

RESOLUTION NO. 2510

A RESOLUTION AUTHORIZING A LOAN FROM THE BROWNFIELDS REDEVELOPMENT FUND AND ENTERING INTO A FINANCING CONTRACT WITH THE OREGON BUSINESS DEVELOPMENT DEPARTMENT TO FINANCE TROUTDALE URBAN RENEWAL PROJECTS, AND RELATED MATTERS.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. That the Oregon Revised Statutes (“ORS”) 285A.185 through 285A.188 (the “Act”) authorize any municipality to file an application with the Oregon Business Development Department (“OBDD”) to obtain financial assistance from the Brownfields Redevelopment Fund.
2. That ORS 271.390 authorizes the City of Troutdale (“City”) to enter into financing contracts to finance real and personal property so long as the estimated weighted average life of the financing does not exceed the estimated dollar weighted average life of the project to be financed, and the Troutdale City Council (“City Council”) determines the project is needed.
3. That the Urban Renewal Agency of the City of Troutdale (“Agency”), the duly formed body to implement urban renewal plans in Troutdale was established by the adoption of City Ordinance. No. 771 on January 27, 2006.
4. That in order to protect the public health, safety, and welfare the City adopted the Troutdale Riverfront Renewal Plan (“Plan”) on February 14, 2006, by Ordinance No. 773 to provide urban renewal authority to eliminate blight and foster development, and the Agency was assigned to implement the vision, goals and objectives of the Plan to achieve redevelopment of the property in the Plan Section IV Urban Renewal Area (“Plan Area”).
5. That at various locations across the 20 acre project site past environmental contamination of varying degrees has occurred, and to protect the Agency from potential liability for pre-acquisition releases of hazardous substances at or from the property, the Agency on January 16, 2018 adopted Resolution No. 43 approving and entering into a Prospective Purchaser Agreement (“PPA”) Consent Judgement with the Oregon Department of Environmental Quality (“DEQ”).

6. That environmental assessments within the Plan Area and required remediation of environmental conditions is an authorized project of the Plan Section V.G. and is an authorized general power of the Agency pursuant to ORS 457.170.
7. That due to greater than estimated project costs for the environmental remediation actions of hazardous substances necessary to facilitate productive reuse of contaminated property, the Agency does not have sufficient financial resources to complete the court mandated requirements of the Consent Judgement PPA and needs additional financing to complete the necessary remediation actions.
8. That ORS 457.320 authorizes the City to exercise any of its powers otherwise provided by law to assist in the planning or the carrying out of an urban renewal plan.
9. That the City adopted Resolution No. 2397 on October 10, 2017 which finds and declares it serves the public interest, and it is necessary and desirable for the City to assist the Agency by the financing of the real property purchase, remediation of environmental conditions, and redevelopment actions in order to implement the Plan redevelopment projects, benefiting the public health, safety and welfare of the community.
10. That the Agency and City have determined that the financing of the real property, remediation of environmental conditions and redevelopment actions, through a borrowing of the City and obligating the Agency to repay that borrowing through an IGA, is financially feasible and in the parties' best interest.
11. That the City has filed an application with OBDD to obtain financial assistance from the Brownfields Redevelopment Fund pursuant to the Act, and OBDD has approved the City's application for financial assistance.
12. That the City is required, as a prerequisite to the receipt of financial assistance from OBDD, to enter into a Financing Contract with OBDD, number N20018, substantially in the form attached hereto as Resolution Attachment 1. The project is described in Exhibit C to that Financing Contract (the "Project") and is located in the Plan Area.
13. That it is necessary and desirable for the City to obtain a \$1,500,000 loan from OBDD for the purpose of financing the remediation of environmental conditions of the Project and that it would be in the City's best interest.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Financing Loan Authorized. The City Council authorizes and directs the City Manager, Ray Young, and Finance Director, Erich Mueller (each an “Authorized Officer”) to execute on behalf of City the Financing Contract and such other documents as may be required to obtain financial assistance (the “Financing Documents”), including a loan from OBDD, on such terms as may be agreed upon between the Authorized Officer and OBDD, on the condition that the principal amount of the loan from OBDD to the City is not in excess of \$1,500,000 (with \$60,000 eligible for principal forgiveness if contract conditions are met) and an interest rate of 3.00% per annum. The proceeds of the loan from OBDD will be applied solely to the “Costs of the Project” as such term is defined in the Financing Contract with OBDD, number N20018, which is hereby approved substantially in the form attached hereto as Resolution Attachment 1 with such changes as may be approved by the Authorized Officer.

Section 2. Sources of Repayment. Amounts payable by the City are payable from the sources described in section 4 of the Financing Contract, which include the General Fund of the City, and or any other legally available sources of revenue.

Section 3. Determination of Need. Pursuant to ORS 271.390, the City Council in accordance with the findings set forth above, in order to facilitate redevelopment and the remediation of environmental conditions in the Plan Area, hereby determines that the Project is needed.

Section 4. Agency Repayment. The Authorized Officer is authorized to enter into an intergovernmental agreement (“IGA”) with the Urban Renewal Agency of the City (the “Agency”), under which the Agency agrees to pay all amounts due from the City under the Financing Contract. However, the Agency is only obligated to make those payments from the proceeds of the sale of the Project, and unspent proceeds of the Financing Contract. The IGA may also contain requirements to prepay portions of the Financing Contract if the Project, or a portion of it, is sold to private entities. The City Council hereby approves the IGA with the Agency in substantially the form of Exhibit A of the Staff Report with such changes as may be approved by the Authorized Officer.

Section 5. Assistance to Agency. The City hereby declares it serves the public interest, and it is necessary and desirable for the City to assist the Agency to finance the Project in order to implement the Troutdale Riverfront Renewal Plan redevelopment projects, pursuant to ORS 457.320.

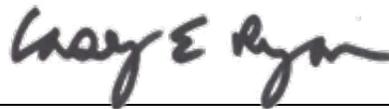
Section 6. Appointment of Special Counsel. The City Council appoints Hawkins Delafield & Wood LLP as Special Counsel for the Financing Contract with OBDD, number N20018, to provide a portion of the opinions required by OBDD.

Section 7. Further, as applicable, to implement intent of this Resolution, comply with State statutes, administrative rules or local ordinances, and to act in the best interest of the City, and without further action by the City Council, the Authorized Officers are hereby authorized, empowered, directed, and responsible for fulfilling the ministerial, intergovernmental, technical, compliance, procedural or promotional functions as required for the effective administration, correction, modification and implementation of the Financing Documents, and to take any other action as may be advisable, convenient, necessary, or appropriate, and the execution thereof by any such Authorized Officer shall be conclusive as to such determination.

Section 8. The Finance Director is authorized and directed to disburse funds, subject to annual appropriations, as necessary to fulfill the intent of this resolution and the IGA and is further directed to implement all such actions necessary to ensure budgetary compliance.

Section 9. Effective Date. This Resolution shall take effect immediately upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Casey Ryan, Mayor
Date: July 15, 2020



Sarah Skroch, City Recorder
Adopted: July 14, 2020

OREGON BUSINESS DEVELOPMENT DEPARTMENT
BROWNFIELDS REDEVELOPMENT FUND
FINANCING CONTRACT

Project Name: Riverfront Redevelopment Cleanup Project

Project Number: N20018

This financing contract ("Contract"), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through its Oregon Business Development Department ("OBDD"), and the City of Troutdale ("Recipient") for financing of the project referred to above and described in Exhibit C ("Project"). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Security
Exhibit C	Project Description; Project Special Condition
Exhibit D	Project Budget

This Contract also includes Exhibit E - Summary of Loan Terms, only for informational purposes.

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

"Estimated Project Cost" means \$4,000,000.

"Loan Amount" means \$1,500,000.

"Maturity Date" means the 9th anniversary of the Repayment Commencement Date.

"Interest Rate" means 3.00% per annum, computed by counting actual days occurring in a 360-day year.

"Payment Date" means the 1st day of each month.

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

"Project Completion Deadline" means 36 months after the date of this Contract.

"Repayment Commencement Date" means the first Payment Date to occur thirteen months after the first disbursement is made.

SECTION 2 - FINANCIAL ASSISTANCE

The OBDD shall provide Recipient, and Recipient shall accept from OBDD, financing for the Project specified below:

- A. A non-revolving loan (the "Loan") in an aggregate principal amount not to exceed the Loan Amount.

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds will be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an OBDD-provided or OBDD-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. The OBDD’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.
- C. Payment to Contractors. The OBDD, in its sole discretion, may make direct payment to suppliers, contractors and subcontractors and others for sums due them in connection with construction of the Project, instead of reimbursing Recipient for those sums.

SECTION 4 - LOAN PAYMENT; PREPAYMENT

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with its terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of OBDD to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against OBDD or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest and Loan Payments. From the date of the first disbursement and the 12 consecutive calendar months thereafter, no payments are due and no interest will accrue. Thereafter, interest accrues at the Interest Rate on the amount already disbursed and on each disbursement until the Loan is fully paid. Recipient shall make interest-only payments on each Payment Date for months 13 through 24, each payment sufficient to pay the interest accrued to the date of payment. Thereafter, for month 25 and continuing until the Loan is fully repaid, Recipient shall make level installment payments of principal and interest, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.

The Recipient authorizes OBDD to calculate accrued interest and the payments for purposes including, but not limited to, loan amortization schedule, loan prepayment, and loan payoff. Absent manifest error, such calculations will be conclusive.

- C. [Reserved.]

D. Loan Prepayments.

- (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract.
- (2) Optional Prepayment. The Recipient may prepay, without any premium or penalty, all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.

E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of OBDD, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, OBDD will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.

F. Forgiveness. If Recipient completes the Project by the Project Completion Deadline in accordance with the terms of this Contract, and upon OBDD acceptance of documentation of approval by Oregon DEQ, and provided that no Event of Default has occurred, OBDD shall, 90 days after the Project Completion Date, forgive repayment of up to \$60,000 of the Loan.

SECTION 5 - CONDITIONS PRECEDENT

A. Conditions Precedent to OBDD's Obligations. The OBDD's obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:

- (1) This Contract duly signed by an authorized officer of Recipient.
- (2) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract and the other Financing Documents.
- (3) An opinion of Recipient's Counsel.
- (4) Such other certificates, documents, opinions and information as OBDD may reasonably require.

B. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:

- (1) There is no Default or Event of Default.
- (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
- (3) The OBDD, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Brownfields Redevelopment Fund ("Fund") for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.

- (4) The OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, releases, satisfactions or other signed statements or forms as OBDD may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
- (5) The Recipient has delivered documentation satisfactory to OBDD that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
- (6) The Recipient has delivered documentation satisfactory to OBDD that all requested pre-award expenditures meet all programmatic eligibility requirements, including, but not limited to, the nature of the activity, when the activity took place, and cost.
- (7) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

SECTION 6 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit E. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of OBDD.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit C.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
 - (1) The Recipient is a municipality, validly organized and existing under the laws of the State of Oregon.
 - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
 - (3) This Contract and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.

- (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by OBDD, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, 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 Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.
- E. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
 - (2) The Recipient 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 Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.
- G. Governmental Consent. The Recipient 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 Contract and the other Financing Documents, for the financing or refinancing and undertaking and completion of the Project.

SECTION 8 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, and the Project. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
 - (2) State labor standards and wage rates found in ORS chapter 279C.
- These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.
- C. Project Completion Obligations. The Recipient shall:
- (1) [Reserved.]
 - (2) [Reserved.]
 - (3) Ensure that a professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for the design and construction of the Project. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. The Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.
 - (4) Permit OBDD to conduct inspection of the Project at any time.
 - (5) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
 - (6) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the OBDD in writing.
 - (7) Comply with regulatory oversight through the Oregon Department of Environmental Quality's Voluntary Cleanup Program.
 - (8) No later than the Project Closeout Deadline, provide OBDD with a final project completion report on a form provided by OBDD, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, OBDD will be the final judge of the Project's completion.
 - (9) Acknowledge in some public fashion that the Project was funded in part with Oregon State Lottery Funds administered by the Oregon Business Development Department.
- D. Ownership of Project. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient.

- E. Operation and Maintenance of the Project. The Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long-term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements during term of the Loan.
- F. Insurance, Damage. The Recipient shall maintain, or cause to be maintained, 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. Nothing in this provision precludes Recipient from asserting a defense against any party other than OBDD, including a defense of immunity. If the Project or any portion is destroyed, any insurance proceeds will be paid to OBDD and applied to prepay the outstanding balance on the Loan in accordance with section 4.D.(1), unless OBDD agrees in writing that the insurance proceeds may be used to rebuild the Project.
- G. Sales, Leases and Encumbrances. Except as specifically described in Exhibit C, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project or any system that provides revenues for payment or is security for the Loan, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. However, OBDD may consent to such disposition if it has received 90 days' prior written notice from Recipient. Such consent may require assumption by transferee of all of Recipient's obligations under the Financing Documents and payment of OBDD's costs related to such assumption. In the case of sale, exchange, transfer or other similar disposition, Recipient shall, within 30 days of receipt of any proceeds from such disposition, prepay the entire outstanding balance on the Loan in accordance with section 4.D.(1), unless OBDD agrees otherwise in writing. If Recipient abandons the Project, Recipient shall prepay the entire outstanding balance of the Loan immediately upon demand by OBDD.
- H. Condemnation Proceeds. If the Project or any portion is condemned, any condemnation proceeds will be paid to OBDD and applied to prepay the outstanding balance of the Loan in accordance with section 4.D.(1).
- I. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.
- J. Inspections; Information. The Recipient shall permit OBDD and any party designated by OBDD: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as OBDD may reasonably require. In addition, Recipient shall, upon request, provide OBDD with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.

- K. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- L. Economic Benefit Data. The OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.
- M. Disadvantaged Business Enterprises. ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans owned and emerging small businesses...” The OBDD encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045, available at https://www.oregonlegislature.gov/bills_laws/ors/ors200.html. Additional resources are provided by the Governor’s Policy Advisor for Economic and Business Equity. Also, the Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.
- N. Notice of Default. The Recipient shall give OBDD prompt written notice of any Default as soon as Recipient becomes aware of its existence or reasonably believes a Default is likely.
- O. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys’ fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- P. Further Assurances. The Recipient shall, at the request of OBDD, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.

SECTION 9 - DEFAULTS

Any of the following constitutes an “Event of Default”:

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.

- C. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project.
- D. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
- (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
- (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
- (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
- (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within any applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. The OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
 - (1) Terminating OBDD’s commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
 - (2) Declaring all payments due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
 - (3) Barring Recipient from applying for future awards.
 - (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, including as provided in Oregon Administrative Rule 123-135-0090.
 - (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.

- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; then, to pay interest due on the Loan; then, to pay principal due on the Loan; and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD 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 Contract or any of the Financing Documents will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

SECTION 11 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- 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 Recipient 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 Contract 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 Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.
 - (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of OBDD. The OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.
 - (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that OBDD deems to be necessary.
- C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:
- (1) The OBDD 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 are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

D. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or OBDD at the addresses set forth below, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. 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 OBDD: Assistant Director, Economic Development
Oregon Business Development Department
775 Summer Street NE Suite 200
Salem OR 97301-1280

If to Recipient: Finance Director
City Hall of the City of Troutdale
219 E Historic Columbia River Hwy
Troutdale OR 97060-2078

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract 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. Amendments, Waivers. This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. 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.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to OBDD by its attorneys. The Recipient shall, on demand, pay to OBDD reasonable expenses incurred by OBDD in the collection of Loan payments.
- 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 Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

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

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

J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

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



STATE OF OREGON
acting by and through its
Oregon Business Development Department



CITY OF TROUTDALE

By: _____
Chris Cummings, Interim Director
Business Oregon

By: _____
Ray Young, City Manager

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Wendy Johnson as per email dated 22 May 2020
Wendy Johnson, Senior Assistant Attorney General

EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means ORS 285A.185 through 285A.188, as amended.

“Award” means the award of financial assistance to Recipient by OBDD dated 23 Apr 2020.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

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

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates (including but not limited to all promissory notes) executed pursuant to or in connection with OBDD’s financing of the Project.

“Financing Proceeds” means the proceeds of the Loan.

“ORS” means the Oregon Revised Statutes.

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

“Real Property” means the real property located at 302 and 410 NW 257th Way, Troutdale, Oregon (Tax Lots 1N3E25BD 100, 400, 500 and 600) in Multnomah County.

EXHIBIT B - SECURITY

General Fund Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract. This Contract is payable from all legally available funds of Recipient.

EXHIBIT C - PROJECT DESCRIPTION; PROJECT SPECIAL CONDITIONS

I. PROJECT DESCRIPTION

Recipient will complete the following activities on the Real Property:

1. Complete a Remedial Investigation Report / Conceptual Site Model.
2. Complete a Contaminated Materials Management Plan.
3. Complete remedial activities to include: soil / groundwater sampling as necessary; contaminated soil excavation, removal and disposal; demolition of building as necessary to facilitate underlying soil contamination removal; mitigation of asbestos and other hazardous building materials; and, installation of a protective cap to cover areas where soil exceeding risk based concentrations will be managed post-construction.

Recipient shall submit documentation to DEQ for review and approval.

II. PROJECT SPECIAL CONDITIONS

1. Should the Property be sold or transferred in part, Recipient may request, in writing, a modification of the mandatory prepayment provisions of the Contract, which may be approved or denied solely at the discretion of the Department.
2. **Pre-Award Costs:** Recipient will provide sufficient documentation that pre-award costs meet all programmatic eligibility requirements, including, but not limited to, the nature of the activity, when the activity took place, its cost, et cetera. Pre-award costs incurred in accordance with all program rules and policies shall be reimbursed.

EXHIBIT D - PROJECT BUDGET

	OBDD Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
Hazardous Materials Cleanup Activities	\$1,500,000	\$2,500,000
Total	\$1,500,000	\$2,500,000

EXHIBIT E - SUMMARY OF LOAN TERMS – INFORMATIONAL ONLY

1.	Name and Address of Recipient:	City of Troutdale 219 E Historic Columbia River Hwy Troutdale OR 97060-2078
2.	Authorized Officer(s) of Recipient:	TBD
3.	Approximate Project Completion Date:	June 2021
4.	Maximum Aggregate Principal Amount of Loan:	\$1,500,000 (Loan Forgiveness of \$60,000 conditioned on written request and submission of cleanup completion documentation from Oregon Department of Environmental Quality)
5.	Term of Loan:	120 Months
6.	Interest Rate:	Three (3) Percent
7.	Payment Dates:	Payment due 1st day of month
8.	Payment Type:	Monthly
9.	Payments:	Zero interest and no payments for months 1 – 12; Interest only monthly payments for months 13 – 24; Full principal and interest monthly payments for months 25 – 120 (remainder of loan term); Balloon payment of remaining Principal at Loan Maturity.
10.	Guarantors (Personal / Corporate):	N/A
11.	Security:	The City of Troutdale shall pledge its full faith and credit within the limitations of Article XI, Sections 11 and 11b, of the Oregon Constitution to pay the amount due under the Financing Contract. The Loan shall be payable from all lawfully available funds of the Recipient.
12.	Funding Source:	Oregon Brownfields Redevelopment Fund
13.	Purpose:	To finance the environmental remediation of the Real Property
14.	Loan Type:	Direct Loan from Fund
15.	Prepayment Option:	No fees or penalties for prepayment
16.	Other Considerations:	Should the Real Property be sold or transferred in part, Recipient may request, in writing, a modification of the mandatory prepayment provisions of the Contract, which may be approved or denied solely at the discretion of the Department.