

City Council Action Item Cover Sheet

DATE: October 3, 2018

Agenda Item:

Resolution 2018-34

Question Before Council:

Adopt resolution 2018-34 for borrowing of an additional \$300,000 to fund completion of South Tank

Person/Group Initiating Request:

Judy Richter, City Clerk III

Item Summary/Background:

This is the additional funding I was authorized to secure. The paperwork is now complete. This resolution authorizes the borrowing and the Mayor to sign the necessary loan documents. Amendment Number 2 is the loan document.

RESOLUTION 2018-34

**RESOLUTION 2018-34 OF THE CITY OF YACHATS
AUTHORIZING A LOAN FROM THE SAFE DRINKING WATER REVOLVING LOAN FUND
BY ENTERING INTO A FINANCING CONTRACT
WITH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY**

The City Council (the “Governing Body”) of the City of Yachats (the “Recipient”) finds:

A. The Recipient is a community or nonprofit non-community water system as defined in Oregon Administrative Rule 123-049-0010.

B. The Safe Drinking Water Act Amendments of 1996, Pub.L. 104-182, as amended (the “Act”), authorize any community or nonprofit non-community water system to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department (“the IFA”) to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund.

C. The Recipient previously entered into Financing Contract with the IFA for the project described in Exhibit D to the Financing Contract (the “Project”), project number S16018, in the principal loan amount of \$1,400,000, effective 9 March 2016.

D. The IFA has approved the Recipient’s application for additional financial assistance from the Safe Drinking Water Revolving Loan Fund.

E. The Recipient is required, as a prerequisite to the receipt of additional financial assistance from the IFA, to enter into Amendment 2 to the Financing Contract with the IFA, substantially in the form attached hereto as Exhibit A.

F. Notice relating to the Recipient’s consideration of the adoption of this [Ordinance/Resolution/Order] was published in full accordance with the Recipient’s charter and laws for public notification.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the Recipient as follows:

1. Financing Loan Authorized. The Governing Body authorizes the [Title of Officer] to execute Amendment 2 to the Financing Contract and the Replacement Promissory Note (the “Financing Documents”) and such other documents as may be required to obtain additional financial assistance, including a loan from the IFA on the condition that the principal amount of the loan from the IFA to the Recipient is not more than \$1,730,000 (with \$700,000 eligible for principal forgiveness if contract conditions are met) and the interest rate is not more than 1% if contract conditions are met (and 2.2% if not met). The proceeds of the loan from the IFA must be applied solely to the “Costs of the Project” as such term is defined in the Financing Contract.

2. Security. Amounts payable by the Recipient are payable from the sources described in Section 4 of the Financing Contract and the Oregon Revised Statutes Section 285A.213(5) which include:

- (a) Revenue from any water system project of the Recipient, including special assessment revenue;
- (b) Amounts withheld under subsection 285A.213(6);
- (c) The general fund of the Recipient;
- (d) Any combination of sources listed in paragraphs (a) to (c) of this subsection; or
- (e) Any other source.

3. Additional Documents. The [Title of Officer] is hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to obtain financial assistance from the IFA for the Project pursuant to the Financing Documents.

4. Tax-Exempt Status. The Recipient covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Recipient pursuant to the Financing Documents not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The [name of officer] of the Recipient may enter into covenants on behalf of the Recipient to protect the tax-exempt status of the interest paid by the Recipient pursuant to the Financing Documents and may execute any Tax Certificate, Internal Revenue Service forms or other documents as may be required by the IFA or their bond counsel to protect the tax-exempt status of such interest.

5. Reimbursement Bonds. The Recipient may make certain expenditures on the Project prior to the date the Financing Contract is executed with IFA or the date the State of Oregon issues any bonds to fund the loan. The Recipient hereby declares its intent to seek reimbursement of such expenditures with amounts received from the IFA pursuant to the Financing Contract, but only as permitted by IFA policy, the Financing Contract, and federal tax regulations. Additionally, the Recipient understands that the IFA may fund or reimburse itself for the funding of amounts paid to the Recipient pursuant to the Financing Documents with the proceeds of bonds issued by the State of Oregon pursuant to the Act. This [Ordinance/Resolution/Order] constitute "official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations promulgated by the United States Department of the Treasury.

DATED this 3rd day of October, 2018__.

City of Yachats

Gerald Stanley, Mayor

ATTEST:

Shannon Beaucaire, City Manager

Amendment Number 2

Project Name: Yachats South Water Storage Tank

This amendment is made and entered into by and between the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority of the Oregon Business Development Department (“IFA”), and the City of Yachats (“Recipient”), and amends the Financing Contract, Project Number S16018 dated 9 March 2016 for the above-named Project, as previously amended by Amendment Number 1 dated 15 May 2017 (the “Contract”). Capitalized terms not defined in this amendment have the meanings assigned to them by the Contract.

Recital: The purpose of this amendment is to increase both the Loan Amount and the Forgivable Loan Amount to pay for increased construction costs related to change orders processed to address soil stabilization and added support of the water storage tank.

The parties agree to:

1. Amend the following Key Terms in Section 1 of the Contract, as amended, as follows (deletions in ~~strikethrough~~; additions in double underline):

“Estimated Project Cost” means ~~\$1,417,839~~ \$1,732,839.

“Forgivable Loan Amount” means ~~\$655,000~~ \$700,000.

“Loan Amount” means ~~\$760,000~~ \$1,030,000.

2. The following is added as a new Subsection C to Exhibit B (Security) of the Contract, as amended:

C. Pledge of Incremental Property Tax Revenues of Urban Renewal Agency.

1. The Loan shall be repaid, in part, from the ad valorem tax revenues from property within the City of Yachats Revitalization Area (the “Area”) which are attributable to the increase in assessed value of property within the Area as described in Section 1c, Article IX of the Oregon Constitution and ORS Chapter 457 (the “Incremental Property Tax Revenues”) and all earnings thereon while the Incremental Property Tax Revenues are held in a segregated fund for the Area. The Incremental Property Tax Revenues have been pledged to Recipient by the Urban Renewal Agency of the City of Yachats (the “URA”) as described in an intergovernmental agreement (“IGA”) between the Recipient and the URA. The Recipient hereby grants to IFA a security interest in and irrevocably pledges the Incremental Property Tax Revenues to pay all of the obligations owed by the Recipient to IFA under the Contract.

2. Absent IFA’s prior written consent, the Recipient shall not incur any obligations payable from or secured by a lien on and pledge of the Incremental Property Tax Revenues that is superior to or on a parity with the lien of the pledge made by the Recipient in the Contract to secure the repayment of the Loan. The Recipient shall not allow the URA to incur, on or after the date of the IGA, any obligations payable from or secured by a lien on and pledge of Incremental Property Tax Revenues that is superior to or on a parity with the lien of the pledge made by the URA under the IGA.

3. Notwithstanding the requirement of section 2. above, loans previously made and loans made in the future by IFA to Recipient that are secured by the Incremental Property Tax Revenues shall have a lien on such Incremental Property Tax Revenues on a parity with the Loan; provided that this section (3) does not affect the priority of IFA’s lien as against the liens of third parties.

4. The Incremental Property Tax Revenues pledged pursuant to section 1. about and hereafter received by the Recipient shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, except as provided in section 2. above, to the fullest extent permitted by ORS 287A.310.

5. Recipient agrees that it shall not amend the IGA without the prior written consent of IFA, which consent IFA shall not unreasonably withhold or delay.

3. Delete Exhibits C (Form of Section 2.A. Promissory Note) and C-1 (Form of Forgivable Promissory Note) of the Contract, as amended, and intentionally leave them omitted.
4. Delete Exhibit E (Project Budget) of the Contract, as amended, and replace it with the following new Exhibit E:

EXHIBIT E - PROJECT BUDGET		
	IFA Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
Design / Engineering	\$292,499	\$0
Construction	1,094,169	0
Construction Contingency	178,332	2,839
Property Acquisition	135,000	0
Prevailing Wage Specialist	15,000	0
Project Management	15,000	0
Total	\$1,730,000	\$2,839

IFA will have no obligation under this amendment, unless within 60 days after receipt, the Recipient delivers to IFA the following items, each in form and substance satisfactory to IFA and its Counsel:

- (i) This amendment duly executed by an authorized officer of the Recipient.
- (ii) A copy of the ordinance, order or resolution of the governing body of Recipient, certified by an authorized officer of Recipient, authorizing all of the following: the borrowing of the new Forgivable Loan Amount and the new Loan Amount; the contemplated transactions under this amendment; and the execution and delivery of this amendment.
- (iii) A copy of the executed Inter-governmental Agreement between Recipient and the URA, in form and substance satisfactory to IFA in its sole discretion, by which the URA pledges not less than \$100,000 per year for fourteen years to service the new Forgivable Loan Amount and Loan Amount.
- (iv) Such other certificates, documents, opinions and information as IFA may reasonably require.

Except as specifically provided above, this amendment does not modify the Contract, and the Contract shall remain in full force and effect during the term thereof. This amendment is effective on the date it is fully executed and approved as required by applicable law.



STATE OF OREGON
acting by and through the
Oregon Infrastructure Finance Authority



CITY OF YACHATS

By: _____
Chris Cummings, Assistant Director for
Economic Development

By: _____
The Honorable Gerald Stanley
Mayor of Yachats

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/Sam Zeigler (per email dated 27 Sep 2018)
Sam Zeigler, Sr. Assistant Attorney General