

RESOLUTION NO. 02-2022

A RESOLUTION OF JOHN DAY/CANYON CITY PARKS AND RECREATION DISTRICT CALLING A MEASURE ELECTION TO SUBMIT TO DISTRICT'S ELECTORS THE QUESTION OF AUTHORIZING NO MORE THAN \$4,000,000.00 OF GENERAL OBLIGATION BONDS TO FINANCE CAPITAL COSTS FOR A POOL FACILITY; DECLARING DISTRICT'S INTENT TO REIMBURSE ITSELF WITH BOND PROCEEDS FOR QUALIFYING POOL FACILITY RELATED EXPENDITURES; AUTHORIZING ACCEPTANCE OF A DEPARTMENT OF ADMINISTRATIVE SERVICES GRANT FOR \$2,000,000.00; AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE DISTRICT AND CITY OF JOHN DAY; APPROVING APPLICATION FOR ADDITIONAL GRANT FUNDS; AND RELATED MATTERS.

WHEREAS, the Board of Directors (the "Board") of the John Day/Canyon City Parks and Recreation District ("District"), an Oregon special district, has determined the need to issue bonds to finance capital costs as described in the ballot title attached hereto as Exhibit A (collectively, the "Project"); and

WHEREAS, ORS 266.512 limits the amount of park and recreation general obligation bonds issued and outstanding at any one time to two and one-half percent (2.5%) of the real market value of all taxable property of the District, and issuing the bonds (the "Bonds") described in this Resolution 02-2022 (this "Resolution") will not cause District to exceed this limited; and

WHEREAS, the Bonds will bear low interest rates because the Bonds are expected to pay "tax-exempt" interest (i.e., interest that is excluded from gross income under 26 U.S.C. § 103 (I.R.C. § 103)); and

WHEREAS, District may spend money on the Project from its general fund before District issues the Bonds, and 26 C.F.R. § 1.150-2 (Treasury Regulation § 1.150-2) requires District to declare its intent to reimburse itself for amounts that District spends before the Bonds are issued if District wishes to reimburse itself for such expenditures from Bond proceeds; and

WHEREAS, ORS 266.480 to 266.512 authorizes District to contract bonded indebtedness to provide funds to finance Project costs and bond issuance costs subject to voter approval; and

WHEREAS, District and City of John Day ("City"), an Oregon municipal corporation, desire to enter into an intergovernmental agreement under ORS 190.010 (the "Intergovernmental Agreement") concerning Project financing, construction, operations, and maintenance; and

WHEREAS, District and City are beneficiaries and co-recipients of a certain Oregon State Lottery revenue bond grant award of \$2,000,000.00 for Project construction as authorized under Oregon Senate Bill 5534 (Lottery Bond Bill) and Oregon House Bill 5006 (Omnibus Bill) from the 2021 Oregon Legislative Session; and

WHEREAS, District and City desire to jointly pursue additional grant funding (the "Grant") for the Project through the Oregon Parks and Recreation District ("OPRD") Large Government Grant Program (the "Program").

NOW, THEREFORE, BE IT RESOLVED, John Day/Canyon City Parks and Recreation District board of directors resolve as follows:

1. Findings. The above-stated findings contained in this Resolution are hereby adopted.
2. Measure Election. The measure election is hereby called for the purpose of submitting to District's electors the question of issuing the Bonds (i.e., general obligation bonds) in the name of District in a principal amount not to exceed \$4,000,000.00. Bond proceeds will be used to finance the Project. The Board hereby authorizes and approves the ballot title concerning the Bonds in substantially the form attached hereto as Exhibit A with such changes as may be approved by the Authorized Representative, as defined below. The District authorizes the Authorized Representative to finalize the ballot title in substantially the form attached hereto as Exhibit A but with such changes as the Authorized Representative shall approve (the "Ballot Title"), to submit the Ballot Title [and explanatory statement, if required], and to execute any documents and take any other action necessary or desirable to facilitate the measure election.
3. Measure Date. The measure election hereby called will be held in District on May 17, 2022. The Authorized Representative shall cause Form SEL 805 to be delivered to the Election Officer of Grant County, Oregon (the "Election Officer") not later than February 25, 2022 (eighty-one (81) days prior to the election date). The Authorized Representative shall also cause Form SEL 803 to be delivered to the Election Officer not later than March 17, 2022 (sixty-one (61) days prior to the election date).
4. Lottery Revenue Bonds Grant Agreement. The Board hereby authorizes and approves District to be a co-recipient with City pursuant to the terms of a certain State of Oregon Lottery Revenue Bonds Grant Agreement substantially in the form attached hereto as Exhibit B (the "Grant Agreement"). Lisa Weigum (Budget Officer) and/or Zach Williams (Board Chair) (individually and collectively, the "Authorized Representative(s)") are each authorized to negotiate and sign the Grant Agreement for and on behalf of District provided the terms of the Grant Agreement contain terms and conditions reasonably acceptable to the Authorized Representatives.
5. Intergovernmental Agreement. The Board hereby authorizes and approves the Intergovernmental Agreement substantially in the form attached hereto as Exhibit C. The Authorized Representatives are each authorized to negotiate and sign the Intergovernmental Agreement for and on behalf of District provided the terms of the Intergovernmental Agreement contain terms and conditions reasonably acceptable to the Authorized Representatives.
6. LGGP Grant. The Board approves application for not more than \$750,000.00 in additional grant proceeds under the Program. The Authorized Representatives are each authorized to apply for the Grant under the Program and to negotiate and sign all Grant agreements, documents, and instruments for and on behalf of District provided the terms of the Grant agreements, documents, and instruments contain terms and conditions reasonably acceptable to the Authorized Representatives.
7. Reimbursement. District hereby declares its official intent under 26 C.F.R. § 1.150-2 (Treasury Regulation § 1.150-2) to reimburse itself from Bond proceeds for all allowable amounts District expends on the Project before the Bonds are issued.
8. Bond Counsel; Advisory Services. The Board hereby authorizes and appoints the law firm of Hawkins Delafield & Wood LLP to serve as bond counsel with respect to issuance of the Bonds.

Special Districts Association of Oregon, an Oregon nonprofit corporation, is hereby appointed to serve as District's advisor with respect to the Bond issuance.

9. General Authorization. Each Authorized Representative is authorized to sign and deliver all agreements, documents, and/or instruments and to take or cause to be taken all other acts on behalf of District that the Authorized Representatives deem necessary or appropriate to effect and carry out the intent of the above resolutions. All acts previously taken by an Authorized Representative for and on behalf of District to effect and carry out the intent of the above resolutions are approved, ratified, and confirmed, provided the acts were not inconsistent with District's organizational documents and/or applicable Oregon law.

10. Miscellaneous. All pronouns contained in this Resolution and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The provisions of this Resolution are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Resolution. This Resolution may be corrected by order of the Board to cure editorial and/or clerical errors.

APPROVED, ADOPTED, AND MADE EFFECTIVE by the Board on February ____, 2022.

By: Zach Williams, Chair

ATTEST:

By: Lisa Weigum

Exhibit A
Form of Ballot Title

[attached]

EXHIBIT A

BALLOT TITLE

JOHN DAY/CANYON CITY PARKS AND RECREATION DISTRICT

GRANT COUNTY, OREGON

CAPTION: (10 WORD LIMIT)

General Obligation Bonds for Pool Facility

QUESTION: (20 WORD LIMIT)

Shall John Day/Canyon City Parks and Recreation District issue \$4,000,000.00 in bonds to finance a pool facility?

If the bonds are approved, they will be payable from taxes on property or property ownership that are not subject to the limits of sections 11 and 11 b, Article XI of the Oregon Constitution.

SUMMARY: (175 WORD LIMIT)

If approved, bond proceeds will finance capital costs and improvements of a recreational facility consisting of a public swimming pool, locker rooms, office space, mechanical equipment and a multi-purpose room, site improvements, equipment, furnishings and to pay bond issuance costs. The pool will be the only public pool in Grant County.

Bond Proceeds, together with an authorized \$2,000,000 grant from the State of Oregon, will be used to finance the project. The district will establish a citizen oversight committee to ensure proceeds are used for the purposes indicated.

Bonds may be issued in multiple series, with each series maturing within 20 years from the date of issuance. The estimated average annual tax rate is \$0.70 per \$1,000 of taxable assessed property value. This is an ESTIMATE Only based on the information available from the county assessor at the time of the estimate. Actual rate may differ due to changes in interest rates and assessed value.

Exhibit B

State of Oregon Lottery Revenue Bonds Grant Agreement

[attached]

STATE OF OREGON LOTTERY REVENUE BONDS
GRANT AGREEMENT
(Governmental Entity – Reimbursement)

Grantee: «Grantee»
Project Name: «Project_Title»
Lottery Bonds Series Number: «Bond_Year__Series»

This Grant Agreement (“Agreement”), is made by the State of Oregon, acting by and through its Department of Administrative Services (“DAS”), and «Grantee» (“Grantee”) for financing of the project referred to above and described in Exhibit A (the “Project”). This Agreement becomes effective only when fully signed and approved as required by applicable law, and shall expire on the date of the last disbursement of the funds provided under this Agreement or the third anniversary date of the sale of the bonds funding this Agreement, whichever is earlier. This Agreement includes the following exhibits, incorporated into and made a part of this Agreement:

- Exhibit A: Project Description
- Exhibit B: Project Budget
- Exhibit C: Reimbursement Request Form
- Exhibit D: Declaration of Official Intent to Reimburse Project Costs

SECTION 1 – DEFINITIONS OF KEY TERMS

The following capitalized terms have the meanings assigned below.

“Bond Counsel” means a law firm that serves as bond counsel to the State because it has knowledge and expertise in the field of municipal law and issues opinions that are generally accepted by purchasers of municipal bonds.

“Bonds” means the State of Oregon Lottery Revenue Bonds «Bond_Year__Series» issued pursuant to Senate Bill 5534, codified at 2021 Oregon Laws Chapter «Enacting_Legislation», a portion of the sale proceeds of which are funding the Grant.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Date of Issuance” means the date the Bonds are issued, which is expected to be «Bond_issuance_date».

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Grant Amount” means an amount of proceeds from the sale of the Bonds, not to exceed «Grant_Amount».

“Preliminary Expenditures” means costs such as architectural, engineering, surveying, soil testing, and similar costs that, in the aggregate, are not in excess of 20% of the Grant Amount. Costs of land acquisition, site preparation and similar costs incident to commencement of construction are NOT preliminary expenditures.

“Private Person” means any person or entity other than a state or local governmental unit or an individual not acting in a trade or business. Accordingly, a Private Person would include the federal government, for-profit organizations, non-profit organizations, and individuals who are acting in a trade or business capacity.

“Private Use” means, subject to certain exceptions, the use of a portion or all of the Project by a Private Person if such use is other than as a member of the general public. Private Use can include ownership of the property by the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the property (such as a lease, management contract, service or incentive payment contract, output contract, naming rights contract or other special arrangement) in such a manner as to set the Private Person apart from the general public. Use by employees of the Grantee solely in their capacity as employees ordinarily will not be considered Private Use.

“Project” means the project described in Exhibit A.

“Project Budget” means the budget for the Project described in Exhibit B.

“Project Closeout Deadline” means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

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

“Project Completion Deadline” means 36 months after the Date of Issuance of the Bonds issued to fund the Project Costs.

“Project Costs” means expenditures incurred by Grantee that are (a) reasonable, necessary and directly used for the Project, (b) capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Code, and (c) eligible or permitted uses of the Grant under law and this Agreement. Project Costs do NOT include internal costs charged to the Project by Grantee or payments made to Related Parties, do NOT include loans or grants to be made to third parties, and may only include the payment of principal due on interim financing for the Project with the prior written consent of DAS.

“Related Parties” means, in reference to governmental units or 501(c)(3) organizations, members of the same controlled group within the meaning of Section 1.150-1(e) of the Code, and in reference to any person that is not a governmental unit or a 501(c)(3) organization, a related person as defined in Section 144(a)(3) of the Code.

“State” means the State of Oregon, acting by and through its agencies including but not limited to DAS, the Office of the State Treasurer and any other agency authorized to administer proceeds and payment of the Bonds.

SECTION 2 – FINANCIAL ASSISTANCE

DAS shall provide Grantee, and Grantee shall accept from DAS, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.

SECTION 3 – REIMBURSEMENTS

- A. Reimbursement Requests. The Grant shall be disbursed to Grantee on an expense reimbursement or costs-incurred basis. Grantee must submit each disbursement request for some or all of the Grant Amount using the Reimbursement Request form attached to this Agreement as Exhibit C, containing the information and certifications shown in Exhibit C.
- B. Conditions to Disbursement. DAS has no obligation to disburse any of the Grant unless all of the following conditions are met on the date of disbursement:
- (1) There is no Default or Event of Default.
 - (2) The representations and warranties made by Grantee in this Agreement are true and correct as if made on such date.
 - (3) The Bonds have been issued by the State.
 - (4) DAS, in the reasonable exercise of its administrative discretion, has sufficient funding, appropriations, limitations, allotments, allocation and other expenditure authority to authorize the disbursement.
 - (5) DAS (a) has received a completed Reimbursement Request from Grantee, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as DAS may require, (c) is satisfied that all items listed in the Reimbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Project Costs, and (d) has determined that the disbursement is only for costs defined as eligible Project Costs.
 - (6) DAS has received the following items in form and substance satisfactory to DAS:
 - a. This Agreement duly signed by an authorized officer of Grantee.
 - b. Such other certificates, documents, opinions and information as DAS may reasonably require.
 - (7) Any conditions to disbursement elsewhere in this Agreement or in the other financing documents for this Project are met.

- C. Disbursement by DAS. Upon satisfaction of the conditions set forth in Section 3.B, DAS shall disburse or cause to be disbursed some or all of the Grant Amount requested by Grantee.

SECTION 4 – USE OF GRANT FUNDS

- A. Use of Proceeds. The Grantee shall use the Grant only for the activities described in Exhibit A. Grantee shall use disbursements of the Grant only to reimburse itself for Project Costs in compliance with Grantee’s certifications in its Reimbursement Request.
- B. Project Costs paid by Grantee before the Bonds are Issued. Except for certain Preliminary Expenditures for costs that can be capitalized to the Project, the Grant cannot be used for Project Costs that were paid more than 60 days before the earlier of the following two dates: (i) the Date of Issuance of the Bonds; and (ii) the date on which a Declaration of Official Intent to Reimburse Project Costs set forth in Exhibit D was executed.
- C. Costs Paid for by Others. Grantee may not use any of the Grant to pay internal costs charged to the Project by Grantee or by Related Parties or to repay the interest owed for any interim financing for the Project. Grantee may not use any of the Grant to repay the principal owed on interim financing for the Project without the prior written consent of DAS.
- D. Earnings on Bond Proceeds. Any earnings on proceeds of the Bonds prior to disbursement will be retained by the State.
- E. Unexpended Proceeds. Grantee shall complete the Project on or before the Project Completion Deadline. Grantee shall immediately repay to DAS, unless DAS otherwise directs, any portion of the Grant disbursed to Grantee, and any interest earned by Grantee on the Grant disbursement, that are not used for Project Costs or that remain after the earliest of (i) the Project Completion Date, (ii) the date this Agreement has expired or is terminated; or (iii) the Project Completion Deadline.

SECTION 5 – REPRESENTATIONS AND WARRANTIES OF GRANTEE

Grantee represents and warrants to the State:

- A. Organization and Authority.
- (1) Grantee is a «Organization_Type» validly created and existing under the laws of the State of Oregon.
 - (2) Grantee has all necessary right, power and authority under its applicable enabling statutes, code, ordinances or other Oregon law to (a) execute and deliver this Agreement, (b) incur and perform its obligations under this Agreement, and (c) receive financing for and carry out the Project.

- (3) This Agreement has been duly authorized by a vote, resolution or other act of the governing body or officer of Grantee, is executed by an authorized representative of Grantee, and when executed by DAS, is legal, valid and binding, and enforceable in accordance with its terms.
- B. Full Disclosure. Grantee has disclosed in writing to DAS all facts that may materially adversely affect the Project, or the ability of Grantee to perform all obligations required by this Agreement. Grantee has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Grant, the Project and this Agreement. The information contained in this Agreement is true and accurate in all respects.
- C. Pending Litigation. Grantee has disclosed in writing to DAS all proceedings, environmental or otherwise, pending (or to the knowledge of Grantee, threatened) against or affecting Grantee, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Grantee to perform all obligations required by this Agreement.
- D. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Agreement.
- (2) Grantee has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Grantee to perform all obligations required by this Agreement.
- E. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Agreement will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Grantee is a party or by which the Project or any of Grantee's property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, charter, ordinances or other Oregon law pursuant to which Grantee was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Grantee, the Project or Grantee's properties or operations.
- F. Governmental Consent. Grantee has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Agreement and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located. "Land use approvals and development permits" includes, but is not limited to, any necessary "land use decision" or "limited land use decision" as those terms are defined by ORS 197.015(10) and (12).

- G. Project Budget. The Project Budget as described in Exhibit B represents the total cost of the Project based on contracts entered into or solicited by Grantee or Grantee's estimate of the labor and materials necessary to complete the Project.

SECTION 6 – COVENANTS OF GRANTEE

Grantee covenants as follows for so long as the Bonds and any obligations issued to refund the Bonds are outstanding:

- A. Compliance with Laws. Grantee shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement and the Project. These laws, rules, regulations and orders are incorporated by reference in this Agreement to the extent required by law.
- B. Project Reporting Obligations.
- (1) Promptly after completion of the Project and in no event later than the Project Closeout Deadline, Grantee shall furnish the State with a final report on Grantee's expenditure of the Grant; and
 - (2) Grantee shall provide such additional reports as the State may reasonably request from time to time, including information or documentation that the State determines is necessary to comply with arbitrage and private use restrictions that may apply to the Bonds.
- C. Real Property. Legal title to all real property financed with the Grant shall be owned in fee simple by Grantee, free and clear of all encumbrances other than minor encumbrances. Grantee shall maintain a standard form of title insurance policy for the value of the purchase price of the property, and where appropriate will purchase endorsements to that policy in amounts to cover improvements. Where Grantee suffers a loss that is covered by title insurance, insurance proceeds will be paid to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance).
- D. Operation and Maintenance of the Project. Grantee agrees to construct the Project in accordance with the Project plans, specifications and budget and to contract with competent, properly licensed and bonded contractors and professionals in accordance with the Oregon Public Contracting Code and all other applicable federal, state and local laws regulating construction of the Project. Grantee agrees to have plans and specifications for the Project prepared by a licensed architect or licensed engineer and to require that the Project meets applicable standards of survival in good condition. Prior to commencement of any Project construction, Grantee shall require the general contractor for the Project to procure and maintain in full force and effect throughout the entire time of construction and until one year after the Project is completed, a performance and payment bond for the faithful performance and payment of all of the contractor's obligations for the total cost of the Project. The Grantee shall be named as the obligee on the bond. Grantee shall operate

and maintain the Project in good repair and operating condition so as to preserve the public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements until the bonds are no longer outstanding.

- E. Insurance, Damage. Grantee shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to the State, not to exceed the amount necessary to call or defease the portion of the then outstanding Bonds relating to the Project (including all allocable costs of issuance), unless DAS agrees in writing that the insurance proceeds will be used to rebuild the Project.
- F. Sales, Leases and Encumbrances. Grantee shall not sell, transfer, encumber, lease or otherwise dispose of any property paid for with disbursements of the Grant, unless worn out, obsolete, or, in the reasonable business judgment of Grantee, no longer useful in the operation of the Project. Nevertheless, DAS may consent to such disposition if it has received prior written notice from Grantee. In the case of sale, lease, exchange, transfer or other disposition of any substantial portion of or interest in the Project, Grantee shall, within 30 days of receipt of any proceeds from such disposition, pay such proceeds to the State, not to exceed the amount necessary to call or defease the portion of the then outstanding Bonds relating to the Project (including all allocable costs of issuance), unless DAS agrees otherwise in writing.
- G. Condemnation Proceeds. If the Project, or any portion of the Project, is condemned, within 30 days of receipt of any condemnation proceeds, Grantee shall pay such proceeds to the State, not to exceed the amount necessary to call or defease the portion of the then outstanding Bonds relating to the Project (including all allocable costs of issuance), unless Grantee has informed DAS in writing that the condemnation proceeds will be used to rebuild the Project.
- H. Financial Records. Grantee shall keep accurate books and records regarding use of the Grant, and maintain them according to generally accepted accounting principles established by the Governmental Accounting Standards Board in effect at the time.
- I. Inspections; Information. Grantee shall permit the State and any party designated by the State: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Grantee's records regarding receipts, disbursements, contracts, investments and any other related matters. Grantee shall supply any reports and information related to the Project as the State may reasonably require.
- J. Records Maintenance. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Project, or the Grant until the date that is three years following the later of the final maturity or earlier retirement of all of the Bonds (including the final maturity or redemption date of any obligations issued to refund the Bonds) or such longer period as may be required by other provisions of this Agreement or applicable law.

K. Notice of Default. Grantee shall give DAS prompt written notice of any Default as soon as any senior administrative or financial officer of Grantee becomes aware of its existence or reasonably believes a Default is likely.

L. Representations and Covenants Regarding Prevailing Wage.

- (1) The prevailing wage rate requirements that may apply to the Project are set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (“PWR”), or, if applicable, 40 U.S.C. 3141 et seq. (“Davis-Bacon Act”). If applicable, Grantee shall:
 - a) be the public agency responsible for compliance with PWR, require its contractors and subcontractors to pay the applicable PWR or Davis-Bacon Act rates, and to comply with all other Oregon Bureau of Labor and Industries (“BOLI”) requirements pursuant to the PWR, including on all contracts and subcontracts and in filing separate public works bonds with the Construction Contractors Board (applicable wage rates are those in effect on the effective date of this Agreement and may be accessed via: BOLI : Prevailing Wage : For Employers : State of Oregon and <https://sam.gov/>); and
 - b) pay to BOLI, within the required timeframe and in the appropriate amount, the project fee required by OAR 839-025-0200 to 839-025-0230, including any additional fee that may be owed upon completion of the Project.
- (2) If Grantee believes the Project is not subject to PWR, Grantee must obtain and provide DAS with a copy of a coverage determination letter from the BOLI that confirms the Project is not subject to PWR requirements before Grantee enters into a contract for construction management, contracts with a contractor to act as general manager of the project or proceeds to act as Grantee’s own general contractor.
- (3) Grantee represents and warrants that it is not on the BOLI current List of Contractors Ineligible to Receive Public Works Contracts and that it will not contract with any contractor on this list.

M. Indemnity; Release. To the extent allowed by law, Grantee shall defend, indemnify, save and hold harmless and release the State, its officers and employees from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and reasonable attorneys’ fees and expenses at trial, on appeal and in connection with any petition for review, arising out of or relating to Grantee, its officers, employees, contractors, or agents in connection with this Agreement, the Project, PWR or Davis-Bacon Act requirements or the tax-exempt status of the Bonds, including without limitation, any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by BOLI, the Internal Revenue Service, the Securities and Exchange Commission, Municipal Securities Rulemaking Board and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction over the Bonds, arising from the Project or the actions or omissions of Grantee.

N. Representations and Covenants Regarding the Tax-Exempt Status of the Bonds.

- (1) Grantee acknowledges that the Bonds have been or are expected to be issued with the interest paid on the Bonds excludable from gross income for federal income tax purposes and that the uses of the Grant proceeds and the Project by Grantee during the term of the Bonds may impact the tax-exempt status of the Bonds. Grantee agrees to comply with all applicable provisions of the Code necessary to protect the exclusion of interest on the Bonds from federal income taxation.
 - (2) Grantee shall not, without prior written consent of DAS, permit more than five percent (5%) of the Project to be used in a Private Use by a Private Person if such Private Use could result in the State of Oregon receiving direct or indirect payments or revenues (excluding generally applicable taxes) from the portion of the Project to be privately used.
 - (3) Unless Grantee receives the prior written approval from DAS, Grantee shall not directly or indirectly use any of the Grant proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
- O. Representations and Covenants Regarding “Arbitrage Bonds”. The Grantee shall not directly or indirectly use or permit the use of any of the Grant Amount or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be “arbitrage bonds” within the meaning of 26 U.S.C. Section 148(a).

SECTION 7 – DEFAULTS

- A. Grantee Default. Any of the following constitutes an “Event of Default” of Grantee:
- (1) Any false or misleading representation is made by or on behalf of Grantee, in this Agreement or in any document provided by Grantee to DAS related to this Grant or the Project or in regard to compliance with the requirements of section 103 and sections 141 through 150 of the Code.
 - (2) Grantee fails to perform any obligation required under this Agreement, other than those referred to in subsection A(1) of this Section 7, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Grantee by DAS, or such longer period as DAS may agree to in writing, if DAS determines Grantee has instituted and is diligently pursuing corrective action.
 - (3) If and to the extent allowed by law, Grantee initiates or consents to a proceeding or case, or a proceeding or case is commenced without the application or consent of Grantee, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment,

or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

- B. DAS Default. DAS will be in default under this Agreement if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 8 – REMEDIES

- A. Remedies. Upon any Event of Default, DAS may pursue any or all remedies in this Agreement, and any other remedies available at law or in equity (including specific performance) to collect amounts due or to become due or to enforce the performance of any obligation of Grantee. Remedies may include, but are not limited to:
- (1) Terminating DAS' commitment and obligation to make any further disbursements of the Grant under this Agreement.
 - (2) Barring Grantee from applying for future grants.
 - (3) While any of the Grant remains undisbursed, withholding amounts otherwise due to Grantee and applying such amounts to the payment of amounts due under this Agreement.
 - (4) Requiring repayment upon demand from DAS of all or a portion of the Grant, the State of Oregon's costs of exercising its remedies under this Agreement, and interest on all or any portion of the Grant moneys required to be returned.
- B. Application of Moneys. Any moneys collected by DAS pursuant to Section 8.A will be applied first, to pay any reasonable attorneys' fees and other fees and expenses incurred by the State of Oregon; then, to repay any Grant moneys owed; and last, to pay any other amounts due and payable under this Agreement.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to DAS is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right, power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. DAS is not required to provide any notice in order to exercise any right or remedy, except as set forth in Section 7.A.2.
- D. Grantee Remedies. In the event of default by DAS, Grantee's sole remedy will be for reimbursement of Project Costs reviewed and accepted by DAS, less any claims DAS has against Grantee.

SECTION 9 – MISCELLANEOUS

- A. Time is of the Essence. Grantee agrees that time is of the essence under this Agreement.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Grantee is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Agreement gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Agreement will be binding upon and inure to the benefit of DAS, Grantee, and their respective successors and permitted assigns.
 - (4) Grantee may not assign or transfer any of its rights or obligations or any interest in this Agreement without the prior written consent of DAS. In the event of an assignment, Grantee shall pay, or cause to be paid to DAS, any fees or costs incurred because of such assignment, including but not limited to reasonable attorneys' fees of DAS's counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of DAS beyond those in this Agreement, nor does assignment relieve Grantee of any of its duties or obligations under this Agreement.
 - (5) DAS may assign this Agreement to a successor agency or entity without the consent of or notice to Grantee.
- C. Disclaimer of Warranties; Limitation of Liability. Grantee agrees that:
- (1) DAS makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
 - (2) In no event is DAS, any agency of the State of Oregon or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Agreement or the existence, furnishing, functioning or use of the Project.
- D. Notices. All notices to be given under this Agreement must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section. Notices may only be delivered by personal delivery, email or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the

recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

If to DAS: Jean Gabriel, Capital Finance & Planning Manager
Department of Administrative Services
155 Cottage Street NE
Salem, OR 97301
Phone: (971) 900-7691
Email: Jean.L.Gabriel@oregon.gov

If to Grantee: «Signators_Name», «Signators_Title»
«Grantee»
«Street_Address»
«City_State»
Phone: «Telephone»
Email: «email»

- E. No Construction Against Drafter. This Agreement is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Agreement is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Survival. The covenants of Grantee under this Agreement related to the tax-exempt status, if any, of the Bonds, the continued operation and maintenance of the Project, default and remedies, including without limitation Sections 6, 7, 8, and 9.G. and I. of this Agreement, shall survive disbursement of the Grant Amount and termination of this Agreement until the Bonds (including the final maturity or redemption date of any obligations issued to refund the Bonds) are no longer outstanding.
- H. Amendments, Waivers. This Agreement may be amended only by mutual written agreement of the parties. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, 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 Agreement 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's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Agreement (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.
- K. False Claims. Grantee will refer to the DAS contact identified for receipt of notices under this Agreement, any credible evidence that a principal, employee, agent, sub-grantee contractor, contractor or other person has submitted a false claim under the False Claims Act, ORS180.750 to 180.785, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving funds provided under this Agreement.
- L. Execution in Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

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

STATE OF OREGON
acting by and through the
Department of Administrative Services

«GRANTEE»

By: _____
Name: George Naughton or delegate
Title: Chief Financial Officer

By: _____
Name: «Signators_Name»
Title: «Signators_Title»

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Wendy J. Johnson, Assistant Attorney General

EXHIBIT A – PROJECT DESCRIPTION

Project Name: «Project_Title»

Project Description: «Project_Description»

EXHIBIT B – PROJECT BUDGET

Project Revenues

Grant Amount	\$0.00
Other Funding	\$0.00
Total project budget	\$0.00

Expenditure Plan

Reimbursement	\$0.00
April-21	\$0.00
May-21	\$0.00
June-21	\$0.00
July-21	\$0.00
August-21	\$0.00
September-21	\$0.00
October-21	\$0.00
November-21	\$0.00
December-21	\$0.00
January-22	\$0.00
February-22	\$0.00
March-22	\$0.00
April-22	\$0.00
May-22	\$0.00
June-22	\$0.00
July-22	\$0.00
August-22	\$0.00
September-22	\$0.00
October-22	\$0.00
November-22	\$0.00
December-22	\$0.00
January-23	\$0.00
February-23	\$0.00
March-23	\$0.00
April-23	\$0.00
May-23	\$0.00
June-23	\$0.00
Total	-

EXHIBIT C – REIMBURSEMENT REQUEST FORM

Dated: [date of request]

Project Name: «Project_Title»

Bonds: Lottery Revenue Bonds: «Bond_Year__Series»

Date of Grant Agreement: []

Name of Grantee: «Grantee»

On behalf of «Grantee» (the “Grantee”) I hereby request a total disbursement of \$_____ under the Grant Agreement listed above (the “Grant Agreement”).

I hereby make the following certifications in connection with this Reimbursement Request:

1. As of the date of this Reimbursement Request, Grantee has spent a portion of the Grant Amount in the amount of \$[_____] as detailed on the attached list and documentation.
2. All of the disbursement requested by this Reimbursement Request (the “Disbursement”) will be used to reimburse Grantee for payments that Grantee has made for Project Costs.
3. Grantee is eligible to receive the Disbursement under the terms of the Grant Agreement, and has satisfied all conditions that the Grant Agreement requires be satisfied for DAS to make the Disbursement.
4. The invoices or other documents provided to DAS in connection with this Reimbursement Request evidence that the Project Costs to be paid from the Disbursement have been paid by Grantee.
5. All of the Disbursement will be used to pay for Project Costs that have not been previously paid from disbursements under the Grant.
6. All representations of Grantee in the Grant Agreement are true and correct on the date of this Reimbursement Request and all warranties by Grantee in the Grant Agreement continue to be in effect.

The certifications in this Reimbursement Request are true and accurate to the best of my knowledge and belief, after reasonable investigation.

Capitalized terms that are used but are not defined in this Reimbursement Request have the meanings defined for those terms in the Grant Agreement.

«Grantee»

By: _____

Name: «Signators_Name»

Title: «Signators_Title»

Date: _____

EXHIBIT D
DECLARATION OF OFFICIAL INTENT TO REIMBURSE PROJECT COSTS

Exhibit C
Intergovernmental Agreement

[attached]

INTERGOVERNMENTAL AGREEMENT
Construction of New Aquatics Center

This Intergovernmental Agreement for Construction of a New Aquatics Center (this "Agreement") is made and entered into on _____, 2022, but made effective for all purposes as of _____, 2022 (the "Effective Date") between City of John Day ("City"), an Oregon municipal corporation, and John Day Canyon City Parks and Recreation District ("District"), a special purpose district created under ORS Chapter 266.

RECITALS:

A. District has maintained and managed Gleason Pool from 1990 to 2020 under an agreement between District and City. Gleason Pool has been closed for two seasons. The City is in the process of selling the current property to Oregon State Parks and Recreation Department for the expansion and further development of the Kam Wah Chung Heritage Site.

B. City has received \$1 million in state funds for associated site development improvements adjacent to the Kam Wah Chung Heritage Site through 2021 House Bill 5006 and \$2 million in 2023 State Lottery Bonds to assist with construction of a new aquatics center in John Day through 2021 Senate Bill 5534.

C. City and District desire to work collaboratively to replace the Gleason Pool and construct a new aquatics center on District land located at 1/2 845 NW Bridge Street, John Day, Oregon 97845, commonly known as the Belshaw Fields at the 7th Street Sports Complex (the "Project"). City and District agree that the Project should be designed and constructed as depicted on the plans attached as Exhibit A.

D. This Agreement is made pursuant to ORS 190.010, which statute provides that units of local government may enter into agreements for the performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Unless defined elsewhere in this Agreement, capitalized terms contained in this Agreement have the meanings assigned to them in the attached Appendix A.

2. Project Planning and Pre-Construction.

2.1 City Obligations. Subject to the terms contained in this Agreement, City will perform the following obligations in preparation for construction of the Project: (1) prepare a land use site plan and design for the Project based on 2018-2020 feasibility studies conducted by City and District, as presented in Exhibit B; (2) hire a qualified consultant to prepare a conditional use application based on the site plan and pool design approved by City, District, and the John Day Planning Commission on November 9, 2021; (3) hire a public opinion research firm to complete a public opinion survey regarding the proposed Project to inform the public of the final design and ballot measure for construction bonds; (5) hire consultant(s) to complete the Project design, drawings, and specifications for bidding documents; (6) provide for the demolition of the Gleason Pool as part of the Kam Wah Chung re-development project; and (7) provide the public with updates and information regarding the Project through radio, print, and social media sources.

2.2 District Obligations. Subject to the terms contained in this Agreement, District will perform the following obligations in preparation for construction of the Project: (1) sign and submit a Conditional Use Permit Application for the Project to the City; (2) testify in support of the application at the City Planning Commission hearing; (3) cooperate with City to conduct a public opinion survey; (4) participate with City to prepare the final design and specifications of Project by hosting any public engagement sessions recommended by

City and/or the Project consultants; (5) prepare and file for a general obligation bond measure election for the Project with the Grant County Clerk for consideration by District voters in the May 2022 election; (6) determine and approve the amount of the proposed bond based on input from the City, consultants, capital campaign results, and other information obtained from the public survey; and (7) assure the public is fully informed of the Project by engaging in various outreach efforts, including but not limited to developing and initiating a public information campaign to distribute print and digital information describing the Project, the proposed bond measure, and any other applicable Project information.

3. Project Construction.

3.1 City Obligations. Subject to the terms contained in this Agreement, City will perform the following obligations for the construction of the Project: (1) provide technical and professional knowledge to District, as requested, to assist District with initiating and managing the general obligation bond sale; (2) prepare solicitation and bid documents for a competitive bid on Project construction; (3) issue request for proposals (“RFP”) and select a contractor in conjunction with District; (4) issue notice of intent to award and notice of award for construction of the Project upon voter approval; (5) oversee Project construction from negotiations, approval of a general contractor, and notice to proceed through Certificate of Occupancy, (including payment of invoices, Project financial management, and assuring that the Project remains within budgeted funds); (6) assure compliance with prevailing wage and other state and federal regulations and reporting requirements; (7) appoint a Project Manager; and (8) provide updates and information to the public regarding the Project through radio, print, and social media sources.

3.2 District Obligations. Subject to the terms contained in this Agreement, District will perform the following obligations for the construction of the Project: (1) upon approval of the bond measure to construct the Project, District will contract with Special Districts Association of Oregon Advisory Services, or another qualified firm, to sell general obligation bonds for the Project; (2) appoint board members to serve on the Source Selection Panel; (3) appoint a board member or staff representative to serve on the Project Management Team; and (4) provide updates and information to the public regarding the Project as part of the District’s outreach through print and social media sources.

4. Pool Operation; Management.

4.1 City Obligations. Subject to the terms contained in this Agreement, City will be responsible for payment of utilities for the pool and office facility including water, sewer, electricity, propane, broadband/cable/internet service, and telephone as further explained in Section 5.1 of this Agreement.

4.2 District Obligations. Except as provided by Section 4.1 of this Agreement, District will be responsible for all operations, maintenance, and programming costs associated with operating the aquatics center pool and District’s office located in the Aquatics Center Building. District will open the aquatics center for public use a minimum of ninety (90) days per year between the months of May and September unless unforeseen circumstances including but not limited to inclement weather, utility, mechanical failures, and/or natural hazards prevent public access to the facility. District will be responsible for all exterior maintenance of the pool building, fencing and grounds, including the maintenance of all parking lots associated with and constructed as part of the Project. Exterior maintenance includes, but is not limited to routine sweeping, snow plowing/removal, stripping, signage, and preventative maintenance measures such as seal coating and crack sealing. District will be responsible for maintaining all landscaping, turf, pedestrian trails/walkways, signs, lights, and other outdoor appurtenances associated with development and operation of the Project.

5. Budget. In accordance with and subject to the Laws, including, without limitation, applicable Oregon Local Budget Law provisions, City and District will each make expenditures for the services, supplies, facilities, personnel, and/or equipment as may be necessary or appropriate to carry out the purposes of this Agreement. Expenditures will not exceed funds appropriated for the specific purposes and will be made in

accordance with applicable law. City and District will each prepare and develop an operating budget as further described in Section 5.1 and Section 5.2 of this Agreement.

5.1 City Budget Obligations. City will establish an aquatic center capital construction fund or department within City's budget to receive and expend funds for the project. City will provide up to fifty (50) percent of the project costs or \$3 million, whichever is less, as outlined in Exhibit C, Project Construction Budget. City will secure an interim financing credit facility for the design and construction of the Project. The credit facility shall be backed by the proceeds of the 2023 Oregon lottery bonds issued in accordance with 2021 SB 5534, as authorized by the grant from the Department of Administrative Services to City for expenditures related to Project and the Declaration of Official Intent to Reimburse Capital Costs with State of Oregon Lottery Revenue Bonds, enclosed as Exhibit D. Any balance of funds from the sale of the Gleason Pool property and/or any remaining funds on interim credit facility will be dedicated toward Project construction upon notice of award and approval of the general obligation bond sale. Subject to the terms of this Agreement, Project planning and pre-construction costs incurred by the City will be reimbursed to the City through funds received from sale of the Gleason Pool property, interim financing grant proceeds described in Recital B, and other City funds and grants. City will maintain accurate records of all project costs, both direct and indirect, associated with the project. Upon Project completion, and subject to the terms of this Agreement, City will be responsible for payment of utilities for the pool and office facility including water, sewer, electricity, propane, broadband/cable/internet service, and telephone.

5.2 District Budget Obligations. District will establish an aquatic center capital construction fund within the District's budget to receive and expend funds for the Project. Except as provided by Section 4.1 of this Agreement, District will be responsible for all operations, maintenance, and programming costs associated with operating the Project and District's office located in the Project property.

5.3 Joint City and District Budget Obligations. City and District will jointly and collaboratively prepare and submit the Oregon State Parks Local Government Grant application (the "Application") to fund a warm water pool as part of the Project. City and District will jointly present the Project to the grant review committee. City and District will submit the Application prior to April 1, 2022.

6. Term; Termination. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect for a term of twenty-five (25) years, unless sooner terminated in accordance with this Agreement. The term of this Agreement may be extended subject to the mutual written agreement of each party. This Agreement may be terminated (a) at any time by the mutual written agreement of City and District, or (b) by either party upon 120 days prior written notice if either party breaches and/or otherwise fails to perform any representation, warranty, covenant, and/or obligation contained in this Agreement. In the event District ceases to exist, the Project property and all parking lots developed as part of the Project will become property of the City.

7. Miscellaneous.

7.1 Indemnification; Insurance. To the fullest extent permitted under applicable law, City and District will defend, indemnify, and hold each other and their respective Representatives harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of the City or District's breach and/or failure to perform the obligations contained in this Agreement. City will provide for adequate insurance to cover the directors, officers, employees, staff, contractors, agents, and activities undertaken by City. District will provide for adequate insurance to cover the directors, officers, employees, staff, contractors, agents, and activities undertaken by District.

7.2 Relationship. This Agreement does not create an agency relationship between City and District and does not establish a joint venture or partnership between City and District. Neither City or District has the authority to bind the other or represent to any person that a one is an agent of the other. Neither City or

District will provide any benefits to the other; each will be solely responsible for obtaining their own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans.

7.3 Coordination; Severability; Remedies. The parties will maintain adequate levels of communication to ensure maximum cooperation between the parties. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. If a party breaches and/or otherwise fails to perform any of its terms, covenants, conditions, and/or obligations under this Agreement, the other party may, in addition to any other remedy provided to the party under this Agreement, pursue all remedies available to the party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

7.4 Assignment; Binding Effect. No party may assign any of the party's rights and/or obligations under this Agreement to any person without the prior written consent of the other party. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, executors, administrators, successors, and permitted assigns and will inure to their benefit. This Agreement will be deemed binding and effective for all purposes as of the Effective Date.

7.5 Expenses; Notices. Subject to the terms and conditions contained in this Agreement, each party will pay all wages and benefits due the party's personnel, including, without limitation, overtime, workers' compensation, and death benefits. Any notice will be deemed given when personally delivered or delivered by facsimile or email transmission (with electronic confirmation of delivery), or will be deemed given three days following delivery of the notice by U.S. mail, certified, return receipt requested, postage prepaid, by the applicable party to the address shown in Appendix A (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day.

7.6 Waiver; Entire Agreement. Notwithstanding anything contained in this Agreement to the contrary, no provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by the parties. No waiver by a party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements.

7.7 Applicable Law; Attorney Fees. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Except as provided otherwise under ORS 403.160, any action or proceeding arising out of this Agreement will be litigated in courts located in Grant County, Oregon. Each Party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

7.8 Person; Interpretation; Signatures. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine,

feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. This Agreement may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a party, the other party or parties will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting party.

7.9 Conflict of Interest. The law firm of Bryant, Lovlien & Jarvis, P.C. (“Law Firm”) has been retained by City to prepare this Agreement, and all related documents and instruments. Law Firm currently represents City and District on one or more unrelated matters. Oregon’s rules of ethics for lawyers limit or prohibit one lawyer or law firm from representing two or more clients when their interests conflict. Law Firm may not oppose a current client (even on an unrelated matter) without informed consent after an explanation about the material risks of, and reasonable alternatives to, consenting. Law Firm has discussed the conflict of interest with each party. Each party consents to Law Firm’s representation of City in connection with the preparation of this Agreement and all related documents and instruments. Notwithstanding the parties’ informed consent, should a conflict or dispute arise between the parties, Law Firm will not represent any party in connection with the conflict or dispute (each party will obtain the party’s own, independent legal counsel).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above but made effective for all purposes as of the Effective Date.

CITY:

City of John Day,
an Oregon municipal corporation

DISTRICT:

John Day Canyon City Parks and Recreation District,
an Oregon special district

By: _____
Its: _____

By: _____
Its: _____

Dated: _____

Dated: _____

Appendix A
Definitions

“Agreement” has the meaning assigned to such term in the preamble.

“Application” has the meaning assigned to such term in Section 5.3.

“Aquatics Center Building” means the building constructed on District land located at 845 ½ NW Bridge Street in John Day, Oregon 97845.

“City” means the City of John Day, an Oregon municipal corporation, whose address is 450 East Main Street, John Day, Oregon 97845.

“District” means John Day Canyon City Parks and Recreation District, a special purpose district created under ORS Chapter 266, whose address is 1/2 845 NW Bridge Street, John Day, Oregon 97845.

“Effective Date” means January 1, 2019.

“Gleason Pool” means the property located at 250 NW Canton Street, John Day, Oregon 97845.

“Law(s)” mean all federal, state, and local laws, statutes, ordinances, and/or regulations directly or indirectly affecting this Agreement, and/or the Project, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder) and ORS chapter 190, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

“Law Firm” has the meaning assigned to such term in Section 7.9.

“Project” has the meaning assigned to such term in Recital C.

“Project Manager” means that certain City appointed individual who will work with District staff/representatives and project consultants on the Project Management Team to provide technical assistance and general Project oversight.

“Project Management Team” means those certain District appointed board members or staff representatives who will collaborate with City and Project consultants to review Project construction, approve all changes orders, and approve final documents at the completion of the Project.

“Representative(s)” mean the officers, employees, volunteers, and authorized representatives of the identified party.

“Source Selection Panel” means that certain panel of individuals for the Project construction RFP made up of appointed District board members and City councilor

Exhibit A
Depiction of Project

DRAFT

Exhibit B
2018-2020 Feasibility Studies

DRAFT

Exhibit C
Project Construction Budget

DRAFT

Exhibit D

Declaration of Official Intent to Reimburse Capital Costs with State of Oregon Lottery Revenue Bonds

DRAFT