





AGENDA
OMAK CITY COUNCIL MEETING
Hybrid Meeting with Zoom
Monday, July 19, 2021 – 7:00 PM

- A. CALL TO ORDER
- B. FLAG SALUTE
- C. CITIZEN COMMENTS
- D. CORRESPONDENCE AND MAYOR'S REPORT
- E. CONSENT AGENDA:
1. Approval of minutes from July 6, 2021
2. Approval of Claims
- F. NEW BUSINESS:
1. Res. 35-2021 – Approve Professional Service Agreement for Lobbyist & Gov't Relation Srvc. 
2. Res. 36-2021 – Approve Interagency Agreement with Washington State Auditor's Office 
3. Res. 37-2021 – Approve Cost Allocation Policy 
4. Res. 38-2021 – Approve COVID-19 Leave Policy 
5. Res. 39-2021 – Approve Loan Contract from DWSRF for Julia Maley Well Treatment 
- G. OTHER BUSINESS:
1. Council Committee Reports
2. Staff Reports

 **Action by City Council**

In accordance with the "Stay Home, Stay Healthy" order from Governor Inslee, our Council Meeting will be conducted using a Hybrid Model incorporating Zoom Meetings (information on next page).
If you need support, contact the City Clerk in advance of the meeting by calling 509-826-1170 or e-mail clerk@omakcity.com for assistance.

The City of Omak is inviting you to a scheduled Zoom meeting
Monday, July 19th, 2021 @ 7:00pm

Join Zoom Meeting

<https://uso2web.zoom.us/j/81286650785?pwd=bGFGWDBxTo1FWkRKdXI3YUNCeHk4Zzo9>

Meeting ID: 812 8665 0785

Passcode: 965661

One tap mobile

+12532158782,,81286650785#,,,,*965661# US (Tacoma)

+16699006833,,81286650785#,,,,*965661# US (San Jose)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

Meeting ID: 812 8665 0785

Passcode: 965661

Find your local number: <https://uso2web.zoom.us/j/81286650785?pwd=bGFGWDBxTo1FWkRKdXI3YUNCeHk4Zzo9>

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Todd McDaniel
City Administrator

Date: July 19, 2021

Subject: **Resolution No. 35-2021** Agreement for Consulting Services

The attached Resolution **35-2021, A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH NORTHWEST SOLUTIONS FOR LOBBYIST AND GOVERNMENT RELATIONS SERVICES,** is forwarded for your consideration.

With Jim Rowland's recent retirement, the city is left without proper representation to our Legislatures and partnering State Agencies.

Northwest Solutions has been selected to carry on these efforts. Mara Machulsky has worked with the City and Rowland Company in the past and is well positioned to represent the city.

An agreement has been prepared and reviewed by the City Attorney. This a one-year agreement valued at \$1,750.00 per month (\$21,000.00 annually).

I support this Resolution and recommend its approval.

RESOLUTION NO. 35-2021

A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH NORTHWEST SOLUTIONS FOR LOBBYIST AND GOVERNMENT RELATIONS SERVICES

WHEREAS, the City of Omak utilizes consulting services to monitor actions and advocate for the city to the Legislature and State Agencies; and

WHEREAS, consulting services provide by Rowland Company have terminated, due to Jim Rowlands recent retirement; and

WHEREAS, Northwest Solutions has been selected for the city's continued consulting service needs.

NOW, THEREFORE BE IT RESOLVED by the Omak City Council the Professional Services Agreement between the City of Omak and Northwest Solutions, a copy of which it attached hereto as exhibit "A", is approved. The Mayor is authorized to execute this agreement.

INTRODUCED AND PASSED this _____ day of _____, 2021.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael D. Howe, City

City of Omak & Northwest Solutions
Contract for State Lobbying & Consulting Services

Northwest Solutions

Mara Machulsky- 360-742-0515

Scope of Work:

The consultant agrees to provide lobbying and consulting services to the City of Omak (the City) as set forth herein. All duties, obligations, and services shall be provided in a skillful, professional, and respectful manner. The quality of the consultant's performance and all interim and final products provided to or on behalf of the City of Omak shall be comparable to or exceed the best industry standards.

These services include, but are not limited to:

1. Providing advice and consultation regarding activities related to the Washington State Legislature.
2. Attending City of Omak council meetings whenever requested, to report on legislative involvement.
3. Assisting the City in drafting testimony, letters, and talking points on issues/bills prioritized by the City.
4. The consultant will communicate the City legislative priorities and issues to members of the Washington State Legislature, and legislative staff and identify any areas of potential concern or opportunity for achieving the identified objectives.
5. When requested, arranging meetings with legislators and stakeholders regarding legislation of interest to the City.
6. Attending Association of Washington Cities intergovernmental relations table and report on their meetings, as time allows.
7. Pre-working issues/bills with partners and interest groups, as well as opposition when appropriate, as authorized by the City.
8. Bringing fully analyzed issues related to the City to legislator's attention, including information regarding the process involved with issues/bills prioritized by the City.
9. The consultant will provide update reports on actions performed for the City, to be

submitted with monthly invoices. Weekly reports will be provided during the sessions, with additional reports provided during special sessions as legislative activity dictates.

10. The consultant will be available in a timely manner in person, by telephone, or email to the City of Omak's assigned point of contact (City Administrator, Todd McDaniel) to provide consultation and advice on legislative matters, or other matters involving the development and maintenance of successful government relations.
11. During each interim period (between legislative sessions) the consultant will work with the City to produce a legislative plan for upcoming sessions and de-brief the past session. The consultant shall also provide briefings regarding the implementation of pertinent legislation signed into law following each legislative session.

Billing:

The consultant will submit an invoice each month. The consultant will provide documentation supporting invoices as may be requested.

Compensation:

The City of Omak agrees to pay the partnership the amount of \$1,750 per month (\$21,000 annually) for services performed and completed pursuant to the terms and conditions of this agreement. The compensation due to the consultant shall be paid monthly, provided the consultant has demonstrated compliance with the terms of this section and submitted an invoice.

Communications Protocol:

The City council members and the consultant have requested one point of contact for the consultant outside of the City council meetings.

The City Administrator for the City of Omak will serve in this role.

The consultant will directly communicate all lobbyist requests for information or action to the City Administrator by email. The City Administrator will disseminate such requests to the appropriate person(s). Responses to the requested information shall be provided to the and forwarded by them to the consultant.

All requests for lobbyist information-or action from Council members or staff, shall be communicated to the City Administrator, who will forward such requests to the consultant.

The consultant will provide the requested information and/or report on requested actions, back to the City Administrator for dissemination to Council members and/or staff as appropriate.

In addition to communications through the City Administrator, the City of Omak may convey requests for lobbyist information or action directly to the consultant at City Council meetings. Such requests, if any, shall be reflected in Council meeting minutes.

Term of Agreement

This agreement shall be binding upon the parties when signed and shall continue for one calendar year.

Non-exclusive

This agreement is for the non-exclusive use of the partnership's services. Nothing contained herein shall prevent the partnership from contracting to provide similar services to other clients on a non-exclusive basis.

Confidentiality


- a. The consultant acknowledges that during the course of, and as the result of the consultant's relationship with the City of Omak, the consultant may have access to, acquire, and be required to utilize confidential information. The consultant hereby covenants and agrees that it will not, without the written consent of the City, directly or indirectly divulge, communicate, or disclose to any person, firm, or organization any confidential information.

- b. The consultant agrees that during the term of this agreement, it shall not have or hold any continuing or frequently recurring employment or contractual relationship that is antagonistic to or incompatible with the consultant's loyal and conscientious exercise of judgment related to performance under this agreement.

- c. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this agreement are and shall remain the property of the City of Omak. In the event of termination of this agreement, any documents prepared by the consultant, whether complete or incomplete, shall remain the property of the City and shall be delivered by the consultant to the City Administrator within one month of termination of this agreement by either party.

Independent Contractors

The partnership and the City of Omak have entered into this agreement with the mutual understanding that the partnership is an independent contractor, and not an employee of the organization. The partnership understands and agrees to be responsible for complying with state and federal requirements as they relate to Public Disclosure Commission reporting, income taxes, social security contributions, and any other requirements placed upon self-employed persons.



Mara Machulsky (Northwest Solutions)
Signed July 1st, 2021

Cindy Gagné, Mayor, City of Omak
Signed July _____, 2021

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Todd McDaniel
City Administrator

Date: July 19, 2021

Subject: **Resolution No. 36-2021** Interagency SAO Data sharing

The attached Resolution **36-2021, A Resolution of the Omak City Council approving an Interagency Agreement Between the City of Omak and The Office of the Washington State Auditor,**

ESSB 5432 created the Office of Cybersecurity. This Office will set policy and procedures for state agencies in the collection, transmittal, and storage of confidential information.

Concerns over data security continue to increase as the world falls prey to data leaks and cyber-attacks. SAO will have a role in ensuring state agencies comply with best policy and practice in the collection, storage, and exchange of data information.

This agreement helps formalize the act of sharing data with SAO for auditing purposes. Vision IT has reviewed this agreement and has no concerns regarding the security of our IT systems and, the ability to comply with future guidance from the Office of Cyber Security.

I support this Resolution and recommend its approval.

RESOLUTION NO. 36-2021

**A RESOLUTION OF THE OMAK CITY COUNCIL, APPROVING AN
INTERAGENCY AGREEMENT BETWEEN THE CITY OF OMAK AND THE
OFFICE OF THE WASHINGTON STATE AUDITOR**

WHEREAS, the Revised Code of Washington, RCW 39.34 authorizes units of government within the State to enter into cooperative agreements for the provision of goods and services to each other; and

WHEREAS, the Office of the Washington State Auditor (SAO) is the auditor of all public accounts in Washington State. SAO's authority is broad and includes both explicit and implicit powers to review records, including confidential records; and

WHEREAS, Engrossed Substitute Senate Bill (ESSB) 5432 Creates the Office of Cybersecurity and requires written data share agreements between cooperating agencies; and

WHEREAS, SAO will require access to City systems and data to ensure compliance with ESSB 5432; and

WHEREAS, the Interagency Data Sharing Agreement documents the responsibility of the City of Omak and SAO in the exchange of confidential information.

NOW, THEREFORE, BE IT RESOLVED by the Omak City Council, that the Interagency Agreement, between the City of Omak and the Office of the Washington State Auditor, a copy of which is attached hereto as Exhibit "A", is approved. The Mayor is hereby authorized and directed to execute the same for and on behalf of the City.

INTRODUCED AND APPROVED by the City Council of the City of Omak this _____ day of _____, 2021.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael D. Howe, City Attorney

EXHIBIT A

Agency DSA 21-01

INTERAGENCY DATA SHARING AGREEMENT

Between

City of Omak

And the Office of the Washington State Auditor

This Interagency Data Sharing Agreement (DSA) is entered into by and between City of Omak hereinafter referred to as "Agency", and the Office of the Washington State Auditor, hereinafter referred to as "SAO", pursuant to the authority granted by Chapter 39.34 RCW and 43.09 RCW.

AGENCY PROVIDING DATA: Agency

Agency Name: City of Omak
Contact Name: Todd McDaniel
Title: City Administrator
Address: Box 72, Omak, WA.
Phone: 509.826.1170
E-mail: admin@omakcity.com

AGENCY RECEIVING DATA: SAO

Agency Name: Office of the Washington State Auditor
Contact Name: Jake Santistevan
Title: Audit Manager
Address: 1014 Fifth Street, Suite 202, Wenatchee WA 98801
Phone: (360) 522-2874
E-mail: jake.santistevan@sao.wa.gov

1. PURPOSE OF THE DSA

The purpose of the DSA is to provide the requirements and authorization for the Agency to exchange confidential information with SAO. This agreement is entered into between Agency and SAO to ensure compliance with legal requirements and Executive Directives (Executive Order 16-01, RCW 42.56, and OCIO policy 141.10) in the handling of information considered confidential.

2. DEFINITIONS

"Agreement" means this Interagency Data Sharing Agreement, including all documents attached or incorporated by reference.

DSA Agreement between Agency and SAO
Agency DSA: 21-01

“Data Access” refers to rights granted to SAO employees to directly connect to Agency systems, networks and/ or applications combined with required information needed to implement these rights.

“Data Transmission” refers to the methods and technologies to be used to move a copy of the data between systems, networks and/ or employee workstations.

“Data Storage” refers to the place data is in when at rest. Data can be stored on removable or portable media devices such as a USB drive or SAO managed systems or OCIO/ State approved services.

“Data Encryption” refers to enciphering data with a NIST-approved algorithm or cryptographic module using a NIST-approved key length. Encryption must be applied in such a way that it renders data unusable to anyone but the authorized users.

“Personal Information” means information defined in RCW 42.56.590(10).

3. PERIOD OF AGREEMENT

This agreement shall begin on July 1, 2021, or date of execution, whichever is later, and end on June 30, 2024, unless terminated sooner or extended as provided herein.

4. JUSTIFICATION FOR DATA SHARING

SAO is the auditor of all public accounts in Washington State. SAO’s authority is broad and includes both explicit and implicit powers to review records, including confidential records, during the course of an audit or investigation.

5. DESCRIPTION OF DATA TO BE SHARED

The data to be shared includes information and data related to financial activity, operation and compliance with contractual, state and federal programs, security of computer systems, performance and accountability for agency programs as applicable to the audit(s) performed. Specific data requests will be limited to information needed for SAO audits, investigations and related statutory authorities as identified through auditor requests.

6. DATA ACCESS

If desired, with the Agency’s permission, the Agency can provide direct, read-only access into its system. SAO will limit access to the system to employees who need access in support of the audit(s). SAO agrees to notify the agency when access is no longer needed.

7. DATA TRANSMISSION

Transmission of data between Agency and SAO will use a secure method that is commensurate to the sensitivity of the data being transmitted.

8. DATA STORAGE AND HANDLING REQUIREMENTS

Agency will notify SAO if they are providing confidential data. All confidential data provided by Agency will be stored with access limited to the least number of SAO staff needed to complete the purpose of the DSA.

9. INTENDED USE OF DATA

The Office of the Washington State Auditor will utilize this data in support of their audits, investigations, and related statutory responsibilities as described in RCW 43.09.

10. CONSTRAINTS ON USE OF DATA

The Office of the Washington State Auditor agrees to strictly limit use of information obtained under this Agreement to the purpose of carrying out our audits, investigations and related statutory responsibilities as described in RCW 43.09.

11. SECURITY OF DATA

SAO shall take due care and take reasonable precautions to protect Agency's data from unauthorized physical and electronic access. SAO complies with the requirements of the OCIO 141.10 policies and standards for data security and access controls to ensure the confidentiality, and integrity of all data shared.

12. NON-DISCLOSURE OF DATA

SAO staff shall not disclose, in whole or in part, the data provided by Agency to any individual or agency, unless this Agreement specifically authorizes the disclosure. Data may be disclosed only to persons and entities that have the need to use the data to achieve the stated purposes of this Agreement. In the event of a public disclosure request for the Agency's data, SAO will notify the Agency

- a. SAO shall not access or use the data for any commercial or personal purpose.
- b. Any exceptions to these limitations must be approved in writing by Agency.
- c. The SAO shall ensure that all staff with access to the data described in this Agreement are aware of the use and disclosure requirements of this Agreement and will advise new staff of the provisions of this Agreement.

13. OVERSIGHT

The SAO agrees that Agency will have the right, at any time, to monitor, audit, and review activities and methods in implementing this Agreement in order to assure compliance.

14. TERMINATION

Either party may terminate this Agreement with 30 days written notice to the other party's Agreement Administrator named on Page 1. However, once data is accessed by the SAO, this Agreement is binding as to the confidentiality, use of the data, and disposition of all data received as a result of access, unless otherwise amended by the mutual agreement of both parties.

15. DISPUTE RESOLUTION

In the event that a dispute arises under this Agreement, a Dispute Board shall determine resolution in the following manner. Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review facts, contract terms, and applicable statutes and rules and make a determination of the dispute.

16. GOVERNANCE

- a. The provisions of this Interagency Data Sharing Agreement are severable. If any provision of this Agreement is held invalid by any court that invalidity shall not affect the

DSA Agreement between Agency and SAO
Agency DSA: 21-01

- other provisions of this Interagency Data Sharing Agreement and the invalid provision shall be considered modified to conform to the existing law.
- b. In the event of a lawsuit involving this Interagency Data Sharing Agreement, venue shall be proper only in Thurston County, Washington.

17. SIGNATURES

The signatures below indicate agreement between the parties.

Agency

Office of the Washington State Auditor

Signature Date

Signature Date

Title: _____

Title: _____

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Todd McDaniel
City Administrator

Date: July 19, 2021

Subject: **Resolution NO. 37-2021** Cost Allocation Policy

The attached Resolution **37-2021, a Resolution of the Omak City Council approving a Cost Allocation Policy**, is forwarded for your consideration.

During our last State audit, it was recommended that a Cost Allocation Policy be implemented to comply with state and federal guidelines. I have taken several runs at it since this recommendation, almost three years ago.

The policy's main objective is to allocate shared labor resources, with an emphasis on the function of City Hall. Central Service, Public Works and ER allocations are identified but are materially unchanged from past practice.

We currently have no efficient means to log time worked for the purpose of cost allocation. Workloads are variable and diverse with daily, weekly, monthly, and seasonal demands. For this reason, I have selected a method using total transaction mined from our accounting software. Transaction amounts are grouped into either Current Expense or their corresponding enterprise fund. Each funds cost allocation is based on the five-year average of the percentage of the total transactions amount.

Although this cost allocation method is still a bit complicated it will, fairly and consistently, distribute costs to the appropriate Fund. The Cost Allocation will be computed annually and reviewed during the budget process.

I support this Resolution and recommend its approval.

RESOLUTION NO. 37-2021

A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING A COST ALLOCATION POLICY

WHEREAS, City departments share common facilities and resources in the delivery of city services; and

WHEREAS, RCW 43.09.210 requires separate accounting for department funds to ensure one department does not benefit from another; and

WHEREAS, a cost allocation policy will assist in the equitable distribution of costs among the department funds.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Omak, that the Cost Allocation Policy, attached hereto as Exhibit "A" is approved.

DATED this _____ day of _____, 2021.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

APPROVED AS TO FORM:

Connie Thomas, City Clerk

Michael D. Howe, City Attorney

City of Omak
Cost Allocation Policy
July 2021

The Washington State Auditors prescribes accounting and reporting methods for local Governments in the State of Washington Under Chapter 43.09 of the Revised Code of Washington. 24 specific funds have been created to account for the lawful services and operation provided by the City. The Funds Consist of:

CURRENT EXPENSE FUND, CITY STREET FUND, CEMETERY FUND, LIBRARY FUND, MOTEL/HOTEL TAX FUND, AFFORDABLE HOUSING FUND, BLOCK GRANT FUND, STAMPEDE ARENA REDEVEL, DRUG ENFORCEMENT FUND, CAPITAL IMPROVEMENT FUND, WATER FUND, SEWER FUND, GARBAGE FUND, STORM DRAIN UTILITY FUND, AIRPORT FUND, WATER CUM. RESERVE FUND, SEWER CUM. RESERVE FUND, EQUIPMENT RENTAL FUND, EQ. RENTAL CAPITAL PURCH. FUND, TREASURER'S SURPLUS CASH, STATE BLDNG PERMIT FEES, STATE AGENCY DEPOSITS, REVOLVING ADVANCED TRAVEL FUND, and the INVESTMENT TRUST FUND.

Many of these Funds share common resources, Labor, Equipment and Facilities, in the delivery of their services. The intent of this policy is to identify a process that ensures each fund pays its equitable share for these resources and no fund with assigned revenues appropriates those revenues to support another fund.

For cost allocation, the 24 accounting funds can be further consolidated in to **6 Allocation Funds**: Current Expense, Water, Sewer, Storm, Garbage, and Airport Funds. 10 of the 24 city funds are excluded in this formula. These 10 funds are either a function of or directly related to one or all the 6 of the Allocation Funds. 8 of the 24 Funds are rolled up into the Current Expense Allocation fund. These 8 Funds rely on the City's general taxing authority for their operation, they are a function of general government, or have minimum annual transaction histories. The **Allocations Funds** can be described as follows.

1. **Current Expense Allocation** Fund 's primary sources of revenues are generated from the city's general taxing Authority, and includes the Street Fund - for its reliance on Property Tax revenues; the Cemetery Fund - for its reliance on Current Expense Fund transfers; the Library Fund for its reliance on Current Expense transfers; Hotel Motel - minimal administrative needs and annual transaction history, funded with Lodging Tax; Affordable Housing Fund - funded by State Sales Tax credit, minimal transaction history; Block Grant Fund - funded by past Community Block Grant program money, minimal transaction history; Stampede Arena Fund-funded with Admission, minimal annual transaction history; Drug Enforcement fund - reliance on Current Expense Fund Transfers, minimal annual transaction history. The Current Expense Allocation share will be paid by the Current Expense general revenues, directly or indirectly.

2. **Water Allocation Fund** represents the City Water utility. Revenues are received for delivery of service. These revenues are required to be used for the continued operation of this utility. The Water Allocation Fund share will be paid by the Water fund.
3. **Sewer Allocation Fund** represents the City Sewer utility. Revenues are received for delivery of service. These revenues are required to be used for the continued operation of this utility. The Sewer Allocation Fund share will be paid by the Sewer fund.

4. **Garbage Allocation Fund** represents the Garbage utility. Revenues are received for delivery of service. These revenues are required to be used for the continued operation of this utility. The Garbage Allocation Fund share will be paid by the Garbage fund.
5. **Storm Drain Utility Allocation Fund** represents the Storm Drain utility. Revenues are received for delivery of service. These revenues are required to be used for the continued operation of this utility. The Storm Drain Allocation Fund share will be paid by the Storm Drain Utility fund.
6. **Airport Allocation Fund** represents the operations. Revenues are received from grants, sale of fuel, delivery of service, property rent and transfers from Current Expense. Unspent revenues are assigned for the continued operation of the Airport. The Airport Allocation Fund share will be paid by the Airport fund.

Allocation

Executive Branch

The Executive Branch consists of the Mayor and a seven-member Legislative body. This branch serves as the Executive board for the general government and utility services. Compensation for this Branch is solely derived from the Current expense fund. Cost are relatively small for this group and no fund allocation is prescribed at this time. Future cost allocation could mirror the Administration group.

Administration Group

The Administration Group consist of 6 fulltime employees (FTEs), The City Administrator, City Clerk, Deputy Clerk, Utility Clerk, and 2 Administrative Assistants. The Utility Clerk position is focused entirely on administration of the Airport and Utility funds and is designated as 1 FTE. The 5 remaining FTEs participate in the administration of all City functions. These 5 FTE's will be allocated using a percentage of the previous 5-year average of the total **cash transactions activity** of the Allocation Funds.

Public Works

Public Works operates in all city departments. The Public Works Crew are allocated based on the actual time worked by the public works crew during a 12-month period beginning July 1st of the previous budgeted year. The Public Works director and Assistant Public Works Director will be allocated among the Allocation Funds, proportional to the crew hours worked. This method will be used to allocate equipment and supply costs that benefit all the Public Works Departments. For purchase that may only benefit selected Public Work departments, the Director will allocate the costs of the asset based on the expected use of the life the asset.

Equipment Rental

Equipment Rental maintains and replaces equipment used in all city functions, with the exception of certain fire trucks. Allocation cost for the operation, maintenance and replacement of equipment is based on actual department use during a 12-month period beginning July 1st of the previous budget year.

Central Service

Is used within the Current Expense Fund to capture and seek reimbursement for shared resources that assist in the administration of city functions. These shared resources include the City Hall Facility, equipment, supplies, maintenance, and debt service. Resources that are primarily used for specific departments will not be include in Central Services. The cost for these specific resources will be purchased or partially purchased by the benefited Fund ('s). Central Service FTE's Will be allocated using a percentage of the previous 5-year average of the **cash transactions activity** of the Allocation Funds.

Cash Transaction Activity Allocation Funds Method

The City utilizes computer-based accounting software and follows the Budget Accounting Reporting system as prescribed by the Washington State Auditors Office. **Allocation Fund** share are computed as follows.

Annual Cash and Investment and Activity Report shall be compiled for each of the 5 previously completed fiscal years. The total annual cash activity in and out for each individual Allocation Fund, and its corresponding components, shall be totaled. Total activity per individual Allocation Fund shall be divided by the sum of the annual activity of all Allocation Funds. Annual percentages for each individual Allocation Fund are obtained. Average annual percentage can be calculated by totaling the 5 previous years percentage and dividing by 5.

$(\text{Activity In} + \text{Activity Out}) / \text{Total Allocation Fund activity} = \text{Annual Allocation Fund Share}$

$5\text{-year sum of Annual Allocation Fund share} / 5 = \text{Allocation Fund cost share.}$

Further allocation of the Current Expense Allocation Share is needed for transparency of operating costs within the city budget. The City Clerk is empowered to allocate Current Expense Allocation share among its component funds, with exclusion of the Hotel Motel Fund, Affordable Housing Fund, Block Grant Fund and Stampede Arena Redevelopment Fund. The excluded funds shares will be paid by the Current Expense fund.

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Todd McDaniel
City Administrator

Date: July 19, 2021

Subject: **Resolution No. 38-2021** COVID-19 Leave Policy

The attached Resolution **38-2021, A Resolution of the Omak City Council approving a COVID-19 Leave Policy**, is forwarded for your consideration.

In 2020 the FFCRA required employers to offer additional leave for certain conditions related to the COVID-Virus through December 31, 2020. Very few employees needed the additional leave during the period it was available.

In rolls 2021 and, a few employees were infected, and some were quarantined as a precautionary measure. I doubt that we and ours have seen the last of this virus.

To help mitigate the impact to the employees, Staff and the Personnel Committee recommend extending any unused portion of the 80 hours available under the FFCRA through December 31, 2021, as identified in the COVID-19 Policy (attached).

I support this Resolution and recommend its approval.

RESOLUTION NO. 38-2021

**A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING COVID-19
LEAVE POLICY**

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary Alex Azar declared a public health emergency for COVID-19, beginning on January 27, 2020; and

WHEREAS, the U.S. Department of Labor's, Families First Coronavirus Response Act of 2020 (FFCRA) provided employees additional leave for certain conditions relating to the COVID-19 Pandemic through December 31, 2021; and

WHEREAS, the COVID-19 Virus has continued to disrupt the workplace and requires employees to take leave for personal health and workplace health; and

WHEREAS, a COVID-19 Leave Policy has been prepared to offer additional leave to employees impacted by the virus, effective January 1, 2021, through December 31, 2021.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Omak, that the COVID-19 Leave Policy, attached hereto as Exhibit "A" is approved.

DATED this _____ day of _____, 2021.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

APPROVED AS TO FORM:

Connie Thomas, City Clerk

Michael D. Howe, City Attorney

July 19, 2021

COVID-19 Leave Policy

The Families First Coronavirus Response Act (FFCRA) was Implemented on April 1, 2020. This Act provided paid sick leave for specific reasons related to the COVID-19 pandemic. Although this Act expired December 31, 2020, the COVID virus has continued to impact employees.

The city will extend up to 80 additional hours to all employees that did not use the FFCRA leave during its authorized period, or the balance of the 80 hours not used during the FFCRA authorized period. The extension for the additional leave will be effective January 1, 2021, through December 31, 2021 for the following conditions:

- Up to 80 hours of **paid sick leave** at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Up to 80 hours of **paid sick leave** at the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual's immediate family subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider)

Employees that have used regular accrued leave after December 31, 2020, for the above qualified conditions can have their leave balances credited up to the 80 hour limit. Documented requests can be made through your supervisor.

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Ken Mears
Public Works Director

Date: July 19th, 2021

Subject: **Resolution No. 39-2021** Approving the Loan Contract from DWSRF for Julia Maley Well Treatment.

The attached Resolution: **39-2021, A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING THE LOAN CONTRACT DWL26046 WITH DEPARTMENT OF HEALTH, DRINKING WATER STATE REVOLVING FUND FOR JULIA MALEY PARK WELL TREATMENT,** is forwarded for your consideration.

Julia Maley Park well has been determined to need a treatment facility for the removal of arsenic and a small amount of water discoloration. Therefore, we applied for a low-interest loan from the Department of Health, Drinking Water State Revolving Fund (DWSRF) program last November 2020. This Resolution is to accept and approve the loan and start the project, which will resolve the water quality issues of the well and add to the city's water supply the capability of an additional source.

This project has been discussed in the past with the Infrastructure Committee and City Attorney. City engineers have reviewed the contract.

I support this Resolution and recommend its approval.

RESOLUTION NO. 39-2021

A RESOLUTION OF THE OMAK CITY COUNCIL APPROVING THE LOAN CONTRACT DWL26046 WITH DEPARTMENT OF HEALTH, DRINKING WATER STATE REVOLVING FUND FOR JULIA MALEY PARK WELL TREATMENT

WHEREAS, the City has determined the need for treatment of the Julia Maley Park Well for improved water quality and arsenic removal; and

WHEREAS, an application to the Drinking Water State Revolving Fund was submitted November 2020; and

WHEREAS, it is necessary to secure the funds for the treatment project, which includes design and construction; and

WHEREAS, the total loan amount of \$2,012,546.20 with a twenty-year term at an interest rate of 1.75%.

NOW, THEREFORE, BE IT RESOLVED BY THE OMAK CITY COUNCIL, that the Loan Contract DWL26046 with Department of Health Drinking Water State Revolving Fund program, a copy of which is attached hereto as Exhibit "A" is hereby approved. The Mayor is authorized and directed to execute all necessary contract documents on behalf of the City.

DATED this _____ day of _____, 2021.

APPROVED:

Cindy Gagné, Mayor

ATTEST:

Connie Thomas, City Clerk

APPROVED AS TO FORM:

Michael D. Howe, City Attorney

EXHIBIT A



June 18, 2021

City of Omak
Todd McDaniel
2 North Ash Street
P.O. Box 72
Omak WA 98841
admin@omak.city.com - publicworks@omakcity.com
RE: Loan Contract Number: DWL26046

Dear Todd McDaniel;

Enclosed is the Drinking Water State Revolving Fund Loan Contract Number identified above for your signature. The Loan Contract details the terms and conditions that will govern the agreement between us, which includes the project's Scope of Work as a formal attachment. Failure to return the contracts within 60 calendar days of the date of this letter may result in your loan offer being withdrawn.

Review, print and sign the document. Once signatures are obtained, scan and return by email to dohcon.mgmt@doh.wa.gov or print and sign a hard copy, and return the originals to us for full execution.

Please note that the U.S. Environmental Protection Agency is the funding source for this program and the Catalog of Federal Domestic Assistance (CFDA) number is 66.468. Consequently, the loan funds are federal and subject to both state and federal requirements.

A non-refundable one-percent loan administration fee will be collected at contract execution (If applicable), including any subsequent amendments where funds are added. The loan amount may be modified to include an amount sufficient to cover the one-percent loan administration fee. In most cases, the fee will be collected in full at contract execution. Please review the terms and conditions of the Loan Contract and all attachments carefully for details.

A requirement of the DWSRF program is that you must maintain updated project records and yearly renewal of your registration in the System for Award Management at www.sam.gov.

Another requirement of the DWSRF program is that all entities are required to verify that the federal government has not suspended or debarred them from receiving federal funds. This includes, but is not limited to, project contractors, subcontractors, engineers, architects, consultants, and equipment vendors. The Exclusion Report can be accessed at www.sam.gov. Failure to provide this required certification may result in termination of your loan contract.

After the Loan Contracts have been signed by the Department or its designee, one fully executed original will be returned to you for your files. Instructions for drawing the loan funds will be returned to you with the executed Loan Contract, as well as the necessary forms. The Loan Contract specifies that draws may be made for costs that have been incurred within the contract period of performance, and which have supporting documentation such as receipts or bills.

We are looking forward to working with you over the course of this project. If you have any questions about this Loan Contract, please contact me.

Sincerely,

Brittany Cody-Pinkney
DOH Contract Manager
360-236-0474
Brittany.Cody-Pinkney@DOH.WA.GOV

Enclosures:
ATTACHMENT I: SCOPE OF WORK (PROJECT)
ATTACHMENT II: ATTORNEY'S CERTIFICATION
ATTACHMENT III: FEDERAL AND STATE REQUIREMENTS
ATTACHMENT IV: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS
ATTACHMENT V: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS
ATTACHMENT VI: DWSRF ELIGIBLE PROJECT COSTS
ATTACHMENT VII: LABOR STANDARD PROVISIONS FOR SUBRECIPIENTS THAT ARE GOVERNMENTAL ENTITIES

Washington State Department of Health

DWSRF Municipal Loan Boilerplate

May 2018

Version History		
Date	Revision(s)	Version
05-15-2018	Original - developed via a team of the DWSRF Grant and Loan Unit Supervisor, the DOH Office of Drinking Water Finance Director, the DOH Office of Contracts and Procurement Technical and Policy Advisor, and DOH's Financial Services Assistant Attorney General.	1

1. CONTRACT FACE SHEET

2020-3874 Loan Number: DWL26046
Washington State Department of Health (DOH)
Drinking Water State Revolving Fund (DWSRF)
Municipal

1. Borrower City of Omak P.O. Box 72 2 North Ash Street Omak, WA 98841		2. Borrower Doing Business As (optional)	
3. Borrower Type Construction Loan		4. Borrower's Statutory Authority	
5. Borrower Contract Manager Information Todd McDaniel City Administrator		6. DOH Contract Manager Brittany Cody-Pinkney P.O. Box 47822 Olympia, WA 98504-7822	
(509) 826-1170 admin@omakcity.com		(360) 236-0474 Brittany.Cody-Pinkney@DOH.WA.GOV	
7. Project Name Julia Maley Park Well Treatment			
8. Loan Amount: \$2,012,546.20 Loan Fee: \$19,926.20 Interest Rate: 1.75%	9. Funding Source Federal: <input checked="" type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/>	10. Start Date DOE	11. End Date DOE + 20 Years
12. Federal Funding Agency Environmental Protection Agency Catalogue of Federal Assistance (CFDA) Number 66.468			
13. Borrower Tax ID # 91-11214300	14. SWV # 0007412	15. Borrower UBI # 243-000-001	16. Borrower DUNS # 097254569
17. Contract Purpose DOH and the party identified above as Borrower, hereafter referred to as BORROWER, have entered into this contract to fund the project identified above that furthers the goals and objectives of the DOH DWSRF Program. The project will be done by the BORROWER as described in the scope of work and this contract. The rights and obligations of the parties are governed by this contract and the following documents incorporated by reference: General Terms and Conditions including Declarations; Attachment I: Scope of Work (Project); Attachment II Attorney's Certification; Attachment III: Federal and State Requirements; Attachment IV: Disadvantaged Business Enterprise Requirements; Attachment V: Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Attachment VI: DWSRF Eligible Project Costs; and Attachment VII: Labor Standard Provisions for Subrecipients that are Governmental Entities. By the signature below, the parties acknowledge and accept the terms of this contract.			
FOR CONTRACTOR SIGNATURE AND DATE		FOR DOH SIGNATURE and DATE	
NAME and TITLE		NAME and TITLE	
		APPROVED AS TO FORM ONLY Mark Calkins, AAG Signature on File	

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3. DECLARATIONS

3.1. BORROWER INFORMATION

Legal Name: City of Omak
Loan Number: **DWL26046**
Award Year: **2020**
State Wide Vendor Number: 0007412-00

3.2. PROJECT INFORMATION (PROJECT)

Project Title: **Julia Maley Park Well Treatment**
Project Location (City or County): **Okanogan**
Project State: **Washington**
Project Zip Code: **98841**

Project Scope of Work (PROJECT): Attachment I, attached hereto and incorporated by reference.

3.3. CONTRACT COMMUNICATION

Communications regarding Contract performance is delegated by each party to its Contract Manager. Either party may change its Contract Manager by express notice to the other party. Either party may identify on an as needed basis an alternate Contract Manager to serve during the stated temporary absence of its primary Contract Manager. Notices between the parties regarding Contract performance must be provided by written communication to the other party's Contract Manager. Written communication includes email but not voice mail. Notices are presumed received by the other party's Contract Manager upon evidence of delivery between the hours of 8:00 am to 5:00 pm except for state holidays and weekends.

3.4. LOAN INFORMATION

Loan Amount: **\$2,012,546.20**
Loan Fee (Included in loan amount if applicable): **\$19,926.20**
Principal Loan Forgiveness %: **0%**
Loan Term: **20 Years**
Interest Rate: **1.75**
Payment Month(s): **October 1st Annually**
Earliest Date for Construction Reimbursement: **12 months prior to Contract execution**
Time of Performance: **48 months from Contract start date (date of last signature) to Project Completion date.**

Notice to Proceed: 18 months from Contract start date (date of last signature)

3.5. FUNDING INFORMATION

Total Funds from BORROWER: **\$2,012,546.20**
Source(s) of Funds from Borrower, with assigned amounts per source: **To be determined**
Total State Funds: **To be determined**
Total Amount of Federal Award (as applicable): **To be determined**
Total Amount of Loan: **\$2,012,546.20**
Federal Award Date: **To be determined**
Federal Award ID # (FAIN): **To be determined**
Amount of Federal Funds Obligated by this Action: **To be determined**

3.6. SPECIAL TERMS AND CONDITIONS

N/A

4. GENERAL TERMS AND CONDITIONS

DRINKING WATER STATE REVOLVING FUND (MUNICIPAL)

4.1. AUTHORITY

Acting under the authority of Section 1452 of the Safe Drinking Water Act (SDWA) Section 130, RCW 39.34, RCW 43.70.040, and RCW 70.119A.170 the Washington State Department of Health (DOH) has awarded BORROWER a Drinking Water State Revolving Fund Loan (LOAN) for the project identified in the Declarations (PROJECT). Under this CONTRACT, BORROWER is a sub-recipient of funds provided by the United States Environmental Protection Agency (EPA), CFDA Number 66.468, Safe Drinking Water State Revolving Fund.

In some CONTRACT attachments, DOH is referred to as "Lender" and BORROWER is referred to as "Contractor."

4.2. FULL AGREEMENT

This CONTRACT contains the full agreement of the parties. No other understandings, oral or otherwise, regarding the subject matter of this CONTRACT exists.

4.3. ORDER OF PRECEDENCE

In the event of an inconsistency in this CONTRACT, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: The order of precedence for terms and conditions under categories B and C is subject to the proviso that when a contract term or condition appears in more than one contract document, the more specific contract term or condition shall control if the different contract provisions cannot be harmonized.

- A. Applicable local, state, and federal statutes and regulations
- B. Contract amendments
- C. The Contract (in this order)
 - Declarations and Special Terms and Conditions
 - General Terms and Conditions
 - Attachments I – VII

4.4. LOAN AMOUNT

DOH, using funds from the Drinking Water Assistance Account, will loan BORROWER a sum not to exceed the amount shown as LOAN AMOUNT in the Declarations. The LOAN AMOUNT shall not exceed one hundred percent (100%) of the actual eligible PROJECT costs.

4.5. LOAN FEE

If DOH assessed a LOAN FEE, it is shown in the Declarations as LOAN FEE and included in the total LOAN AMOUNT. The fee (if applicable) is one percent (1%) of the loan request and will not be reduced, regardless of the final LOAN AMOUNT at PROJECT completion. If the LOAN FEE applies and the total LOAN AMOUNT is increased by amendment, DOH will assess an additional LOAN FEE equal to one percent (1%) of the additional LOAN AMOUNT. LOAN FEES are non-refundable.

4.6. LOAN TERM

Unless changed by an amendment, the LOAN TERM will not exceed the period of time shown in the Declarations. The repayment period for DOH subsidized loans is twenty-four (24) years from this CONTRACT's start date. The repayment period for non-DOH subsidized loans is twenty (20) years from this CONTRACT's start date.

4.7. INTEREST RATE

The interest rate is stated in the Declarations. Interest is per annum on the outstanding principal balance and starts to accrue from the date DOH releases LOAN FUNDS to BORROWER. If BORROWER completes the PROJECT within twenty-four (24) months of the CONTRACT start date, DOH will reduce the LOAN INTEREST to one percent

(1%) at PROJECT completion. The reduced interest rate will apply to the remaining payments beginning from the date DOH approves the BORROWER's Project Completion Report.

4.8. LOAN FORGIVENESS

If the LOAN qualifies for LOAN Forgiveness, the percent of the LOAN balance that DOH will forgive at PROJECT completion is stated in the Declarations. DOH calculates the amount forgiven when DOH approves the BORROWER's Project Completion Report. The amount forgiven will be based on either the LOAN AMOUNT or BORROWER's ELIGIBLE PROJECT COSTS, whichever is less, and accrued interest.

4.9. RELEASE OF LOAN FUNDS AND REQUIRED DOCUMENTATION

DOH will release LOAN funds to BORROWER to reimburse BORROWER for eligible PROJECT costs. To request reimbursement, BORROWER must submit a signed and completed invoice using a form provided by DOH. The invoice must reference the PROJECT activity performed, and include supporting documentation such as bills, invoices, receipts, and documentation of compliance with CONTRACT requirements as requested by DOH. The invoice must be signed by an official of BORROWER with authority to bind BORROWER.

Invoices must also include a report of the progress made since the last invoice, and the PROJECT status to date. DOH will not release funds until the PROJECT status report and documentation are approved by DOH. Approval will not be unreasonably withheld or delayed. After approving the invoice, documentation, and PROJECT status report, DOH will release funds to BORROWER within thirty (30) days, if BORROWER is not in alleged or actual breach of CONTRACT.

DOH will withhold ten percent (10%) of LOAN funds until DOH confirms that BORROWER has successfully completed all steps for PROJECT COMPLETION. The 10% holdback will be available to BORROWER as part of the last LOAN disbursement.

4.10. TIME OF PERFORMANCE

BORROWER will begin the activities in the PROJECT within thirty (30) calendar days of the CONTRACT start date. BORROWER will issue a 'Notice to Proceed', after the formal award of a construction contract, within eighteen (18) months of the CONTRACT start date.

BORROWER must reach PROJECT COMPLETION within the TIME OF PERFORMANCE. If there are extenuating circumstances, BORROWER may request, in writing, at least ninety (90) calendar days prior to the PROJECT COMPLETION that DOH extend the deadline for PROJECT COMPLETION. At its discretion, DOH may issue an extension. DOH's decision is final and not subject to the dispute clause.

If BORROWER does not meet the requirements of this section, it is a breach of CONTRACT, and DOH may terminate or suspend this CONTRACT.

4.11. PROJECT COMPLETION AMENDMENT AND THE PROJECT COMPLETION REPORT

The PROJECT Completion Amendment determines the final LOAN AMOUNT and LOAN TERM. When activities in the PROJECT are complete, BORROWER will start the process for the PROJECT Completion Amendment by sending DOH the PROJECT Completion Report. In the PROJECT Completion Report, BORROWER will provide the following information to DOH:

- A. A statement of the actual dollar amount spent, from all fund sources, to complete the PROJECT.
- B. A statement that all ELIGIBLE PROJECT COSTS have been incurred. Costs are incurred when goods and services are received and/or contracted work is performed.
- C. Evidence showing BORROWER'S compliance with financial the audit requirements of this CONTRACT.
- D. An invoice for the remaining ELIGIBLE PROJECT COSTS.
- E. Documentation of BORROWER's compliance with National Historic Preservation Act, 54 USC Subtitle III.

4.12. LOAN PAYMENTS

BORROWER must begin repaying the LOAN no later than one (1) year after the CONTRACT start date. Payments are due on the first day of the month(s) shown as the PAYMENT MONTH(S) in the Declarations. The first payment is only the interest accrued at that time. All other payments are principal and interest accrued up to the PAYMENT MONTH(S).

BORROWER can repay in full the LOAN balance, including fees and repayment of LOAN FUNDS for ineligible project costs (if any), at any time or make accelerated payments without penalty. The final payment must be on or before the end of the LOAN TERM.

4.13. LOAN DEFAULT

DOH must receive BORROWER'S payment within thirty (30) calendar days of the due date. Late payments are delinquent and assessed a monthly penalty on the first (1st) day past the due date. The penalty is one percent (1%) of the late payment amount per month. Penalty and fees accrue interest at the rate stated as LOAN INTEREST in the Declarations.

DOH may notify any other entity, creditors, or potential creditors of BORROWER's delinquency. BORROWER is responsible for all attorney fees and costs incurred by DOH in any action taken to enforce its rights under this section, including in any alternative dispute resolution proceeding.

4.14. LOAN SECURITY

LOAN Security is only required if identified in the Declarations. In its sole discretion and if allowed under the EPA regulations relevant to this Contract, DOH may subordinate its LOAN security to Borrower's obligations under existing or future bonds and notes. Nothing in this section releases BORROWER from the obligation to make LOAN PAYMENTS when due, and to adjust rates, fees, or surcharges as necessary to meet its obligations under this CONTRACT.

4.15. AMENDMENTS, MODIFICATIONS, ASSIGNMENTS, AND WAIVERS

Amendments, modifications, assignments, and waivers to any of the terms of this CONTRACT supersede, if applicable, those terms as found in the original CONTRACT, and are not binding unless they are in writing and signed by representatives authorized to bind each of the parties. Only the authorized representative or their designee has the express, implied, or apparent authority to alter, amend, assign, modify, or waive any terms of this CONTRACT.

Neither this CONTRACT nor any claim arising under it may be transferred or assigned by BORROWER without DOH's prior written consent. During the LOAN TERM, DOH must approve in advance, any change in ownership of the water system(s) improved with LOAN FUNDS. DOH may require the LOAN, including fees and ineligible project costs (if any), be paid in full as a condition of approval.

Nothing in this CONTRACT may be waived unless approved by DOH in writing. No waiver of any default or breach is implied from any failure to take action upon such default or breach if the default of breach persists or repeats. Waiver of any default or breach is not a waiver of any subsequent default or breach.

4.16. AMERICAN IRON AND STEEL

None of the LOAN funds can be used for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used are produced in the United States. "Iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

DOH may waive this requirement if:

- A. Compliance would be inconsistent with the public interest; or
- B. The particular iron and steel products are not produced in the United States in sufficient and reasonably available quantities and are not of a satisfactory quality; or

- C. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than twenty-five (25) percent; and
- D. The waiver is approved by the Environmental Protection Agency (EPA).

BORROWER must submit the waiver request to DOH, which will submit it to EPA. The full text of the American Iron and Steel requirements can be found in H.R. 3547, Consolidated Appropriations Act, 2014, P.L. 113-76, SEC. 436.

4.17. ATTORNEYS' FEES

Unless expressly stated under another section of the CONTRACT, each party agrees to bear its own attorneys' fees and costs for litigation or other action brought to enforce the contract terms.

4.18. BONUS AND COMMISSION PAYMENTS NOT ALLOWED

Funds provided under this CONTRACT cannot be used to pay any bonus or commission to gain approval of the loan application or any other approval under this CONTRACT. This section does not prohibit paying for bona fide technical consultants, managerial, or other such services, if payment is for ELIGIBLE PROJECT COSTS.

4.19. COMPLIANCE

BORROWER will comply with all applicable federal, state and local laws, requirements, and ordinances for the design, implementation, and administration of the PROJECT and this CONTRACT, including but not limited to those stated in the CONTRACT attachments. BORROWER will provide DOH with documentation of compliance, if requested.

In the event of BORROWER's alleged or actual noncompliance with any part of this CONTRACT, DOH may suspend all or part of the CONTRACT, withhold payments, or prohibit BORROWER from incurring additional obligations of LOAN FUNDS during the investigation and pending corrective action by BORROWER, or a decision by DOH to terminate the CONTRACT.

4.20. DISPUTES

Except as otherwise provided in this CONTRACT, when a dispute arises between the parties that cannot be solved by direct negotiation, either party may request a dispute hearing with the Director of the Office of Drinking Water (the Director), who may designate a neutral person to decide the dispute. The parties will be equally responsible for any reasonable costs and fees incurred by the neutral.

The party requesting a dispute hearing must:

- A. Be in writing;
- B. State the disputed issues;
- C. State the relative positions of the parties;
- D. State BORROWER's name, address, and the CONTRACT number;
- E. Provide contact information for the requester's representative, and,
- F. Be mailed to the other party's (respondent's) Contract Manager within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent must send a written answer within five (5) working days.

In the alternative, the parties can agree to submit a mutual request to the Director, which should include each party's response to the other party's characterization of the dispute.

The Director or designee will review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary, by notifying the parties. The decision on the dispute is non-binding and is not admissible in any succeeding judicial or quasi-judicial proceeding.

This non-binding dispute process must precede any action in a judicial or quasi-judicial tribunal. Nothing in this CONTRACT limits the parties from using any mutually acceptable alternate dispute resolution (ADR) method in addition to or instead of the dispute hearing procedure outlined above.

4.21. ELIGIBLE PROJECT COSTS

BORROWER will comply with Attachment VI: DWSRF Eligible Project Costs and is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

The purchase of any land necessary for the PROJECT must be included in the PROJECT and be documented with an appraisal or equivalent market evaluation, if approved by DOH, and a valid purchase and sale agreement.

Construction expenses incurred after the date shown as earliest date for construction reimbursement in the Declarations are eligible for reimbursement. Requests for reimbursements for costs related to construction activities will not be accepted until BORROWER has met the following conditions:

- A. Completed the State Environmental Review Process (SEPA Review under RCW 43.21C);
- B. Complied with all provisions of the National Historic Preservation Act, 54 USC Subtitle III;
- C. Complied with Prevailing Wage requirements;
- D. Received approval from DOH of the project report and related construction documents for all applicable activities described in the PROJECT; and
- E. Complied with any other LOAN conditions required by DOH.

BORROWER cannot use LOAN FUNDS for any expenses charged by BORROWER against any other contract, subcontract, or source of funds.

If DOH reimburses BORROWER for costs that are later determined by DOH to be ineligible, BORROWER must repay these funds to DOH no later than when the BORROWER returns the PROJECT Completion Amendment to DOH. Prior to final completion, DOH may withhold payment for such costs as allowed under Section 4.36 RECAPTURE. Repayment is subject to interest retroactive to the date of the applicable disbursement by DOH.

4.22. FALSE, INCORRECT, OR INCOMPLETE INFORMATION OR CLAIM

BORROWER warrants that they have not and will not submit to DOH any information that is materially false, incorrect, or incomplete. Providing false, fictitious, or misleading information with respect to the receipt and disbursements of LOAN funds is a basis for criminal, civil, or administrative fines and/or penalties. DOH may also pursue applicable remedies for violations by BORROWER of this section.

4.23. FINANCIAL AUDIT

DOH may require BORROWER to obtain an audit of this PROJECT conforming to Generally Accepted Accounting Principles (GAAP). BORROWER will maintain its records and accounts to facilitate the audit. BORROWER is responsible for correcting any audit findings. BORROWER is responsible for any audit findings incurred by its own organization and/or its subcontractors. DOH reserves the right to recover from BORROWER all disallowed costs and INELEGIBLE PROJECT COSTS resulting from the audit.

The audit must include a report on compliance, including an opinion (or disclaimer of opinion) about whether the BORROWER is in compliance with laws, regulations and requirements of this CONTRACT that could have a direct and material effect on DOH.

BORROWER must send a copy of any required audit per 2 CFR §200.512 to the DOH Contract Manager, no later than nine (9) months after the end of BORROWER's fiscal year(s). BORROWER must send any audit corrective action plan for audit findings and a copy of the management letter, within three (3) months of the audit report.

4.24. GOVERNING LAW AND VENUE

This CONTRACT shall be construed and interpreted according to the laws of the state of Washington, and the venue of any action brought under the CONTRACT will be in the Superior Court for Thurston County.

4.25. HISTORICAL AND CULTURAL REQUIREMENTS

BORROWER will not conduct or authorize destructive PROJECT planning activities before completing the requirements of the National Historic Preservation Act, 54 USC Subtitle III. BORROWER will not begin construction

activities, ground disturbance, or excavation of any sort, until BORROWER has complied with all requirements of the National Historic Preservation Act of 1966, as amended.

If historical or cultural artifacts are discovered during the PROJECT, BORROWER will immediately stop construction and implement reasonable measures to protect the discovery site from further disturbance, take reasonable steps to ensure confidentiality of the discovery site, restrict access to the site, and notify the concerned tribe's cultural staff or committee, Tribal Historical Preservation Officer (THPO), DOH Contract Manager, and the State's Historical Preservation Officer (SHPO) at the Washington State Department of Archaeology and Historic Preservation (DAHP). If human remains are uncovered, BORROWER will report the presence and location of the remains to the local coroner and law enforcement immediately, then contact the concerned tribe's cultural staff or committee, DOH Contract Manager, and DAHP.

BORROWER is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural sites and artifacts and will hold harmless the state of Washington and DOH in relation to any claim related to historical or cultural sites discovered, disturbed, or damaged as a result of BORROWER'S and BORROWER's subcontractors activities.

BORROWER will include the requirements of this section in all contracts for work or services related to the PROJECT. BORROWER will require that bid documents include an inadvertent discovery plan that meets the requirements of this section.

4.26. INDEMNIFICATION

BORROWER agrees to defend, indemnify, and hold harmless DOH and the state of Washington for claims arising out of or incident to BORROWER'S or any BORROWER'S subcontractor's performance or failure to perform the CONTRACT. BORROWER'S obligation to indemnify, defend, and hold harmless DOH and the state of Washington shall not be eliminated or reduced by any actual or alleged concurrent negligence of DOH or its agents, agencies, employees and officials. BORROWER'S obligation to indemnify, defend and hold harmless DOH and the state of Washington includes any claim by BORROWER'S agents, employees, officers, subcontractors or subcontractor employees.

BORROWER waives immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

4.27. INDUSTRIAL INSURANCE COVERAGE

BORROWER will comply with the applicable parts of Title 51 RCW, Industrial Insurance. If BORROWER fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as required by law, DOH may collect from BORROWER the full amount payable to the Industrial Insurance Accident Fund. DOH may deduct the amount owed by BORROWER to the accident fund from the amount payable to BORROWER by DOH under this CONTRACT and transmit the deducted amount to the Washington State Department of Labor and Industries (L&I).

4.28. LITIGATION

BORROWER warrants that there is no threatened or pending litigation, investigation, or legal action before any court, arbitrator, or administrative agency that, if adversely determined against BORROWER, would have a materially adverse effect on BORROWER's ability to repay the LOAN. BORROWER agrees to promptly notify DOH if any above-referenced actions become known to BORROWER during the pendency of the Contract.

4.29. NONDISCRIMINATION

BORROWER will not discriminate on the basis of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability in the performance of this CONTRACT. BORROWER will comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination and 42 USC 12101 et seq., the Americans with Disabilities Act (ADA), and 40 CFR Part 33 Participation by Disadvantaged Business Enterprises in US EPA Programs. Failure by BORROWER to carry out these requirements is a material breach of this CONTRACT. BORROWER is required to include these non-discriminatory provisions in any contract with a subcontractor.

4.30. PREVAILING WAGE

BORROWER will assure that all contractors and subcontractors performing work funded through this CONTRACT comply with prevailing wage laws by paying the higher of state or federal prevailing wages. BORROWER is legally and financially responsible for compliance with the prevailing wage requirements. BORROWER should consult the United States Department of Labor and Washington State Department of Labor and Industries websites to determine the federal and State prevailing wages that must be paid.

4.31. PROCUREMENT

BORROWER will comply with all procurement requirements for subcontracting for the PROJECT and for obtaining PROJECT-related goods and services. BORROWER must maintain records to verify compliance with procurement requirements.

BORROWER must ensure that all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the PROJECT will insert in full, in any contract, the labor standards provisions in Attachment VIII: Labor Standard Provisions for Subrecipients That Are Governmental Entities.

4.32. PROHIBITION STATEMENT

Per Section 106 of the federal Trafficking Victims Protection Act, BORROWER `s contractors, subcontractors, engineers, vendors, and any other entity performing work funded by this CONTRACT must comply with and include the following terms and conditions in all contracts for work or services for the PROJECT.

"All forms of trafficking in persons, illegal sex trade, or forced labor practices are prohibited in the performance of this award or subawards under the award, or in any manner during the period of time that the award is in effect. This prohibition applies to you as the recipient, your employees, subrecipients under this award, and subrecipients' employees."

4.33. PROJECT SIGNS

If BORROWER displays, during the TIME OF PERFORMANCE, any signs or markers identifying parties that are providing funds for the PROJECT, BORROWER must include the Washington State Department of Health Drinking Water State Revolving Fund and the Washington State Department of Health as participants in the PROJECT.

4.34. PUBLICITY

BORROWER agrees to get prior written consent from DOH's Contract Manager before publishing or using any advertising or publicity materials that include Washington State or DOH's name or includes language that may reasonably infer or imply a connection with either one.

4.35. RATES AND RESERVES

BORROWER will maintain reserves at a minimum as required by the Water System Plan or Small Water System Management Plan. BORROWER will timely adopt rate increases and/or capital assessments for the system's services to provide sufficient funds, along with other revenues of the system, to pay all operating expenses and debt repayments during the LOAN TERM.

4.36. RECAPTURE

DOH reserves the right to recapture from BORROWER sufficient funds to compensate DOH for BORROWER's noncompliance with any part of this CONTRACT, in addition to any other remedies available under the CONTRACT, at law, or in equity. DOH may withhold LOAN FUNDS from BORROWER to recapture such funds.

4.37. RECORDKEEPING AND ACCESS TO RECORDS

DOH, its agents, and authorized officials of the state and federal governments will have full access and the right to examine, copy, excerpt, or transcribe, at no additional cost and at all reasonable times, any pertinent documents, papers, records, and books of BORROWER and of persons, firms, or organizations with which BORROWER may contract, involving transactions related to this CONTRACT. BORROWER agrees to keep complete records of its compliance with this CONTRACT for a period of six (6) years from the date that the debt to DOH is paid in full. This includes but is not limited to financial reports. If any litigation, claim or audit is started before the expiration of the six (6) year period, BORROWER must keep the records until all litigation, claims or audit findings involving the records have been resolved. These records retention requirements are in addition to the local government records

retention schedules applicable to the BORROWER.

4.38. REGISTRATION WITH THE SYSTEM FOR AWARD MANAGEMENT (SAM)

BORROWER must comply with 48 CFR 52.204-7 to register with the System for Awards Management (SAM.gov). BORROWER is responsible for the accuracy and completeness of its data in the SAM database and any liability resulting from the Government or DOH reliance on inaccurate or incomplete data in it. BORROWER must remain registered in the SAM database. BORROWER should annually review its information in SAM to ensure it is accurate and complete.

4.39. SEVERABILITY

If any part of this CONTRACT or part of any document incorporated by reference is found to be invalid, it will not affect the other parts of this CONTRACT that can be given effect without the invalid part.

4.40. SUBCONTRACTING

Prior to awarding contracts and/or subcontracts, BORROWER must verify that the complete names of both the selected contractor and the owner or president are not in the Federal Excluded Parties List System for Ineligible Professionals and Debarred Contractors (www.SAM.gov). BORROWER must provide the DOH Contract Manager with a screen printout documenting that neither the firm, the owner or the president are excluded.

BORROWER will ensure that every contract and subcontract awarded for the PROJECT after the CONTRACT start date will bind the parties to follow all applicable terms of this CONTRACT. BORROWER is responsible to DOH for noncompliance by its contractors and/or subcontractors. BORROWER's contracts or subcontracts do not release or reduce the BORROWER's liability to DOH for any breach in the performance of BORROWER's duties. BORROWER's contracts and subcontracts must include a term that the state of Washington and DOH are not liable for claims or damages arising from a contractor and/or subcontractor's performance or lack thereof.

4.41. SURVIVAL

The CONTRACT's terms, conditions, and warranties that by its sense and context are intended to survive the completion of the performance, cancellation or termination of this CONTRACT, shall so survive.

4.42. TERMINATION FOR CAUSE

If DOH concludes that BORROWER has failed to comply with the CONTRACT requirements or has otherwise breached one or more parts of the CONTRACT, DOH may, at its discretion, upon notice to BORROWER, terminate or suspend the CONTRACT and/or its attached agreements in whole or in part.

The notice will be in writing and state the reason(s) for termination or suspension, and the effective date. The effective date will be determined by DOH. The notice will allow BORROWER at least thirty (30) business days to cure the breach, if curable. If the breach is not cured or cannot be cured within thirty (30) business days, the outstanding balance of the LOAN, with any interest accrued and other costs as authorized by the CONTRACT shall be due and payable to DOH.

If DOH terminates this CONTRACT under this section, DOH is liable only for payment required under the terms of this CONTRACT for ELIGIBLE PROJECT COSTS incurred prior to the effective date of termination.

At DOH's discretion, the termination for cause may be deemed a termination for convenience if DOH determines that the default or failure to perform was outside BORROWER's control, fault or negligence. The rights and remedies of DOH provided in this CONTRACT are not exclusive and are in addition to any other rights and remedies provided by law. Nothing in this section affects BORROWER's obligations to immediately repay the unpaid balance of the LOAN as prescribed in the Washington Administrative Code (WAC) 246-296-150.

4.43. TERMINATION OR SUSPENSION FOR CONVENIENCE

If funding or appropriation from state, federal, or other sources is withdrawn, reduced, or limited in any way during the TIME OF PERFORMANCE, DOH may:

- A. Delay or suspend releasing LOAN FUNDS until funding or appropriation are available to DOH; or
- B. Amend the CONTRACT to reflect the new funding limitations and conditions; or
- C. Terminate the CONTRACT and/or its attached agreements, in whole or in part; or
- D. Suspend the CONTRACT and/or its attached agreements, in whole or in part.

If DOH terminates the CONTRACT and/or its attached agreements in whole or in part, under this section, DOH will notify BORROWER's representative in writing of the reason(s) for termination, and the effective date. The effective date will be determined by DOH.

DOH may choose to suspend this CONTRACT and/or its attached agreements in whole or in part, if DOH determines that the funding insufficiency will likely be resolved in time for BORROWER to resume activities prior to the end of the TIME OF PERFORMANCE. DOH will notify BORROWER's representative by facsimile or email of the reason(s) for suspension, and the effective date. DOH will determine the effective date. BORROWER must suspend performance on the effective date of the suspension. During the period of suspension each party must notify the other party's representative of any conditions that may reasonably affect its ability to resume performance.

During the suspension, when DOH determines that the funding insufficiency is resolved, DOH may notify BORROWER's representative of the proposed date to resume performance. BORROWER must respond to DOH's representative in writing, within five (5) business days of DOH sending notice, as to whether it can resume performance on that date or offer an alternative date to resume performance. If BORROWER cannot resume performance or the alternative date is not acceptable to DOH, the parties agree the CONTRACT will be deemed terminated for convenience, retroactive to the original date of suspension.

If DOH terminates or suspends this CONTRACT, DOH is liable only for payment required under the terms of this CONTRACT for eligible project costs incurred prior to the effective date of suspension or termination. Nothing in this section shall affect Contractor's obligations to repay the unpaid balance of the LOAN. Nothing in this section affects BORROWER's obligation to repay the LOAN, including fees and other expenses as allowed by the CONTRACT.

4.44. TERMINATION PROCEDURES

When BORROWER receives Notice of Termination or on the date a suspension is converted to a termination, except as otherwise directed by DOH, BORROWER will:

- A. Stop work under the CONTRACT on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the CONTRACT;
- C. If expressly requested by DOH, assign to DOH any or all of the rights, title, and interest of BORROWER under the orders and subcontracts so terminated, in which case DOH has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by BORROWER to settle such claims must have the prior written approval of DOH; and
- D. Preserve and transfer any materials, CONTRACT deliverables and/or DOH property in BORROWER's possession as directed by DOH.

Upon termination of this CONTRACT, DOH will pay BORROWER for amounts due under the CONTRACT prior to the date of termination unless such payment is precluded under any other provision of this CONTRACT. DOH may withhold any amount due as DOH reasonably determines is necessary to protect DOH against potential loss or liability resulting from the termination. DOH will pay any withheld amount to BORROWER if DOH later determines that loss or liability will not occur.

4.45. WORK HOURS AND SAFETY STANDARDS

If this CONTRACT exceeds \$100,000, BORROWER must comply with the applicable Contract Work Hours and Safety Standards Act (40 USC Chapter 37). These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

ATTACHMENT I: SCOPE OF WORK (PROJECT)

Scope of Work:

Project to include:

1. Installation of arsenic removal treatment system at the Julia Maley Park well site rated at approximately 800 gpm. Costs to include: treatment units, chemical feed systems, treatment building, piping, controls, telemetry, electrical, backwash system, waste handling system, permanent emergency generator, surface restoration and other appurtenances.
2. Modifications to the existing Julia Maley pump house to accommodate treatment includes reconfiguration of interior piping, valves and appurtenances. Modifications to accommodate permanent emergency generator include installation of electrical conduit and wiring from the Julia Maley pump house to permanent emergency generator location, PLC programming, and surface restoration.
3. Submit project reports and construction documents for review and approval by Eastern Regional Office of Drinking Water regional engineer prior to start of construction.

In addition to costs of construction, costs may include (but are not limited to): engineering, design, construction inspection, hydrogeologic assessment, public involvement, preparation of bid documents, fees, taxes, legal, administrative, audit, and acquisition, and cultural and environmental review.

2020-3874 JULIA MALEY PARK WELL TREATMENT FACILITY

Project Costs by Cost Category:

COST CATEGORY	CURRENT ESTIMATES
Engineering Report (Preliminary Engineering)	\$0
Environmental Review	\$0
Historical Review/Cultural Review (Paid by City of Omak)	\$0
Land/ROW Acquisition	\$0
Permits	\$0
Public Involvement/Information	\$1,000.00
Bid Documents (Design Engineering)	\$28,000.00
Construction: Estimated Cost. Provide details on following pages.	\$1,272,320.00
DOH Review/Approval Fees:	\$1,000.00
Contingency: (10% min, 20% max)	\$318,100.00
Sales or Use Taxes	\$133,600.00
Construction Engineering/Inspection	\$238,600.00
Insurance:	\$0
Audit:	\$0
Legal:	\$0
Service Meters (Purchase and Installation)	\$0
Other:	\$0
TOTAL ESTIMATED PROJECT COSTS (before Loan Fee)	\$1,992,620.00
DWSRF Loan Origination Fee (1%)	\$19,926.20
DWSRF Loan Award	\$2,012,546.20

2020-3874 JULIA MALEY PARK WELL TREATMENT FACILITY

Project Funding:

TYPE OF FUNDING	SOURCE	CURRENT STATUS
Grants and Other Non-Matching Funds		
Grant #1		
Grant #2		
Other Grants		\$
New Grants		\$
Total Grants and Other Non-Matching Funds		a) \$ _____
Loans		
<i>This Loan Request</i>	DWSRF loan	\$2,012,546.20
Other Loan #1		\$
Other Loan #2		\$
Other Loans		\$
New Loans		\$
Total Loans		b) \$ _____
Local Revenue		
Source #1		\$
Source #2		\$
Other Local Revenue		\$
New Local Revenue	City of Omak-Cultural Review/Some Design Cost	\$160,000.00
Total Local Revenue		\$160,000.00
Other Funds		
Other Funds		\$
Other Funds		\$
Total Other Funds		c) \$ _____
TOTAL PROJECT FUNDING		d) \$2,012,546.20

2020-3874 JULIA MALEY PARK WELL TREATMENT FACILITY

Engineer's Certification:

The term of this loan will be based on an engineer's certification of the expected useful life of the improvements, as stated below, or 20 years, whichever is less. If the jurisdiction prefers the term of its loan to be less than either 20 years or the useful life of the improvements, the preferred loan term should be indicated here: ___ years.

I, David Ellis, licensed engineer, certify that the average expected useful life for the improvements described above is 20+ years.

Signed: David Ellis

Name: David Ellis

Date: 7-13-21

Telephone: (509) 453-4833

Professional Engineer License Number: 42768

**DRINKING WATER STATE REVOLVING FUND (DWSRF)
Loan Security for Local Governments Only**

The LOCAL GOVERNMENT must select **one** of the following options for securing repayment of the loan. **Please initial the appropriate option.**

1. _____ **General Obligation:**
This loan is a general obligation of the LOCAL GOVERNMENT.

OR

2. X **Revenue Obligation:**
This Contract is a revenue obligation of the CONTRACTOR payable solely from the net revenue of the WATER system. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer or solid waste utility project.

OR

3. _____ **Local Improvement District:**
Pursuant to RCW 35.51.050, the CONTRACTOR pledges to repay this loan from assessments collected from a Local Improvement District, Local Utility District or other similar special assessment district in which the improvements financed by this loan are located. The name of the special assessment district is _____.

Signature: _____
Print Name: _____
Title: _____
Date: _____
Applicant Organization: _____
Application ID: 2020-3874

ATTACHMENT II: ATTORNEY'S CERTIFICATION

**DRINKING WATER STATE REVOLVING FUND
(MUNICIPAL)**


I, Michael D. Howe, hereby certify:

I am an attorney at law admitted to practice in the state of Washington and the duly appointed attorney of BORROWER identified in the Declarations of the Contract identified above; and

I have also examined any and all documents and records, which are pertinent to the Contract, including the application requesting this financial assistance.

Based on the foregoing, it is my opinion that:

1. BORROWER is a public body, properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state and local funds, to contract with the state of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in its application.
2. BORROWER is empowered to accept the Drinking Water State Revolving Fund financial assistance and to provide for repayment of the loan as set forth in the loan agreement.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin BORROWER from repaying the Drinking Water State Revolving Fund loan extended by DOH with respect to such project. BORROWER is not a party to litigation, which will materially affect its ability to repay such loan on the terms contained in the loan agreement.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to BORROWER.


Signature of Attorney

7-13-21
Date

Michael D. Howe 5895
Name and BAR Number (WSBA No.)

10 Valley View Park, Omak WA
Address

ATTACHMENT III: FEDERAL AND STATE REQUIREMENTS (NOT ALL INCLUSIVE)

1) Environmental and Cultural Authorities

- a) Archeological and Historic Preservation Act of 1974, Public Law 86-523 as amended
- b) Clean Air Act, Public Law 84-159 as amended
- c) Coastal Zone Management Act, Public Law 92-583 as amended
- d) Endangered Species Act, Public Law 93-205 as amended
- e) Environmental Justice, Executive Order 12898
- f) Floodplain Management, Executive Order 11988 as amended by Executive Order 12148
- g) Protection of Wetlands, Executive Order 11990
- h) Farmland Protection Policy Act, Public Law 97-98
- i) Fish and Wildlife Coordination Act, Public Law 85-624 as amended
- j) National Historic Preservation Act, 54 USC Subtitle III
- k) Safe Drinking Water Act, Public Law 93-523 as amended
- l) Wild and Scenic Rivers Act, Public Law 90-542 as amended
- m) Washington State Environmental Policy Act, Chapter 43.21C RCW
- n) Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, Revised Code of Washington (RCW) 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and Washington Administrative Code (WAC) 25-48 regarding Archaeological Excavation and Removal Permits.

2) Economic and Miscellaneous Authorities

- a) Demonstration Cities and Metropolitan Development Act of 1996, Public Law 89-754 as amended, Executive Order 12372
- b) Procurement Prohibitions under Section 306 of the Clean air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- c) Uniform Relocation and Real Property Policies Act, Public Law 91-646 as amended
- d) Debarment and Suspension, Executive Order 12549
- e) H.R. 3547, Consolidated Appropriations Act, 2014.

3) Social Policy Authorities

- a) Age Discrimination Act of 1975, Public Law 94-135
- b) Title VI of the Civil Rights Act of 1964, Public Law 88-352
- c) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500 (the Clean Water Act)
- d) Section 504 of the Rehabilitation Act of 1973, Public Law 93-112 (including Executive Orders 11914 and 11250)
- e) Equal Employment Opportunity, Executive Order 11246
- f) Disadvantaged Business Enterprise, Public Law 101-549 (the Clean Air Act), and Public Law 102-389 (the Clean Water Act)
- g) Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590
- h) Chapter 49.60 RCW, Washington's Law against Discrimination, and 42 USC 12101 et seq. the Americans with Disabilities Act (ADA).
- i) The Contract Work Hours and Safety Standards Act (40 USC 327-333)-Where applicable.
- j) The Genetic Information Nondiscrimination Act of 2008 (GINA), 42 USC s. 2000ff et seq.

4) State Laws

- a) Chapter 36.70A RCW, Growth Management Act
- b) Chapter 39.80 RCW, Contracts for Architectural and Engineering Services
- c) Chapter 39.12 RCW, Washington State Public Works Act
- d) Chapter 43.20 RCW, State Department of Health of Health
- e) Chapter 43.70 RCW, Department of Health
- f) Chapter 43.155 RCW, Public Works Project
- g) Chapter 70.116 RCW, Public Water Systems Coordination Act of 1977
- h) Chapter 70.119 RCW, Public Water Supply Systems Certification and Regulation of Operations
- i) Chapter 70.119A RCW, Public Water Systems, Penalties & Compliances
- j) Chapter 246-290 WAC, Group A Public Water Systems

- k) Chapter 246-291 WAC, Group B Public Water Systems
- l) Chapter 246-292 WAC, Waterworks Operator Certification Regulations
- m) Chapter 246-293 WAC, Water Systems Coordination Act
- n) Chapter 246-294 WAC, Drinking Water Operating Permits
- o) Chapter 246-295 WAC, Satellite System Management Agencies
- p) Chapter 246-296 WAC Drinking Water State Revolving Fund Loan Program
- q) Chapter 173-160 WAC, Minimum Standards for Construction & Maintenance of Wells
- r) Title 173 WAC, Department of Ecology Rules
- s) Title 40 Part 141 Code of Federal Regulations, Federal National Primary Drinking Water Regulations (Section Adopted by Reference)

ATTACHMENT IV: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

GENERAL COMPLIANCE, 40 CFR, Part 33

BORROWER must comply with the requirements of Environmental Protection Agency's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under this Contract, contained in 40 CFR, Part 33. BORROWER will use the directory of certified firms available through the Washington State Office of Minority and Women's Business Enterprises to meet the requirements.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

The following are exemptions from the fair share objective Requirements:

- Grant and loan recipients receiving a total of \$250K or less in EPA financial assistance in a given fiscal year.
- Tribal recipients of Performance Partnership Eligible grants under 40 CFR Part 35, Subpart B.
 - There is a 3-year phase in period for the requirement to negotiate fair share goals for Tribal and Insular Area recipients.
- Recipients of Technical Assistance Grants.

The Fair Share Objectives or goals for the utilization of disadvantaged businesses negotiated with EPA by the WA Office of Minority Women Business are stated below.

Construction	10% MBE	6% WBE
Supplies	8% MBE	4% WBE
Equipment	8% MBE	4% WBE
Purchased Services	10% MBE	4% WBE

BORROWER must accept the fair share objectives/goals stated above and purchase the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as WA Office of Minority Women Business goals.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, BORROWER will make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply.

Records documenting compliance with the six good faith efforts shall be retained. The six good faith efforts shall include:

- A. Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing the Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- B. Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- C. Consider in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and Local Government recipients, this will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- D. Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- E. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Health.
- F. If the prime contractor awards subcontracts, also require the prime contractor to take the five good faith efforts in paragraphs A through E above.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

BORROWER is required to submit MBE/WBE participation reports to DOH, on a quarterly basis, beginning with the Federal fiscal year reporting period BORROWER receives the award and continuing until the project is completed.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

BORROWER agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BORROWER agrees to require all general contractors to provide forms: EPA Form 6100-2 DBE Subcontractor Participation Form and EPA Form 6100-3 DBE Subcontractor Performance Form to all its Disadvantaged Business Enterprise subcontractors, engineers, vendors, and any other entity for work or services listed in the PROJECT. These two (2) forms may be obtained from the EPA Office of Small Business Program's website on the internet at <http://www.epa.gov/osbp/grants.htm>.

BORROWER agrees to require all general contractors to complete and submit to BORROWER and Environmental Protection Agency EPA Form 6100-4 DBE Subcontractor Utilization Form beginning with the Federal fiscal year reporting period BORROWER receives the award and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a Contractor's MBE/WBE accomplishments.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

BORROWER is also required to create and maintain a bidders list if BORROWER of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

Section 33.501(b) of the rule is as follows:

A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs.

The bidders list must be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and e-mail address;
- (3) The procurement on which the entity bid or quoted, and when; and
- (4) Entity's status as a MBE/WBE¹ or non-MBE/WBE.

The exemption found at § 33.501(c) is as follows:

A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the paragraph (b) of this section requirement to create and maintain a bidders list. Also, a recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the paragraph (b) of this section bidders list requirement of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less, or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the paragraph (b) of this section bidders list requirements of this subpart.

¹ Qualified Women and Minority business enterprises may be found on the Internet at www.omwbe.wa.gov or by contacting the Washington State Office of Minority and Women's Enterprises at 360-704-1181.

ATTACHMENT V: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS



EPA Project Control Number

The terms, "covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded", as used in this attachment, are defined in the rules implementing Executive Order 12549, including 13 CFR § 400.109. You may contact DOH for help getting a copy of these regulations.

BORROWER, defined as the primary participant and its principals, certifies by signing below that to the best of its knowledge and belief they:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- B. Have not within a three-year (3) period preceding this CONTRACT, been convicted of or had a civil judgment against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses described in this attachment; and,
- D. Have not within a three-year period (3) preceding the signing of this CONTRACT had one or more public transactions (federal, state, or local) terminated for cause or default.

Prior to awarding contracts for the PROJECT, BORROWER must verify that neither the contractor's business name(s) nor the names of its principals are in the Federal Excluded Parties List System for Ineligible Professionals and Debarred Contractors (www.SAM.gov). BORROWER must keep documentation in the PROJECT files and provide a copy to the DOH Contract Manager.

BORROWER will include the language below without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

The lower tier contractor certifies, by signing this CONTRACT that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine or imprisonment for up to 5 years, or both.

Typed or Printed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

ATTACHMENT VI: DWSRF ELIGIBLE PROJECT COSTS

Must be directly attributable to the project.

1. The costs for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
2. DWSRF loan fees.
3. The purchase of a portion of another system's capacity, if it is the most cost effective solution (limited to publicly owned (municipal) systems).
4. Construction of reservoirs (clear wells) that are part of the treatment process and are collocated with the treatment facility.
5. Construction of distribution reservoirs (finished water).
6. Cost associated with restructuring or consolidation of existing water systems by publicly owned water systems.
7. Main extensions to connect to safe and reliable sources of drinking water.
8. Cost associated with collecting and preparing environmental assessment documents to obtain local permits.
9. Direct labor including related employee benefits:
 - a. Salaries and wages (at actual or average rates) covering productive labor hours of employees of the borrower (excluding the administrative organization of the operating unit involved) for periods of time actively or incidentally engaged in pre-design engineering, design engineering, construction engineering, acquisition of rights of way, and the cleaning, sterilization or bacteriological testing of water system components prior to public use. The costs of services rendered by employees generally classified as administration/project management of the loan are considered a direct cost only when such employees are assigned the types of services described above and shall be limited to 3% or less of the project loan amount.
 - b. Employee benefits relating to labor are considered a direct cost of construction projects. The following items may be included as employee benefits:
 - F.I.C.A. (Social Security) –employer's share.
 - Retirement benefits.
 - Hospital, health, dental, and other welfare insurance.
 - Life insurance.
 - Industrial and medical insurance.
 - Vacation.
 - Holiday.
 - Sick leave.
 - Military leave and jury duty.

Employee benefits must be calculated as a percentage of direct labor dollars. The

computation of predetermined percentage rates to be applied to current labor costs must be based on the average of total employee benefits and total labor costs for the prior fiscal year and adjusted by known current year variations.

- c. Other than work identified in Number 9.a, no costs associated with labor performed by the borrower's employees, including force account work, are eligible for financing assistance.
10. Contract engineering, planning, design, legal, and financial planning services. The Department of Health reserves the right to declare ineligible legal costs that are unreasonable and disproportionate to the project.
11. Contract construction work.
12. Direct vehicle and equipment charges at the actual rental cost paid for the equipment or, in the case of city or county-owned equipment, at the rental rates established by the local government's "equipment rental and revolving fund" following the methods prescribed by the division of municipal corporations. However, such costs must be charged on a uniform basis to equipment used for all projects regardless of the source of funding. Cities with a population of eight thousand or less not using this type of fund are allowed the same rates as used by the State Department of Transportation.
13. Direct materials and supplies.
14. Other direct costs incurred for materials or services acquired for a specific project are eligible costs and may include, but are not limited to such items as:
 - a. Telephone charges.
 - b. Reproduction and photogrammetry costs.
 - c. Video and photography for project documentation.
 - d. Computer usage.
 - e. Printing and advertising.
15. Other project related costs include:
 - Competitive Bidding.
 - Audit.
 - Insurance.
 - Prevailing wages.
 - Attorney fees.
 - Environmental Review.
 - Archaeological Survey.

Water system plan costs are not eligible for reimbursement. Small water system management program and plan amendments costs are eligible for reimbursement.

Projects may be designed to accommodate reasonable growth. This is generally the 20-year projection included in the system's water system plan or small water system management program.

ATTACHMENT VII: LABOR STANDARD PROVISIONS FOR SUBRECIPIENTS THAT ARE GOVERNMENTAL ENTITIES

Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)

Preamble

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each state which in turn provides subgrants or loans to eligible entities within the state. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

I. Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)

For Subrecipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2013 Continuing Resolution with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact Department of Health. If a State recipient needs guidance, they may obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c) (3) (iv). The subrecipient shall monitor www.wdol.gov on a weekly

basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Borrower and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing

apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually

registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Borrower must comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The Borrower and/or subcontractor must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes will be resolved according to the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, Borrower certifies that neither it (nor he or she) nor any person or firm who has an interest in the Borrower's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the

contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB.

Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the Department of Health and to the appropriate DOL Wage and Hour District Office listed at

https://www.dol.gov/whd/WHD_district_offices.pdf.