systems financing for planning, design, and construction projects that protect public health, ensure compliance with federal and state requirements, respond to an emergency, or generally improve water infrastructure resiliency (ORS 285A.213 and OAR 123-049).*

This project meets the Business Oregon Strategic Plan priority to Cultivate Rural Economic Stability by enhancing local economic development capacity in distressed rural communities.

***Program Findings & Compliance***

1. Applicant eligibility: Rockaway Beach is considered to be an eligible applicant per OAR 123-049-0020, which states that all community water systems and nonprofit water systems are eligible to apply for financing except those determined to be ineligible by the department because of prior non-performance.

2. This project is not compliance-related.
3. Project priority is (high). Although this project was not triggered by any compliance warnings, it was ranked 17<sup>th</sup> on Oregon Health Authority’s Project Priority List for Health and Compliance Projects. It was deemed eligible for Bipartisan Infrastructure Law funding.
4. This project will utilize standard desktop and site visit monitoring procedure.
5. This is a traditional project and does not require any waivers.
6. This project is found to be compliant with applicable Department policies, Rules and Statutes. The programmatic and financial sections of the Eligibility Checklist have been completed and the application has been determined per current ORS to be eligible for funding.
7. During the completeness review process, Oregon Health Authority verified that the water system is not on the federal Suspension and Debarment list.

**Funding Recommendation**

Budget Line Items	BIL-GS Funding	Other Funds	Totals
Design / Engineering	\$112,510	\$262,531	<u>\$ 375,041</u>
Construction	\$2,334,586	\$0	<u>\$ 2,334,586</u>
Construction Contingency	\$233,459	\$0	<u>\$ 233,459</u>
Labor Standards	\$15,000	\$0	<u>\$ 15,000</u>
Environmental Review	\$5,000	\$0	<u>\$ 5,000</u>
Federal Requirements Assistance	\$15,000	\$0	<u>\$ 15,000</u>
Legal Fees	\$35,000	\$0	<u>\$ 35,000</u>
Permitting and Regulatory Fees	\$10,000	\$0	<u>\$ 10,000</u>
Administrative Costs	\$45,000	\$0	<u>\$ 45,000</u>
<b>Total</b>	<b><u>\$ 2,805,555</u></b>	<b><u>\$ 262,531</u></b>	<b><u>\$ 3,068,086</u></b>

<b>Source of Business Oregon Funds</b> (Indicate Loan/Grant/Principal Forgiveness, Bond, Private or Public, and Taxable or Tax Exempt)	<b>Amount</b>
SDWRLF BIL-GS Funding - Loan – Public – Tax Exempt	\$1,342,279
SDWRLF BIL-GS Funding – Principal Forgiveness - Public – Tax Exempt	\$1,463,276
<b>Total</b>	<b><u>\$2,805,555</u></b>

<b>Source of Other Funds</b> (For other State funds, indicate loan / grant, et cetera)	<b>Amount</b>
City General Fund	\$262,531
<b>Total</b>	<b><u>\$ 262,531</u></b>

**Proposed Work Plan**

<b>Activity</b>	<b>Date</b>
Environmental Review complete, including public notice	8/1/2024
Final Design Complete, including OHA/DEQ approval of plans	12/31/2024
Bidding and Contracting	2/28/2025
Construction Complete	9/30/2025
Project Closeout	11/30/2025

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**Financial Findings & Compliance**

**Repayment source**

The table below shows historic revenue from the Applicant’s Water Operating Fund for the last four audited fiscal years ending June 30, 2023.

<b>Water Operating Fund</b>				
<b>City of Rockaway Beach</b>				
<b>Performance Review</b>	<b>Audited</b>	<b>Audited</b>	<b>Audited</b>	<b>Audited</b>
<b>FY Ending June 30th</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
Beginning Fund Balance	897,970	1,113,378	1,638,416	2,334,539
<b><i>Revenues</i></b>				
Water Sales	1,231,962	1,270,709	1,345,823	1,353,862
Other Operating Revenues	0	0	0	0
<b>Operating Revenues</b>	<b>1,231,962</b>	<b>1,270,709</b>	<b>1,345,823</b>	<b>1,353,862</b>
Interest and Miscellaneous	6,745	2,712	1,864	10,380
Other Non-Operating Revenues	36,851	25,870	188,127	173,576
<b>Total Non-Operating Revenues</b>	<b>43,596</b>	<b>28,582</b>	<b>189,991</b>	<b>183,956</b>
<b>Total Revenues</b>	<b>1,275,558</b>	<b>1,299,291</b>	<b>1,535,814</b>	<b>1,537,818</b>
<b><i>Expenditures</i></b>				
Personal Services	388,885	390,963	400,095	429,804
Materials & Services	206,716	245,579	223,995	229,199
<b>Total Operating Expenses</b>	<b>595,601</b>	<b>636,542</b>	<b>624,090</b>	<b>659,003</b>
<b>Net Operating Income</b>	<b>636,361</b>	<b>634,167</b>	<b>721,733</b>	<b>694,859</b>
Capital Outlay	53,377	20,849	98,601	14,559
Debt Service	0	0	0	0
Total Expenses	648,978	657,391	722,691	673,562
<b>Net Revenues</b>	<b>626,580</b>	<b>641,900</b>	<b>813,123</b>	<b>864,256</b>
Net Transfers/Adjustments	(411,172)	(116,862)	(117,000)	(731,000)
<b>Ending Fund Balance</b>	<b>1,113,378</b>	<b>1,638,416</b>	<b>2,334,539</b>	<b>2,467,795</b>

The applicant’s Water Operating Fund reflects year-over-year growth in water sales, total revenue, and ending fund balance. Operating expense has seen controlled growth with average annual growth of 4% versus average annual revenue growth of 7%, resulting in significant net operating income reported over all periods reviewed. Internal transfers out of the fund reflecting internal payments for shared enterprise expense and transfers to the Water Master Plan Reserve Fund were recorded in all periods reviewed. The average ending fund balance over the period reviewed represents 300% of average annual total operating expense. The audited financial results suggest prudent fiscal management. Average net revenue after internal transfers was sufficient to repay the proposed debt at a DSCR of roughly 6 to 1.

### General Fund summary

The following table shows a performance review of the Applicant's General Fund for the last four audited fiscal years ending June 30, 2023.

<b>General Fund</b>				
<b>City of Rockaway Beach</b>				
<b>Performance Review</b>	<b>Audited</b>	<b>Audited</b>	<b>Audited</b>	<b>Audited</b>
<b>FY Ending June 30th</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
Beginning Fund Balance	420,354	669,880	1,088,035	1,374,147
<b><i>Revenues</i></b>				
Property Taxes	425,269	444,816	464,630	483,295
Other Operating Revenues	561,962	646,255	603,085	624,308
<b>Operating Revenues</b>	<b>987,231</b>	<b>1,091,071</b>	<b>1,067,715</b>	<b>1,107,603</b>
Interest and Miscellaneous	68,291	382,935	33,921	158,508
Grants	154,848	59,105	29,261	188,214
<b>Total Non-Operating Revenues</b>	<b>223,139</b>	<b>442,040</b>	<b>63,182</b>	<b>346,722</b>
<b>Total Revenues</b>	<b>1,210,370</b>	<b>1,533,111</b>	<b>1,130,897</b>	<b>1,454,325</b>
<b><i>Expenditures</i></b>				
Expenditures	1,366,636	1,293,931	1,161,762	1,351,816
<b>Total Operating Expenses</b>	<b>1,366,636</b>	<b>1,293,931</b>	<b>1,161,762</b>	<b>1,351,816</b>
<b>Net Operating Income</b>	<b>(379,405)</b>	<b>(202,860)</b>	<b>(94,047)</b>	<b>(244,213)</b>
Capital Outlay	0	0	0	0
Debt Service	114,132	180,325	70,612	123,543
Total Expenses	1,480,768	1,474,256	1,232,374	1,475,359
<b>Net Revenues</b>	<b>(270,398)</b>	<b>58,855</b>	<b>(101,477)</b>	<b>(21,034)</b>
Net Transfers/Adjustments	519,924	359,300	387,589	380,785
<b>Ending Fund Balance</b>	<b>669,880</b>	<b>1,088,035</b>	<b>1,374,147</b>	<b>1,733,898</b>

The applicant's General Fund reflects stable revenue with a slight growth trend secondary to property tax growth. General Fund operating revenue was offset by flat operating expenditure over the period reviewed resulting in negative operating income recorded in all periods. In all periods reviewed fund revenues were supplemented with internal fund transfers from enterprise funds reflecting reimbursement for shared service expense. On the basis of internal fund transfers, the General Fund ending fund balance reflects year-over-year growth. The average annual ending fund balance represents 94% of average annual operating expenditure. Debt service is for capital leases.

## Debt service analysis

Net Revenues for Debt Coverage: The following table reflects the Projected Net Revenues for the Applicant's Water Operations Fund only as provided with the Applicant's application. It reflects more than adequate net revenues necessary to provide the required 1.20 debt service coverage ratio.

<b>Summary of Revenues, Expenditures, and Debt Service Coverage</b>						
<b>City of Rockaway Beach</b>						
<b>PRO FORMA</b>	<b>Projected</b>					
<b>Year (ending June 30th)</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>
Beginning Fund Balance	2,467,795	3,054,269	2,631,347	2,863,081	2,997,939	3,085,721
<b>Operating Revenues</b>						
Water Sales	1,363,690	1,363,690	1,404,601	1,404,601	1,404,601	1,446,739
Service Fees	175,100	180,353	185,764	191,336	197,077	202,989
New Water Sales	105,704	108,875	112,141	115,505	118,971	122,540
<b>Total Operating Revenues</b>	<b>1,644,494</b>	<b>1,652,918</b>	<b>1,702,506</b>	<b>1,711,442</b>	<b>1,720,649</b>	<b>1,772,268</b>
<b>Operating Expenses</b>						
Personal Services	747,355	788,459	831,824	877,575	925,841	976,762
Materials & Services	380,716	389,138	397,812	406,746	415,949	428,427
Other Operating Expenses	0	0	0	0	0	0
<b>Total Operating Expenses</b>	<b>1,128,071</b>	<b>1,177,597</b>	<b>1,229,636</b>	<b>1,284,321</b>	<b>1,341,790</b>	<b>1,405,190</b>
<b>Debt Service</b>						
<b>Funds Avail for Debt</b>	<b>516,423</b>	<b>475,321</b>	<b>472,870</b>	<b>427,121</b>	<b>378,859</b>	<b>367,079</b>
IFA Proposed Loan	0	0	13,500	65,800	65,800	65,800
<b>Total Debt Service</b>	<b>0</b>	<b>0</b>	<b>13,500</b>	<b>65,800</b>	<b>65,800</b>	<b>65,800</b>
<b>Debt Service Coverage Ratio</b>	<i>N/a</i>	<i>N/a</i>	<i>35.03</i>	<i>6.49</i>	<i>5.76</i>	<i>5.58</i>
<b>Other Activities</b>						
<b>Cash Avail After Debt Service</b>	<b>516,423</b>	<b>475,321</b>	<b>459,370</b>	<b>361,321</b>	<b>313,059</b>	<b>301,279</b>
Loan Proceeds / Drawdowns	0	2,805,555	0	0	0	0
Capital Outlay (OUT)	0	(3,775,000)	(300,000)	(300,000)	(300,000)	(300,000)
Other Non-Operating Activity - SDC Fees	115,051	116,202	117,364	118,537	119,723	120,920
<b>Net Other Activity</b>	<b>115,051</b>	<b>(853,243)</b>	<b>(182,636)</b>	<b>(181,463)</b>	<b>(180,277)</b>	<b>(179,080)</b>
Net Transfers IN (OUT)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)
Adjustments	0	0	0	0	0	0
Net Transfers & Adjustments	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)
<b>Ending Fund Balance</b>	<b>3,054,269</b>	<b>2,631,347</b>	<b>2,863,081</b>	<b>2,997,939</b>	<b>3,085,721</b>	<b>3,162,920</b>
<b>Avg. Rev's per EDU (calc)</b>	\$115.94	\$116.04	\$119.02	\$119.15	\$119.29	\$122.36
<b>Rate per EDU (app)</b>	\$47.15	\$47.15	\$48.56	\$48.56	\$48.56	\$50.02
<b>EDU's (app)</b>	<b>1,182</b>	<b>1,187</b>	<b>1,192</b>	<b>1,197</b>	<b>1,202</b>	<b>1,207</b>
<b>Connections (app)</b>	<b>2,622</b>	<b>2,633</b>	<b>2,644</b>	<b>2,655</b>	<b>2,666</b>	<b>2,677</b>

The applicant's pro forma reflects sufficient net revenues to support the request debt with a minimum debt service coverage ratio of 5.58 to 1.00. The revenue categories include a line item for future water system growth, "New Water Sales", pegged at 3% annual growth, which is roughly double historical community population growth. Revenue from existing water customers is flat



with the exception of increases in FY 2026 and 2029 to reflect anticipated water rate increases. Operating expense is forecast to increase at 4.5% annually over the pro forma period. Even under a very favorable estimate for connection growth, the applicant’s revenue and expense forecasts are reasonable based on historical performance. The applicant assesses water rates bi-monthly, however the rate has been converted to a monthly rate for the purpose of underwriting and affordability assistance determination. Current monthly rates are below the community affordability rate of \$49.78.

**Existing obligations and risks**

The following table reflects the applicant’s debt service requirements as of their last audit [also comment on parity, concerns, and strengths/mitigations if needed].

Summary of Outstanding Debt Obligations						
City of Rockaway Beach						
Loan Source	June 30, 2023 Balance	Annual Debt Service	Payment Source	FF&C Pledged	Debt Priority	Maturity
<b>Net Direct Debt</b>						
Capital Leases	\$31,776	\$18,763	General Fund	No	N/A	2028
<i>Net Direct Debt</i>	<b>\$31,776</b>	<b>\$18,763</b>				
<b>Self-Supporting Debt</b>						
FF&C Refunding Bonds 2020	\$1,866,231	\$316,350	Repayment Fund	Yes	N/A	2046
<i>Self-Supporting Debt</i>	<b>\$1,866,231</b>	<b>\$316,350</b>				
<b>Gross Bonded Debt</b>	<b>\$1,898,007</b>	<b>\$335,113</b>				

The applicant carries minimal debt. The 2020 Full Faith and Credit Refunding Bonds are repaid through a debt service fee applied on water and sewer bills and accounted for through dedicated debt service funds.

**Underwriting standards**

The Applicant meets 16 of the 17 applicable indicators in the attached Financial Summary. The following indicators are not met:

- Top 10 Taxpayers as a percentage of Total Collections. [71% > 15% standard]

**RISK ANALYSIS SUMMARY:**

The applicant has a significantly narrow property tax base with 71% of 2023 collections coming from ten taxpayers. This risk factor is mitigated by the strength of the primary payment source. The applicant’s historical operation of water system assets has consistently generated net revenue sufficient to repay the proposed debt with an average coverage ratio of close to 6:1. The pro forma presentation of near-term revenue and expense reflects sufficient net revenue to repay the proposed debt with a minimum coverage ratio of 5.5:1. The applicant has minimal debt and current water rates are below the community affordability rate.

**(Top 10 Tax or User if failed indicator)**

Top Ten Taxpayers	Amount	
	Total Taxes	Assessed Value
Tillamook PUD	\$ 91,408	\$ 9,260,898
James Walling	\$ 52,098	\$ 5,274,630
Rockaway Beach Resort In	\$ 48,878	\$ 4,904,640
Twin Rocks Corp	\$ 45,530	\$ 4,610,380
Charter Communications	\$ 30,567	\$ 3,096,862
Dale Anderson	\$ 17,541	\$ 1,771,040
William Byron	\$ 17,238	\$ 1,745,280
BKNK LLC	\$ 14,653	\$ 1,482,130
Orloff & Scholtz	\$ 10,291	\$ 1,034,710
Conklin	\$ 9,986	\$ 1,010,490
Total	\$ 338,190	\$ 34,191,060

**Applicant's bond rating** The applicant's Full Faith and Credit Refunding Obligation, Series 2020 is rated AA- by S&P Global Ratings. AA- is an investment grade rating.

1. **Financial statement of program** This project is targeted to the upcoming 2023 BIL General Supplemental Funding Allocation under the Drinking Water State Revolving Fund Program of \$31,672,000.  
  
SDWRLF as of the June 10, 2024 "Cash and Commitments" report. Available funds \$5,275,257.
2. Remaining balance, if the project is approved, is \$2,469,702.
3. No existing Business Oregon loans.

Repayment Phase Loan Summary							
City of Rockaway Beach							
Program	Award Amount	Forgivable Loan Amount	SDWRLF Origination Fee	Loan Amount	Interest Rate	Amortized (in years)	Est. Annual Payment*
SDWRLF	\$2,805,555	\$1,463,276	\$0	\$1,342,279	2.69%	30	\$65,800
* Actual payment will likely be different. Payment rounded to nearest \$100. Construction Period Interest is expected to be paid prior to or with the 1st scheduled P&I payment date.							

## FINANCIAL RECOMMENDATION

Applicants under the Safe Drinking Water Revolving Loan Fund (SDWRLF) program are determined to be a Disadvantaged Community if the Median Household Income (MHI) of the water system’s service area is below the State’s MHI of \$76,632. The MHI for this community has been determined to be \$47,788 by the Oregon Health Authority through the project rating and ranking process resulting in Disadvantaged Community status.

This project is targeted to the 2023 Bipartisan Infrastructure Law (BIL) General Supplemental grant from the U.S. Environmental Protection Agency to the state of Oregon. Each BIL General Supplemental grant requires a portion of the grant to be provided to Disadvantaged Communities in the form of a forgivable loan. Projects funded through the 2023 BIL General Supplemental grant will receive approximately 52.16% of total award in the form of a forgivable loan. For the city of Rockaway Beach funding award, this results in a forgivable loan amount of \$1,463,276. This forgivable loan amount will be forgiven upon successful completion of the project.

Disadvantaged Communities may also qualify for a reduced interest rate depending on user rates at project completion. Reduced interest rate shall not result in water user rates projected to be below the “Threshold Rate” (calculated as MHI multiplied by 1.25% and divided by 12 months). The threshold rate of this community, \$49.78, is compared to the average monthly water rate per Equivalent Dwelling Unit (EDU) at project completion. An EDU is one residential connection or up to the equivalent of 7500 gallons of usage, whichever is less. If anticipated water user rates by project completion will not exceed the threshold rate, then the standard SDWRLF interest rate is applied. The SDWRLF interest rate is 80% of the agency’s current market rate. Since at project completion the projected user rate is estimated to be \$48.56 when applying the standard SDWRLF interest rate, a reduced interest rate was not applied. For this project the interest rate is 2.69%.

Financing is awarded in the amount of \$2,805,555 which is to be distributed as follows:

- \$1,342,279 SDWRLF BIL-GS Loan; 30-year term loan at a 2.69% interest rate.
- \$1,463,276 SDWRLF BIL-GS Forgivable Loan.

The proposed loan will be structured in two phases. The first phase [construction phase] will accrue interest on actual funds disbursed, estimated first disbursement will be in March 2025. All accrued interest during the construction phase (estimated to be \$25,500) will be due prior to or with the first principal and interest payment. The interest rate will be set at 2.69% for this phase. Construction is scheduled for completion by September 2025.

The second phase (Repayment Phase) will begin with constant annual payments of principal and interest sufficient to repay the outstanding principal balance, together with interest, within a 30-year period. The estimated first principal and interest payment due date is December 1, 2026. The loan can be prepaid in part or in full without penalty. The interest rate will be set at 2.69% for the repayment phase. The "Repayment Phase Loan Summary" table summarizes the repayment phase of the proposed financing.

**The present value of the interest rate subsidy is \$111,198 and when combined with grant/forgivable loan of \$1,463,276 the total project subsidization is \$1,574,474.**

### *Funding Recommendation and Conditions of Award*

#### **Conditions:**

Based upon the following analysis, the award recommended above should be subject to the following conditions:

1. **Full Faith and Credit Pledge.** The Recipient will be required to pledge its full faith and credit and taxing power within the limitations of Article XI, Sections 11 and 11b, of the Oregon Constitution to pay the amounts due under the Financing Contract. All amounts due under this Contract are payable from all legally available funds of the Recipient.
2. **Pledge of Net Revenues as Source of Repayment.** The Recipient will be required to grant to the State a security interest in and irrevocably pledge its Net Revenues of the Recipient's Water Operations Fund to pay all of the obligations owed by the Recipient to the State under the Financing Contract.
3. **Financial Covenants.** The Recipient shall charge rates and fees in connection with the operation of the Water Operations Fund Systems which, when combined with other gross revenues, are adequate to generate Net Revenues each fiscal year at least equal to one hundred twenty (120%) percent of the annual debt service due in the fiscal year on the Loan, any outstanding senior lien obligations, and any outstanding Parity Obligations.
4. **Parity.** "No Parity or Senior Option". No additional debt secured with water system revenue without the prior consent of the agency.

**This financial review is the financial portion of the Capacity Assessment. The Technical and Managerial portions of the assessment are included in a separate document.**

#### **List of Attachments**

Financial Summary

Budget recommends that this award come from [ ] Oregon Bond Bank [X] Program Funds

Karl Mielke 7/29/2924

Karl Mielke, Deputy CFO Date

APPROVAL:

[X] Approve project and recommendation as submitted.

[ ] Approve project and recommendation with the following modifications:

Chris Cummings 7/26/2024

Chris Cummings, Deputy Director Date  
Economic Development

The IFA Board shall consider *loans* over \$2,999,999, *grants* over \$500,000 and Safe Drinking Water forgivable loans over \$750,000 for approval. The Drinking Water Advisory Committee shall consider Safe Drinking Water projects over \$6,000,000.

This project exceeds the regular approval dollar amount.

[ ] Infrastructure Finance Authority Board has discussed the proposed project and has concluded to approve the award.

[ ] Infrastructure Finance Authority Board has discussed the proposed project and has concluded to approve the award with the following modifications:

Chris Cummings, Deputy Director  
Economic Development

Board Meeting Date

**RESOLUTION NO. 2024-XX**

**A RESOLUTION ADJUSTING APPROPRIATIONS FOR THE  
2024-2025 FISCAL YEAR BUDGET**

**WHEREAS**, the 2024-2025 Fiscal Year Budget was duly authorized and adopted by Resolution on June 12, 2024; and

**WHEREAS**, ORS 294.463 provides that transfers of appropriations may be made within a fund when authorized by ordinance or resolution of the governing body of a municipal corporation; and

**WHEREAS**, the contingency transfer does not exceed 15%, and may therefore be carried through resolution; and

**WHEREAS**, a transfer within the General Fund from Contingency to the Administration Department (City Hall Operations GL account 6830) is necessary due to unanticipated expenditures related to attorney fees.

**NOW, THEREFORE, BE IT RESOLVED THAT**

**Section 1.** The City Council of the City of Rockaway Beach hereby authorizes appropriation transfers to the 2024-2025 Fiscal Year Budget as follows:

<b>General Fund</b>	<b>Original</b>	<b>Increase</b>	<b>Decrease</b>	<b>Revised</b>
Contingency	\$ 329,848		\$ XX,XXX	\$ XXX,XXX
Administration Department.	\$ 775,960	\$ XX,XXX		\$ XXX,XXX

**Section 2.** This Resolution shall be effective immediately upon adoption.

**APPROVED AND ADOPTED BY THE CITY COUNCIL THE X<sup>th</sup> DAY OF  
X 2024.**

APPROVED

---

Charles McNeilly, Mayor

ATTEST

---

Melissa Thompson, City Recorder

CITY OF ROCKAWAY BEACH

2024/2025

# SMALL COMMUNITY GRANT



GRANT FUNDS AVAILABLE: \$<>  
MAXIMUM GRANT REQUESTS: \$4,999.99

Applications open <>, 2024  
Deadline to apply:  
<>day, <>, 2024 at 12:00 pm

Questions? Need assistance?  
Grant Manager , <>  
<>@corb.us  
(503) 374-1752 ext. <>



## OVERVIEW

The Small Community Grant program provides support to non-profit, not-for-profit organizations, and community entities that serve the Rockaway Beach community. This grant program accepts applications twice per fiscal year. Organizations and entities may only submit one application for consideration per funding cycle.

Grant funds are available to support organizations and entities which provide:

- Assistance for essential utilities, food, medical or mental health needs, clothing, or shelter.
- Educational, cultural, social, physical, or recreational opportunities for residents.
- Positive volunteerism that enhances city aesthetics, benefits the environment, promotes positive community engagement, or support city initiatives or projects.

## ELIGIBILITY

Eligible Applicants:

- Non-profit and not-for-profit organizations
- Community entities

*Eligible Applicants may not have any in-progress grants and must have satisfactorily closed out all previous grants issued by the City of Rockaway Beach.*

Examples of Eligible Projects:

- Healthy meals program
- Active living program
- Health services
- Early literacy program
- Youth development programs
- Small facility improvements or operational items with a lifespan of 3+ years.





## GRANT TIMELINE

Applications open and publication of notice	<>, 2024
Applications due, 12:00 pm	<>, 2024
Planning Commission review and recommendations	<>, 2024
City Council award of decision	<>, 2024
Notification to Grantees; Contracts sent to grant recipients	<>, 2024
Project deadline - 12 months from City Council decision	<>, 2024
Project Expense Worksheet and Grant Close Out Form due	<>, 2024



## **KEY PRINCIPLES**

In the application, eligible Applicants are asked to describe how the proposed project contributes to a healthy, inclusive, charitable, and equitable community. The City of Rockaway Beach believes that supporting its organizations and entities that encourage this type of community building will make a better future for everyone.

Projects funded through the Small Community Grant must predominately support or be attended by the Rockaway Beach community.

## **FUNDING PRIORITIES**

**1.**

Projects that make the largest impact for Rockaway Beach residents.

**2.**

Projects that fill an existing need that would not be met without grant funding.

**3.**

Projects that bring the community together and create positive community engagement.

## **INELIGIBLE PROJECTS**

- Tourism based/supported projects
- Day-to-day operational expenses and payroll
- Marketing and promotional projects
- Political activities and fundraising for political activities
- Projects that drive/support commerce

*For profit businesses are encouraged to apply for building improvement funds and/or marketing needs through the City's Business Facade Grant and/or Marketing Grant programs.*

# SELECTION CRITERIA

All applications for eligible projects will be rated and ranked based on the following criteria. While the following criteria has been deemed most important, additional relevant factors beyond the score may be worthy of consideration.

## **Healthy Community Score (25 points)**

A healthy community is one where access to fresh, healthy foods are available, educational resources are provided, physical fitness is promoted, recreational opportunities are encouraged, medical and mental health needs are met, and the environment is cared for.

- Does the project offer opportunities to improve physical or mental health?
- Does the project provide healthy opportunities to those who may not otherwise have access?
- Does the project promote healthy lifestyle changes?

## **Inclusive Community Score (25 points)**

This score measures how well the project strengthens the local sense of community. In an inclusive community diversity is valued, social opportunities are plentiful, community involvement thrives, and residents work together to support city initiatives or projects.

- Does the project create new social opportunities for residents?
- Does the project strengthen the local sense of community or serve an underrepresented population?
- Does the project bring the community together to work towards a common goal?

## **Charitable Community Score (25 points)**

This score measures how well the project supports local charitable efforts. Charitable communities value giving back to others, promote volunteer opportunities, and strive to meet the needs of the local community.

- Does the project offer new opportunities for residents to volunteer to better the community?
- Does the project provide services or opportunities currently lacking in the community?

## **Equitable Community Score (25 points)**

This score measures how well the project encourages equity throughout the local community. Equitable communities provide a helping hand to residents in need and meet the needs of underserved community members.

- Does the project assist residents who need additional support?
- Does the project provide new services or assistance to underserved community members?

## **SCORING OVERVIEW**

*Baseline Scoring*

*Up to*

Healthy Community Score	25 points
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Inclusive Community Score	25 points
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Charitable Community Score	25 points
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Equitable Community Score	25 points
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# **GRANT REVIEW PROCESS**

The City of Rockaway Beach staff will provide guidance on applications if presented a minimum of 14 calendar days prior to the grant application deadline, <>, 2024.

Each application received will first be reviewed by the Grant Manager for completeness. If the application is incomplete or not received by the deadline, it will not be submitted to the Planning Commission for consideration.

The Planning Commission will review, score, and rank all of the applications received, then make initial scoring recommendations for funding. The Planning Commission's recommendations will be presented to the City Council at their workshop on <>, 2024.

The City Council will review the applications, the Planning Commission's recommendations, and make the award decision at their regular meeting on <>, 2024.



# **FUNDING PROCESS**

Once the grant is awarded and contract is signed, Grantees can start on projects.

Grant funds will be issued within two weeks of contract execution via check.

Upon completion of the project, the Grantee shall complete the Project Expense Worksheet and Grant Close Out form. The Grantee shall be scheduled to make a five-minute presentation to the City Council to publicly share how the grant funds were spent. The presenter shall not be a member of the governing body.

The City Council shall determine the grant complete through a motion at a public meeting.

# SMALL COMMUNITY GRANT

## APPLICATION

### APPLICANT INFORMATION

**Organization Name**

**Contact Name**

**Title**

**Phone Number**

**Email**

**Organization Type**

**Physical Address**

**Mailing Address**

### PROJECT CHECKLIST

- ✓ **Complete Application**
- ✓ **Attach Plans, as needed**
- ✓ **Submit Application by 12:00 pm on <>, 2024**

*Preferred delivery format is one combined PDF with all documents in order listed above. The City of Rockaway Beach will accept multiple PDF documents if titled in the following format; [Organization Name, Page X of X]. Paper copies will also be accepted. You will receive an email confirmation of receipt from the Grant Manager within 2 business days of submittal. It is the Applicant's responsibility to verify successful receipt of application. If confirmation is not received in the allotted time frame, contact the Grant Manager via email.*

### PROJECT OVERVIEW

**Project Title**

**Grant Request**

**Total Project Cost**

Questions? Need assistance?  
Grant Manager, <>  
<>@corb.us  
(503) 374-1752 ext. <>



## PROJECT DESCRIPTION

*Answers must fit in the space with provided formatting.*

**Provide a complete description of the project's intended function and demographic(s) that will be served by the project.** *If relevant, attach design drawings, plans, etc.*

## HEALTHY COMMUNITY

*Answers must fit in the space with provided formatting.*

**Explain how the project contributes to a healthier local community.**

A healthy community is one where access to fresh, healthy foods are available, educational resources are provided, physical fitness is promoted, recreational opportunities are encouraged, medical and mental health needs are met, and the environment is cared for.

## INCLUSIVE COMMUNITY

*Answers must fit in the space with provided formatting.*

**Explain how the project assists the local community in promoting inclusivity.**

In an inclusive community diversity is valued, social opportunities are plentiful, community involvement thrives, and residents work together to support city initiatives and projects.



## CHARITABLE COMMUNITY

*Answers must fit in the space with provided formatting.*

### **Explain how the project supports local charitable efforts.**

Charitable communities value giving back to others, promote volunteer opportunities, and strive to meet the needs of the local community.

## EQUITABLE COMMUNITY

*Answers must fit in the space with provided formatting.*

### **Explain how the project encourages equity throughout the local community.**

Equitable communities provide a helping hand to residents in need and meet the needs of underserved community members.

# PROJECT BUDGET

Income	BUDGET
City of Rockaway Beach Small Community Grant	\$
Other Income	
<i>Matching amounts are NOT required, but if your project exceeds the grant fund limit, use this section to add additional funding resources</i>	
	\$
	\$
	\$
<b>TOTAL INCOME</b>	
	\$

Expenses		
Description	Estimate Obtained (Y/N)	Budget
<i>If estimates from tentative vendors have been obtained, please attach those to the application.</i>		
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
<b>TOTAL BUDGET</b>		
		\$

*Total income should equal total expenses*

## AUTHORIZATIONS AND CERTIFICATIONS

Initial the following authorizations and certifications

**I am an eligible Applicant and submitted an eligible project.** Refer to above grant information for details.

**I agree to comply with federal, state, and local rules and regulations, where applicable.**

**Legal title affirmation.** I understand that legal title to the completed project must be held for at least 3 years following the project completion or that some other arrangement, satisfactory to the City of Rockaway Beach, will be put in place to protect the investment of public funds in this project for a 3-year period.

*Required for facility improvement projects only.*

**I agree to enter into an agreement with the City of Rockaway Beach upon grant approval.** The City of Rockaway Beach reserves the right to include such additional special conditions or requirements in each contract, as it might deem necessary or desirable to protect the public investment of tax dollars in the project.

**I agree to provide a W9-Request for Taxpayer Identification Number and Certification.** I certify that the Federal Employer Identification Number and business type provided in the above application is accurate and the organization is not subject to back-up withholding.

**I agree to provide current, executed Articles of Incorporation or Organization for the non-profit or not for profit organization.**

*Not applicable to other community entities.*

**I give permission to the City of Rockaway Beach to use my project for public information, promotional, and educational purposes.**

**Hold harmless and Indemnification.** I agree to hold the City of Rockaway Beach harmless for any liens, claims, damages, or other liabilities related to the project, and to indemnify and defend the City of Rockaway Beach from any claims, costs, damages, or expenses of any kind, including attorney's fees and other costs and expenses of litigation, arising out of the project.

**Authorization.** I certify to the best of my knowledge that all information contained in this application, including all attachments, certifications, is valid and accurate. I further certify that the application has been reviewed and approved by the authorized owner(s), manager(s) with appropriately delegated authority and/or in accordance with the organization's Articles of Incorporation or Organization.

Signature

Date

Printed Name

Title



# SMALL COMMUNITY GRANT

Applicant & Project Title	Healthy Community (up to 25 points)	Inclusive Community (up to 25 points)	Charitable Community (up to 25 points)	Equitable Community (up to 25 points)	Additional Comments
Applicant #1 Project Name					
Applicant #2 Project Name					
Applicant #3 Project Name					
Applicant #4 Project Name					
Applicant #5 Project Name					
Applicant #6 Project Name					
Applicant #7 Project Name					

CITY OF ROCKAWAY BEACH

2024/2025

# LARGE COMMUNITY GRANT



GRANT FUNDS AVAILABLE: \$<>  
GRANT REQUESTS: \$5,000 - \$20,000

Applications open <>, 2024  
Deadline to apply:  
<>day, <>, 2024 at 12:00 pm

Questions? Need assistance?  
Grant Manager, <>  
<>@corb.us  
(503) 374-1752 ext. <>



## OVERVIEW

The Large Community Grant program provides support to non-profit and not-for-profit organizations that serve the Rockaway Beach community. This grant program accepts applications once per fiscal year. Organizations and entities may only submit one application for consideration.

Grant funds are available to support organizations and entities which provide:

- Assistance for essential utilities, food, medical or mental health needs, clothing, or shelter.
- Educational, cultural, social, physical, or recreational opportunities for residents.
- Positive volunteerism that enhances city aesthetics, benefits the environment, promotes positive community engagement, or support city initiatives or projects.

## ELIGIBILITY

Eligible Applicants:

- Non-profit and not-for-profit organizations

*Eligible Applicants may not have any in-progress grants and must have satisfactorily closed out all previous grants issued by the City of Rockaway Beach.*

Examples of Eligible Projects:

- Healthy meals program
- Active living program
- Health services
- Early literacy program
- Youth development programs
- Facility improvements with a lifespan of 10+ years.



## GRANT TIMELINE

Applications open and publication of notice	<>, 2024
Applications due, 12:00 pm	<>, 2024
Planning Commission review and recommendations	<>, 2024
City Council award of decision	<>, 2024
Notification to Grantees; Contracts sent to grant recipients	<>, 2024
Project deadline - 18 months from City Council decision	<>, 2024
Project Expense Worksheet and Grant Close Out Form due	<>, 2024



## **KEY PRINCIPLES**

In the application, eligible Applicants are asked to describe how the proposed project contributes to a healthy, inclusive, charitable, and equitable community. The City of Rockaway Beach believes that supporting its organizations and entities that encourage this type of community building will make a better future for everyone.

Projects funded through the Large Community Grant must predominately support or be attended by the Rockaway Beach community.

## **FUNDING PRIORITIES**

**1.**

Projects that make the largest impact for Rockaway Beach residents.

**2.**

Projects that fill an existing need that would not be met without grant funding.

**3.**

Projects that bring the community together and create positive community engagement.

## **INELIGIBLE PROJECTS**

- Tourism based/supported projects
- Day-to-day operational expenses and payroll
- Marketing and promotional project
- Political activities and fundraising for political activities
- Projects which drive/support commerce

*For-profit businesses are encouraged to apply for building improvement funds and/or marketing needs through the City's Business Facade Grant and/or Marketing Grant programs.*



# SELECTION CRITERIA

All applications for eligible projects will be rated and ranked based on the following criteria. While the following criteria has been deemed most important, additional relevant factors beyond the score may be worthy of consideration.

## Healthy Community Score (25 points)

A healthy community is one where access to fresh, healthy foods are available, educational resources are provided, physical fitness is promoted, recreational opportunities are encouraged, medical and mental health needs are met, and the environment is cared for.

- Does the project offer opportunities to improve physical or mental health?
- Does the project provide healthy opportunities to those who may not otherwise have access?
- Does the project promote healthy lifestyle changes?

## Inclusive Community Score (25 points)

This score measures how well the project strengthens the local sense of community. In an inclusive community diversity is valued, social opportunities are plentiful, community involvement thrives, and residents work together to support city initiatives or projects.

- Does the project create new social opportunities for residents?
- Does the project strengthen the local sense of community or serve an underrepresented population?
- Does the project bring the community together to work towards a common goal?

## Charitable Community Score (25 points)

This score measures how well the project supports local charitable efforts. Charitable communities value giving back to others, promote volunteer opportunities, and strive to meet the needs of the local community.

- Does the project offer new opportunities for residents to volunteer to better the community?
- Does the project provide services or opportunities currently lacking in the community?

## Equitable Community Score (25 points)

This score measures how well the project encourages equity throughout the local community. Equitable communities provide a helping hand to residents in need and meet the needs of underserved community members.

- Does the project assist residents who need additional support?
- Does the project provide new services or assistance to underserved community members?

## SCORING OVERVIEW

*Baseline Scoring*

*Up to*

Healthy Community Score	25 points
Inclusive Community Score	25 points
Charitable Community Score	25 points
Equitable Community Score	25 points

# **GRANT REVIEW PROCESS**

The City of Rockaway Beach staff will provide guidance on applications if presented a minimum of 14 calendar days prior to the grant application deadline, <>, 2024.

Each application received will first be reviewed by the Grant Manager for completeness. If the application is incomplete or not received by the deadline, it will not be submitted to the Planning Commission for consideration.

The Planning Commission will review, score, and rank all of the applications received, then make initial scoring recommendations for funding. The Planning Commission's recommendations will be presented to the City Council at their workshop on <>, 2024.

The City Council will review the applications, the Planning Commission's recommendations, and make the award decision at their regular meeting on <>, 2024.



# **FUNDING PROCESS**

Once the grant is awarded and contract is signed, Grantees can start on projects.

Grant funds will be issued within two weeks of contract execution via check.

Upon completion of the project, the Grantee shall complete the Project Expense Worksheet and Grant Close Out form. The Grantee shall be scheduled to make a five-minute presentation to the City Council to publicly share how the grant funds were spent. The presenter shall not be a member of the governing body.

The City Council shall determine the grant complete through a motion at a public meeting.

# LARGE COMMUNITY GRANT

## APPLICATION

### APPLICANT INFORMATION

**Organization Name**

**Contact Name**

**Title**

**Phone Number**

**Email**

**Organization Type**

**Physical Address**

**Mailing Address**

### PROJECT CHECKLIST

- ✓ **Complete Application**
- ✓ **Attach Plans, as needed**
- ✓ **Attach 3 Letters of Support**
- ✓ **Submit Application by 12:00 pm on <>, 2024**

*Preferred delivery format is one combined PDF with all documents in order listed above. The City of Rockaway Beach will accept multiple PDF documents if titled in the following format; [Organization Name, Page X of X]. Paper copies will also be accepted. You will receive an email confirmation of receipt from the Grant Manager within 2 business days of submittal. It is the Applicant's responsibility to verify successful receipt of application. If confirmation is not received in the allotted time frame, contact the Grant Manager via email.*

### PROJECT OVERVIEW

**Project Title**

**Grant Request**

**Total Project Cost**

Questions? Need assistance?  
Grant Manager, <>  
<>@corb.us  
(503) 374-1752 ext. <>



## PROJECT DESCRIPTION

*Answers must fit in the space with provided formatting.*

**Provide a complete description of the project's intended function and demographic(s) that will be served by the project.** *If relevant, attach design drawings, plans, etc.*

## HEALTHY COMMUNITY

*Answers must fit in the space with provided formatting.*

**Explain how the project contributes to a healthier local community.**

A healthy community is one where access to fresh, healthy foods are available, educational resources are provided, physical fitness is promoted, recreational opportunities are encouraged, medical and mental health needs are met, and the environment is cared for.

## INCLUSIVE COMMUNITY

*Answers must fit in the space with provided formatting.*

**Explain how the project assists the local community in promoting inclusivity.**

In an inclusive community diversity is valued, social opportunities are plentiful, community involvement thrives, and residents work together to support city initiatives and projects.

## CHARITABLE COMMUNITY

*Answers must fit in the space with provided formatting.*

### **Explain how the project supports local charitable efforts.**

Charitable communities value giving back to others, promote volunteer opportunities, and strive to meet the needs of the local community.

## EQUITABLE COMMUNITY

*Answers must fit in the space with provided formatting.*

### **Explain how the project encourages equity throughout the local community.**

Equitable communities provide a helping hand to residents in need and meet the needs of underserved community members.

## PROJECT WORK PLAN

The project work plan highlights key objectives of your application, how you plan to achieve them, and how to intend to measure the impacts.

The work plan describes project goals. Each goal further defines the following:

- Budget amount per goal
- Key action steps
- Timeline to complete each step
- Expected outcome for each step
- Evaluation method for each step

Complete the template below. Limited to three goals in formatting provided.

*Verify that "Budget to Complete Goals" total matches "Budget Totals"*

### **GOAL #1:**

### **Budget to Complete Goal:**

Key Action Steps	Timeline	Expected Outcome	Evaluation Method



**GOAL #2:**

**Budget to Complete Goal:**

Key Action Steps	Timeline	Expected Outcome	Evaluation Method

**GOAL #3:**

**Budget to Complete Goal:**

Key Action Steps	Timeline	Expected Outcome	Evaluation Method

# PROJECT BUDGET

Income	BUDGET
City of Rockaway Beach Large Community Grant	\$
Other Income	
<i>Matching amounts are NOT required, but if your project exceeds the grant fund limit, use this section to add additional funding resources</i>	
	\$
	\$
	\$
<b>TOTAL INCOME</b>	
	\$

Expenses		
Description	Estimate Obtained (Y/N)	Budget
<i>If estimates from tentative vendors have been obtained, please attach those to the application.</i>		
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
<b>TOTAL BUDGET</b>		\$

*Total income should equal total expenses*

# AUTHORIZATIONS AND CERTIFICATIONS

Initial the following authorizations and certifications

**I am an eligible Applicant and submitted an eligible project.** Refer to above grant information for details.

**I agree to comply with federal, state, and local rules and regulations, where applicable.**

**Legal title affirmation.** I understand that legal title to the completed project must be held for at least 10 years following the project completion or that some other arrangement, satisfactory to the City of Rockaway Beach, will be put in place to protect the investment of public funds in this project for a 10-year period.

*Required for facility improvement projects only.*

**I agree to enter into an agreement with the City of Rockaway Beach upon grant approval.** The City of Rockaway Beach reserves the right to include such additional special conditions or requirements in each contract, as it might deem necessary or desirable to protect the public investment of tax dollars in the project.

**I agree to provide a W9-Request for Taxpayer Identification Number and Certification.** I certify that the Federal Employer Identification Number and business type provided in the above application is accurate and the organization is not subject to back-up withholding.

**I agree to provide current, executed Articles of Incorporation or Organization for the non-profit or not for profit organization.**

**I give permission to the City of Rockaway Beach to use my project for public information, promotional, and educational purposes.**

**Hold harmless and Indemnification.** I agree to hold the City of Rockaway Beach harmless for any liens, claims, damages, or other liabilities related to the project, and to indemnify and defend the City of Rockaway Beach from any claims, costs, damages, or expenses of any kind, including attorney's fees and other costs and expenses of litigation, arising out of the project.

**Authorization.** I certify to the best of my knowledge that all information contained in this application, including all attachments, certifications, is valid and accurate. I further certify that the application has been reviewed and approved by the authorized owner(s), manager(s) with appropriately delegated authority and/or in accordance with the organization's Articles of Incorporation or Organization.

Signature

Date

Printed Name

Title



# LARGE COMMUNITY GRANT

Applicant & Project Title	Healthy Community (up to 25 points)	Inclusive Community (up to 25 points)	Charitable Community (up to 25 points)	Equitable Community (up to 25 points)	Additional Comments
Applicant #1 Project Name					
Applicant #2 Project Name					
Applicant #3 Project Name					
Applicant #4 Project Name					
Applicant #5 Project Name					
Applicant #6 Project Name					
Applicant #7 Project Name					