

RESOLUTION NO. 2276

Introduced by All Commissioners

AUTHORIZING A LOAN FROM THE SAFE DRINKING WATER REVOLVING LOAN  
FUND BY ENTERING INTO A LOAN CONTRACT  
WITH THE OREGON BUSINESS DEVELOPMENT DEPARTMENT

The City Commission of the City of Warrenton finds:

- A. The City of Warrenton is a community or nonprofit non-community water system as defined in Oregon Administrative Rule 123-049-0010.
- B. The Safe Drinking Water Act Amendments of 1996, Pub.L. 104-182, as amended (the "Act"), authorize any community or nonprofit non-community water system to file an application with the Oregon Business Development Department ("the Department") to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund.
- C. The City of Warrenton has filed an application with the Department to obtain financial assistance for a "drinking water project" within the meaning of the Act.
- D. The Department has approved the City of Warrenton's application for financial assistance from the Safe Drinking Water Revolving Loan Fund pursuant to the Act.
- E. The City of Warrenton is required, as a prerequisite to the receipt of financial assistance from the Department, to enter into a Financial Assistance Award Contract and a Loan Agreement with the Department in substantially the form attached hereto as Exhibits "A" and "B."
- F. The project described in Exhibit "A" to the Loan Agreement (the "Project") is a "safe drinking water project" within the meaning of the Act which is needed by and is in the public interest of the City of Warrenton.
- G. Notice relating to the City of Warrenton's consideration of the adoption of this Resolution was published in full accordance with the City of Warrenton's charter and laws for public notification.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Warrenton as follows:

1. Loan Authorized. The Governing Body authorizes the Mayor to execute the Financial Assistance Award Contract, Loan Agreement, the Promissory Note attached as Exhibit "G" to the Loan Agreement (the "Financing Documents") and such other documents as may be required to obtain financial assistance including a loan from the Department on the condition that the principal amount of the loan from the Department to the City of Warrenton is not in excess of

\$ 5,399,048 \_ and the interest rate on such loan is not in excess of 3.83 percent. The proceeds of the loan from the Department shall be applied solely to the "Costs of the Project" as such term is defined in the Loan Agreement.

2. Security. Amounts payable by the City of Warrenton shall be payable from the sources described in Section 2.05 of the Loan Agreement which include:

- a. any sources of funds that are legally available to the City of Warrenton,
- b. the revenues, if any, of the Project, including special assessment revenues, if any, and
- c. the City of Warrenton's general fund including the general revenues of the City of Warrenton or other funds which may be available. The obligation of the City of Warrenton to make payments pursuant to the Loan Agreement is a full faith and credit obligation of the City of Warrenton that is not subject to annual appropriation.

3. Additional Documents. The Mayor 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 Department for the Project pursuant to the Financial Assistance Award Contract and the Loan Agreement.

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

5. This resolution shall take effect immediately upon its passage.

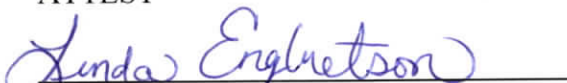
Adopted by the City Commission of the City of Warrenton this 25<sup>th</sup> Day of August, 2009.

APPROVED



Gilbert Gramson, Mayor

ATTEST

  
Linda Engbretson, City Recorder

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**LOAN AGREEMENT**

between

**STATE OF OREGON**

acting by and through its

**BUSINESS DEVELOPMENT DEPARTMENT**

and

**CITY OF WARRENTON**

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THIS LOAN AGREEMENT is made and entered into as of the Effective Date (as defined below), by and between the STATE OF OREGON, ACTING BY AND THROUGH ITS BUSINESS DEVELOPMENT DEPARTMENT ("State"), and Recipient (as defined below).

**ARTICLE I**  
**DEFINITIONS**

**SECTION 1.01. Definitions.** Unless the context clearly requires otherwise, the following terms as used in this Loan Agreement have the meanings assigned to them below:

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

"ARRA" means American Recovery and Reinvestment Act of 2009, Public Law 111-5, as amended.

"ARRA Forgivable Loan" means the Loan made by State to Recipient pursuant to Section 2.01(a)(1).

"ARRA Forgivable Note" means that certain forgivable promissory note, substantially in the form of Exhibit F-3 hereto, evidencing the ARRA Forgivable Loan, as it may from time to time be amended, extended, renewed or restated.

"ARRA money" means the financial assistance provided hereunder pursuant to ARRA.

"Authorized Officer" means, in the case of Recipient, a person whose name or title is set forth in Exhibit C hereto or such other person authorized pursuant to a resolution, ordinance, order or other authorizing document of the governing body of Recipient under Recipient's organizational documents to act as an authorized officer of Recipient to perform any act or execute any document relating to the Loan or this Loan Agreement and whose name or title is furnished in writing to State.

"Availability Termination Date" has the meaning set forth in Section 2.01(b).

"Business Day" means any day other than a Saturday, Sunday or legal holiday or a day on which banking institutions in Salem, Oregon are closed.

"Buy American" means the requirement in Section 1605 of ARRA for recipients to use domestic iron, steel and manufactured goods that are produced in the United States in all water infrastructure projects under contract or under construction by February 17, 2010. The following definitions apply to the Buy American requirements:

"Manufactured Good" means a good brought to the construction site for incorporation into the building or work that has been (1) processed into a specific form and shape, or (2) combined with other raw material to create a material that has different properties than the properties of the individual raw materials. There is no requirement with regard to the origin of components or subcomponents in manufactured goods, as long as the manufacture of the goods occurs in the United States.

"Reasonably Available Quantity" means the quantity of iron, steel, or the relevant manufactured good that is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the Project plans and design.

"Satisfactory Quality" means the quality of iron, steel, or the relevant manufactured good that is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the Project plans and design.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Production in the United States of the iron or steel used in the Project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the Project.

“Contract” means that certain financial assistance award contract with the reference number of SZ9012 dated as of the Effective Date between State and Recipient, to which the form of the Loan Agreement is attached, as amended from time to time.

“Costs of the Project” means those costs that are (a) reasonable, necessary and directly related to a “project” within the meaning of ORS 285A.213, and OAR 123-049-0010 through 123-049-0020, including any financing costs properly allocable to the Project and preliminary costs such as engineering and architectural reports, studies, surveys, soil tests, designs, plans, working drawings and specifications that are necessary for the construction of the Project, and (b) permitted by generally accepted accounting principles to be costs of such Project. The term “Costs of the Project” does not include any ineligible activities listed in Section 3.B. of the Contract.

“Counsel” means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, State or Recipient) duly admitted to practice law before the highest court of any state.

“Disbursement Request” means a disbursement request on a form to be provided by State.

“Effective Date” means the date this Loan Agreement is fully executed, and approved as required by applicable law.

“EPA” means the Environmental Protection Agency.

“Event of Default” means any occurrence or event specified in Section 6.01 hereof.

“First Payment Date” means (1) in the case of the SDWRLF F-2 Note, the December 1 following the earlier of (a) the Project Completion Date or (b) the date availability hereunder is terminated pursuant to Section 2.01(b); and (2) in the case of the ARRA Forgivable Note, means the December 1 following the Project Completion Date if Recipient does not fulfill the conditions for forgiveness set forth in Section 2.02(f) hereof.

“Loan” means collectively and individually without distinction, as the context requires, the SDWRLF F-2 Loan and the ARRA Forgivable Loan.

“Loan Agreement” means this loan agreement, including any exhibits, schedules or attachments hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

“Loan Closing Date” means the date on which all conditions to the Loan closing have been satisfied (or waived by State) and the Loan proceeds are available to be disbursed to Recipient in accordance with Section 2.01(b) hereof.

“Loan Closing Deadline” means August 31, 2009, by which all conditions precedent to Loan closing must be satisfied (or waived by State).

“Loan Documents” means the Loan Agreement, Note, and any agreements, instruments and certificates required to be executed and delivered hereunder.

“Loan Prepayment” means any amount paid by Recipient in excess of the amount required to be paid as Loan Repayment.

“Loan Repayment” means the scheduled payments of principal and interest required to be made by Recipient pursuant to a Note.

“Maturity Date” means the nineteenth (19th) anniversary of the First Payment Date, on which date the outstanding balance of the Loan must be paid in full.

“Net Revenues” means the revenues of Recipient’s System that remain after payment of operations and maintenance costs of the System.

“Note” means, collectively and individually without distinction, as the context requires, the SDWRLF F-2 Note and the ARRA Forgivable Note.

“Project” means the project described in Exhibit A hereto, all or a portion of which is financed or refinanced by State pursuant to this Loan Agreement.

“Project Closeout Date” means the date by which Recipient must submit the Project completion report and certification described in Section 3.02(c) of the Loan Agreement.

“Project Completion Date” means February 16, 2012, the date by which Recipient must complete the Project and submit to State a notice of substantial completion executed by the Project engineer.

“Recipient” means the municipality that is a party to this Loan Agreement described on Exhibit C hereto and that owns the System, and its successors and assigns.

“SDWRLF F-2 Loan” means the Loan made by State to Recipient pursuant to Section 2.01(a)(3).

“SDWRLF F-2 Note” means that certain promissory note, substantially in the form of Exhibit F-2 hereto, evidencing the SDWRLF F-2 Loan, as it may from time to time be amended, extended, renewed or restated.

“Safe Drinking Water Fund” or “Fund” means the Safe Drinking Water Revolving Loan Fund established by ORS 285A.213 and managed by State pursuant to OAR 123-049-0005 through 123-049-0050.

“System” means the community water system, as described in the Act and OAR 123-049-0010, of Recipient which includes the Project or components of the Project, as such system or systems may be modified or expanded from time to time. References in this Loan Agreement to Recipient’s “System” shall be ignored to the extent that the Project is not a component of a utility system or systems.

“Waiver” means a waiver by EPA of the Buy American requirement in Section 1605 of the ARRA.

**SECTION 1.02. General Rules.** Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, partnerships, agencies and districts. Words importing one gender shall include any other gender.



**ARTICLE II  
LOAN TO RECIPIENT**

**SECTION 2.01. Loan; Disbursements; Use of Proceeds.**

(a) Loan. Subject to and in accordance with the terms and conditions hereof, in particular Sections 4.01 and 4.02 hereof, State hereby agrees to make and disburse to Recipient, and Recipient agrees to accept from State, the following:

(1) a loan in a principal amount not to exceed in the aggregate Two Million, Six Hundred Ninety-Nine Thousand, Five Hundred Twenty-Four Dollars (\$2,699,524) ("ARRA Forgivable Loan"), as evidenced by the ARRA Forgivable Note;

(2) [Reserved];

(3) a loan in a principal amount not to exceed in the aggregate Two Million, Six Hundred Ninety-Nine Thousand, Five Hundred Twenty-Four Dollars (\$2,699,524) ("SDWRLF F-2 Loan"), as evidenced by the SDWRLF F-2 Note; and

(4) [Reserved].

The proceeds of the Loan will be disbursed to Recipient in the order set forth above.

(b) Disbursements. Subject to Sections 4.01 and 4.02, the proceeds of the Loan shall be disbursed to Recipient on an expense reimbursement or costs incurred basis upon receipt by State of a Disbursement Request. State's obligation to make, and Recipient's right to request, disbursements under this Loan Agreement shall terminate the earlier of 90 days after February 16, 2012 or 90 days after actual construction completion ("Availability Termination Date").

(c) Use of Proceeds. Recipient shall use the proceeds of the Loan strictly in accordance with Section 3.02(a) hereof and subject to and in compliance with the Special Conditions set forth in Exhibit D.

**SECTION 2.02. Loan Payment; Principal Forgiveness.**

(a) Promise to Pay. Recipient hereby covenants and agrees to repay the Loan in accordance with the terms hereof and the Note and the Loan Documents.

(b) Payments. As to each Note, commencing on the First Payment Date and thereafter on December 1 of each year, Recipient shall make level installment payments of principal and interest, which shall be calculated based on the assumption that the outstanding principal balance on the First Payment Date accrued interest for a full year prior to the First Payment Date; and each such installment shall 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 outstanding principal balance of the Note by the Maturity Date; provided, however, that the first such installment payment shall be adjusted to include actual interest accrued to the First Payment Date.

(c) Interest Rate. The interest rate for the ARRA Forgivable Loan is three percent (3%) per annum. The interest rate for the SDWRLF F-2 Loan is three and 83/100 percent (3.83%) per annum; provided that if State receives EPA approval of an amended Oregon Safe Drinking Water Intended Use Plan that allows the interest rate to be three percent (3%) per annum, the SDWRLF F-2 Note shall accrue interest at the rate of three percent (3%) per annum, effective the date of the Note without the necessity for a replacement Note or any further action. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12) thirty-day (30-day) months.

(d) Payment Schedule. Notwithstanding Section 2.02(b) or (c) above, State and Recipient may agree to attach a payment schedule to a Note or provide for payments different from those described in Section 2.02(b) or (c). In such case Recipient shall execute and deliver to State a replacement Note which shall have attached thereto the agreed upon payment schedule as "Schedule 1 – Payment Schedule."

(e) Note with Schedule. In the event a "Schedule 1 – Payment Schedule" is attached to a Note pursuant to Section 2.02 (c), the third paragraph of the Note shall read as follows:

"Recipient shall pay all unpaid interest accrued to the date of payment and make the payments of principal as set forth in "Schedule 1 – Payment Schedule" (which is attached to this Note) until the Maturity Date, at which time the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full."

(f) Principal Forgiveness. If Recipient complies with the terms of, and completes, the activities as described in Exhibit A (Project Description) and as reflected by line items in Exhibit B (Project Budget), and provided that no Event of Default has occurred, State shall forgive repayment of all or a portion of the ARRA Forgivable Note.

**SECTION 2.03. Unconditional Obligations**. Loan Repayments and all other payments required under the Loan Documents are payable solely from the sources of repayment described in Section 2.05 hereof, and the obligation of Recipient to make the Loan Repayments and all other payments required under the Loan Documents and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part to be performed or observed contained therein shall be absolute and unconditional. Payments hereunder and under any of the other Loan Documents shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, or any payments under this Loan Agreement or a Note 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 or the System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of State to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project, this Loan Agreement or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against State, or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**SECTION 2.04. Loan Prepayments**.

(a) Mandatory Prepayment. Recipient shall prepay the outstanding balance of the Loan as required by the terms of the Loan Documents.

(b) Optional Prepayment Prior to the Maturity Date. Recipient may make Loan Prepayments, without premium or penalty, on any Business Day; provided, however, that each Loan Prepayment shall include payment of the accrued interest on the amount prepaid.

(c) Application of Loan Repayments and Loan Prepayments. Loan Repayments and Loan Prepayments shall be applied first to the costs and expenses of State, then to accrued interest (in the case of a Loan Prepayment, on the portion of the Loan prepaid), and lastly to principal payment(s) on the Loan. In the case of a Loan Prepayment that does not prepay the entire principal of the Loan, State shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments.

**SECTION 2.05. Sources of Payment of Recipient's Obligations.**

(a) State and Recipient agree that the amounts payable by Recipient under this Loan Agreement and any of the other Loan Documents, including, without limitation, the amounts payable by Recipient pursuant to Sections 2.02, 2.04, 2.06 and 6.04 hereof, are payable from the sources of repayment described in paragraph (b) of this Section 2.05; provided however that nothing herein shall be deemed to prevent Recipient from paying the amounts payable under this Loan Agreement and the other Loan Documents from any other legally available source.

(b) The amounts payable by Recipient under this Loan Agreement and the other Loan Documents are payable from the Recipient's general fund, the Net Revenues of Recipient's System and other sources, if any, identified on Exhibit D hereof.

(c) Recipient expressly acknowledges that if Recipient defaults on payments due under this Loan Agreement or any of the other Loan Documents, State of Oregon may, pursuant to ORS 285A.213(6) and OAR 123-049-0040, withhold all or a portion of any amounts otherwise due to Recipient and apply said amounts to payments due under this Loan Agreement and the other Loan Documents to the fullest extent permitted by law.

**SECTION 2.06. Disclaimer of Warranties; Limitation of Liability; Indemnification.** Recipient acknowledges and agrees that:

(a) State does not make any 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 System or the Project or any portions thereof or any other warranty or representation with respect thereto;

(b) in no event shall State or any of its officers, employees, or agents be liable or responsible for any direct, indirect, incidental, special or consequential damages in connection with or arising out of this Loan Agreement, any of the other Loan Documents or the Project or the existence, furnishing, functioning or use of the System or the Project or any item or products or services provided for in this Loan Agreement;

(c) to the extent permitted by law, Recipient shall (subject to ORS chapter 180) defend, indemnify, save and hold harmless State and its officers, employees and agents against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Recipient or its officers, employees, agents or subcontractors pursuant to the terms of this Loan Agreement or any of the other Loan Documents, provided, however, that the provisions of this paragraph (c) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon;

(d) Recipient shall assume sole liability for Recipient's breach of the conditions of the ARRA Forgivable Loan, and shall, upon Recipient's breach of ARRA Forgivable Loan conditions that causes or requires the State to return to the EPA the ARRA money disbursed to Recipient for the ARRA Forgivable Loan, hold harmless and indemnify the State for an amount equal to such ARRA money which the State is required to pay the EPA, and State will not be responsible for any costs incurred by Recipient.

**ARTICLE III**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS OF RECIPIENT**

**SECTION 3.01. Representations and Warranties of Recipient.** Recipient represents and warrants for the benefit of State as follows:

(a) Organization and Authority.

- (i) Recipient is a municipality and owns a community water system as defined in the Act and OAR 123-049-0010. Recipient has full power and authority to transact the business in which it is engaged, and full power, authority, and legal right to make this Loan Agreement and the Note and to incur and perform its obligations hereunder and under the other Loan Documents.
- (ii) Recipient has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Project and its System, other than licenses and permits relating to the Project which Recipient expects to receive in the ordinary course of business, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement and the other Loan Documents.
- (iii) The Project is a project that Recipient may undertake pursuant to Oregon law and the Act, including but not limited to 42 U.S.C. § 300j-12(a)(3), and for which Recipient is authorized by law to borrow money.
- (iv) The making and performance by Recipient of this Loan Agreement and all Loan Documents required hereunder to be executed and delivered by Recipient and the transaction contemplated by this Loan Agreement and the Loan Documents, including but not limited to the undertaking and completion of the Project by Recipient, have been authorized by all necessary action of Recipient duly and lawfully adopted in accordance with the laws of Oregon.
- (v) This Loan Agreement and all other Loan Documents required hereunder to be executed by Recipient have been duly authorized and executed and delivered by an Authorized Officer of Recipient no later than August 31, 2009; and, assuming that State has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement and the Loan Documents required hereunder to be executed by State, this Loan Agreement and other Loan Documents required hereunder to be executed by Recipient constitute the legal, valid and binding obligation of Recipient in accordance with their terms subject to the laws of bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally.
- (vi) Recipient's Contract and the Loan Agreement have been authorized by an ordinance, resolution or other authorizing document of Recipient as appropriate under Recipient's organizational documents which was adopted in accordance with applicable state and local law including but not limited to publication, public hearing and prior notice, if required.
- (vii) The Project has been budgeted or is planned to be budgeted within Recipient's fiscal year 2009 – 2010 and fiscal year 2010 – 2011.

(b) Full Disclosure. There is no fact that Recipient has not disclosed to State in writing on Recipient's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of Recipient, the Project or Recipient's System, or the ability of Recipient to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents. Neither Recipient's application for

the Loan or Recipient's representations in this Loan Agreement or any of the other Loan Documents contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and the information contained in Exhibit A and Exhibit B and in Sections 2, 3, 4, 16 and 17 of Exhibit C is true and accurate in all respects.

(c) Pending Proceeding or Litigation. There is no known threatened or actual proceeding or litigation that would, if adversely determined, materially adversely affect Recipient, the Project, the System or the ability of Recipient to observe and perform all of its duties and obligations under this Loan Agreement and the other Loan Documents.

(d) Compliance with Existing Agreements, Etc. This Loan Agreement and the other Loan Documents and Recipient's performance of its obligations thereunder will not result in any breach or default or result in the imposition of any lien, charge or encumbrance upon any of the property of Recipient under any other agreement or instrument to which Recipient is a party or by which Recipient, its System, the Project or any of its property may be bound, nor will such performance violate any law or authority governing Recipient or any of its properties or operations, including but not limited to the System and the Project.

(e) No Defaults. No event has occurred and no condition exists that will cause Recipient to be in default hereunder upon execution and delivery of this Loan Agreement or any of the Loan Documents or the disbursement of the Loan. Recipient has not violated or allegedly violated any other agreement or instrument to which Recipient is a party or by which Recipient, its System, the Project or any of its property may be bound, which violation would materially adversely affect Recipient, its property, including but not limited to the System and the Project, and its ability to observe and perform its duties and obligations under this Loan Agreement and the other Loan Documents.

(f) Governmental Consent. Recipient has obtained or will obtain all permits and approvals required to date by any governmental body or officer for the making, observance and performance by Recipient of its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents or for the undertaking or completion of the Project and the financing thereof; and Recipient has complied or will comply with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by Recipient of its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents or with the undertaking or completion of the Project and the financing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained is required on the part of Recipient as a condition to the authorization, execution and delivery of this Loan Agreement or any other Loan Document.

(g) Compliance with Law. Recipient:

- (i) is in compliance with all applicable laws, ordinances, and governmental rules and regulations (including but not limited to the federal cross-cutters listed in Exhibit 3 to the Contract and the requirements set forth in the SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant's Handbook for the Federally Funded Safe Drinking Water Revolving Loan Fund & Drinking Water Protection Loan Fund, March 2009, as amended from time to time) to which it is subject, the failure to comply with which would materially adversely affect the ability of Recipient to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of Recipient or its System;
- (ii) has obtained or will obtain all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of Recipient to

conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of Recipient or its System; and

- (iii) will comply with federal Davis-Bacon Act wage rates and Oregon Bureau of Labor and Industries prevailing wage rates. All construction bid documents must reflect compliance.
- (iv) will comply, and document compliance, with the ARRA Buy American requirement for iron, steel and manufactured goods. All construction bid documents must reflect compliance.

(h) The Project.

- (i) The Project is feasible, and there will be adequate funds available to complete the Project and to repay the Loan.
- (ii) Recipient has been provided with a copy of the rules adopted by State under ORS 285A.075 and 285A.213, and the Project is in compliance with such rules.
- (iii) The term of the Loan is not in excess of the useful life of the Project.
- (iv) The Project will be completed no later than February 16, 2012.

(i) Costs of the Project. Recipient certifies that the Costs of the Project, as listed in Exhibit B and Exhibit C hereto, are

- (i) a reasonable and accurate estimation and based upon a feasibility report and estimate stamped by a registered professional engineer, a copy of which shall be promptly provided to State upon request, and
- (ii) equal to or exceed the maximum principal amount of the Loan shown on Exhibit C.

Recipient further certifies that a professional engineer registered and in good standing in Oregon will be responsible for design and construction of the Project. Prior to Recipient's execution of a contract for engineering service, Recipient shall verify the engineer's registration and complaint history with the Oregon State Board of Examiners for Engineering and Land Surveying.

(j) Continuing Representations. The representations of Recipient contained herein shall be true at the time of the Loan Closing Date and at all times during the term of this Loan Agreement.

**SECTION 3.02. Particular Covenants of Recipient.**

(a) Use of Proceeds. Recipient will apply the proceeds of the Loan to finance all or a portion of the Costs of the Project. Recipient will apply the proceeds strictly in accordance with the Act, the ARRA, Oregon law, and as described in Section 3 of the Contract.

(b) Performance Under Loan Documents. Recipient covenants and agrees (i) to maintain the Project and its System in good repair and operating condition; (ii) to cooperate with State in the observance and performance of the respective duties, covenants, obligations and agreements of Recipient and State under this Loan Agreement and the other Loan Documents; and (iii) to comply with the covenants described in this Loan Agreement and the other Loan Documents.

(c) Completion of Project and Provision of Moneys Therefore. If the Project is funded in whole or in part with ARRA funds, Recipient shall design the Project (where applicable) and solicit bids for construction in accordance with ARRA Buy American requirements using American made iron, steel and manufactured goods. Recipient shall incorporate, and shall cause its contractors and subcontractors to incorporate, ARRA Buy American terms, substantially in the form of Exhibit G and Exhibit H, in any request for proposals or solicitation for bids, and in all contracts for the Project or any part thereof,

Recipient may submit a request for a Waiver directly to EPA Region 10 at [region10waiver@epa.gov](mailto:region10waiver@epa.gov) (with a copy to State at [Karen.Homolac@state.or.us](mailto:Karen.Homolac@state.or.us)) if at any point before, during, or after the bid process one or a combination of the following three conditions is met:

- i. Application of Buy American requirements would be inconsistent with the public interest.
- ii. Iron, steel and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
- iii. Inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Recipient may request assistance from State at any point before, during, or after the bid process.

At least ten days before advertising for bids, Recipient shall submit bid documents and a timeline for the bidding and awarding process to State for review. Within ten days after selecting a contractor, Recipient shall provide a copy of the bid tabulation and notice of award to State. Recipient shall obtain as-built drawings for all facilities of the Project and obtain certification of completion per as-built drawings from the Project engineer within ninety (90) days of the Project Completion Date. Recipient shall supply a copy of such drawings and certifications to State upon request.

Recipient further covenants and agrees

(i) to complete the Project on or before the Project Completion Date;

(ii) to proceed expeditiously with, and complete, the Project in accordance with the dates in Section 3.03 (ARRA Representation, Warranties and Covenants) of the Loan Agreement. State will not extend the completion date for any given segment or phase of the Project in Section 3.03 of the Loan Agreement. State has the right to immediately terminate this Loan Agreement if a required completion date in Section 3.03 is not met; and

(iii) to provide from its own fiscal resources all moneys, in excess of the total amount of Loan proceeds it receives pursuant to this Loan Agreement, required to complete the Project.

Recipient shall have a program, documented to the satisfaction of State, for the on-going maintenance, operation and replacement, at Recipient's sole expense, of the Project. The program shall include a plan for generating revenues sufficient to assure the operation, maintenance and replacement of the Project during the useful life of the Project.

Recipient covenants to submit to State for its review and approval, on or prior to the Project Closeout Date stated in Exhibit C, a final Project completion report, on a form provided by State, certifying that the conditions set forth in the Loan Agreement have been satisfied, construction has been completed, and all Project expenditures have occurred.

(d) Disposition of Project or System. Unless worn out, obsolete, or in the reasonable business judgment of Recipient, no longer useful in the operation of the System, Recipient shall not sell, lease, exchange, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or its System or any other system which provides revenues for payment of amounts due under this Loan Agreement and the Loan Documents, except if State consents thereto in writing upon ninety (90) days' prior written notice to State and subject to such conditions as the State may impose. Proceeds of any such disposition not used to replace property that is part of the Project shall be applied to prepay the Loan, as provided in Section 2.04 of this Loan Agreement.

(e) Operation and Maintenance of System. Recipient covenants and agrees that it shall, in accordance with prudent utility practice, (i) at all times operate the properties of its System and any business in connection therewith in an efficient manner, (ii) maintain its System in good repair, working order and operating condition, (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to its System so that at all times the business carried on in connection therewith shall be properly and advantageously conducted and (iv) not provide free service to any customer served by the System except in an emergency; provided, however, this covenant shall not be construed as requiring Recipient to expend any funds which are derived from sources other than the operation of its System or other receipts of such System which are not sources of repayment under Section 2.05(b), and provided further that nothing herein shall be construed as preventing Recipient from doing so.

(f) Revenue Records; Accounts. Recipient shall keep accurate records and accounts for the revenues and funds that are the source of repayment of the Loan (the "Repayment Revenue Records"), separate and distinct from its other records and accounts (the "General Records"). Such Repayment Revenue Records shall be maintained in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time and shall be audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of Recipient. Such Repayment Revenue Records and General Records shall be made available for inspection by State at any reasonable time, and a copy of such annual audit(s) therefore, including all written comments and recommendations of such accountant, shall be furnished to State within two hundred ten (210) days of the close of the fiscal year being so audited. Recipient's financial management systems must conform to the generally accepted accounting principles for state and municipal corporations established by the National Committee on Governmental Accounting as in effect from time to time.

(g) Other Records. Recipient shall maintain any other records pertinent to the Contract and Loan Agreement in such a manner as to clearly document Recipient's performance. Audits shall be conducted annually in accordance with the Office of Management and Budget (OMB) Circular A-133, 24 C.F.R. §§45.1-45.5 (1997). Recipient shall retain and keep accessible all such books, accounts, records, reports, files, and other papers, or property for a minimum of six (6) years from closeout of the Project hereunder, or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract and Loan Agreement, whichever date is later.

Recipient shall identify, and shall cause all its subrecipients to identify, on the Schedule of Expenditures of Federal Awards ("SEFA") required by OMB Circular A-133, information to specifically identify expenditures made under ARRA (i.e., the federal award number, the CFDA number, inclusion of the prefix "ARRAS-" in identifying the name of the federal program, and the amount of the ARRA money). The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is "66.468, Capitalization Grant for Drinking Water State Revolving Funds".

(h) Inspections; Information. Recipient shall permit State, the federal government and any party designated by State ("Inspecting Party") to examine, visit and inspect, at any and all reasonable time, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as Inspecting Party may reasonably require in connection therewith. In addition, Recipient shall provide Inspecting Party with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any bonds, notes or other indebtedness of Recipient that are issued after the Loan Closing Date and are secured by the Net Revenues or any funds that are the source of repayment of the Loan.



The Recipient agrees to allow, and to cause its contractors and subcontractors to allow, any appropriate representative of the EPA Office of Inspector General to (1) examine any records of the Recipient or the Recipients' contractors and subcontractors that pertain to, and involve transactions relating to, the Project and this Loan, and (2) interview any officer or employee of the Recipient, the Recipient's contractors or subcontractors, regarding such transactions.

(i) Insurance. Recipient shall maintain or cause to be maintained insurance policies with responsible insurers or self insurance programs insuring against risk of direct physical loss, damage or destruction of the Project and its System, at least to the extent that similar insurance is usually carried by governmental units constructing, operating and maintaining system facilities of the nature of Recipient's System, including liability coverage, all to the extent available at reasonable cost. Nothing herein shall be deemed to preclude Recipient from exerting against any party, other than State, a defense that may be available to Recipient, including without limitation a defense of immunity. In the event the Project or any portion thereof is destroyed, any insurance proceeds shall be paid to State and shall be applied to prepay the outstanding balance of the Loan in accordance with Section 2.04 of the Loan Agreement, unless State agrees in writing that the insurance proceeds shall be used to rebuild the Project.

(j) Condemnation. In the event the Project or any portion thereof is condemned, any condemnation proceeds shall be used to prepay the outstanding balance of the Loan in accordance with Section 2.04 of the Loan Agreement.

(k) Notice of Material Adverse Change. Recipient shall promptly notify State of any material adverse change in the activities, prospects or condition (financial or otherwise) of Recipient, the Project, or Recipient's System or in the ability of Recipient to complete the Project or make all Loan Repayments required by the Loan Documents and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents.

(l) Financial Statements; Reports. Recipient shall deliver to State in form and detail satisfactory to State such statements (including but not limited to financial statements) or reports as to Recipient as State may request.

(m) Meters. Prior to final disbursement of the Loan,

- (i) In the case of construction projects, Recipient shall install necessary source meter and service meter on all connections throughout the drinking water system. Recipient shall also have an acceptable operations program that includes regular reading and maintaining of all system meters.
- (ii) In the case of planning, preliminary engineering and final design and specification projects, Recipient must adopt a plan for the installation of necessary source meter and service meter on all connections throughout the drinking water system.

(n) Environmental Review. Prior to any construction work on the Project, an environmental review in accordance with State environmental review process and consistent with state and federal environmental laws must be completed.

(o) Lobbying. Recipient acknowledges and agrees that the Costs of the Project do NOT include any Lobbying costs or expenses incurred by Recipient or any person on behalf of Recipient and that Recipient 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.

(p) Contract Covenants. Recipient covenants and agrees to comply with the terms of the Contract including without limitation the covenants of Recipient in Section 6 of the Contract.

(q) Further Assurances. Recipient shall, at the request of State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, and confirming the rights, security interests and agreements granted or intended to be granted by any of the Loan Documents.

**SECTION 3.03. ARRA Representations, Warranties and Covenants**

(a) Buy American. Recipient covenants and agrees that (1) all contractors and subcontractors for the Project will be required to comply with ARRA Buy American requirements, (2) all contracts with contractors and subcontractors for the Project will contain a Buy American provision substantially in the form of Exhibit G and (3) it will obtain and maintain certification (or other satisfactory documentation) of compliance with this provision from all subcontractors and contractors. Upon request, Recipient shall provide State with certification of, or documentation showing, compliance with this Section 6.O.I. Compliance with this Section 3.03 (a) does not prohibit Recipient from applying for a Buy American Waiver following solicitation for Project construction.

(b) Easement and Property Acquisition. Recipient will complete all easement and property acquisitions necessary for the Project and will so certify to State by September 30, 2009 (and provide detailed documentation if requested).

(c) Water Rights and Permits. Recipient will obtain all applicable water rights and all permits necessary for the Project and will so certify to the State, by November 30, 2009 (and provide detailed documentation if requested).

(d) Environmental Review. Recipient will complete the environmental review process and provide the results of this review to State no later than November 30, 2009.

(e) Other Funds. Recipient will secure from other sources the funds necessary to pay for all Costs of the Project not covered by the Loan and will provide to State documentation of such funds no later than December 31, 2009.

(f) Final Design. Recipient will have final design completed and certified by a licensed engineer, and will provide State a copy of such certification to State, no later than December 31, 2009.

(g) Construction Contract. Recipient will execute a construction contract for the Project with a Project completion date no later than February 16, 2012 and will provide documentation satisfactory to State of such construction contract to State by February 16, 2010.

(h) DUNS Number. Recipient must, and must cause its prime contractor(s) to, obtain a Data Universal Numbering System (DUNS) number.

(i) CCR. Recipient must, and must cause its prime contractor(s) to, maintain current registration with the Central Contractor Registration ("CCR"). CCR is the primary registrant database for the federal government. CCR collects, validates, stores, and disseminates data in support of federal acquisition missions. To register in the CCR database, go to <http://www.ccr.gov>. Note – A DUNS number is required to register in CCR.

(j) Contract Provision regarding Reporting. Any of Recipient's contracts funded in whole or in part with ARRA funds under or through this Loan Agreement must contain a special contract condition requiring the contractor to comply with the reporting requirements established for ARRA funding.

(k) Whistleblowers. Recipient shall, and shall cause all employers receiving ARRA funds under or through this Loan Agreement to, post notice of the rights and remedies provided to whistleblowers under Section 1553 of ARRA.

(l) Future ARRA Requirements. Recipient acknowledges that as of the Effective Date of this Loan Agreement the federal government has not issued all of the ARRA requirements, especially including reporting requirements, that may be applicable to Recipient under this Loan Agreement. Recipient agrees that it will comply with all such future requirements provided to Recipient by State.

#### ARTICLE IV CONDITIONS PRECEDENT

**SECTION 4.01. Loan Closing**. State's obligations hereunder are subject to satisfaction of the following conditions precedent on or prior to the Loan Closing Deadline or such later date as State may authorize in writing, in State's sole and absolute discretion:

(a) due execution and delivery to State by Recipient of the following items, each in form and substance satisfactory to State and its Counsel, and filed if so required by State:

- (i) this Loan Agreement duly executed and delivered by an Authorized Officer of Recipient;
- (ii) the Note duly executed and delivered by an Authorized Officer of Recipient;
- (iii) the Contract duly executed and delivered by an Authorized Officer of Recipient;
- (iv) copy of the ordinance, order, resolution, or other authorizing document of the governing body of Recipient as appropriate under Recipient's organizational documents authorizing the execution and delivery of this Loan Agreement, the other Loan Documents, and Recipient's Contract, certified by an Authorized Officer of Recipient;
- (v) an opinion of Recipient's Counsel, acceptable to State, substantially in the form of Exhibit E hereof; and
- (vi) such other certificates, documents, opinions and information as State may reasonably require.

(b) there is money available in the Safe Drinking Water Fund for the Project;

provided, however, State shall be under no obligation to make any disbursements hereunder if there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

**SECTION 4.02. Conditions to Disbursements**. Notwithstanding anything in this Loan Agreement or any of the Loan Documents to the contrary, State shall have no obligation to make any disbursement to Recipient hereunder unless:

(a) an Event of Default, or event, omission or failure of a condition which would constitute an Event of Default as defined in this Loan Agreement or any of the Loan Documents after notice or lapse of time or both, has not occurred and is not continuing under this Loan Agreement or any of the Loan Documents;

(b) all representations and warranties of Recipient made in this Loan Agreement are true and correct on the date of disbursement with the same effect as if made on such date;

(c) State receives (i) a completed Disbursement Request executed by Recipient and (ii) any other written evidence of materials and labor furnished to or performed upon the Project, itemized receipts or invoices for the payment of the same, and releases, satisfactions and other signed statements and forms as State may require as a condition for making disbursement of funds under this Loan Agreement. State may, at its option, from time to time, either reimburse Recipient for construction costs paid or may make direct

payment for construction costs to suppliers, subcontractors and others for sums due them in connection with construction of the Project. Nothing herein contained shall require State to pay any amounts for labor or materials unless satisfied that such claims are reasonable and that such labor and materials were actually expended and used in the construction of the Project. State, at its option, from time to time, may also require that Recipient have a contractor or subcontractor execute or deliver a surety bond or indemnification in form and substance acceptable to State for the faithful performance of the construction contract or subcontract and payment of all liens and lienable expenses in connection therewith in a sum equal to the contract or subcontract price; and

(d) money is available in the Safe Drinking Water Fund to fund the disbursement;

provided, however, State shall be under no obligation to make any disbursements hereunder if there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

#### ARTICLE V ASSIGNMENT

**SECTION 5.01. Assignment by Recipient.** This Loan Agreement and the other Loan Documents may not be assigned by Recipient without the prior written consent of State. State may grant or withhold such consent in its sole discretion. In the event of an assignment of this Loan Agreement and the other Loan Documents by Recipient and assumption of the obligations hereunder, Recipient shall pay, or cause to be paid, to State any fees or costs incurred by State as the result of such assignment, including but not limited to, attorney fees of State's Counsel.

#### ARTICLE VI DEFAULTS AND REMEDIES

**SECTION 6.01. Event of Default.** Time is of the essence of this Loan Agreement. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default:"

(a) Failure by Recipient to make, or cause to be made, any required payments of principal or interest on a Note when due, as provided in the Note and this Loan Agreement; or

(b) Failure by Recipient to make, or cause to be made, any required payments of principal and interest on any bonds, notes or other obligations of Recipient for borrowed money (other than the Loan), after giving effect to the applicable grace period; or

(c) Any representation made by or on behalf of Recipient contained in this Loan Agreement or any other Loan Document, or in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement, any other Loan Document or the Loan, is false or misleading in any material respect; or

(d) A petition is filed by or against Recipient under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against Recipient, such petition shall be dismissed within twenty (20) calendar days after such filing, and such dismissal shall be final and not subject to appeal; or Recipient shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator or trustee of Recipient or any of its property) shall be appointed by court order or take possession of Recipient or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

(e) Failure of Recipient's governing body to appropriate sufficient funds to fully fund all of Recipient's obligations to make Loan Repayments hereunder or under any of the Loan Documents for any future fiscal period; or

(f) The occurrence of any event of default under Section 7 of the Contract or under any of the Loan Documents; or

(g) Breach of Section 3.03 hereof;

(h) Failure by Recipient to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement or any other Loan Documents, other than as referred to in subsections (a) through (g) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to Recipient by State, unless State shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, State may not unreasonably withhold its consent to an extension of such time up to one hundred twenty (120) days from the delivery of the written notice referred to above if corrective action is instituted by Recipient within the applicable period and diligently pursued until the Event of Default is corrected.

**SECTION 6.02. Notice of Default.** Recipient shall give State prompt notice by telephone of the occurrence of any Event of Default referred to in Section 6.01(d) hereof and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of Recipient becomes aware of the existence thereof. Any telephone notice pursuant to this Section 6.02 shall be confirmed in writing as soon as practicable by Recipient.

**SECTION 6.03. Remedies on Default.** Whenever an Event of Default referred to in Section 6.01 hereof shall have occurred and be continuing, State shall have the right to take any action permitted or required pursuant to the Loan Agreement or any other Loan Document and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of Recipient hereunder, including without limitation, (a) declaring all principal and interest and all other amounts due hereunder and under the other Loan Documents to be immediately due and payable, and upon notice to Recipient the same shall become due and payable without further notice or demand, (b) appointment of a receiver of the System, (c) refusal to disburse any funds under this Loan Agreement, (d) barring Recipient from applying for future state assistance, or (e) withholding amounts otherwise due to Recipient to apply to the payment of amounts due under this Loan Agreement pursuant to ORS 285A.213(6) and OAR 123-049-0040.

**SECTION 6.04. Attorney 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 Loan Agreement shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to State by its attorneys. Recipient shall, on demand, pay to State reasonable expenses incurred by State in the collection of Loan payments.

**SECTION 6.05. Application of Moneys.** Any moneys collected by State pursuant to Section 6.03 hereof shall be applied (a) first, to pay any attorney fees or other fees and expenses owed by Recipient hereunder, (b) second, to pay interest due and payable on the Loan, (c) third, to pay principal due and payable on the Loan, and (d) fourth, to pay any other amounts due and payable under this Loan Agreement or any of the Loan Documents.

**SECTION 6.06. No Remedy Exclusive; Waiver; Notice.** No remedy herein conferred upon or reserved to State is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or any of the Loan Documents or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. To entitle State to exercise any remedy reserved to it in this Article VI, it shall not be necessary to give any notice, other than such notice as may be required in this Article VI.

**SECTION 6.07. Default by State.** In the event of any default by State under any covenant, agreement or obligation of this Loan Agreement, Recipient's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of State hereunder as may be necessary or appropriate.

## ARTICLE VII MISCELLANEOUS

**SECTION 7.01. Notices.** All notices hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed, postage prepaid, to Recipient at the address specified on Exhibit C hereof and to State at the following address:

Business Development Department  
Attention: Program Services Manager, Infrastructure Finance Authority  
775 Summer Street NE, Suite 200  
Salem, OR 97301-1280

Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice given by personal delivery shall be effective when actually delivered.

A party may designate any further or different address to which subsequent notices shall be sent, by notice in writing.

**SECTION 7.02. Successors and Assigns.** Recipient shall not assign or transfer any interest in this Loan Agreement or in any other Loan Document without the prior written approval of State. Any such assignment or transfer, if approved, is subject to such conditions and provisions as State may deem necessary. No approval by State of any assignment or transfer shall be deemed to create any obligation of State in addition to those set forth in the Loan Agreement or the other Loan Documents nor will State's approval of an assignment or transfer relieve Recipient of any of its duties or obligations under this Loan Agreement or any of the other Loan Documents. This Loan Agreement shall inure to the benefit of and shall be binding upon State and Recipient and their respective successors and permitted assigns.

**SECTION 7.03. Severability.** In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

**SECTION 7.04. Amendments, Supplements and Modifications.** This Loan Agreement may not be amended, supplemented or modified without the prior written consent of State and Recipient. This Loan Agreement may not be amended, supplemented or modified in a manner that is not in compliance with the Act.

**SECTION 7.05. Execution in Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 7.06. No Construction Against Drafter.** Both parties acknowledge that they are each represented by and have sought the advice of Counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

**SECTION 7.07. Applicable Law.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law, and the Act and ARRA. Any claim, action, suit or proceeding (collectively, "Claim") between State (or any agency or department of the State of Oregon) and Recipient that arises from or relates to this Loan Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon (unless Oregon law requires that it be brought and conducted in another county); provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

**SECTION 7.08. Consents and Approvals.** Whenever the written consent or approval of State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by State unless otherwise provided by law or by rules, regulations or resolutions of State.

**SECTION 7.09. Merger; No Waiver.** This Loan Agreement and the attached exhibits (which are by this reference incorporated herein) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall bind either party unless in writing and signed by the party against whom the waiver or consent is sought to be enforced (and in the case of a waiver or consent by State, all necessary State approvals have been obtained). Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of or delay by State to enforce any provision of this Loan Agreement shall not constitute a waiver by State of that or any other provision.

**SECTION 7.10. No Third Party Beneficiaries.** State and Recipient are the only parties to this Loan Agreement and are the only parties entitled to enforce its terms. The parties agree that Recipient's performance under this Loan Agreement is solely for the benefit of State. Nothing in this Loan Agreement gives, is intended to give, or shall be construed to give or provide, whether directly, indirectly or otherwise, to third persons any greater benefit or right than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Loan Agreement.

This Loan Agreement is effective as of the Effective Date. Recipient, by the signature below of its Authorized Officer, acknowledges that it has read this Loan Agreement, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON  
acting by and through its  
Business Development Department

CITY OF WARRENTON

By: \_\_\_\_\_  
James P. Ruef, Program Services Manager  
Infrastructure Finance Authority

By: \_\_\_\_\_  
The Honorable Gilbert Gramson  
Mayor of Warrenton

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

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

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

\_\_\_\_\_  
/s/ Lynn T. Nagasako, AAG (email dated July 31, 2009)  
Lynn T. Nagasako, Sr. Assistant Attorney General

Date: \_\_\_\_\_ July 31, 2009 \_\_\_\_\_



### PROJECT DESCRIPTION

Recipient will, with the assistance of a licensed engineer, design and construct a new 3.5-million-gallon covered-water reservoir; extend two, 18-inch ductile iron waterlines approximately 3,000 feet from Highway 101 to the reservoir; and upgrade a single-lane bridge that provides access to the reservoir.

Recipient will complete an inventory of the water System physical assets and perform GIS mapping of those assets. The data gathered will be integrated into its financial accounting and budget plans. An integrated asset management plan will be developed as part of the operation and maintenance activities over the next two years.

Recipient will mitigate water losses from the Blue Tank overflow and from unmetered City facilities, and then will complete a new estimate of water loss, to satisfy conditions of the Technical and Managerial Capacity Reviews documented by Department of Human Services, Drinking Water Program memo dated April 21, 2009.

Oregon Economic & Community Development Department  
Project Budget

Loan Agreement Exhibit B  
Page 1 of 1

Project Number: SZ9012  
Project Name: LT2 Compliance Project

Recipient: City of Warrenton  
Funding Pgm(s): Safe Drinking Water Revolving Loan Fund

DUNS Number: 87-700-4937 CTS # 033600172

(A) Activity	Department Funds				Other/Matching Funds			All Funds
	(B) Approved Budget	(C) Prior Disbursements	(D) Current Request	(E) = [B-C-D] Balance	(F) Approved Budget	(G) Expended To Date	(H) = [F-G] Balance	(I) = [C+D+G] Disbursed & Expended To Date
Site Acquisition					\$70,000		\$70,000	
Engineering	392,548			392,548				
Legal	25,000			25,000				
Construction	4,089,150			4,089,150				
Construction Contingency	817,830			817,830				
Geotechnical Studies / Surveys (Pre-award)	35,000			35,000				
Asset Management	39,520			39,520				
<b>Total</b>	<b>\$5,399,048</b>			<b>\$5,399,048</b>	<b>\$70,000</b>		<b>\$70,000</b>	

Total Project Budget		
Funding Sources	Approved Budget	Expenditures To Date
Safe Drinking Water Revolving Loan Fund	\$5,399,048	
Other/Matching Funds	70,000	
<b>Total Project Costs</b>	<b>\$5,469,048</b>	

Non-Department Funds (Other/Matching) Sources Used for all Expenditures		
Funding Sources	Approved Budget	Expenditures To Date
City of Warrenton	\$70,000	
<b>Total Non-Dept. Funds</b>	<b>\$70,000</b>	

Non-Department Funds (Other/Matching) IN-KIND		
Source of In-Kind Contribution	Goods/Services Donated	Value of Contribution To Date
<b>In-Kind Contributions To Date</b>		

**DESCRIPTION OF THE FINANCIAL AWARD**

1. Loan Closing Deadline: August 31, 2009
2. Name and Address of Recipient: City of Warrenton  
225 South Main Avenue / PO Box 250  
Warrenton, OR 97146
3. Costs of the Project: \$5,469,048
4. Other Funds: \$70,000
5. Project Completion Date: February 16, 2012
6. Project Closeout Date: May 31, 2012
7. [Reserved]
8. Maximum Aggregate Principal Amount of SDWRLF F-2 Loan: \$2,699,524
9. Maximum Aggregate Principal Amount of ARRA Forgivable Loan: \$2,699,524
10. [Reserved]
11. [Reserved]
12. Interest Rate of SDWRLF F-2 Loan: Three and 83/100 percent (3.83%) per annum  
(Subject to adjustment pursuant to Section 2.02(c))
13. Interest Rate of ARRA Forgivable Loan: Three percent (3%) per annum
14. [Reserved]
15. Term of the Loan: See Sections 1.01 and 2.02
16. Authorized Officer(s) of Recipient: Mayor
17. Recipient's DUNS Number 87-700-4937

**SPECIAL CONDITIONS****I. GENERAL FUND**

Recipient hereby 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 the Loan Agreement and the Note. The Loan Agreement and the Note shall be payable from all legally available funds of Recipient.

**II. NET REVENUES**

1. The principal of and interest on the Loan shall be payable from the Net Revenues of Recipient's System. Recipient hereby grants to State a security interest in and irrevocably pledges its Net Revenues to pay all of the obligations owed by Recipient to State under the Loan Agreement. As described in ORS 287A.310, the pledge of the Net Revenues hereby made by Recipient shall be valid and binding from the date of this Loan Agreement.
2. Recipient shall not incur any obligation payable from or secured by a lien on and pledge of the Net Revenues that is superior to or on parity with the Loan unless the annual Net Revenues exceed one hundred twenty percent (120%) of the aggregate annual debt service on the Loan and all senior lien and parity obligations (including any proposed senior lien or parity obligations and obligations deemed to be parity obligations pursuant to paragraph 3 of Section II below). Prior to the issuance of any senior lien or parity obligations, Recipient shall deliver to State a certificate demonstrating that the requirements of this paragraph are satisfied.
3. Loans previously made and loans made in the future by State to Recipient that are secured by the Net Revenues shall have a lien on such Net Revenues on a parity with the Loan; provided that nothing in this paragraph 3 of Section II shall adversely affect the priority of any lien of State on such Net Revenues in relation to the lien(s) of any third party(ies).
4. Recipient shall charge rates and fees in connection with the operation of the System that, when combined with other gross revenues, are adequate to generate the Net Revenues each fiscal year at least equal to one hundred twenty percent (120%) of the annual debt service due in the fiscal year on the Loan, any outstanding senior lien obligations, and all obligations on parity with the Loan or deemed to be on a parity with the Loan pursuant to paragraph 3 of this Section II. If in any fiscal year Recipient fails to collect fees to meet this requirement, Recipient shall adjust its fees and assure future compliance.
5. Recipient may establish a debt service reserve fund to secure repayment of the obligations that are issued on a parity with the Loan as described in paragraph 2 of this Section II, only on the condition that no deposit of the Net Revenues of the System into such debt service reserve fund shall be permitted unless and until provision is made for the payment of debt service on the Loan and all parity obligations described in paragraph 3 of this Section II for the 12-month period succeeding such deposit.
6. The Net Revenues pledged pursuant to paragraph 1 of this Section II and hereafter received by Recipient shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, except as provided in paragraphs 2 and 3 of this Section II, to the fullest extent permitted by ORS 287A.310. Recipient hereby represents and warrants that the pledge of Net Revenues hereby made by Recipient complies with, and shall be valid and binding from the date hereof as described in ORS 287A.310.

**Form of Opinion of Counsel**

Capitalized terms used in this opinion that are not defined herein have the meanings assigned to them by that certain loan agreement dated as of XXXXXXXXXXXXXXXXXXXX, XXXX between the State of Oregon acting by and through the Business Development Department (“State”) and Recipient (as defined below).

It is the opinion of XXXXXXXXXXXXXXXXXXXXXXXXXXXX, counsel for the City of Warrenton (“Recipient”), that:

(a) Recipient is a municipality duly organized and validly existing under the laws of Oregon, and Recipient has the requisite power and authority to own its properties and conduct its business as now conducted. Recipient owns a community water system, as defined under the Act and Oregon law, that is eligible to receive funds.

(b) Recipient has the requisite power and authority to execute, deliver, and perform the Loan Documents and the Contract. The Loan Documents and the Contract have been duly and validly authorized by Recipient, have been executed and delivered by an Authorized Officer of Recipient, constitute the legal, valid, and binding obligations of Recipient and are enforceable according to their terms, subject to bankruptcy and other laws of general application affecting the rights and remedies of creditors, except that no opinion need be given as to the availability of equitable remedies.

(c) Recipient is not in violation or default of any material agreement to which it is a party or by which it is bound, which affects or relates to Recipient’s performance under the Loan Documents or the Contract. Recipient’s execution, delivery, performance, and compliance with the terms of the Loan Documents and the Contract do not violate any material provision of any applicable federal, state, or local law, rule or regulation binding on Recipient or of any judgment, writ, decree, or order known to such counsel to be binding on Recipient, or any provision of Recipient’s organizational documents and do not conflict with or constitute a material default under the provisions of any material agreement to which Recipient is a party or by which it is bound.

(d) All consents, approvals, orders, or authorizations of, and all qualifications, registrations, designations, declarations, or filings with any federal or state governmental authority on the part of Recipient required for the consummation of the transactions contemplated by the Loan Documents and the Contract have been obtained and are effective as of the date hereof, and such counsel is not aware of any proceedings, or threat thereof, which question the validity thereof.

(e) There is no action, suit, proceeding, or investigation pending or threatened against Recipient that would, if adversely determined, have a material adverse effect on the financial condition or business of Recipient or on the ability of Recipient to perform its obligations under the Loan Documents or the Contract.

(f) State has acquired a legally valid and perfected security interest in and lien on the Net Revenues to secure Recipient’s repayment of the Loan and performance of Recipient’s other obligations under the Loan Documents.

**EXHIBIT F-2 - SDWRLF F-2 NOTE**

**PROMISSORY NOTE**

(Dated) XXXXXXXXXXXXXXXX, XXXX

Warrenton, Oregon

FOR VALUE RECEIVED, the City of Warrenton, 225 South Main Avenue / PO Box 250, Warrenton, OR 97146 (hereinafter "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 ITS BUSINESS DEVELOPMENT DEPARTMENT, at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280 (hereinafter "State"), the principal sum of Two Million, Six Hundred Ninety-Nine Thousand, Five Hundred Twenty-Four Dollars (\$2,699,524) or so much thereof as is disbursed pursuant to the Loan Agreement (as defined below), plus accrued interest on the outstanding principal balance at the rate of Three and 83/100 percent (3.83%) per annum from the date hereof until paid, subject to adjustment pursuant to Section 2.02(c) of the Loan Agreement. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12) thirty-day (30-day) months.

Capitalized terms not otherwise defined in this Note shall have the meanings assigned to them by that certain loan agreement dated as of XXXXXXXXXXXXXXXX, XXXX, between State and Recipient (as amended from time to time the "Loan Agreement").

Unless earlier repayment is received hereunder or under the terms of the Loan Agreement, commencing on the First Payment Date and thereafter on December 1 of each year, Recipient shall make installment payments of principal and interest in such amounts as calculated in accordance with Section 2.02 of the Loan Agreement until the Maturity Date, at which time the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full.

This Note is subject to mandatory prepayment, and is payable prior to its maturity, as provided for in Sections 2.04 of the Loan Agreement.

Each payment made by Recipient hereunder shall be applied first to State's costs and expenses, then to unpaid accrued interest on the Loan, and lastly to the principal of the Loan, unless the Loan Documents provide otherwise.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by State to Recipient in accordance with Section 2.01 of the Loan Agreement. In consideration thereof, Recipient authorizes State to record in State's files the date and amount of each such disbursement, the date and amount of each payment and prepayment by Recipient hereunder and the amount of interest accrued and paid. Recipient further agrees that absent manifest error, such notations shall be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations shall not affect the obligations of Recipient hereunder or under any of the Loan Documents.

If any Event of Default occurs, the outstanding balance of the Note, including principal, interest and other charges, if any, shall, at the option of State, become immediately due and payable in accordance with Section 6.03 of the Loan Agreement. Failure or delay of the holder of this Note to exercise any option available to State under the terms of this Note or the Loan Agreement shall not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default and shall not constitute a waiver of any subsequent breach of the same or of any other provision of this Note or the Loan Agreement.

All parties to this Note hereby waive presentment, dishonor, notice of dishonor, and protest. All parties hereto hereby consent to, and the holder hereof is hereby expressly authorized to make, without notice, any and all renewals, extensions, modifications or waivers of the time for or the terms of payment of any sum of sums due hereunder, or under any documents or instruments relating to or securing this Note, or of the performance of any covenants, conditions or agreements hereof or thereof, or the taking or release of collateral securing this Note. No liability of any of the parties of this Note shall be discharged by any action consented to above taken by any holder of this Note.

This Note is made with reference to, and is to be construed in accordance with, the laws of the State of Oregon without regard to principles of conflicts of law.

This Note is subject to, and is secured pursuant to, the terms and conditions of the Loan Agreement.

**Notice to Recipient**

**Do not sign this Note before you read it.**

**CITY OF WARRENTON**

By: XXXXXXXXXXXXXXXXXXXXXXXXXX

Title: XXXXXXXXXXXXXXXXXXXXXXXXXX

**EXHIBIT F-3 – ARRA Forgivable Note**  
**Promissory Note**

(Dated) XXXXXXXXXXXXXXXX, XXXX

Warrenton, Oregon

FOR VALUE RECEIVED, the City of Warrenton, 225 South Main Avenue / PO Box 250, Warrenton, OR 97146 (hereinafter "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 ITS BUSINESS DEVELOPMENT DEPARTMENT, at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280 (hereinafter "State"), the principal sum of Two Million, Six Hundred Ninety-Nine Thousand, Five Hundred Twenty-Four Dollars (\$2,699,524) or so much thereof as is disbursed pursuant to the Loan Agreement (as defined below), plus accrued interest on the outstanding principal balance at the rate of three percent (3%) per annum from the date hereof until paid. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12) thirty-day (30-day) months.

Capitalized terms not otherwise defined in this Note shall have the meanings assigned to them by the certain loan agreement dated as of XXXXXXXXXXXXXXXX, XXXX, between State and Recipient (as amended from time to time the "Loan Agreement").

Unless earlier repayment is received hereunder or under the terms of the Loan Agreement, commencing on the First Payment Date and thereafter on December 1 of each year, Recipient shall make installment payments of principal and interest in such amounts as calculated in accordance with Section 2.02 of the Loan Agreement until the Maturity Date, at which time the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full.

This Note is subject to mandatory prepayment, and is payable prior to its maturity, as provided for in Sections 2.04 of the Loan Agreement.

Each payment made by Recipient hereunder shall be applied first to State's costs and expenses, then to unpaid accrued interest on the Loan, and lastly to the principal of the Loan, unless the Loan Documents provide otherwise.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by State to Recipient in accordance with Section 2.01 of the Loan Agreement. In consideration thereof, Recipient authorizes State to record in State's files the date and amount of each such disbursement, the date and amount of each payment and prepayment by Recipient hereunder and the amount of interest accrued and paid. Recipient further agrees that absent manifest error, such notations shall be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations shall not affect the obligations of Recipient hereunder or under any of the Loan Documents.

If any Event of Default occurs, the outstanding balance of the Note, including principal, interest and other charges, if any, shall, at the option of State, become immediately due and payable in accordance with Section 6.03 of the Loan Agreement. Failure or delay of the holder of this Note to exercise any option available to State under the terms of this Note or the Loan Agreement shall not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default and shall not constitute a waiver of any subsequent breach of the same or of any other provision of this Note or the Loan Agreement.



All parties to this Note hereby waive presentment, dishonor, notice of dishonor, and protest. All parties hereto hereby consent to, and the holder hereof is hereby expressly authorized to make, without notice, any and all renewals, extensions, modifications or waivers of the time for or the terms of payment of any sum of sums due hereunder, or under any documents or instruments relating to or securing this Note, or of the performance of any covenants, conditions or agreements hereof or thereof, or the taking or release of collateral securing this Note. No liability of any of the parties of this Note shall be discharged by any action consented to above taken by any holder of this Note.

This Note is made with reference to, and is to be construed in accordance with, the laws of the State of Oregon without regard to principles of conflicts of law.

This Note is subject to, and is secured pursuant to, the terms and conditions of the Loan Agreement.

**This Note is subject to forgiveness pursuant to Section 2 02(f) of the Loan Agreement.**

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

CITY OF WARRENTON

By: \_\_\_\_\_XXXXXXXXXXXXXXXXXXXX

Title: \_\_\_\_\_XXXXXXXXXXXXXXXXXXXX

**BUY AMERICAN CONTRACT LANGUAGE**

LANGUAGE SUBSTANTIALLY IN THE FORM OF THE FOLLOWING PROVISION MUST BE INCLUDED IN ALL CONTRACTS THAT USE ARRA FUNDS:

The Contractor acknowledges to and for the benefit of the City of Warrenton ("Purchaser") and the State of Oregon (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the federal American Recovery and Reinvestment Act of 2009 (ARRA) (or are being made available for a project being funded with monies made available by the federal ARRA) and such law contains provisions commonly known as "Buy American" that require all of the iron, steel, and manufactured goods used in the project be produced in the United States ("Buy American Requirements") including iron, steel, and manufactured goods provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project will be or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or documentation of a waiver and information necessary to support a waiver of the Buy American Requirements, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or the Environmental Protection Agency, as the case may be, or any damages or indemnification owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

**FORM OF CERTIFICATION OF COMPLIANCE WITH SECTION 1605 OF THE ARRA**

1. Identification of American-made Iron, Steel, and Manufactured Goods: Consistent with the terms of the Purchaser's bid solicitation and Section 1605 of the federal American Recovery and Reinvestment Act of 2009 (ARRA), the Bidder certifies that this bid reflects the Bidder's best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.
2. Verification of U.S. Production: The Bidder certifies that all components contained in the bid solicitation that are American-made have been so identified, and if this bid is accepted, the Bidder agrees that it will provide reasonable, sufficient, and timely verification to the Purchaser of the U.S. production of each component so identified.
3. Documentation Regarding Non- American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any component or components that are not American-made and are so identified in this bid, the Bidder has included in or attached to this bid one or both of the following, as applicable:
  - a. Identification of and citation to a categorical waiver published by the U.S. Environmental Protection Agency in the Federal Register that is applicable to such component or components, and an analysis that supports its applicability to the component or components;
  - b. Verifiable documentation sufficient to the Purchaser, as required in the bid solicitation or otherwise, that the Bidder has sought to secure American-made components but has determined that such components are not available on the schedule and consistent with the deadlines prescribed in the bid solicitation, with assurance adequate for the Bidder under the applicable conditions stated in the bid solicitation or otherwise.
4. Information and Detailed Justification Regarding Non- American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any such component or components that are not so available, the Bidder has also provided in or attached to this bid information, including but not limited to the verifiable documentation and a full description of the bidder's efforts to secure any such American-made component or components, that the Bidder believes are sufficient to provide and as far as possible constitute the detailed justification required for a waiver under Section 1605 with respect to such component or components. The Bidder further agrees that, if this bid is accepted, it will assist the Purchaser in amending, supplementing, or further supporting such information as required by the Purchaser to request and, as applicable, implement the terms of a waiver with respect to any such components.

**CERTIFICATION REGARDING LOBBYING**  
(Awards of \$100,000 or more)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_