

**A BILL FOR AN ORDINANCE AMENDING ) ORDINANCE BILL NO. 2016-16  
ORDINANCE BILL NO. 2015-11 – ORDINANCE )  
2867 AUTHORIZING A LOAN FROM THE SAFE ) ORDINANCE NO. 2885  
DRINKING WATER REVOLVING LOAN FUND BY )  
ENTERING INTO A FINANCING CONTRACT )  
WITH THE OREGON INFRASTRUCTURE )  
FINANCE AUTHORITY )**

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

**WHEREAS**, the City has a community water system as defined in Oregon Administrative Rule 123-049-0010; and

**WHEREAS**, the Safe Drinking Water Act Amendments of 1996, Pub.L. 104-182, as amended (the “Act”), authorize any community or nonprofit non-community water system to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department (“the IFA”) to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund; and

**WHEREAS**, the City has filed an application with the IFA to obtain financial assistance for a “safe drinking water project” within the meaning of the Act, and the IFA has approved the City’s application for financial assistance from the Safe Drinking Water Revolving Loan Fund; and

**WHEREAS**, the City previously entered into a Financing Contract with the IFA, Project Number S16004 dated October 16, 2015 (“Contract”);and

**WHEREAS**, the City has applied for an amendment to the Contract to increase the previous loan amount by \$3,000,000.00; and

**WHEREAS**, notice relating to the City’s consideration of the adoption of this Ordinance was published in full accordance with the City’s charter and laws for public notification.

**NOW, THEREFORE, THE CITY OF LEBANON ORDAINS AS FOLLOWS:**

**SECTION 1: Financing Loan Authorized.** Based on the above findings, subject to the thirty day referral period of this nonemergency ordinance without the ordinance being referred to a vote under the requirements of ORS 287A.150, the Governing Body authorizes the City Manager or the Finance Director, or their designee (the “Authorized Officer”), to negotiate the terms of and execute the Financing Contract and a Promissory Note(s) (the “Financing Documents”) and such other documents as may be required to obtain financial assistance including a loan from the IFA on the condition that the principal amount of the loan from the IFA to the City is not more than \$13,000,000 (with \$1,015,000 eligible for principal forgiveness if contract conditions are met) and the interest rate is not more than 1% if contract conditions are met (and 2.11% per annum if certain conditions

are not met). The proceeds of the loan from the IFA shall be applied solely to the "Costs of the Project" as such term is defined in the Financing Contract.

**SECTION 2: Security.** Amounts payable by the City shall be payable from the sources described in Section 4 of the Financing Contract and the Oregon Revised Statutes Section 285A.213(5) which include:

- a. Revenue from any water system project of the City, including special assessment revenue;
- b. Amounts withheld under subsection 285A.213(6);
- c. The general fund of the City;
- d. Any combination of sources listed in paragraphs (a) to (c) of this subsection; or
- e. Any other source

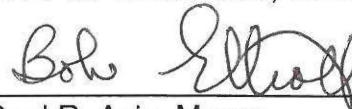
**SECTION 3: Additional Documents.** The Authorized Officer is hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to obtain financial assistance from the IFA for the Project pursuant to the Financing Documents.

**SECTION 4: Tax-Exempt Status.** The City covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the City pursuant to the Financing Documents not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The Authorized Officer of the City may enter into covenants on behalf of the City to protect the tax-exempt status of the interest paid by the City pursuant to the Financing Documents and may execute any Tax Certificate, Internal Revenue Service forms or other documents as shall be required by the IFA or their bond counsel to protect the tax-exempt status of such interest.

**SECTION 5: Effective.** This Ordinance shall take effect on the thirtieth day after the date of enactment below.

Passed by the Lebanon City Council and executed by the Mayor on this 12<sup>th</sup> day of October, 2016 by a vote of 4 yeas and 0 nays.

CITY OF LEBANON, OREGON



Paul R. Aziz, Mayor

Bob Elliott, Council President

ATTESTED:

  
Linda Kaser, City Clerk



RECEIVED

DEC 09 2016

IFA

**ATTACHMENT A**

**Amendment Number 1**

**Project Name:** Lebanon Water Treatment Plant

This amendment is made and entered into by and between the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority ("IFA"), and the City of Lebanon ("Recipient"), and amends the Financing Contract, Project Number S16004 ("Contract") dated 16 October 2015 for the above-named Project. Capitalized terms not defined in this amendment shall have the meanings assigned to them by the Contract.

**Recital:** The purpose of this amendment is to increase the Loan Amount due to higher than anticipated costs.

**The parties agree as follows:**

1. Amend the following Key Terms in Section 1 of the Contract as follows (deletions in ~~strikethrough~~; additions in double underline):

" <u>Estimated Project Cost</u> " means	<del>\$21,000,000</del>	<u>\$28,000,000.</u>
<u>"Forgivable Loan Amount"</u> means	<del>\$765,000</del>	<u>\$1,015,000.</u>
<u>"Loan Amount"</u> means	<del>\$9,235,000</del>	<u>\$11,985,000.</u> "

2. Delete Exhibit C (Form of Section 2.A. Promissory Note) and Exhibit C-1 (Form of Forgivable Promissory Note) and Exhibit E (Project Budget) of the Contract and replace them with the attached new Exhibit C and new Exhibit C-1 (collectively, the "Replacement Notes") and new Exhibit E.
3. When executed and delivered by Recipient, the Replacement Notes will be considered replacements for, but not payment of, the promissory notes originally executed and delivered by Recipient under the terms and conditions of the Contract.

IFA will have no obligation under this amendment, unless within 60 days after receipt, the Recipient delivers to IFA the following items, each in form and substance satisfactory to IFA and its Counsel:

- i. This amendment duly executed by an authorized officer of the Recipient;
- ii. A copy of the ordinance, order or resolution of the governing body of Recipient, certified by an authorized officer of Recipient, authorizing the borrowing of the new Loan Amount, the contemplated transactions under this amendment, and the execution and delivery of this amendment and the replacement Notes.
- iii. Replacement Notes duly executed by an authorized officer of the Recipient, substantially in the form of Exhibit C and C-1.
- iv. Such other certificates, documents, opinions and information as the State may reasonably require.

Except as specifically provided above, this amendment does not modify the Contract, and the Contract shall remain in full force and effect during the term thereof. This amendment is effective on the date it is fully executed and approved as required by applicable law.

STATE OF  
OREGON

acting by and through  
the  
Oregon Infrastructure Finance  
Authority

CITY OF LEBANON

By: Robert Ault

By: Robert Ault, Manager,  
Program Services Division

Date: 12/13/17

Bob Elliott

~~The Honorable Paul Aziz~~ Bob Elliott  
~~Mayor of Lebanon~~  
City Council President

Date: 10/12/16

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

/s/ David Elott as per email dated 9 September 2016

David Elott, Assistant Attorney  
General



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

**City of Lebanon  
PROMISSORY NOTE**

Dated October 12, 2016

Lebanon, Oregon

FOR VALUE RECEIVED, the City of Lebanon, 925 South Main Street, Lebanon, OR 97355 ("Recipient"), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY ("IFA"), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of Eleven Million Nine Hundred Eighty-Five Thousand Dollars (\$11,985,000) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of One percent (1.00%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number S16004, between IFA and Recipient (as amended from time to time, the "Contract"). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

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

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

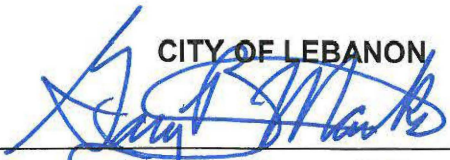
This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. The Recipient authorizes IFA to record the date and amount of each such disbursement, the date and amount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

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

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

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

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

By:  CITY OF LEBANON  
Title: City Manager



**EXHIBIT C-1 - FORM OF FORGIVABLE PROMISSORY NOTE**

**City of Lebanon**

**FORGIVABLE PROMISSORY NOTE**

Dated: October 12, 2016

Lebanon, Oregon

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

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

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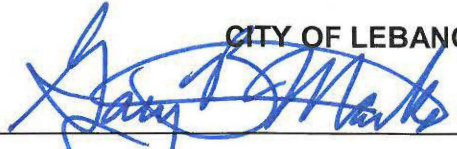



To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to IFA by its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

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

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

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

By:  \_\_\_\_\_  
CITY OF LEBANON  
Title:  \_\_\_\_\_  
City Manager

**Exhibit E: Project Budget**

L16003

S16004

	<b>IFA Funds</b>	<b>IFA Funds</b>	<b>Other / Matching</b>
Activit	Approved	Approved	Approved Budget
Treatment Plant	\$3,600,000	\$11,000,000	\$2,250,000
Transmission & Distribution	1,400,000		
Water Source Improvements	6,000,000		
Construction Management		2,000,000	
Construction Contingency			1,750,000
<b>Total</b>	<b>\$11,000,000</b>	<b>\$13,000,000</b>	<b>\$4,000,000</b>