

AGREEMENT AND INDEMNIFICATION REGARDING HAZARDOUS SUBSTANCES

THIS AGREEMENT AND INDEMNIFICATION (the "Agreement") is executed by the CITY OF JOHN DAY ("Recipient") in order to induce the STATE OF OREGON, acting by and through its INFRASTRUCTURE FINANCE AUTHORITY of the BUSINESS DEVELOPMENT DEPARTMENT ("OBDD"), to make a certain loan (the "Loan") to Recipient in the maximum principal sum \$519,000, pursuant to that certain financing contract, number L17011, dated _____, 2017, between OBDD and Recipient (as amended from time to time the "Financing Contract"), issued by Recipient and made payable to OBDD; and secured by that certain Trust Deed; Assignment Of Rents; Security Agreement And Fixture Filing dated _____, 2017, executed by Recipient in favor of OBDD (as amended from time to time, the "Trust Deed"). For purposes of this Agreement, the Financing Contract, the Trust Deed and any other documents executed in connection with the Loan may sometimes collectively be referred to as the "Loan Documents."

1. DEFINITIONS.

1.1 "Environmental Laws" means any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment.

1.2 "Property" means real property in the County of Grant, State of Oregon, more specifically described as follows:

Legal Description

PARCEL 1:

Land in the City of John Day, Grant County, Oregon, as follows: Township 13 South, Range 31 East, Willamette Meridian, Section 22; a tract of land situated in the NE1/4SW1/4 and the SE1/4SW1/4 described as follows:

Beginning at the Southeast corner of the N1/2N1/2NE1/4SW1/4 of said Sec. 22; thence S. 89°27'30" W., along the South line of said N1/2N1/2NE1/4SW1/4 a distance of 942.75 feet; thence N. 0°33' 13" W., 283.30 feet; thence N. 88°36'45" W., 360.21 feet; thence S. 0°33'13" E., 1520.00 feet; thence S. 85°19'14" W., 11.37feet to the West line of the SE1/4SW1/4 of said Sec. 22; thence S. 0°28'49" E., along the West line of said SE1/4SW1/4, 54.17 feet to the North line of the Hall tract; thence N. 89°26'00" E., along the North line of said Hall tract, 100.98 feet thence S. 83°34'00" E., along the North line of said Hall tract, 802.60 feet; thence N. 63°04'00" W., 31.73 feet; thence N. 0°23'30" W., (record bearing N. 0°06' W.) parallel with the North-South center line of said Sec. 22, a distance of 140.00 feet; thence N. 89°42'30" E., (record bearing East) 240.83 feet to a point 200.00 feet West of said NorthSouth center line; thence N. 0°23'30" W., (record bearing N. 0°06' W.) parallel with and 200.00 feet West of said NorthSouth center line, 300.00 feet; thence N. 89°42'30" E., (record bearing East) 200.00 feet to a point on said North-South center line; thence N. 0°23'30" W., along said North-South center line, 594.34 feet to the Southwest corner of the S1/2N1/2NW1/4SE1/4 of said Sec. 22; thence N. 89°27'17" E., along the South line of said S1/2N1/2NW1/4SE1/4, 1321.40 feet to the Southeast corner of said S1/2N1/2NW1/4SE1/4; thence N. 0°08'07" W., along the East line of the N1/2NW1/4SE1/4, 283.72 feet; thence West, 581.01 feet to a point on the approximate center line of the Trowbridge Ditch; thence along the following courses, being the approximate center of said Trowbridge Ditch: S. 65°47'15" W., 140.00 feet; N. 87°45'49" W., 69.75 feet; N. 75°11'31"W., 88.13feet; N. 45°01'17" W., 98.31 feet, to the South line of the N1/2N1/2NW1/4SE1/4 of said Sec. 22; thence S. 89°27'25" W., along the South line of said N1/2N1/2NW1/4SE1/4, a distance of 389.79 feet to the point of beginning.

SAVE & EXCEPTING THEREFROM THE FOLLOWING TRACTS:

(a) A tract of land in the E1/2SW1/4 described as follows: Beginning at a point which is 1225.14 feet North and 1820.55 feet East of the Southwest corner of said Sec. 22; thence S. 4°58'00" W., 150.00 feet;

thence S. 80°36'12" E., 302.70 feet; thence N. 4°58'00" E., 314.00 feet; thence N. 80°36'12" W., 302.70 feet; thence S. 4°58'00" W., 164.00 feet to the point of beginning. All according to Map Survey No. 173 as filed in the office of the Grant County Surveyor.

(b) A tract of land in the NE1/4SW1/4 and in the SE1/4SW1/4, said tract being a strip of land 60.00 feet in width, 30 feet on each side of the following described center line: Beginning at a point on the North line of the tract of land first described herein; said point being 2609.59 feet North and 1626.53 feet East of the Southwest corner of said Sec. 22; thence S. 0°33'13" E., parallel with and 30.00 feet West of a portion of the West line of the Bill Patterson property as described in Deed Book 124, page 122, 284.32 feet; thence 400.00 feet along the arc of a 1200.00 foot radius curve left (the long chord of which bears S. 10°06'10" E., 398.15 feet); thence S. 19°39'08" E., 165.86 feet; thence 391.54 feet along the arc of a 911.24 foot radius curve right (the long chord of which bears S. 7°20'34" E., 388.54 feet); thence S. 4°58'00" W., parallel with and 30.00 feet Westerly of the West line of that certain tract of land as shown on Map of Survey No. 173, a distance of 391.33 feet, more or less, to the Northerly right of way line of the John Day Highway; All according to Map of Survey No. 671 as filed in the office of the Grant County Surveyor.

(c) A tract of land in the S112N112NW1/4SE1/4 described as follows: Beginning at a point on the East line of the S112N112NW1/4SE1/4, said point being N. 0°08'07" W., 195.58 feet from the Southeast corner of said S112N1/2NW114SE114; thence N. 0°08'07" W., along the East line of said S112N1/2NW1/4SE114, 88.14 feet; thence West 581.01 feet to a point on the approximate center line of the Trowbridge Ditch; thence S. 65°47'15" W., along the approximate center line of said ditch, 140.00 feet; thence leaving said ditch, S. 87°31 '05" E., 709.57 feet to the point of beginning. All according to Map of Survey No. 671 as filed in the office of the Grant County Surveyor.

(d) A tract of land in the S112N112NW1/4SE1/4 described as follows: Beginning at the Northwest corner of the S1/2N112NW1/4SE1/4 of said Sec. 22; thence S. 0°23'30" E., along the West line of said S1/2N1/2NW1/4SE1/4, 329.93 feet to the Southwest corner of said S1/2N1/2NW1/4SE1/4; thence N. 89°27'17" E., along the South line of said S1/2N1/2NW114SE114, 1321.40 feet to the Southeast corner of said S112N1/2NW114SE114; thence N. 0°08'07" W., along the East line of said S1/2N1/2NW1/4SE114, 195.58 feet; thence N. 87°31 '05" W. 709.57 feet to a point on the approximate center line of the Trowbridge Ditch; thence along the following courses, being the approximate center line of said Trowbridge Ditch: N. 87°45'49" W., 69.75 feet; N. 75°11'31" W., 88.13 feet; N. 45°01 '17" W., 98.31 feet, to the South line of the N1/2N1/2NW114SE114 of said Sec. 22; thence S. 89°27'25" W., along the South line of said N1/2N112NW114SE114, 389.79 feet to the point of beginning.

(e) A tract of land in the SE1/4SW1/4 described as follows: Beginning at a point on the West line of said SE114SW114; said point being S. 0°28'49" E. 220 feet, more or less, from the Northwest corner of the SE114SW114 of said Sec. 22; said described point being the center line of the John Day River; thence S. 0°28'49" E to the North right of way line of U.S. Highway 395; thence N. 89°26'00" E., along said right of way line, 100.98 feet; thence S. 83°34'00" E., along said right of way line, 341.79 feet; thence N. 4°58'00" E., along the West right of way line of an existing road, a distance of 60 feet, more or less, to the center line of the John Day River; thence in a Westerly direction along the center line of the John Day River to the place of beginning.

(f) A tract of land in the NE114SW1/4 described as follows: Beginning at a point, said point being a 518" iron pin of record located on the North-South center line of said Sec. 22; said point being N. 0°23'30" W. a distance of 1385.28 feet from the South quarter corner of said Sec. 22; thence S. 89°42'30" W. 361.5 feet; thence N. 0°23'30" W. 361.5 feet; thence N. 89°42'30" E. 361.5 feet to the North-South center line of said Sec. 22; thence S. 0°23'30" E. 361.5 feet along said North-South center line to the point of beginning.

(g) A tract of land situated in the NE114SW1/4 described as follows: Beginning at a point on the Eastline of the NE114SW1/4, said point being N. 0°23'30" W., 1385.28 feet from the South quarter corner of said Sec. 22; thence S. 89°42'30" W., 361.50 feet to THE TRUE POINT OF BEGINNING; thence N. 89°12'17" W., 410.57 feet to the Easterly line of an unnamed roadway; thence 358.67 feet along the Easterly line of said road, along the arc of a 941.24 foot radius curve left (the long chord of which bears N. 7°28'20" W. 356.51 feet); thence N. 89°42'30" E. 454.43 feet; thence S. 0°23'30" E. 361.50 feet to THE TRUE POINT OF BEGINNING. All according to Map of Survey No. 841 as filed in the office of the Grant County Surveyor.

(h) Parcels 1and2 of Land Partition Plat No. 93-7, as shown by the plat thereof filed in the office of the Grant County Clerk on August 27, 1993.

(i) That portion conveyed to Iron Triangle LLC, an Oregon Limited Liability Company by deed recorded February 23, 2017, Document No. 20170318.

(Tax Acct. 3-1 13-31-22C TL 1900; Ref. 8599)

PARCEL 2:

Township 13 South, Range 31 East, Willamette Meridian, Grant County, Oregon; Section 22: S1/2NW1/4SE1/4; ALSO, Beginning at the intersection of the Northerly right of way line of the John Day Highway and the East line of the SW1/4SE1/4 of Section 22, Township 13 South, Range 31 East, Willamette Meridian: said point being 598.1 feet North and 1320.3 feet West of the Southeast corner of said Section 22; thence, along the Northerly right of way line of said highway as follows:

S71 '30'W, 559.4 feet; On a 256.5 foot radius curve right (the long chord of which curve bears N86°10'VV, 195.0 feet), 200.0 feet; N63°49'W, 663.8 feet to the West line of the SE1/4 of said Section 22; N62°30'W, 496.2 feet; thence N0°06'VV, 140.0 feet; thence East 239.6 feet; thence N0°06'W, 300.0 feet; thence East 200.0 feet to the West line of the SE1 /4 of said Section 22; thence S0°06'E, along said West line, to the Northwest corner of the SW1/4SE1/4 of said Section 22; thence S89°47'E, along the North line of the SW1/4SE1/4 of said Section 22, 1320.9 feet to the Northeast corner of the SW1/4SE1/4 of said Section 22; thence S0°03'E, along the East line of the SW1/4SE1/4 of said Section 22, 716.9 feet to the PLACE OF BEGINNING.

SAVE & EXCEPT the following parcel of land, to-wit: Beginning at a point which is 1320.5 feet West and 598.1 feet North of the Southeast corner of said Section 22; said point being the Southeast corner of the San Juan Lumber Company Retail Yard; thence N0°03'E, 280.0 feet; thence S72°21 'W, 108.0 feet; thence S17°39'E, 26.6 feet; thence S72°21 'W, 50.0 feet; thence S17°39'E, 22.0 feet; thence S42°45'W, 81.0 feet; thence S14°00'E, 188.0 feet; thence N71°30'E, 163.0 feet to the POINT OF BEGINNING.

SAVE & EXCEPT a parcel of land in the SW1/4SE1/4 of Section 22, Township 13 South, Range 31 East, Willamette Meridian, conveyed to the State of Oregon, by and through its State Highway Commission, by Deed dated December 30, 1955, recorded March 2, 1956 in Book 74 of Deeds, pages 144-5.

(Tax Acct. 3-413-31-22D TL300; Ref. 1846)

1.3 “Hazardous Substances” is used in this Agreement in its very broadest sense and means materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. Hazardous Substances includes, but is not limited to, any and all hazardous or toxic substances, materials or waste as defined by or listed under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act or any other of the Environmental Laws. Hazardous Substances specifically include, but are not limited to, petroleum, including crude oil and any fraction thereof.

2. RECIPIENT’S REPRESENTATIONS.

2.1 To the best of Recipient’s knowledge, after due inquiry and investigation, except as previously disclosed in writing to OBDD in connection with the Loan Documents, none of the Property nor any property adjacent to the Property is being used or has ever been used to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances, whether used in construction or stored on the Property and Recipient does not intend to use the Property for any such purposes.

2.2 Recipient has received no summons, citation, directive, letter or other communication, written or oral, from any agency or department of any county or state or the U. S. Government concerning any intentional or unintentional action or omission on Recipient’s part, related to the Property, which has resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into any waters or onto any lands or where damage may have resulted to the lands, waters, fish, shellfish, wildlife, biota, air or other natural resources.

3. COVENANTS.

3.1 Compliance with Environmental Laws. Recipient shall cause the Property and the operations conducted thereon to comply with all Environmental Laws and orders of any governmental authorities having jurisdiction under any Environmental Laws and shall obtain, keep in effect and comply with all governmental permits and authorizations required by Environmental Laws with respect to the Property. Recipient shall furnish OBDD with copies of all such permits and authorizations and any amendments or renewals thereof and shall notify OBDD of any expiration or revocation of such permits or authorizations.

3.2 Preventive, Investigatory and Remedial Action. Recipient shall exercise extreme care in handling Hazardous Substances if Recipient uses or encounters any. Recipient, at Recipient’s expense, shall undertake any and all preventive, investigatory and remedial action (including emergency response, removal, containment and other remedial action) (a) required by any applicable Environmental Laws and orders by any governmental authority having jurisdiction under Environmental Laws, and (b) necessary to prevent and minimize property damage (including damage to Recipient’s own property), personal injury or damage to the environment, and the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property and operations of Recipient on the Property. In the event Recipient fails to perform any of its obligations under this Section 3.2, OBDD may perform such obligations at Recipient’s expense. In performing any such obligations of Recipient, OBDD at all times will be deemed to be the agent of Recipient and will not, by reason of such performance, be deemed to be assuming any responsibility of Recipient under any Environmental Law or to any third party. Recipient hereby irrevocably appoints OBDD its attorney-in-fact with full power to perform such of Recipient’s obligations under this Section 3.2 as OBDD deems necessary and appropriate.

4. NOTICES, REPORTS AND INSPECTIONS.

4.1 Notices. Recipient shall immediately notify OBDD upon becoming aware of any of the following:

(a) Any spill, release or disposal of a Hazardous Substance on any of the Property, or in connection with any of its operations at the Property, if such spill, release or disposal must be reported to any governmental authority under applicable Environmental Laws.

(b) Any violation of Environmental Laws in connection with the Property or operations at the Property.

(c) Any order, notice of violation, fine or penalty or other similar action by any governmental authority relating to Hazardous Substances or Environmental Laws and the Property or the operations at the Property.

(d) Any judicial or administrative investigation or proceeding relating to Hazardous Substances or Environmental Laws and to the Property or the operations at the Property.

(e) Any matters relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent OBDD cause to be concerned that the value of OBDD's security interest in the Property may be reduced or threatened or that may impair, or threaten to impair, Recipient's ability to perform any of its obligations under this Agreement when such performance is due.

4.2 Access to Records. Recipient shall deliver to OBDD, upon request, copies of any and all documents in Recipient's possession or to which it has access relating to Hazardous Substances or Environmental Laws and the Property, and operations at the Property, including without limitation, results of laboratory analyses, site assessments or studies, environmental audit reports and other consultant's studies and reports.

4.3 Inspections. OBDD reserves the right to inspect and investigate the Property and operations at any time and from time to time, and Recipient shall cooperate fully with OBDD in such inspection and investigations. If OBDD at any time has reason to believe that Recipient is not complying with all applicable Environmental Laws or the requirements of this Agreement or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, OBDD may require Recipient to furnish OBDD at Recipient's expense an environmental audit or a site assessment with respect to the matters of concern to OBDD. Such audit or assessment must be performed by a qualified consultant approved by OBDD.

Notwithstanding any other provision, OBDD has no duty to visit or observe the Property or to conduct tests, and no site visit, observation or testing by OBDD will be a representation that Hazardous Substances are or are not present in, on or under the Property, or that there has been or will be compliance with any law, regulation or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Recipient nor any other party is entitled to rely on any site visit, observation or testing by OBDD. OBDD owes no duty of care to protect Recipient or any other party from, any Hazardous Substances or any other adverse condition affecting the Property.

5. INDEMNIFICATION.

Recipient hereby indemnifies and holds harmless OBDD and its officers, directors, employees and agents, and OBDD's successors and assigns and their officers, directors, employees and agents against any and all claims, demands, losses, liabilities, costs and expenses (including without limitation attorney fees at trial and on any appeal or petition for review) incurred by such person (a) arising out of or relating

to any investigatory or remedial action involving the Property, the operations conducted on the Property or any other operations of Recipient and required by Environmental Laws or by orders of any governmental authority having jurisdiction under any Environmental Laws, or (b) on account of injury to any person whatsoever or damage to any property arising out of, in connection with or in any way relating to (i) the breach of any covenant contained in this Agreement, (ii) the violation of any Environmental Laws, (iii) the use, treatment, storage, generation, manufacture, transport, release, spill, disposal or other handling of Hazardous Substances on the Property, (iv) the contamination of any of the Property by Hazardous Substances by any means whatsoever (including without limitation any presently existing contamination of the Property) or (v) any costs incurred by OBDD pursuant to Section 3.2 or 4.3 of this Agreement.

6. PAYMENT: FULL RECOURSE TO RECIPIENT.

OBDD and Recipient intend that OBDD will have full recourse to Recipient for any sum at any time due to OBDD under this Agreement. Such liabilities, losses, claims, damages and expenses shall be reimbursable to OBDD as OBDD's obligations to make payments with respect thereto are incurred, without any requirement of waiting for ultimate outcome of any litigation, claim or other proceeding, and Recipient shall pay such liability, losses, claims, damages and expenses to OBDD as so incurred within thirty (30) days after notice from OBDD itemizing the amounts incurred to the date of such notice. In addition to any remedy available for failure to periodically pay such amounts, such amounts shall thereafter bear interest at any default rate set forth in the Loan Documents.

7. ACCEPTANCE: NO WAIVER.

Recipient waives any acceptance of this Agreement by OBDD. The failure of OBDD to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against OBDD, nor excuse Recipient from any obligations hereunder. Any waiver of such right or remedy must be in writing and signed by OBDD. This indemnity may be enforced at law and/or in equity. Remedies include, but are not limited to, actions for damages and/or specific performance.

8. SURVIVAL.

The covenants contained in this Agreement shall survive the repayment of the Loan and the delivery of a deed in lieu of foreclosure to OBDD or any successor of OBDD and shall survive any foreclosure, whether judicial or nonjudicial, of the Property by OBDD or any successor of OBDD, and shall be for the benefit of OBDD and any successor to OBDD, as holder of any security interest in the Property or the indebtedness secured thereby, or as owner of the Property following foreclosure or the delivery of a deed in lieu of foreclosure.

9. ATTORNEY FEES.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to OBDD by its attorneys.

10. CHOICE OF LAW, VENUE.

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

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

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



CITY OF JOHN DAY

By: _____
The Honorable Ron Lundbom
Mayor of John Day

Date: _____