

ARCH CAPE DOMESTIC WATER SUPPLY DISTRICT DRAFT MINUTES

16 December 2016

A quorum was present.

Water Board: Virginia Birkby, President
Ron Schiffman, Vice-President
Debra Birkby, Treasurer
Dan Seifer

Sanitary Board: Darr Tindall (non-voting)

Public:

Staff: Phil Chick, District Manager
Steve Hill, Secretary

Ms. Virginia Birkby called the meeting to order at 7:19pm.

Public Comments: None.

Agenda: Mr. Seifer moved acceptance of the agenda which was seconded by Mr. Schiffman. All in Favor (AIF).

Consent Agenda: . Mr. Seifer moved acceptance of the consent agenda where the minutes were corrected to read, “to rescind ...” in place of ‘recommend’ in the second paragraph on page 2 which was seconded by Mr. Schiffman. AIF.

Old Business:

Irrigation and Leak Policies: The general discussion on an irrigation and leak policy revolved around whether the district should provide a relief mechanism for irrigation systems which failed subject to the regular maintenance of these systems and submission of annual reports by customers or charging for metered water used regardless of irrigation system functioning properly. Existing policy absolves customer responsibility for excess water usage charges based upon a known repaired plumbing leak.

There was general consensus that the districts needed a standardized and consistent policy.

Mr. Seifer moved acceptance of the irrigation and leak policy as drafted by Mr. Schiffman which would serve as a replacement for the existing policy which did not receive a second. Moved to next month.

Admin Assistant Contract: Mr. Seifer moved execution of the administrative assistant contract (attached) as recommended by the Personnel and Joint Contract Committee (PJCC) which was seconded by Mr. Schiffman. AIF.

District Manager Contract Revision: Ms. Debra Birkby recommended execution of the District Manager Contract Revision (attached) as recommended by the PJCC which was seconded by Mr. Seifer. AIF.

2nd Water Source Assessment IFA Contract: Mr. Chick confirmed to the Board that Mr. Curt McLeod had worked on the scope of work reflected in the contract and was prepared on behalf of Curran-McLeod Inc. to undertake this work on behalf of the district. The reference on the signature page was lined out to read, “Arch Cape Domestic Water Supply District”.

Mr. Seifer moved adoption of Resolution 16-09 WD (attached) and the IFA second water source assessment contract (attached) as corrected which was seconded by Ms. Debra Birkby. AIF.

SDC Financing (Bancroft): Moved to next month.

New Business:

North Coast Land Conservancy Collaboration: A general discussion ensued of the district’s desire to be fully supportive of the recent change in ownership of the district’s watershed and the part the Board could play in improved conservation and management for this resource. Moved to next month’s agenda.

Reports:

Accounts Receivable: Accounts receivable were reported to be in excellent condition.

District Managers Report: (attached) .

Treasurer’s Report: The Columbia Bank checking account was reported to have a balance at month end of \$53,106 with the LGIP balance at \$48,098 and the accounts to have been successfully reconciled by Mr. Chick.

Board of Directors’ Comments and Reports: Mr. Seifer acknowledged the many years of support to the district and Arch Cape community by the late Mr. George Cerelli.

January Agenda Items: Bancroft SDC financing, Eco-Trust alliance, Irrigation and leak policy. The water district will meet first in January.

Public Comment: None.

Ms. Virginia Birkby adjourned the meeting at 8:18pm.

Respectfully submitted,

Steve Hill

Attest _____
Ms. Virginia Birkby, President

**ARCH CAPE DOMESTIC WATER SUPPLY DISTRICT
ADMINISTRATIVE SUPPORT PERSONAL SERVICES AGREEMENT**

THIS PERSONAL SERVICES CONTRACT ("Contract") is made by and between the Arch Cape Domestic Water Supply District (ACDWSD), a water district formed under ORS Chapter 264, and, Stephen M. Hill ("Contractor").

RECITALS

- A. ACDWSD needs the services of professional Contractor with the particular training, ability, knowledge, and experience possessed by Contractor and wishes to continue receiving such services from Contractor.
- B. ACDWSD desires assistance with the administration of the District as it relates to Finance, accounts and general services limited to the job descriptions.
- C. The parties wish to set forth the terms and conditions of their agreement in this Personal Services Contract ("Contract").

AGREEMENT

- 1. **SCOPE OF WORK.** Contractor shall provide professional, technical and expert services to ACDWSD, as more particularly described in the attached, "Contractor Scope of Services Arch Cape Domestic Water Supply and Sanitary Districts – Exhibit A."
- 2. **EFFECTIVE DATE AND DURATION OF CONTRACT.** This Contract shall become effective on January 1, 2017. This Contract shall remain in full force and effect until December 31, 2019. Upon written agreement of the parties the contract may be extended to terminate on December 31, 2022.
- 3. **PAYMENT.** ACDWSD agrees to pay Contractor a monthly lump sum payment of two thousand two hundred and thirty-two dollars (\$2,232.00) by the Arch Cape Domestic Water Supply District for the services and work required under this Contract through June 30, 2017 increasing to two thousand two hundred and ninety-nine dollars (\$2,299.00) beginning July 01, 2017 and thereafter.
 - 3.1. **CONTRACTOR** shall submit monthly billings for work performed from January 01, 2017 through December 31, 2019.
 - 3.2. ACDWSD shall pay Contractor for the amount billed within thirty (30) days after receiving Contractor's billing. ACDWSD shall not pay any amount in excess of the compensation amounts set forth above nor shall ACDWSD pay Contractor any fees or costs which ACDWSD reasonably disputes.
 - 3.3. **FAILURE TO PERFORM.** In the event that Contractor fails to perform any material obligations, ACDWSD reserves the right to give Contractor written notice of such failure. Contractor will then have thirty (30) calendar days to resolve the failure. If the failure is not resolved within thirty (30) days after notification, ACDWSD reserves the right to withhold all money that is due and payable to Contractor. Such a remedy is in addition to other remedies that might be available to ACDWSD.

Moreover, ACDWSD reserves the right to terminate the contract if Contractor exceeds thirty (30) days of non-performance.

4. **CHANGES.** This Contract, including all exhibits attached hereto, shall not be waived, altered, modified, supplemented, extended or amended, in any manner whatsoever, except by written instrument, executed by both parties. The parties acknowledge and agree that this Contract may be amended to specifically provide for changes (additions or subtractions) to Contractor services that are within or directly related to the Scope of Work.
5. **INDEPENDENT CONTRACTOR STATUS/CONTRACTOR WARRANTIES.** Contractor shall be free from ACDWSD direction and control over the means and manner of providing the labor or service, subject only to the specifications of the desired results. Contractor shall furnish the tools or equipment necessary for the contracted labor or services.
 - 5.1. Contractor agrees, warrants, represents and certifies that:
 - 5.1.1. Contractor is engaged as an independent Contractor and will be responsible for any federal or state taxes applicable to any payments made under this Contract.
 - 5.1.2. Contractor has filed federal and state income tax returns in the name of the business, for the previous year, for labor or services performed as an independent Contractor in the previous year.
 - 5.1.3. The work or services performed under this Contract shall be performed in a good and workmanlike manner and in accordance with the degree of skill and diligence normally employed by professional Contractors performing the same or similar services at the time and location such services are performed.
 - 5.1.4. Contractor has the power and authority to enter into and perform this Contract and, when executed and delivered, this Contract shall be a valid and binding obligation of Contractor enforceable in accordance with its terms.
 - 5.1.5. Contractor has read, understands and agrees to be bound by each of the terms and conditions of this Contract.
 - 5.1.6. Contractor represents and warrants that Contractor is not an employee of ACDWSD is not currently employed by a government agency and, meets the specific independent Contractor standards of ORS 670.600.
6. **OTHER CONTRACTORS.** ACDWSD may undertake or award other contracts for additional or related work, and Contractor shall fully cooperate with such additional Contractors and with any ACDWSD employees concerned with such additional or related work, and shall coordinate the performance of work under this Contract and contract documents, with such additional or related work. If such award results in additional work for Contractor beyond the scope of this agreement, ACDWSD will negotiate with Contractor for the payment of additional compensation. Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by any ACDWSD employee. Contractor shall notify ACDWSD as soon as possible if work being performed by any other Contractor is interfering with or will interfere with the work to be performed by Contractor under this Agreement.

7. SUBCONTRACTORS, ASSIGNMENT; SUCCESSORS-IN-INTEREST.

- 7.1. Except as specifically authorized in the contract documents, Contractor shall not make any subcontract with any other party for furnishing any of the work and services contemplated under the contract documents or assign or transfer any interest in this Contract, without obtaining the express prior written consent of ACDWSD.
- 7.2. Contractor shall be wholly responsible for the performance of all subcontractors and for their acts, errors and omissions, and those of persons either directly or indirectly employed by Contractor, and the fact that subcontractors are subject to the approval of ACDWSD shall not affect Contractor's responsibility in this regard. In any case, this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.
- 7.3. Contractor shall bind every subcontractors to all terms and conditions anywhere contained in the contract documents as far as applicable to the work of such subcontractors so that subcontractor assumes toward Contractor and toward the work all the obligations and responsibilities that the contract assumes toward ACDWSD as to the performance of the subcontractor's portion of the work.
- 7.4. Nothing contained in the Contract documents shall be construed to create any contract between ACDWSD and any subcontractor.

8. NO THIRD-PARTY BENEFICIARIES. ACDWSD and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

9. PAYMENT OF LABORERS; PAYMENT OF TAXES.

Contractor shall:

- 9.1.1. Make payment promptly, as due, to all persons supplying to Contractor labor and material for the prosecution of the work provided for in the contract documents;
- 9.1.2. Not permit any lien or claim to be filed or prosecuted against ACDWSD on account of any labor or material furnished; and
- 9.1.3. Be responsible for all federal, state and local taxes applicable to any compensation or payments paid to Contractor under this Contract.
- 9.1.4. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Contract as such claim becomes due, ACDWSD may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
- 9.1.5. The payment of a claim in this manner shall not relieve Contractor from obligation with respect to any unpaid claims.

- 9.2. Contractor and its subcontractors, if any, are subject to Oregon Workers' Compensation Law, which requires all employers that employ subject workers who work under this Contract in the State of Oregon to comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors, if any, complies with these requirements.
10. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this Contract, including, without limitation, the provisions of ORS 279B.230, B.235, and as set forth, in part, herein. Contractor further expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws.
- 10.1. Contractor shall comply with all requirements of the Americans with Disabilities Act, 42 U.S.C. sec. 12101, et seq., and all regulations implementing the Act, especially including those regulations set forth at 28 C.F.R. sec. 35.130, or any later replacement for those regulations, directly or indirectly applicable to Contractor as a result of a contract with BWD.
11. INSURANCE. Contractor shall obtain prior to beginning any work under this Contract, and shall maintain in full force and effect for the term of this Contract, at Contractor's expense, commercial general liability and automobile insurance policies for bodily injury, including death, and property damage, including coverage for owned, hired or non-owned vehicles, as applicable. The policies shall be primary policies, issued by a company authorized to do business in the State of Oregon and providing single limit general liability coverage of \$1,000,000 and separate automobile coverage of \$1,000,000 or the limit of liability contained in ORS 30.260 to 30.300, whichever is greater. Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.
12. INDEMNIFICATION. Contractor shall indemnify, defend, save and hold harmless ACDWSD, its elected and appointed officials, officers, agents, employees and volunteers against all liability, claims, suits or actions of whatsoever nature, loss or expenses, including attorney fees and other expenses incident thereto, and against all claims, actions, judgments based upon or arising out of damage or injury or death to persons or property, if such is caused in whole or in part by any act or omission by Contractor and anyone acting on Contractor's behalf in connection with, or incidental to, this Contract or the work to be performed hereunder; provided, however, that nothing herewith shall be construed to require indemnification of ACDWSD attributable to its own negligence. Should ACDWSD be required to defend itself for any such claim before Contractor undertakes such defense, Contractor agrees to reimburse ACDWSD for such cost.
13. RECORDKEEPING. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain updated desk top procedures any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. All such fiscal records, books, documents, papers, plans, and writings shall be retained by Contractor and kept accessible; the districts quick books data base shall be updated monthly.

14. **ACCESS TO RECORDS.** Contractor agrees that ACDWSD and its authorized representatives shall have access to all books, documents, papers and records of Contractor which are directly related to the Contract for the purpose of making any audit, examination, copies, excerpts and transcripts.
15. **ERRORS.** Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost to ACDWSD.
16. **TERMINATION.**
- 16.1. This agreement may be terminated by the District, with majority vote of the Board of Directors or the Contractor upon thirty (30) days written notice to the other party.
- 16.2. Contractor may terminate this Contract upon thirty (30) days' written notice to ACDWSD if ACDWSD fails to pay Contractor pursuant to the terms of this Contract and ACDWSD fails to cure within thirty (30) days after receipt of Contractor's notice or such longer period of cure as Contractor may specify in such notice.
- 16.3. In the event of termination or breach, each Party shall be entitled to have any remedy available to it in law or equity.
17. **ATTORNEY FEES.** If a suit or action is filed to enforce any of the terms of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney fees.
18. **FUNDS AVAILABLE AND AUTHORIZED.** ACDWSD has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract.
19. **SEVERABILITY.** The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
20. **FORCE MAJEURE.** Neither ACDWSD nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond, respectively, ACDWSD's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
21. **WAIVER.** The failure of either Party to enforce any provision of this Contract shall not constitute a waiver by that Party of that or any other provision.

The Contractor and Arch Cape Domestic Water Supply District hereby agree to all provisions of this Contract.

Arch Cape Domestic Water Supply District

Contractor

By: Virginia Birkby

Virginia Birkby, President
32065 East Shingle Mill Lane
Arch Cape, Oregon 97102

By: [Signature]

Date: 12.16.16

Date 16 December 2016

“Exhibit A”

**CONTRACTOR SCOPE OF SERVICES
ARCH CAPE DOMESTIC WATER SUPPLY AND SANITARY DISTRICTS**

Banking

- Maintain checkbook monthly and submit to the Board Treasurer for reconciliation.
- Deposit all revenue to bank accounts and record and manage necessary Local Government Pool and Clatsop County documentation forms.

Full Charge Bookkeeping

- Maintain QuickBooks and customer database.
- Maintain water usage data generated for the District.
- Execute quarterly billing in accordance with District policy.
- Send disconnection and reconnection notices to the District Manager who follows through on the process for delinquent or new accounts.
- Support Payroll.
- Report district payables and pay Board approved bills.
- Coordinate efforts with auditor for annual accounting review audit.
- Record, maintain and distribute ledgers with appropriate explanatory notes to District financial statements in monthly budget versus actual financial reports to all Board members.
- Provide data hard drive backup.
- Assist the District Manager in budget preparation and distribute approved budgets to the proper authorities.

Reporting

- Comply with codes and standards.
- Fulfill federal, state, and local reporting requirements including debt service reporting.
- Provide monthly financial report to District Manager.

Supporting Water and Sanitary Boards

- Attend all regular Board and Budget meetings and hearings; record, prepare, and distribute minutes within twelve calendar days.
- Place legal notice of all Board meetings and work sessions with agendas, resolutions, ordinances.
- Serve as Secretary of Board if elected by Board.
- Facilitate development and distribution of the board packet in consultation with the District Manager and Board Presidents..

Arch Cape Domestic Water Supply District
District Manager Employment Agreement Amendment
December 16, 2016

The following amendment is made to the District Manager employment agreement on December 16, 2016:

SECTION 1. DUTIES

The District shall employ Philip A. Chick as District Manager, to perform the functions and duties as specified in the policies and procedures, rules and regulations of the District, and as hereinafter set forth, and as prescribed or assigned by the Board of Directors of the District periodically including the management of the Arch Cape Sanitary District in accordance with Exhibit A IGA. The Board of Directors vests in the District Manager the day-to-day operational control of the Districts' operations, and reserves to the Board of Directors sole policy making authority and exclusive control over all matters of fiscal policy, budget, and financial matters. The District Manager is a salaried employee with discretion to set hours of work as required to fulfill his duties.

The authority of the District Manager, consistent with state law, shall include, but not be limited to, overall management, administration and direction of the District operations; the management and discipline of the District employees and volunteers; the administration of the administrative support contract, the execution and administration of the District policies within budget appropriations pursuant to the District policy and ordinance or resolution; policy advice to elected officials and open communication with the community so as to foster responsive and courteous public service.

Employee

Arch Cape Domestic Water Supply District

By: 

Philip A. Chick

By: 

Virginia Birkby, President

By: 

Ron Shiffman, Vice President

ARCH CAPE DOMESTIC WATER SUPPLY DISTRICT

RESOLUTION 16-09 WD

A RESOLUTION BY THE ARCH CAPE DOMESTIC WATER SUPPLY DISTRICT (“District”) AUTHORIZING THE DISTRICT TO ENTER INTO A CONTRACT WITH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY (“IFA”) FOR ARCH CAPE WATER SOURCE ASSESSMENT PROJECT NUMBER S17009


Whereas, the District, a special service district of the State of Oregon, wishes to procure the services of a civil engineer to complete a water source assessment study to identify the most feasible alternative to provide redundancy to the existing water source of supply from two surface water creeks; Asbury and Shark for the benefit of the Arch Cape community which it serves; and

Whereas, the District further stipulates that:

- (1) It is a public body validly organized and existing under Oregon law with the authority to enter into such a contract; and
- (2) That Ms. Virginia Birkby was duly nominated and elected as President of the District at the regular District meeting taking place on July 10, 2015 and is authorized to sign contracts on behalf of the District; and
- (3) The District is aware of no impediments with respect to its ability to enter into such a contract; and

NOW, THEREFORE, be it resolved the Arch Cape Domestic Water Supply District hereby authorizes the execution of a contract by the District President for water source assessment with the IFA by this instrument.

Adopted and signed this 16th day of December 2016.


Virginia Birkby, President

Attest 

SAFE DRINKING WATER REVOLVING LOAN FUND
FINANCING CONTRACT

Project Name: Arch Cape Water Source Assessment

Project Number: S17009

This financing contract (“Contract”), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority (“IFA”), and Arch Cape Water District (“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 Security
- Exhibit C Project Description
- Exhibit D Project Budget
- Exhibit E Information Required by 2 CFR § 200.331(a)(1)

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

Estimated Project Cost means \$20,000.

Forgivable Loan Amount means \$20,000.

Maturity Date means the 4th anniversary of the Repayment Commencement Date.

Interest Rate means 1.00% per annum, computed on the basis of a 360-day year, consisting of twelve 30-day months.

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 24 months after the date of this Contract.

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

SECTION 2 - FINANCIAL ASSISTANCE

The IFA shall provide Recipient, and Recipient shall accept from IFA, financing for the Project as a non-revolving loan (“Loan”) in an aggregate principal amount not to exceed the Forgivable Loan Amount.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract cannot exceed the Costs of the Project. If the Project is completed for less than the amount of the Estimated Project Cost, the availability of the Loan will be reduced accordingly.

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds shall be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an IFA-provided or IFA-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. The IFA’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.

SECTION 4 - LOAN PAYMENT; PREPAYMENT; FORGIVENESS

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with their terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of IFA to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against IFA or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues 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.
- C. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal and interest, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.
- D. Loan Prepayments.
- (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract.
 - (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.

- E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of IFA, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, IFA will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.
- F. Forgiveness. Subject to satisfaction by Recipient of any special conditions in Exhibit 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, IFA shall, 90 days after the Project Completion Date, forgive repayment of the forgivable Loan and any interest accrued thereon. The Forgivable Loan Amount and any interest forgiven remain subject to the requirements of OAR 123-049-0050, which survive payment of the Loan.

SECTION 5 - CONDITIONS PRECEDENT

- A. Conditions Precedent to IFA's Obligations. The IFA's obligations are subject to the receipt of the following items, in form and substance satisfactory to IFA and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
 - (2) 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) Such other certificates, documents, opinions and information as IFA may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, IFA has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) The IFA, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
 - (4) The IFA (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as IFA may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
 - (5) The Recipient has delivered documentation satisfactory to IFA that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
 - (6) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

SECTION 6 - USE OF FINANCIAL ASSISTANCE

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

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to IFA:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
 - (1) The Recipient (a) is a special district, validly organized and existing under the laws of the State of Oregon, and (b) owns a community water system, as defined in the Act and OAR 123-049-0010.
 - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
 - (3) This Contract and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
 - (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by IFA, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to IFA all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to IFA all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.

E. No Defaults.

- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
- (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract 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.

SECTION 8 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify IFA of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, and the operation of the water system. In particular, but without limitation, Recipient shall comply with the following, as applicable:
 - (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
 - (2) SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant's Handbook for the Federally Funded Safe Drinking Water Revolving Fund & Drinking Water Protection Loan Fund (May 2015), as amended from time to time ("Safe Drinking Water Handbook"), including but not limited to the Federal Crosscutting Requirements described in the Safe Drinking Water Handbook.
 - (3) Lobbying. The Recipient acknowledges and agrees that the Costs of the Project will not include any Lobbying costs or expenses incurred by Recipient or any person on behalf of Recipient, and that Recipient will comply with federal restrictions on lobbying at 40 C.F.R. Part 34 and will not request payment or reimbursement for Lobbying costs and expenses. "Lobbying" means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above.

(4) Federal Audit Requirements. The Loan is federal financial assistance, and the Catalog of Federal Domestic Assistance (“CFDA”) number and title is “66.468, Capitalization Grants for Drinking Water State Revolving Funds.” Recipient is a sub-recipient.

(a) If Recipient receives federal funds in excess of \$750,000 in the Recipient’s fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to IFA 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 IFA 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 IFA 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.

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

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

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

(6) The recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement 98009015 to the State of Oregon. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document.”

(7) Incorporation by Reference. The above state and federal laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. The Recipient shall:

- (1) When procuring professional consulting services, provide IFA with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
- (2) 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.
- (3) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the IFA in writing.
- (4) No later than the Project Closeout Deadline, provide IFA with a final project completion report on a form provided by IFA, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, IFA will be the final judge of the Project's completion.

D. Ownership of Water System. During the term of the Loan, the water system 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. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.

F. Inspections; Information. The Recipient shall permit IFA, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives, and any party designated by IFA: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as IFA may reasonably require. In addition, Recipient shall, upon request, provide IFA with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.

G. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds until the date that is three years following the later of the final maturity of the Lottery Bonds, or the final maturity or redemption date of any obligation, or series of obligations, that refinanced the Lottery Bonds, or such longer period as may be required by other provisions of this Contract or applicable law. Such documentation includes, but may not be limited to, all documentation necessary to establish the uses and investment of the Loan proceeds, all contracts and invoices detailing the costs paid from Loan proceeds, and all contracts related to the uses of the Project, including leases, management contracts, and service contracts that relate to the use of the Project.

- H. Economic Benefit Data. The IFA may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by IFA.
- I. Professional Responsibility. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.
- J. Notice of Default. The Recipient shall give IFA prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- K. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless IFA and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- L. Further Assurances. The Recipient shall, at the request of IFA, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.
- M. Exclusion of Interest from Federal Gross Income and Compliance with Code.
- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. IFA may decline to disburse the Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.
 - (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be "private activity bonds" within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of IFA, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be "disproportionate related business use" or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of IFA, Recipient shall not directly or indirectly use any of the Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
 - (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

- (4) The Recipient shall not cause any Lottery Bonds to be treated as “federally guaranteed” for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as “federally guaranteed” if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.
- (5) The Recipient shall assist IFA to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to IFA such amounts as may be directed by IFA to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Financing Proceeds or other amounts held in a reserve fund. The Recipient further shall reimburse IFA for the portion of any expenses it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.
- (6) Upon IFA’s request, Recipient shall furnish written information regarding its investments and use of the Financing Proceeds, and of any facilities financed or refinanced therewith, including providing IFA with any information and documentation that IFA reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.
- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the payment of the Loan and the Lottery Bonds, and the interest thereon, including the application of any unexpended Financing Proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.
- (8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. §1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Loan.

SECTION 9 - DEFAULTS

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

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.
- C. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project or in regard to compliance with the requirements of section 103 and sections 141 through 150 of the Code.

- D. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
- (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
- (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
- (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
- (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by IFA. The IFA may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, IFA may pursue any or all remedies in this Contract or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
 - (1) Terminating IFA's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
 - (2) Declaring all payments under the 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 IFA pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by IFA; next, to pay interest due on the Loan; next, to pay principal due on the Loan, and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.

- C. No Remedy Exclusive; Waiver; Notice. No remedy available to IFA is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The IFA is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by IFA. In the event IFA defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of IFA's obligations.

SECTION 11 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of IFA, Recipient, and their respective successors and permitted assigns.
 - (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of IFA. The IFA may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to IFA, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of IFA's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of IFA beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.
 - (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that IFA deems to be necessary.
- C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:
- (1) The IFA makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
 - (2) In no event are IFA or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

D. Notices. All notices to be given under this Contract or any other Financing Document must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to IFA: Program Services Division Manager
Infrastructure Finance Authority
Oregon Business Development Department
775 Summer Street NE Suite 200
Salem OR 97301-1280

If to Recipient: District Manager
Arch Cape Water District
31912 E Shingle Mill Ln
Arch Cape OR 97102-0167

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 IFA (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 IFA by its attorneys. The Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA 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.

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



STATE OF OREGON
 acting by and through the
 Oregon Infrastructure Finance Authority



~~ARCH CAPE WATER DISTRICT~~
 Arch Cape Domestic Water Supply District

By: _____
 Robert Ault, Manager
 Program Services Division

By: Virginia Birkby
 Virginia Birkby, President

Date: _____

Date: December 16, 2016

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Not Required per OAR 137-045-0030

EXHIBIT A - GENERAL DEFINITIONS

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

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

“Award” means the award of financial assistance to Recipient by IFA dated 5 October 2016.

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

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

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

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

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

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

“Financing Proceeds” means the proceeds of the forgivable Loan.

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

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

“ORS” means the Oregon Revised Statutes.

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

EXHIBIT B - SECURITY

General Fund Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract. This Contract is payable from all legally available funds of Recipient.

EXHIBIT C - PROJECT DESCRIPTION

I. PROJECT DESCRIPTION

The Recipient shall procure the services of a civil engineer to complete a water sources study to identify the most feasible alternative to provide redundancy to the existing water source of supply from two surface water creeks, Asbury and Shark.

The study will collect information on all water sources in the area including wells and well logs, geological studies, surface water rights, and the water quality of each. The study will evaluate all potential water sources, including summarizing the previous reports on the geology of groundwater wells, identifying and evaluating any existing wells in the District, evaluating the District’s water rights for surface waters and the feasibility of developing additional surface water. The study will also evaluate the potential for an interconnection with any of the adjoining systems of Falcon Beach Cove, Cannon View Water or the City of Cannon Beach; and include a capital improvement plan.

II. PROJECT SPECIAL CONDITION

The Recipient must complete an asset management activity and a community engagement component, as selected by the Recipient from a list of eligible activities provided by IFA.

Exhibit D: Project Budget

	IFA Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
Source Water Assessment Study	\$20,000	
Total	\$20,000	

EXHIBIT E - INFORMATION REQUIRED BY 2 CFR § 200.331(A)(1)

Federal Award Identification:

- (i) Subrecipient* name (which must match registered name in DUNS): ARCH CAPE DOMESTIC WATER SUPPLY DISTRICT
- (ii) Subrecipient's DUNS number: 83-207-9037
- (iii) Federal Award Identification Number (FAIN): 98009015
- (iv) Federal Award Date: 9 Sep 2015
- (v) Sub-award Period of Performance Start and End Date: 24 months from Contract execution
- (vi) Total Amount of Federal Funds Obligated by this Contract: \$20,000
- (vii) Total Amount of Federal Funds Obligated by this initial Contract and any amendments: \$20,000
- (viii) Total Amount of Federal Award to the pass-through entity: \$16,232,300
- (ix) Federal award project description: Oregon's Drinking Water State Revolving Fund: This grant increases the capacity of Oregon to ensure that its public water systems continue to provide safe drinking water. This is done by (1) continuing loan financing to public water systems and support for newly proposed priority projects, (2) providing grant support for covering administrative expenses, small public water system technical assistance, State program management and local assistance, and (3) continuation of the loan fund to finance source water protection project initiatives, including acquiring conservation easements.
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: U.S. Environmental Protection Agency
 - (b) Name of pass-through entity: Oregon Infrastructure Finance Authority
 - (c) Contact information for awarding official of the pass-through entity: Robert Ault, Program Services Division Manager, 503-551-0917
- (xi) CFDA Number and Name: 66.468 Safe Drinking Water State Revolving Fund
Amount: \$20,000
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: N/A

*For the purposes of this Exhibit E, "Subrecipient" refers to Recipient and "pass-through entity" refers to IFA.

Manager Report December 16, 2016

WATER:

Staff has been participating in various trainings for end of year certification renewal and water treatment certification.

I have been working on revisions to the Water Management and Conservation Plan. These will be submitted to Oregon Water Resources Dept. along with our annual water usage report at the end of the month.

I will be mailing correspondence in January to all residences which have backflow devices in order to remind them to have these devices checked. This communication will also include information on the District's requirement to have irrigation systems checked, and the report form submitted to the District office as per irrigation system policy.

We've received new keys for the entrance gates of EcoTrust's property, including the recently installed gates closing off access to our watershed that Stimson did not allow us access to. This will enable us to easily access our watershed when needed, and we have permission to do so.

MONTHLY LOG : ARCH CAPE WATER & SANITARY DISTRICTS

November 2016

Total Hours	352.00	141.75	210.25
Percentage Split		40%	60%
Total Accounts	621	286	335
Percentage Split		46%	54%