

RESOLUTION NO. 22-881-02

A RESOLUTION OF THE CITY OF JOHN DAY AUTHORIZING ACCEPTANCE OF A DEPARTMENT OF ADMINISTRATIVE SERVICES GRANT FOR \$2,000,000.00; AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND THE JOHN DAY/CANYON CITY PARKS AND RECREATION DISTRICT; APPROVING APPLICATION FOR ADDITIONAL GRANT FUNDS; AND RELATED MATTERS.

WHEREAS, the City Council ("Council") of the City of John Day ("City"), an Oregon municipal corporation, and the Board of Directors ("Board") of the John Day/Canyon City Parks and Recreation District ("District"), an Oregon special district, desire to enter into an intergovernmental agreement under ORS 190.010 (the "Intergovernmental Agreement") concerning design, construction, operations and maintenance of a new pool facility in John Day (collectively, the "Project"); 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 that City of John Day resolves as follows:

1. Findings. The above-stated findings contained in this Resolution No. 22-881-02 (this "Resolution") are hereby adopted.
2. Lottery Revenue Bonds Grant Agreement. The Council hereby authorizes and approves City to be a co-recipient with Board pursuant to the terms of a certain State of Oregon Lottery Revenue Bonds Grant Agreement substantially in the form attached hereto as Exhibit A (the "Grant Agreement"). Ron Lundbom (Mayor) and/or Nicholas Green (City Manager) (individually and collectively, the "Authorized Representative(s)") are each authorized to negotiate and sign the Grant Agreement for and on behalf of City provided the terms of the Grant Agreement contain terms and conditions reasonably acceptable to the Authorized Representatives.
3. Interim Financing; Reimbursement. The Council hereby authorizes and approves City's Authorized Representatives to pursue interim financing for the Project, up to \$3,000,000.00, of which \$2,000,000.00 shall be reimbursed to City through the proceeds of Lottery Revenue Bonds Grant Agreement (the "Interim Financing").
4. Bond Counsel; Placement Agent. The Council hereby authorizes and appoints the law firm of Hawkins Delafield & Wood LLP to serve as bond counsel with respect to issuance of the Interim Financing, in accordance with the terms contained in Exhibit B. D.A. Davidson is hereby appointed to serve as City's placement agent with respect to the Interim Financing, in accordance with the terms contained in the placement letter attached hereto as Exhibit C.

4. Intergovernmental Agreement. The Council hereby authorizes and approves the Intergovernmental Agreement substantially in the form attached hereto as Exhibit D. The Authorized Representatives are each authorized to negotiate and sign the Intergovernmental Agreement for and on behalf of City provided the terms of the Intergovernmental Agreement contain terms and conditions reasonably acceptable to the Authorized Representatives.

5. LGGP Grant. The Council approves joint application by City for not more than \$750,000.00 in additional grant proceeds under the Program. The Authorized Representatives are each authorized to co-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.

6. 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 Council to cure editorial and/or clerical errors.

ADOPTED by the City Council of City of John Day and signed by the mayor this 22nd day of February, 2022.

Ron Lundbom, Mayor

ATTEST:

Nicholas Green, City Manager

Exhibit A

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	<u>\$0.00</u>

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

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

Declaration 015
2021-23 Biennium

Section 1. The Oregon Department of Administrative Services, Capital Finance and Planning Section (“DAS”) reasonably expects to issue Lottery Revenue Bonds, by and through the Oregon State Treasury (the “Issuer”), authorized by ORS 286A.560 – 286A.585 and Oregon Laws Chapter 658, Section 2 (2021) and Chapter 682, Section 31 (2021) to finance a grant from the Department of Administrative Services (the “Agency”) to the City of John Day (the “Grantee”) for expenditures related to the construction of an aquatics center (the “Project”).

Section 2. The Issuer reasonably expects that the Grantee may make certain expenditures on the Project prior to the issuance of the Lottery Revenue Bonds and therefore makes this Declaration of Official Intent to Reimburse to preserve the ability of the Issuer to reimburse the Grantee for such expenditures from the proceeds of the Lottery Revenue Bonds.

Section 3. This Declaration of Official Intent to Reimburse is made pursuant to Section 1.150-2 of the Income Tax Regulations promulgated by the United States Department of the Treasury.

Section 4. The maximum principal amount of Lottery Revenue Bonds expected to be issued for the Project is \$2,215,000.

Adopted this 22nd day of October, 2021

Oregon Department of Administrative Services
Capital Finance & Planning Section (CFPS)

Jean Gabriel, CFPS Manager



CITY OF
JOHN DAY

mayor
Ron Lundbom

city manager
Nicholas Green

secretary
Chantal DesJardin

council
Shannon Adair
Gregg Haberly
Dave Holland
Steve Schuette
Elliot Sky
Paul Smith

October 21, 2021

Department of Administrative Services
Chief Financial Office
Capital Finance & Planning Manager
155 Cottage Street NE
Salem, OR 97301

**Re: Request for Declaration of Official Intent to Reimburse Capital Costs
with Lottery Revenue Bonds**

Dear Ms. Gabriel, DAS Capital Finance Manager:

The City of John Day requests that Capital Finance and Planning prepare and execute a *Declaration of Official Intent to Reimburse Capital Costs with Lottery Revenue Bonds* for the grantee's project **John Day Aquatics Center**.

Based on the planned timing of bond sales to finance this project, the grantee would like to begin the project prior to the time bond proceeds are expected to be available. Therefore, the grantee would like to pay for project costs using its own resources and then reimburse itself for the expenditures after the bonds are issued. The grantee understands that Lottery Revenue bond proceeds can only be used for capital expenditures; that is, costs that are capitalized to an asset.

This project has been authorized for bond financing by the Legislature through 2021 SB 5534, section 31. The total amount of bonds authorized for the project is \$2,000,000. As authorized in the lottery revenue bond bill, the project description and scope includes funding for the construction of an aquatics center in John Day, OR.

If you have any questions about this request, please feel free to contact Nicholas Green, City Manager.

Sincerely,

Signature of Authorized Official

Exhibit B

Hawkins Delafield & Wood LLP Engagement Letter

[attached]



PHONE: 503-402-1320
FAX: 503-402-1331

200 SW MARKET STREET, SUITE 350
PORTLAND, OR 97201
WWW.HAWKINS.COM

NEW YORK
WASHINGTON
NEWARK
HARTFORD
LOS ANGELES
SACRAMENTO
SAN FRANCISCO
PORTLAND
ANN ARBOR

GÜLGÜN UGUR, ESQ.
PHONE: (503) 402-1325
EMAIL: GUGUR@HAWKINS.COM

February 15, 2022

Via Email: greenn@grantcounty-or.gov

Nick Green, City Manager
City of John Day
450 East Main Street
John Day, OR 97845

Dear Nick:

Thank you for selecting Hawkins Delafield & Wood LLP to act as bond counsel to the City of John Day (the "City") in connection with the Full Faith and Credit Financing for the pool project (the "Financing"). To this end, we submit for your approval the following provisions governing our engagement. If you are in agreement, please sign the enclosed copy of this letter in the space provided below. We are available to answer any questions that you may have concerning these provisions, or any modifications that you may wish to suggest. We at Hawkins are pleased to have the opportunity to serve the City.

1. *Client; Limited Scope of Representation.* Our client in this matter will be the City. We will be engaged hereunder to render legal advice to the City as its bond counsel or special counsel, including the following:

- (1) Subject to the completion of proceedings to our satisfaction, render our legal opinion (the "Financing Opinion") regarding the validity and binding effect of the Financing, the source of payment and security for the Financing, and, if appropriate, excludability of interest on the Financing from gross income for federal and for state of Oregon income tax purposes.
- (2) Prepare and review documents necessary or appropriate to the authorization, issuance and delivery of the Financing, coordinate the authorization and execution of such documents, and review and, where appropriate, draft enabling legislation.

- (3) Assist the City in seeking from other governmental authorities such approvals, permissions, and exemptions as are necessary or appropriate in connection with the authorization, issuance and delivery of the Financing, except that we will not be responsible for any required Blue Sky filings.
- (4) Review and respond to specific legal issues raised by the City that relate to and arise out of the City's structuring of the Financing.
- (5) Draft the continuing disclosure undertaking, if any, of the City.

Our Financing Opinion will be addressed to the City and will be based on facts and law existing as of its date. In rendering our Financing Opinion we will rely upon the certified proceedings and other representations and certifications of public officials, counsel for and representatives of the City, the purchaser of the Financing, and other persons, furnished to us without any undertaking by us to verify the same by independent investigation, and we will assume continuing compliance by the City and all other participants in the transaction with applicable laws relating to the Financing. During the course of this engagement, we will rely on the City to provide us with complete and timely information on all developments pertaining to any aspect of the Financing and its security. We understand that the City will direct members of its staff and other employees to cooperate with us in this regard. Our duties in this engagement are limited to those expressly set forth above.

Among other things, our duties do not include:

- (a) Except as described in paragraph (5) above, assisting in the preparation or review of any disclosure document with respect to the Financing, or performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document or rendering advice that the official statement or other disclosure document does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.
- (b) Preparing requests for tax rulings from the Internal Revenue Service, or no action letters from the Securities and Exchange Commission.
- (c) Preparing blue sky or investments surveys with respect to the Financing.
- (d) Drafting state constitutional or legislative amendments.
- (e) Pursuing test cases or other litigation such as contested validation proceedings.

- (f) Making an investigation or expressing any view as to the creditworthiness or financial strength of the City or any other party being or having been contracted with by the City or the Financing.
- (g) Opining on a continuing disclosure undertaking pertaining to the Borrowing or, after Closing, providing advice concerning any actions necessary to assure compliance with any continuing disclosure undertaking.
- (h) Representing the City in Internal Revenue Service examinations or inquiries, or Securities and Exchange Commission investigations.
- (i) After Closing, providing continuing advice to the City or any other party concerning any actions necessary to assure that interest paid on the Financing will continue to be excludable from gross income for federal or for State income tax purposes (*e.g.*, our engagement does not include rebate calculations for the Financing).
- (j) Addressing any other matter not specifically set forth above that is not required to render our Financing Opinion.

It is expressly agreed that the City shall not request the firm to provide predictions or advice regarding, and that the firm shall provide no predictions or advice and owes the City no duty regarding, the financial structuring or feasibility of any arrangement nor any predictions or advice as to the ability or likelihood of any other party actually performing their obligations relating thereto.

In expressing its opinion, the firm does not represent, warrant or guarantee that a court will not invalidate either any of the procedures or contracts being utilized in connection with the issuance of the Financing, nor does the firm represent, warrant or guarantee the actual performance rendered by participants in any transaction with the City.

It is also expressly agreed that (i) our client for purposes of this representation is the City and not any of its officers or employees, members, creditors, bondholders, or any other entities having any interest in the City or in which the City has an interest, and (ii) accordingly, this engagement will not establish an attorney-client relationship between the firm and any such individual, member or other entity.

2. *Term of Engagement.* Either the City or the firm may terminate this engagement at any time for any reason by not less than thirty (30) days written notice, subject on our part to applicable rules of professional conduct. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect the City's interests in matters within the scope of this engagement.

3. *Conclusion of Representation; Retention and Disposition of Documents.*

At the City's request, its papers and property will be returned to it or delivered to successor counsel, as it may direct, promptly upon receipt of payment of outstanding fees and expenses. Our own files pertaining to this engagement will be retained by the firm. These firm files include, for example, firm administrative records, time and expense reports, and accounting records, as well as internal lawyer's work product such as drafts, notes, internal memoranda, and legal and factual research prepared by or for the internal use of lawyers. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of this engagement.

4. *Post-Engagement Matters.*

After completion of this engagement, changes may occur in applicable laws or regulations, or in administrative City or judicial interpretations thereof, that could have an impact upon issues as to which we have advised the City during the course of this engagement. Unless you subsequently engage us, after completion of this engagement, to provide additional advice on such issues, the firm has no continuing obligation to advise you with respect to any such future legal developments.

5. *Fees and Expenses.*

We will charge the City a fixed fee for our Bond Counsel services of \$22,000. Such fees will be paid from Bond proceeds at Closing and will be contingent on the successful closing of the Financing.

6. *Consent to Conflict; Non-reliance upon Hawkins Representations.*

The firm from time to time has represented, currently represents, and may in the future represent, underwriters of municipal Financing in financings involving other issuers. The City consents to the firm simultaneously representing such underwriters and the City. The City acknowledges and agrees that it has not relied upon any firm representations or statements of any kind in deciding to give its consent. Instead, it has consulted with other independent counsel and that it has exclusively relied upon such other counsel in deciding to consent.

7. *Attorney-Client Privilege.*

In recent years, several courts have said that when a firm reviews its compliance with professional conduct rules or other law in the representation of a client, the firm may not be able to claim attorney-client privilege for its review unless the firm withdraws from representing the particular client before conducting the review or the client agrees that the firm can assert privilege for any such review. We believe it is in the interest of our clients that the firm have the protection of the privilege in connection with internal reviews of its work for you. The City agrees that any communications between the lawyers and staff working on the City's matter and the lawyers at the firm who may be reviewing that work for compliance with professional conduct rules or other law will be protected by the firm's own attorney-client privilege and that any such review will not constitute a conflict between our interests and your interests.

8. *Client Responsibilities.*

The City agrees to cooperate fully with us and to provide promptly all information known or available to the City relevant to our representation.

The City also agrees to pay our statements for services and expenses in accordance with paragraph 5 above.

9. *Fully Integrated Agreement; Merger; No Oral Amendments or Modifications.* This agreement is intended as a complete integration of the terms of this engagement and, as such, all prior understandings, representations, warranties, and agreements are fully and completely merged herein.

Of course, you may limit or expand the scope of our representation from time to time, provided that any such expansion is agreed to by each of us and memorialized in a supplement hereto.

We are pleased to have this opportunity to work with the City again. I trust that you will not hesitate to call me if you have any questions or comments during the course of this engagement.

Very truly yours,

Hawkins Delafield & Wood LLP



Agreed and Accepted:

City of John Day, Oregon

By: _____

Title: _____

Date: _____

Exhibit C

D.A. Davidson Placement Agent Engagement Letter

[attached]



D | A | DAVIDSON
FIXED INCOME CAPITAL MARKETS

02/08/2022

City of John Day, Oregon
450 East Main Street
John Day, Oregon 97845

Re: Placement Agent Engagement Letter

Dear Mr. Green:

1300 SW Fifth Avenue, Suite 1950
Portland, OR 97201
503-863-5094
800-755-9643
503-210-0241
www.davidson.com/ficm
D.A. Davidson & Co. member SIPC

On behalf of D.A. Davidson & Co. (“we” or “Davidson”), thank you for the opportunity to serve as placement agent for the City of John Day, Oregon (the “Issuer”) on the Issuer’s proposed issuance of the 2022 Full Faith and Credit Obligations (Aquatic Center) (the “Bond”). This letter will confirm the terms of our engagement.

1. Services to be Provided by Davidson. The Issuer hereby engages Davidson to serve as the placement agent of the Bond, and in such capacity Davidson agrees to provide the following services:

- Review and evaluate the proposed terms of the offering and the Bond
- Contact potential purchasers (the “Purchasers”), provide them with related financial information, respond to their inquiries and, if requested, coordinate their due diligence sessions
- Consult with counsel and the municipal advisor (if any) and other service providers as necessary with respect to the terms of the Bond
- Negotiate the terms, including the interest rate, of the Bond
- Plan and arrange for the closing and settlement of the issuance and the delivery of the Bond
- Perform such other usual and customary placement agent services as may be requested by the Issuer

As placement agent, Davidson will not purchase the Bond.

2. No Advisory or Fiduciary Role. The Issuer acknowledges and agrees: (i) the primary role of Davidson, as a placement agent, is to find Purchasers of the Bond, in an arm’s-length commercial transaction between the Issuer and the Purchasers and that Davidson may have financial and other interests that may differ from those of the Issuer; (ii) Davidson is not acting as a municipal advisor, financial advisor, or fiduciary to the Issuer and Davidson has not assumed any advisory or fiduciary responsibility to the Issuer with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether Davidson has provided other services or is currently providing other

services to the Issuer on other matters or transactions); (iii) the only obligations Davidson has to the Issuer with respect to the transaction contemplated hereby expressly are set forth in this agreement; and (iv) the Issuer has consulted its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate. If the Issuer desires to consult with and hire a municipal advisor for this transaction that has legal fiduciary duties to the Issuer the Issuer should separately engage a municipal advisor to serve in that capacity.

In addition, the Issuer acknowledges receipt of a letter outlining certain regulatory disclosures as required by the Municipal Securities Rulemaking Board and attached to this agreement as Exhibit A. The Issuer further acknowledges Davidson may be required to supplement or make additional disclosures as may be necessary as the specific terms of the transaction progress.

3. Fees and Expenses. Davidson's proposed placement agent fee is \$20,000 payable upon closing of the Bond sale. The Issuer shall be responsible for paying all other costs of issuance, including without limitation, bond counsel, rating agency fees and expenses, and all other expenses incident to the performance of the Issuer's obligations under the proposed Bond.

4. Term and Termination. The term of this engagement shall extend from the date of this letter to the closing of the offering of the Bond. Either party may terminate Davidson's engagement at any time without liability of penalty upon at least 30 days' prior written notice to the other party. If Davidson's engagement is terminated by the Issuer prior to closing, the Issuer agrees to compensate Davidson for the services provided and to reimburse Davidson for its out-of-pocket fees and expenses incurred to the date of termination upon receipt of an invoice detailing a prorated amount for services performed and expenses incurred.

5. Limitation of Liability. The Issuer agrees neither Davidson nor its employees, officers, agents or affiliates shall have any liability to the Issuer for the services provided hereunder.

6. Miscellaneous. This letter shall be governed and construed in accordance with the laws of the State of Oregon. This Agreement may not be amended or modified except by means of a written instrument executed by both parties hereto. This Agreement may not be assigned by either party without the prior written consent of the other party.

If there is any aspect of this Agreement that you believe requires further clarification, please do not hesitate to contact us. If the foregoing is consistent with your understanding of our engagement, please sign and return the enclosed copy of this letter.

Again, we thank you for the opportunity to assist you with your proposed financing and the confidence you have placed in Davidson.

Very truly yours,

D.A.DAVIDSON & CO.

By: B. JONAS BERRY

Title: Vice President, Public Finance Banker

Accepted this ___ day of _____, 2021

City of John Day, Oregon

By: _____

Title: _____

EXHIBIT A

02/08/2022

City of John Day, Oregon
450 East Main Street
John Day, Oregon 97845
Attn: Mr. Nick Green, City Manager

Re: Disclosures by D.A. Davidson & Co., as Placement Agent
Pursuant to MSRB Rule G-17 and G-23
2022 Full Faith and Credit Obligations (Aquatic Center)

Dear Mr. Green:

We are writing to provide you, as City Manager of the City of John Day, Oregon (“Issuer”), with certain disclosures required by the Municipal Securities Rulemaking Board (MSRB) Rule G-17 that relate to the proposed issuance and placement of the 2022 Full Faith and Credit Obligations (Aquatic Center), (the “Placement”), which will be used to provide funds to build an aquatic center and related purposes.

The Issuer has engaged D.A. Davidson & Co. (“Davidson”) to serve as a private placement agent (the “Placement Agent”), and not as a financial or municipal advisor, in connection with the Placement. As part of our services as Placement Agent, D.A. Davidson may provide advice concerning the structure, timing, terms, and other similar matters concerning the Placement. The specific terms of our engagement will be as set forth in a placement agent agreement or similar document to be entered into by the parties if and when the issue is placed. As Placement Agent, Davidson will not be required to purchase the securities.

1. Deal-Specific Conflicts of Interest Disclosures

Davidson has not identified any actual or potential material conflicts¹ that require disclosure.

2. Transaction-Specific Disclosures

Since Davidson has not recommended a “complex municipal securities financing” to the Issuer, additional disclosures regarding the financing structure for the Placement are not required under MSRB Rule G-17. In accordance with the requirements of MSRB Rule G-17, if Davidson recommends a “complex municipal securities financing” to the Issuer, this letter will be supplemented to provide disclosure of the material financial characteristics of that financing structure as well as the material financial risks of the financing that are known to us and reasonably foreseeable at that time.

¹ Reference to *potential* material conflicts throughout this letter, refer to ones that are reasonably likely to mature into *actual* material conflicts during the course of the transaction, which is the standard required by MSRB Rule G-17

3. Standard Disclosures

A. Disclosures Concerning the Placement Agent's Role:

- (i) MSRB Rule G-17 requires Davidson, as private placement agent, to deal fairly at all times with both municipal issuers and investors.
- (ii) The Placement Agent has financial and other interests that differ from those of the Issuer.
- (iii) Unlike a municipal advisor, the Placement Agent does not have a fiduciary duty to the Issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the Issuer without regard to its own financial or other interests.
- (iv) The Issuer may choose to engage the services of a municipal advisor with a fiduciary obligation to represent the Issuer's interest in this transaction.
- (v) The Placement Agent has a duty to place the Bonds at a fair and reasonable price, but must balance that duty with its duty to place the Bonds with investors at prices that are fair and reasonable.
- (vi) The Placement Agent will review the placement memorandum or term sheet or offering document for the Bonds in accordance with, and as part of, its respective responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of this transaction.²

B. Disclosures Concerning the Underwriters' Compensation:

- (i) The underwriter will be compensated by a fee that will be set forth in the placement agreement or otherwise documented with the Issuer. Payment or receipt of the fee will be contingent on the closing of the transaction and the amount of the fee may be based, in whole or in part, on a percentage of the principal amount of the Placement. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since the Placement Agent may have an incentive to recommend to the Issuer a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

4. Questions and Acknowledgment.

² Under federal securities law, an issuer of securities has the primary responsibility for disclosure to investors. The review of the official statement by the underwriter is solely for purposes of satisfying the underwriter's obligations under the federal securities laws and such review should not be construed by an issuer as a guarantee of the accuracy or completeness of the information in the official statement.

Davidson is registered as a broker-dealer with the U.S. Securities and Exchange Commission (“SEC”) and the MSRB, and is subject to the regulations and rules on municipal securities activities established by the SEC and MSRB. The website address for the MSRB is www.msrb.org. The MSRB website includes educational material about the municipal securities market, as well as an investor brochure that describes the protections that may be provided by the MSRB rules and how to file a complaint with an appropriate regulatory authority.

If you or any other Issuer officials have any questions or concerns about these disclosures, please make those questions or concerns known immediately to the undersigned. In addition, you should consult with the Issuer’s own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent you deem appropriate.

It is our understanding that you have the authority to bind the Issuer by contract with us, and that you are not a party to any disclosed conflict of interest relating to the subject transaction. If our understanding is incorrect, please notify the undersigned immediately.

We are required to seek your acknowledgement that you have received this letter. Accordingly, please send me an email to that effect, or sign and return the enclosed copy of this letter to me at the address set forth below. Otherwise, an email read receipt from you or automatic response confirming that our email was opened by you will serve as an acknowledgement that you received these disclosures.

Depending on the structure of the transaction that the Issuer decides to pursue, or if additional actual or potential material conflicts are identified, we may be required to send you additional disclosures regarding the material financial characteristics and risks of such transaction and/or describing those conflicts. At that time, we also will seek your acknowledgement of receipt of any such additional disclosures.

Again, we thank you for the opportunity to assist you with your financing and the confidence you have placed in us.

D.A. DAVIDSON & CO.

By: B. JONAS BERRY

Title: Vice President, Public Finance Banker

Acknowledged this ___ day of _____, 2022

City of John Day, Oregon

By: _____

Title: _____

Exhibit D
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

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