

## RESOLUTION NO. 2024-63

A Resolution authorizing the City Manager to enter into a contract with Business Oregon for \$2,000,000 for infrastructure to support workforce housing.

### RECITALS:

**Whereas**, the City of McMinnville worked with Representative Lucetta Elmer (HD-24) on 2024 Oregon Legislative House Bill 4134; and

**Whereas**, the City of McMinnville was allocated \$2,000,000 for water infrastructure for workforce housing development in Water Zone 2; and

**Whereas**, the workforce housing development will result in 20 housing units dedicated specifically to workforce households earning 130% AMI or less and retaining those housing units for workforce housing for at least ten years; and

**Whereas**, the water infrastructure will service 290 lots in this water zone and there are approximately 470 additional future lots in the UGB in this same water zone.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:**

1. That entry into a contract with Business Oregon is hereby approved.
2. The City Manager is hereby authorized and directed to execute the Contract, provided as Exhibit A.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 10th day of December 2024 by the following votes:

Ayes: Menke, Chenoweth, Garvin, Peralta, Geary

Nays: \_\_\_\_\_

Abstain: Payne

Approved this 10th day of December 2024.



MAYOR

Approved as to form:



City Attorney

Attest:



City Recorder

Exhibit A: Contract with Business Oregon

GRANT AGREEMENT

Project Name: Water Infrastructure for Workforce Housing Development

Project Number: C2024779

This grant agreement (“Contract”), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through its Oregon Business Development Department (“OBDD”), and City of McMinnville (“Recipient”) for financing of the project referred to above and described in Exhibit B (“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, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

This Contract less Exhibits	
Exhibit A	General Definitions
Exhibit B	Project Description
Exhibit C	Project Budget

Pursuant to ORS 285A.075(3) and Oregon Laws 2024, Chapter 103, section 5(2) (the “Act” aka HB 4134 (2024)), OBDD is authorized to enter into a grant agreement with Recipient to assist in financing the costs of an Infrastructure project as defined by the Act.

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

**Estimated Project Cost:** \$2,000,000.

**Grant Amount:** \$2,000,000.

**Project Close-Out Deadline:** 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

**Project Completion Deadline:** The Project shall be completed within 24 months of the disbursement of the Grant Amount per the terms of the Act and any extension shall be in accordance with such deadline.

SECTION 2 – FINANCIAL ASSISTANCE

OBDD shall provide Recipient, and Recipient shall accept from OBDD, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount. Notwithstanding the Grant Amount, the aggregate total of Financing Proceeds disbursed under this Contract cannot exceed the Costs of the Project.

Conditions Precedent. 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; and
- (2) Such other certificates, documents, opinions and information as OBDD may reasonably require.

### SECTION 3 – DISBURSEMENTS

A. Grant Disbursements.

Upon execution of this Contract and satisfaction of all Conditions to Disbursement in Section 3C. below, OBDD shall disburse the Grant Amount to Recipient.

B. Financing Availability. OBDD's obligation to make, and Recipient's right to request, disbursements under this Contract terminate on the Project Close-out Deadline.

C. Conditions to Disbursement. 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 funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement. (Recipient acknowledges OBDD's appropriation and expenditure authority for this Grant presently expires on June 30, 2025; OBDD will seek a carry-over extension in the 2025 Oregon Legislative Session.)
- (4) Reserved.
- (5) OBDD has received a completed Disbursement Request.
- (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) Provide a copy of the agreement(s) required by Section 6D.(10) below to OBDD. Recipient may not receive a disbursement of the Financing Proceeds until OBDD has determined Recipient has satisfied Section 6D.(10) below (as required by the Act in Section 1(4)).
- (8) Any conditions to disbursement elsewhere in this Contract are met.

### SECTION 4 – USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. Recipient shall use the Financing Proceeds only for the activities described in Exhibit B and according to the Project Budget in Exhibit C. Recipient may not transfer Financing Proceeds among line items in the Project 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.
- 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.
- D. Unexpended Grant Moneys. Any Grant moneys disbursed to Recipient, and any interest earned by Recipient on the Grant moneys, that are not used as set out herein or that remain after the Project is completed or this Contract is terminated shall be immediately returned to OBDD.

## **SECTION 5 – 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 I, and the Project is fully funded.
- B. Organization and Authority.
  - (1) Recipient is a Municipality as defined in ORS in ORS 285B.410(9), and validly organized and existing under the laws of the State of Oregon.
  - (2) Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive financing for the Project.
  - (3) This Contract has been authorized by an ordinance, order or resolution of Recipient's governing body that was adopted in accordance with applicable law.
  - (4) This Contract has been duly executed by Recipient, and when executed by OBDD, is legal, valid and binding, and enforceable in accordance with their terms.
- C. Recipient has identified a specific, planned housing development that will be primarily benefited by the Project. Recipient represents that the identified housing development will be planned, owned or constructed by Holt Homes Realty, I.I.C., doing business as Holt Homes.
- D. Full Disclosure. Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to perform all obligations required by this Contract. 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, including Exhibit B and Exhibit C, 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 perform all obligations required by this Contract.
- E. No Events of Default.
  - (1) No Events of Default exist or occur upon authorization, execution or delivery of this Contract.
  - (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 perform all obligations required by this Contract.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of any agreement or instrument to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.
- G. Compliance with Tax Laws. Recipient is not in violation of any Oregon tax laws, including but not limited to a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters

118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Department of Revenue under ORS 305.620.

- H. 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 undertaking and completion of the Project.

<b>SECTION 6 - COVENANTS OF RECIPIENT</b>
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Recipient covenants as follows:

- A. Within Urban Growth Boundary. The Project will be located within Recipient's urban growth boundary and will contribute to the development of housing within Recipient's urban growth boundary.
- B. 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 perform all obligations required by this Contract.
- C. 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 and the Project. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) Oregon Tax Laws, (as defined in Section 5.G) and federal tax laws.
  - (2) State procurement regulations found in the Oregon Public Contracting Code, ORS Chapters 279A, 279B and 279C.
  - (3) 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.

D. Project 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. Provide OBDD with copies of all plans and specifications relating to the Project, and a timeline for the bidding/award process, at least ten (10) days before advertising for bids.
- (2) Provide a copy of the bid tabulation and notice of award to OBDD within ten (10) days after selecting a construction contractor.
- (3) Provide OBDD with an expenditure report of all Project expenditures using the Financing Proceeds. All expenditure reports are subject to OBDD review and approval for compliance with the Financing Proceeds use terms of this Contract.
- (4) Permit OBDD to conduct inspection of the Project at any time.
- (5) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (6) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by OBDD in writing.
- (7) Provide status reports to OBDD annually on a form provided for or approved by OBDD. Reports are due August 15 each year until the final project completion report detailed in subsection (8) below is accepted by OBDD or until this Contract is terminated. Status reports shall include a minimum of the following:
  - (a) a progress report on the Project;
  - (b) an updated estimated Project completion timeline or a report of the completed results;
  - (c) an accounting of the moneys spent and remaining for the Project;
  - (d) the number of housing units constructed within the Housing Development served by the Project along with the number of those constructed housing units subject to an affordable housing covenant as required by Section 6D.(10) of this Contract; and
  - (e) an updated number of existing and additional/new housing units estimated to be served by the completed Housing Development and an updated number of units anticipated to be served by the completed Project that will subject to an affordable housing covenant.
- (8) No later than the Project Closeout Deadline, provide OBDD with a final project completion report on a form provided by OBDD, 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, OBDD will be the final judge of the Project's completion.
- (9) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.



- (10) Enter into one or more agreements with the property owner(s) of the Housing Development to be served by the Project (identified by Section 5C. of this Contract) with the agreements including the following requirements:
- (a) The owner's construction of a minimum specified number of housing units in the Housing Development;
  - (b) No less than 30 percent of the dwelling units within the Housing Development will be subject to an affordable housing covenant, as defined in ORS 456.270, under which:
    - (i) Recipient shall serve as or designate the covenant holder; and
    - (ii) The housing will be made affordable to Workforce Income Households for a period of no less than 10 years.
  - (c) The owner shall construct the housing units in the Housing Development before the latter of 36 months after the completion of the Project or 60 months after the disbursement of the Grant Amount.
  - (d) A remedy and liability provision requiring the owner to repay to Recipient the Grant Amount if the units are not developed or the affordability is not maintained as required by this Section 6D.(10), except for delays outside of the owner's control. Recipient hereby assigns any moneys or claims available under this Section 6D.(1)(d) to OBDD.
  - (e) The owner will assist Recipient in its reporting obligations to OBDD as provided by Section 6D.(7) of this Contract.

- E. Ownership of Project. The Project will be owned by Recipient during the Project and for not less than ten years following the Project Close-Out Deadline.
- F. 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 the Project and for not less than ten years following the Project Close-Out Deadline. 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.
- G. Insurance, Damage. During the Project and for a period of not less than ten years following the Project Close-Out Deadline, Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from exerting a defense against any party other than OBDD, including a defense of immunity.
- H. Sales, Leases and Encumbrances. During the Project and for a period of not less than ten years following Project Close-Out Deadline, except as specifically described in Exhibit B (Project Description), Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project, 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.

- I. Books and Records. Recipient shall keep accurate 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: (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. Recipient shall supply any related reports and information as OBDD may reasonably require.
- K. Records Maintenance. Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of ten years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- L. Economic Benefit Data. OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.
- M. Disadvantaged Business Enterprises. ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, veteran-owned businesses and emerging small businesses..." OBDD encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045, available at: [https://www.oregonlegislature.gov/bills\\_laws/ors/ors200.html](https://www.oregonlegislature.gov/bills_laws/ors/ors200.html). Additional resources are provided by the Governor's Policy Advisor for Economic and Business Equity. Also, the Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/SearchCertifiedDirectory.asp?XID=2315&TN=oregon4biz>.
- N. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for any construction design for 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.
- O. 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.
- P. (1) Contributory Liability and Contractor Indemnification – Tort Claims



- (a) 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 regard 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.

- (b) 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 ("Indemnatee") 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims. This Section shall survive termination of this Contract.

(2) Indemnity; Release—Claims Other Than Torts.

- (a) Except for Third-Party Tort Claims and Contractor Tort Claims as provided in Section P(1) above, to the extent authorized by law, Recipient shall defend, indemnify, save and hold harmless and release the State, OBDD, and their officers, employees and agents from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards including but not limited to costs, expenses, and reasonable attorneys' fees incurred (collectively, "Non-Tort Claims"), related to any actual or alleged act or omission by Recipient, or its officers, employees, contractors, or agents in connection with this Contract, the Project, PWR or Davis-Bacon Act requirements, including without limitation, any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by BOLI, the U.S. Department of Labor, the Internal Revenue Service, Treasury and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction arising from the Project or the actions or omissions of Recipient, or its officers, employees, contractors, or agents.
- (b) Notwithstanding the foregoing, neither Recipient nor any attorney engaged by Recipient may defend any Non-Tort Claim in the name of the State of Oregon, nor purport to act as legal representative for the State of Oregon, without first receiving from the Oregon

Attorney General in a form and manner determined appropriate by the Oregon Attorney General, authority to act as legal counsel for the State of Oregon, nor may Recipient settle any Non-Tort Claim on behalf of the State of Oregon without the approval of the Oregon Attorney General. If the State of Oregon assumes its own defense, Recipient will be liable for the attorney fees of the State of Oregon, including but not limited to any fees charged by the Oregon Department of Justice. The provisions of this section are not to be construed as a waiver by the State of Oregon, OBDD, of any immunity, 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. If attorney fees are awarded to Recipient, such attorney fees shall not exceed the rate charged to OBDD by its attorneys.

#### **SECTION 7 – DEFAULTS**

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

- A. Any false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Grant or the Project.
- B. Recipient fails to perform any obligation required under this Contract, other than those referred to in subsection A of this section 7, 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 8 - REMEDIES**

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to any one or more of the following:
  - (1) Terminating OBDD’s commitment and obligation to make the Grant or disbursements of Financing Proceeds under the Contract.
  - (2) Barring Recipient from applying for future awards.
  - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract.
  - (4) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 8.A will be applied first, to pay any attorneys’ fees and other fees and expenses incurred by OBDD; then, as applicable, to repay any Grant proceeds owed; then, to pay other amounts due and payable under this Contract, if any.
- 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 will 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 notice required in section 7 of this Contract.

- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's sole remedy will be for disbursement of Financing Proceeds for Costs of the Project, not to exceed the Grant Amount, less any claims OBDD has against Recipient.

## **SECTION 9 - MISCELLANEOUS**

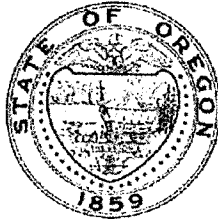
- A. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, 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 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. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract, nor does assignment relieve Recipient of any of its duties or obligations under this Contract.
  - (5) Recipient hereby approves and consents to any assignment, sale or transfer of this Contract 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 the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

If to OBDD: Deputy Director  
Oregon Business Development Department  
775 Summer Street NE Suite 310  
Salem, OR 97301-1280

If to Recipient: Community Development Director  
City of McMinnville  
231 NE 5th Avenue  
McMinnville, OR 97128

- 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 signed 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.
- 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) constitutes 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


By: Chris Cummings  
Chris Cummings, Deputy Director

Digitally signed by Chris  
Cummings  
Date: 2025.01.08  
16:15:08 -08'00'

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



CITY OF MCMINNVILLE

By:   
~~The Honorable Remy Drabkin, Mayor~~  
Jeff Towery, City Manager

Date: 12/18/2024

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ David Berryman per email dated 27 November 2024  
David Berryman, Assistant Attorney General



## **EXHIBIT A - GENERAL DEFINITIONS**

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

“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 Proceeds” means the proceeds of the Grant.

“Housing Development” means multifamily housing or a mix of multifamily, middle housing and single-family housing units planned, owned or constructed together through one or more applications or development projects under ORS 227.175 or a development agreement under ORS 94.504 to 94.528.

“ORS” means the Oregon Revised Statutes.

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

“Workforce Income Household” means a household with income less than or equal to 130 percent of the county median income based on information or estimates available from the United States Census Bureau.

## **EXHIBIT B - PROJECT DESCRIPTION**

Recipient shall use the Grant for piping and pumps to activate a water pump station for developable lands. The Project will be located at 12302 NW Fox Ridge Road in McMinnville, Oregon.

Recipient will procure an engineer licensed in Oregon to design a pump station and related water system infrastructure. The Project will include, but is not limited to, acquisition and installation of the following:

- Four (4) booster pumps
- Water distribution lines
- Flow meters
- Associated pump station electrical equipment
- Standby engine generator
- Surge tank
- Air compressor and control system(s)

**EXHIBIT C - PROJECT BUDGET**

	OBDD Funds	Other / Matching Funds
Activity	Approved Budget	Estimated Budget
Design/Engineering	\$97,000	\$0
Construction	\$1,703,000	\$0
Construction Contingency	\$200,000	\$0
Total	\$2,000,000	\$0