

**RESOLUTION NO. 18 FOR 2010**

**A RESOLUTION OF THE CITY OF SWEET HOME AUTHORIZING A LOAN FROM THE WATER FUND**

BY ENTERING INTO A LOAN AGREEMENT  
WITH THE OREGON BUSINESS DEVELOPMENT DEPARTMENT

WHEREAS The City Council (the "Governing Body") of the City of Sweet Home (the "Municipality") finds:

A. The Municipality is a "municipality" within the meaning of Oregon Revised Statutes 285B.410 (8).

B. Oregon Revised Statutes 285B.560 through 285B.599 (the "Act") authorize any municipality to file an application with the Oregon Business Development Department ("the Department") to obtain financial assistance from the Water Fund.

C. The Municipality received interim financial assistance from the Department to construct a "water project" within the meaning of the Act, (the "Project").

D. The Municipality has completed the Project and now finds it advantageous to obtain permanent financing from the Department.

E. The proceeds of the permanent financing will be used to repay the interim financing provided by the Department and is needed by and is in the public interest of the Municipality

F. Notice relating to the Municipality's consideration of the adoption of this Resolution was published in full accordance with the City of Sweet Home's charter and laws for public notification.

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

1. Permanent Loan Authorized. The Governing Body authorizes the Municipality to obtain permanent financing (the "Permanent Loan") from the Department in an amount not in excess of \$3,333,155 plus an amount sufficient to pay interest accrued on the interim financing loan. The proceeds of the permanent financing loan from the Department shall be applied solely to repayment of the interim financing loan and any remaining costs of the Project. The Governing Body authorizes the Mayor to execute a loan agreement, promissory note and such other documents as may be required to obtain the Permanent Loan from the Department (collectively, the "Financing Documents") and to establish the final terms, conditions, and security of the Loan, including the interest rate that the Mayor deems reasonable and in the best interest of the Municipality.

2. Security. The Municipality shall pay amounts due under the Financing Documents from, and may secure the repayment of the Permanent Loan with, the sources described in Financing Documents and the Oregon Revised Statutes Section 285B.581(2) which include:

- a. any sources of funds that are legally available to the Municipality,
- b. the revenues, if any, of the Project, including special assessment revenues, if any, and
- c. the Municipality's general fund including the general revenues of the Municipality, other funds which may be available for such purpose and a pledge of the Municipality's taxing

power within the restrictions of Article XI, Section 11 and 11b of the Constitution of the State of Oregon. The obligation of the Municipality to make payments pursuant to the Loan Agreement is a full faith and credit obligation of the Municipality that is not subject to annual appropriation.

3. Additional Documents. The Mayor is hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to obtain the Permanent Loan from the Department for the Project.

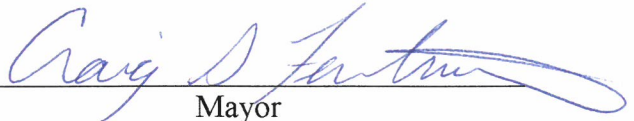
4. Tax-Exempt Status. The Municipality covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Municipality pursuant to the Financing Documents not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal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

5. Reimbursement Bonds. The Municipality may reimburse expenditures for the Project with amounts received from the Department pursuant to the Financing Documents. Additionally, the Municipality understands that the Department may fund or reimburse itself for the funding of amounts paid to the Municipality pursuant to the Financing Documents with the proceeds of bonds issued by the State of Oregon pursuant to the Act. This Resolution shall 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 with respect to the funding or the reimbursement for the funding of the costs of the Project with the proceeds of the Municipality's loan pursuant to the Financing Documents and with the proceeds of any bonds issued by the State of Oregon pursuant to the Act.

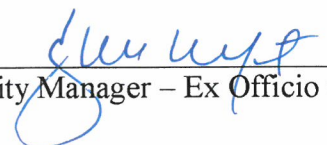
6. Declaration of Emergency. The Governing Body declares that an emergency exists in order that there be no delay in financing the Project as provided in this Resolution. Therefore, this Resolution shall be in force and effect from and after passage by the Governing Body.

PASSED by the City Council and approved by the Mayor this 27<sup>th</sup> day of July, 2010

CITY OF SWEET HOME

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Manager – Ex Officio City Recorder



COPY

**PROMISSORY NOTE**

Loan Amount: \$3,484,655

(Dated) July 27, 2010

Sweet Home, Oregon

FOR VALUE RECEIVED, the City of Sweet Home (hereinafter "Recipient") unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH ITS BUSINESS DEVELOPMENT DEPARTMENT, at its principal office at 775 Summer Street NE, Suite 200, Salem, Oregon 97301-1280 (hereinafter "State"), the Loan Amount stated above, together with interest on the outstanding principal balance from the date hereof until paid at the Note Rate. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12) thirty-day (30-day) months.

Capitalized terms not otherwise defined in this Note shall have the meanings assigned to them by that certain loan agreement dated as of July 27, 2010, between the State and Recipient (as amended from time to time the "Loan Agreement").

Unless earlier prepayment is received hereunder or under the terms of the Loan Agreement, principal and interest shall be payable at the times and in the amounts specified on the Payment Schedule attached to this Note (which is by this reference incorporated herein). All payments hereunder shall be made directly to the Trustee for the account of the State. Each payment made by Recipient hereunder shall be applied in accordance with the terms of the Loan Agreement.

This Note is not prepayable except as provided for in Section 5 of the Loan Agreement, and a prepayment may be subject to the premium determined in accordance with the Payment Schedule to this Note.

If any Event of Default occurs, the outstanding balance of the Note, including principal, prepayment premium, if any, interest and other charges, if any, shall, at the option of the State, become immediately due and payable in accordance with Section 15 of the Loan Agreement. Failure or delay of the holder of this Note to exercise any option available to the State under the terms of this Note or the Loan Agreement shall not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default and shall not constitute a waiver of any subsequent breach of the same or of any other provision of this Note or the Loan Agreement.

All parties to this Note hereby waive presentment, dishonor, notice of dishonor, and protest. All parties hereto hereby consent to, and the holder hereof is hereby expressly authorized to make, without notice, any and all renewals, extensions, modifications or waivers of the time for or the terms of payment of any sum or sums due hereunder, or under any documents or instruments relating to or securing this Note, or of the performance of any covenants, conditions or agreements hereof or thereof, or the taking or release of collateral securing this Note. No liability of any party on this Note shall not be discharged by any action consented to above taken by any holder of this Note.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal (which in the case of the State shall include without limitation the reasonable costs and expenses of the Issuer and the Trustee and the reasonable allocated costs of Department's Counsel, Bond Counsel and any other Counsel appointed by Department). Reasonable attorney fees shall not exceed the rate charged to State by its attorneys.

This Note is made with reference to, and is to be construed in accordance with, the laws of the State of Oregon without regard to principles of conflicts of law.

This Note is subject to, and is secured pursuant to, the terms and conditions of the Loan Agreement.

**NOTICE TO RECIPIENT**

**Do not sign this Note before you read it.**

**This Note is subject to the terms of the Loan Agreement that provides for the payment of a penalty in certain cases of full or partial repayment of the Loan prior to the date provided for repayment in this Note and in the Loan Agreement.**

**This Note is subject to the terms of the Loan Agreement that authorizes Department to refuse in certain cases to accept full or partial repayment of the Loan prior to the date provided for repayment in this Note and in the Loan Agreement.**

**CITY OF SWEET HOME**

By:   
The Honorable Craig Fentiman, Mayor of Sweet Home

**PAYMENT SCHEDULE  
TO  
PROMISSORY NOTE**

Recipient: City of Sweet Home  
 Loan Number: G04003  
 Original Principal Amount: \$3,484,655  
 Annual Interest Calculation Date: January 1  
 Maturity Date: December 1, 2034

<b>Interest Rate(s) and Payment Amounts and Dates</b>					
<b>Payment Date</b>	<b>Principal Amount</b>	<b>Interest Rate*</b>	<b>Interest Payment</b>	<b>Total Principal and Interest Payment</b>	<b>Outstanding Principal Balance</b>
Dec. 1, 2010					
Dec. 1, 2011					
Dec. 1, 2012					
Dec. 1, 2013					
Dec. 1, 2014					
Dec. 1, 2015					
Dec. 1, 2016					
Dec. 1, 2017					
Dec. 1, 2018					
Dec. 1, 2019					
Dec. 1, 2020					
Dec. 1, 2021					
Dec. 1, 2022					
Dec. 1, 2023					
Dec. 1, 2024					
Dec. 1, 2025					
Dec. 1, 2026					
Dec. 1, 2027					
Dec. 1, 2028					
Dec. 1, 2029					
Dec. 1, 2030					
Dec. 1, 2031					
Dec. 1, 2032					
Dec. 1, 2033					
Dec. 1, 2034					

**OPTIONAL LOAN PREPAYMENT DATES AND PRICES**

<b>Optional Loan Prepayment Period (both dates inclusive)</b>	<b>Prepayment Price</b>
January 1, 2019 through December 31, 2019	102%
January 1, 2020 through December 31, 2020	101%
January 1, 2021 and thereafter	100%

\* This interest rate shall apply to the principal amount stated to the left, and interest shall accrue on such principal amount from the Bond Closing Date until paid.



COPY

STATE OF OREGON  
BUSINESS DEVELOPMENT DEPARTMENT  
WATER FUND  
LOAN AGREEMENT

Project Number: G04003

Project Name: New Water Treatment Facility

This loan agreement (“Loan Agreement”), dated as of the date of Department’s signature hereof, is between the State of Oregon acting by and through its Business Development Department (“Department”) and the City of Sweet Home (“Recipient”) with respect to financing for the project (“Project”) which is described in Exhibit B (Project Description). Unless the context requires otherwise, capitalized words and phrases not defined in the main body of this Loan Agreement shall have the meanings assigned to them in Exhibit A.

The parties agree as follows:

**1. Effective Date and List of Exhibits.** This Loan Agreement shall become effective on the date: (a) this Loan Agreement is fully executed and approved as required by applicable law and (b) Recipient delivers to Department the Note duly executed by an Authorized Officer of Recipient. This Loan Agreement includes the following exhibits which are by this reference incorporated herein:

- Exhibit A: General Definitions
- Exhibit B: Project Description
- Exhibit C: Project Budget
- Exhibit D: Sources of Payment and Pledge
- Exhibit E: Form of Promissory Note
- Exhibit F: Form of Legal Opinion

**2. Loan.**

**a. Amount.** Subject to the terms and conditions of this Loan Agreement, Department agrees to make to Recipient, and Recipient agrees to accept from Department, a loan (“Loan”) in the principal amount of **\$3,484,655**. The Loan will be funded from proceeds of the State Bonds that are issued pursuant to the Bond Indenture and as such, certain representations, warranties and covenants of Recipient under this Loan Agreement shall inure to the benefit of the Trustee under the Bond Indenture.

**b. Interest.** Interest shall accrue on the outstanding principal amount of the Loan at the Note Rate. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12) thirty-day (30-day) months. The Loan shall be evidenced by the Note.

**3. Disbursement.**

**a. Disbursement.** Subject to Section 3.b. below, on the Bond Closing Date, Department shall disburse the Loan proceeds from the Loan Disbursement Account by applying such proceeds to pay the outstanding balance due on the Interim Loan.

**b. Conditions Precedent.**

**i.** Department’s obligation to make the Loan to Recipient under this Loan Agreement is subject to the condition precedent that Department has received from Recipient, by the Bond Closing Date, the following, in form and substance satisfactory to Department, Department’s Counsel and Bond Counsel:

(A) This Loan Agreement, duly executed by an Authorized Officer of Recipient;



(B) The Note in substantially the form of Exhibit E;

(C) A copy of the ordinance, order or resolution of the governing body or other organizing documents of Recipient authorizing the execution and delivery of this Loan Agreement and the other Loan Documents and Recipient's performance, observance and discharge of its duties, covenants, agreements and obligations hereunder and thereunder;

(D) An opinion of Recipient's Counsel substantially in the form set forth in Exhibit F; and

(E) All other agreements, certificates, documents and information required by this Loan Agreement to be submitted by Recipient prior to Loan closing or otherwise reasonably requested by Department, the Issuer, the Trustee, the Bond Counsel or the Underwriter, all duly executed and acknowledged as reasonably requested by Department.

ii. In addition to the above conditions precedent, Department's obligation to make a disbursement of the Loan proceeds is further conditioned on the following:

(A) The Bond Closing has occurred.

(B) A revised Payment Schedule that has been prepared in accordance with Section 4 hereof, dated the Bond Closing Date and duly executed by an Authorized Officer of Recipient;

(C) Department has received sufficient funding, appropriations and other expenditure authorizations to allow Department, in the exercise of its reasonable administrative discretion, to make the disbursement and there are sufficient moneys in the accounts or funds to be used to cover the disbursement, as determined by Department in the reasonable exercise of its administrative discretion, to permit Department to make the disbursement;

(D) No Default or Event of Default has occurred; and

(E) All other conditions precedent to disbursement set forth elsewhere in this Loan Agreement or in the other Loan Documents have been satisfied.

4. **Loan Payments.** Recipient hereby covenants and agrees to repay the Loan in accordance with the terms hereof and of the Note, including the Payment Schedule. The parties agree that (a) the Payment Schedule set forth in Exhibit E and in the Note that is delivered by Recipient on the Loan Closing Date has been calculated based on an estimated interest rate and is merely an example; (b) on the Bond Closing Date Recipient will deliver to Department a revised Payment Schedule that accurately reflects the interest rates on the State Bonds that are passed through to the Loan; and (c) the Note may at that time be amended (without the necessity of a formal amendment) to incorporate a revised Payment Schedule by substituting the then current Payment Schedule with a revised Payment Schedule that is dated and signed by both parties.

All payments pursuant to this Loan Agreement and the Note shall be made directly to the Trustee for the account of Department. Recipient acknowledges that payment or defeasance of the State Bonds by Department or the Issuer does not constitute payment of the amounts due under this Loan Agreement or the Note.

## 5. Prepayment.

a. **Mandatory Prepayment.** Recipient shall prepay the Loan if required to do so by Section 12 (b), (c), (d) or any other provision of the Loan Documents, and, except in the case of Section 12(b) and (d), Recipient shall pay the prepayment premium applicable to such Loan Prepayment as determined in accordance with the Payment Schedule to the Note.

**b. Optional Prepayment on or after the Optional Loan Prepayment Date.** Recipient may make Loan Prepayments on or after the Optional Loan Prepayment Date upon not less than ninety (90) days prior written notice to Department and the Trustee; provided, however, that

i. Each Loan Prepayment shall include payment of (A) the accrued interest on the amount prepaid, (B) the prepayment premium applicable to such Loan Prepayment as determined in accordance with the Payment Schedule to the Note, and (C) any expenses of the Trustee, Counsel to Department or Bond Counsel associated with such prepayment; and

ii. No Loan Prepayment shall be made without the prior written approval of Department.

**c. Optional Prepayment prior to the Optional Loan Prepayment Date.** Loan Prepayments may be made prior to the Optional Loan Prepayment Date if

i. Recipient obtains the prior written approval of Department,

ii. an opinion is obtained from Bond Counsel to the effect that such a Loan Prepayment will not adversely affect the exclusion from gross income for federal and state income tax purposes of the interest on the State Bonds and the Loan,

iii. an escrow fund is established with Department or with an escrow agent acceptable to Department, and a deposit shall have been made to such escrow fund of cash and United States Treasury obligations which are not subject to redemption or prepayment and maturing as to principal and interest in such amounts and at such times as will, in the opinion of an independent certified public accountant delivered to Department, provide sufficient moneys, without reinvestment of any matured amounts, to make all payments of principal and interest on the Loan or portion to the Loan to be prepaid to and including the Optional Loan Prepayment Date together with the prepayment premium applicable to such Loan Prepayment as determined in accordance with the Payment Schedule to the Note, and

iv. the investment of amounts held in the escrow fund must be yield restricted to the extent required by Section 148 of the Code.

**d. Prepayment Premium.** If a Loan Prepayment, pursuant to the terms of this Section 5, is subject to a prepayment premium, the amount of the prepayment premium is to be determined in accordance with the Payment Schedule to the Note.

**e. Application of Loan Prepayment.** Loan Prepayments shall be applied first to any expenses required in connection with the Loan Prepayment, including but not limited to the expenses of the Trustee, Counsel to Department, Bond Counsel, escrow agent, and any independent certified public accountant, then to accrued interest on the portion of the Loan prepaid, then to the prepayment premium, if any, and finally to principal payment(s) on the Loan. In the case of a Loan Prepayment that does not prepay all of the principal of the Loan, Department shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments.

6. [Reserved].

**7. Sources of Repayment of Recipient's Obligations; Security for Loan.**

a. Recipient shall apply funds derived from the sources of repayment described in the Act and Exhibit D to the punctual payment of the principal of and interest on the Loan and to satisfy all other payment obligations of Recipient under this Loan Agreement and the other Loan Documents; provided, however, that nothing in this Loan Agreement shall be deemed to prevent Recipient from paying any amounts payable by Recipient under this Loan Agreement or any other Loan Document from any other legally available source.

b. Recipient hereby pledges its full faith and credit and taxing power within the limitations of Article XI, Sections 11 and 11b, of the Oregon Constitution to pay the amounts due under this Loan Agreement and the Note. This Loan Agreement and the Note shall be payable from all legally available funds of Recipient.

c. Further, Recipient hereby grants to Department a security interest in and irrevocably pledges the revenues described in Exhibit D to pay all of the obligations owed by Recipient to Department under the Loan Agreement. Any such revenues hereafter received by 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 Exhibit D, to the fullest extent permitted by ORS 287A.310. Recipient hereby represents and warrants that the pledge of revenues hereby made by Recipient complies with, and shall be valid and binding from the date hereof pursuant to ORS 287A.310.

**8. Unconditional Obligations.** The provisions of this Loan Agreement shall constitute a contract between Department and Recipient and shall be enforced by Department or the Trustee. The obligation of Recipient to perform, observe and discharge its duties, covenants, agreements and obligations contained herein and in the Loan Documents shall be absolute and unconditional, and shall not be subject to any of the following:

a. Any offset, counterclaim, recoupment, defense or other right that Recipient may have against Department, the Issuer, the Trustee or any contractor or anyone else for any reason whatsoever;

b. Abatement through damage, destruction or non-availability of the Project or System, including through eviction or constructive eviction or taking by eminent domain;

c. Any failure of Department, the Issuer or the Trustee to perform, observe or discharge any covenant, agreement, or obligation whether expressed or implied, or any duty, liability, or obligation arising out of or connected with the Project, this Loan Agreement or the Bond Indenture or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against Department, the Issuer, the Trustee or any other party or parties; provided however, that payments hereunder shall not constitute a waiver of any such rights; or

d. Any other event, act of God, or circumstance whatsoever, whether or not similar to any of the foregoing.

Recipient shall not be obligated to make any payments required to be made by any other Municipality under any separate loan agreement or the Bond Indenture.

**9. Loan Agreement to Survive Bond Indenture and State Bonds.** Recipient acknowledges that its duties, covenants, agreements, and obligations under this Loan Agreement and the other Loan Documents shall survive the discharge of any bond indenture applicable to the State Bonds and payment of the principal of, redemption premium, if any, and interest on the State Bonds.

**10. Representations and Warranties of Recipient.** In addition to any other representations and warranties of Recipient set forth in this Loan Agreement or any other Loan Document, Recipient represents and warrants to Department and the holders of the State Bonds, as follows:

**a. Organization and Authority.**

i. Recipient is a Municipality duly and validly organized and in existence under the laws of the State of Oregon.

ii. Recipient has full legal right, power, and authority and all necessary licenses and permits required (A) if the Project involves construction or acquisition of real property, improvements or equipment, to own, operate and maintain the Project, other than licenses and permits relating to the

Project that Recipient expects to receive in the ordinary course of business, (B) to carry on its activities relating thereto, (C) to execute and deliver this Loan Agreement and the other Loan Documents required to be executed and delivered by it, (D) to incur and perform its obligations under this Loan Agreement and the other Loan Documents, (E) to undertake and complete the Project, and (F) to carry out and consummate all transactions contemplated by this Loan Agreement and the other Loan Documents.

iii. Recipient is authorized under Oregon law to undertake the Project and to receive financing for the Project from Department under the terms and conditions of this Loan Agreement and the other Loan Documents.

iv. The Project, this Loan Agreement and all other Loan Documents, Recipient's execution and delivery hereof and thereof and the transactions contemplated hereby and thereby have been duly authorized by Recipient's governing body, and members or voters if necessary, and this Loan Agreement and all other Loan Documents have been executed and delivered on behalf of Recipient by an Authorized Officer of Recipient.

v. Assuming that Department has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement and the other Loan Documents required hereunder to be executed by Department, this Loan Agreement and the other Loan Documents executed and delivered by Recipient constitute the legal, valid and binding obligations of Recipient enforceable in accordance with their terms, subject to the laws of bankruptcy and other similar laws affecting the enforcement of creditors' rights generally.

b. **Full Disclosure.** There is no fact that Recipient has not disclosed to Department, the Issuer, and the Trustee in writing in Recipient's Application or otherwise that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of Recipient or the Project, or the ability of Recipient to observe, perform and discharge all of its duties, covenants, agreements and obligations under this Loan Agreement and the other Loan Documents. Recipient's Application and Recipient's representations and warranties in this Loan Agreement or any of the other Loan Documents do not contain any untrue statement of a material fact or omissions that could reasonably be perceived as misleading.

c. **Pending Litigation.** There are no 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 properties, activities, prospects or condition (financial or otherwise) of Recipient or the Project, or the ability of Recipient to observe, perform and discharge its duties, covenants, agreements and obligations under this Loan Agreement and the other Loan Documents, that have not been disclosed in writing to Department, the Issuer, and the Trustee in Recipient's Application or otherwise.

d. **Compliance with Existing Agreements, Etc.** Recipient's authorization and performance of all obligations and covenants under this Loan Agreement and the other Loan Documents will not (i) result in any breach of any existing ordinance, order or resolution, trust agreement, indenture, mortgage, deed of trust, financing contract 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) result in the creation or imposition of any lien, charge or encumbrance upon any property or asset of Recipient (other than any lien and charge of this Loan Agreement or any of the documents related hereto or to the Bond Indenture), except as previously disclosed to Department, (iii) result in any violation of the provisions of the charter or other document pursuant to which Recipient was created or established, or (iv) violate any laws, ordinances, orders, resolutions, governmental rules, regulations or court orders that apply to Recipient, the Project, or its properties or operations.

**e. No Defaults.** No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or any of the other Loan Documents or receipt of the Loan proceeds and with notice or lapse of time or both, would constitute an Event of Default hereunder. Recipient is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it, the Project, or its property may be bound, which violation would materially adversely affect the activities, prospects or condition (financial or otherwise) of Recipient or the Project or the ability of Recipient to observe, perform and discharge its duties, covenants, agreements and obligations under this Loan Agreement and the other Loan Documents.

**f. Governmental Consent.** Recipient has obtained or will obtain all permits and approvals required by any governmental body or officer for the making, observance, performance and discharge by Recipient of its duties, covenants, agreements and obligations under this Loan Agreement and the other Loan Documents and for the undertaking or completion of the Project and the financing or refinancing thereof. Recipient has complied or will comply with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance, performance and discharge by Recipient of its duties, covenants, agreements, and obligations under this Loan Agreement and the other Loan Documents or with the undertaking or completion of the Project and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained is required on the part of Recipient as a condition to the authorization, execution and delivery of this Loan Agreement or any other Loan Document.

**g. Compliance with Law.** Recipient is in compliance with Oregon Public Contracting Code, ORS Chapters 279A, 279B, and 279C, as applicable. Recipient is also in compliance with all other laws, ordinances, and governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of Recipient to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of Recipient or the Project.

**h. The Project.**

**i.** The Project has been completed in accordance with the terms of the Interim Loan Agreement.

**ii.** Recipient used the proceeds of the Interim Loan solely in accordance with the Project budget (Exhibit C) of the Interim Loan Agreement to cover Eligible Costs (as defined in the Interim Loan Agreement) necessarily incurred by Recipient in completing the Project and subject to any other restrictions imposed by other provisions of the Interim Loan Agreement or applicable law.

**ii.** Recipient will have adequate funds to repay the Loan, and the Loan does not have a final maturity date after the end of the useful life of the Project.

**i. Continuing Representations and Warranties.** The representations and warranties of Recipient contained herein shall be true on the effective date of this Loan Agreement and at all times thereafter until the later of actual completion of the Project, final repayment of the Loan and the portion of any State Bonds that fund or refinance the Loan, or final performance, observance and discharge of all duties, covenants, agreements and obligations of Recipient under this Loan Agreement and the other Loan Documents.

**11. Disclaimer of Warranties by Department.** RECIPIENT ACKNOWLEDGES AND AGREES THAT NEITHER DEPARTMENT, THE ISSUER, NOR THE TRUSTEE MAKE ANY 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 PORTIONS THEREOF OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO.

**12. Certain Covenants of Recipient.** Recipient shall comply with the following covenants:

a. [Reserved].

b. **Insurance.** So long as the Loan is outstanding, Recipient shall maintain fire and hazard insurance, liability insurance, and such other insurance against loss or damage to the Project of the kinds customarily insured against by persons or entities similarly situated, with an insurer acceptable to Department, in such amounts and by such methods as shall be adequate. Each insurance policy must contain a provision that there shall be no cancellation, material change, or refusal to renew such insurance policy without thirty (30) days prior written notice to Department. The liability insurance coverage required by this subsection (b) must name the State of Oregon, Business Development Department, including its officers and employees, as additional insureds but only with respect to acts or omissions of Recipient, its officers, employees or agents or contractors under this Loan Agreement or with respect to the Project. Each policy shall contain a severability of interest clause. In lieu of obtaining insurance from a third party carrier, Recipient may, with the prior written approval of Department, satisfy the insurance requirements of this subsection (b) through a program of self-insurance whose terms and conditions are acceptable to Department. In the event the Project or any portion thereof is destroyed, any insurance proceeds shall be paid to Department and (1) shall be applied to prepay the principal of and interest on the Loan in accordance with Section 5 of this Loan Agreement or (2), upon the request of Recipient, but only so long as Recipient is not in default under any of the Loan Documents, may be applied to rebuilding and restoration of the Project or a portion thereof, on such terms and conditions as Department shall require in its sole discretion.

c. **Disposition of Project.** So long as the Loan is outstanding and unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of any facilities constructed, improved or acquired as part of the Project, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of all or substantially all or any substantial portion of or interest in any facilities constructed, improved or acquired as part of the Project, unless

i. Department consents thereto in advance in writing upon ninety (90) days' prior written notice to Department; and

ii. either:

(A) Recipient demonstrates to the satisfaction of the Trustee that such sale, lease, abandonment or other disposition will not adversely affect the rating of the State Bonds,

(B) A rating of the Loan is obtained which (a) addresses such sale, lease, exchange, abandonment or other disposition, (b) is no lower than the rating of the State Bonds and (c) shall be in one of the three highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) by Moody's Investors Service or Standard and Poors, or

(C) Department certifies to Recipient that this Loan Agreement has not been assigned to the Trustee and provides a copy of such certification to the Trustee.

Department will not consent to any such sale, lease, exchange, abandonment or other disposition unless Department shall have received an opinion of Bond Counsel to the effect that such sale, lease, exchange, abandonment or other disposition complies with the Act and the Bond Indenture and will not adversely affect the exclusion of interest on the Loan and on the State Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. Proceeds of any such transfer not used to replace property that is part of the Project shall be applied to the payment of the outstanding principal of and interest on the Loan as a Loan Prepayment pursuant to Section 5(a) above and the prepayment premium applicable to such Loan Prepayment as determined in accordance with the Payment Schedule of the Note.

**d. Condemnation of Project.** In the event the Project or any portion thereof is condemned, any condemnation proceeds shall be paid to Department and (1) shall be applied to prepay the principal of and interest on the Loan in accordance with Section 5 of this Loan Agreement or (2), upon the request of Recipient, but only so long as Recipient is not in default under any of the Loan Documents, may be applied to rebuilding and restoration of the Project or a portion thereof, on such terms and conditions as Department shall require in its sole discretion.

**e. Exclusion of Interest from Federal Gross Income and Compliance with Code.**

**i.** Recipient covenants and agrees that it shall not take any action or omit to take any action which action or omission would result in the loss of the exclusion of the interest on the Loan from gross income for purposes of federal income taxation as that status is governed by Section 103(a) of the Code.

**ii.** Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action, which action or omission would cause the Loan to be a “private activity bond” within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of Department, Recipient shall neither (A) permit in excess of ten percent (10%) of either (1) the proceeds of the Loan or (2) the Project financed or refinanced with the proceeds of the Loan, to be used directly or indirectly in any manner that would constitute “private business use” within the meaning of Section 141(b)(6) of the Code, nor (B) use directly or indirectly any of the proceeds of the Loan, to make or finance loans to persons other than governmental units as such term is used in Section 141(c) of the Code; provided further, that at least one half of the private business use permitted by clause (A) shall be neither disproportionate related business use, nor private business use not related to the government use of such proceeds of the Loan.

**iii.** Recipient shall not directly or indirectly use or permit the use of any of the “gross proceeds” (within the meaning of Section 148 of the Code) of the Loan or any other funds or take any action or omit to take any action, which use or action or omission could cause the State Bonds to become “arbitrage bonds” within the meaning of Section 148(a) of the Code.

**iv.** Recipient shall not use directly or indirectly the proceeds of the Loan in any manner that would constitute an “advance refunding” within the meaning of Section 149(d)(5) of the Code and shall not prepay the Loan.

**v.** Recipient will not cause the Loan to be treated as a “federally guaranteed” obligation for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code. For purposes of this paragraph, the Loan shall be treated as “federally guaranteed” if: (A) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality

thereof, or (B) five percent (5%) or more of the proceeds of the Loan will be (1) used in making loans, the payment of principal or interest with respect to which is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (2) invested directly or indirectly in federally insured deposits or accounts, and (C) none of the exceptions described in Section 149(b)(3) of the Code apply.

vi. Recipient agrees to ensure that all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code are rebated to the United States of America. If Recipient fails to perform rebate calculations or fails to rebate amounts required to be rebated pursuant to Section 148(f) of the Code, Recipient agrees that Department may undertake to determine whether amounts are necessary to be rebated to the United States of America by Recipient, and Recipient further agrees to provide all amounts necessary to satisfy the requirements of Section 148(f) applicable to the Loan and, to pay to Department such amounts as may be directed by Department and at such times as Recipient may be so directed to satisfy the requirements of Section 148(f) of the Code applicable to the portion of the proceeds of any State Bonds, including any proceeds or other amounts held in a reserve fund, applied to fund or refinance the Loan. Recipient further agrees to reimburse Department for the portion of any expenses incurred by them that relate to the Loan and are necessary to satisfy the requirements of Section 148(f) of the Code.

vii. In furtherance of the foregoing, Recipient covenants that it will comply with the provisions of this Loan Agreement and will furnish to Department in writing, upon reasonable request, information regarding investments and use of proceeds of the Loan and of any facilities financed or refinanced therewith.

viii. Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Loan, the covenants contained in this Section 12(e) shall survive the payment of the Loan and the State Bonds, and the interest thereon, including any payment pursuant to Section 6 of this Loan Agreement. Recipient acknowledges that the Loan may be funded with the proceeds of the State Bonds and that failure to comply with the requirements of this Section 12(e) could adversely affect any exclusion of the interest on the State Bonds from gross income for federal income tax purposes.

ix. Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. §1.150-1(b), shall purchase State Bonds in an amount related to the amount of the Loan.

x. Recipient may use Loan proceeds to reimburse itself for Project expenditures made prior to the funding of the Loan, only if such reimbursement is allowed under one of the following four categories pursuant to 26 C.F.R. §1.150-2:

(A) Preliminary expenditures such as architectural, engineering, surveying, soil testing, bond issuance and similar costs that, in the aggregate, are not in excess of twenty percent (20%) of the proceeds of the Loan. Costs of land acquisition, site preparation and similar costs incidental to commencement of construction are not preliminary expenditures.

(B) Expenditures for issuance costs.

(C) Expenditures that are described in a reimbursement resolution and paid no earlier than sixty (60) days prior to the adoption of such resolution as long as such expenditures are reimbursed no later than 18 months after the later of (i) the date on which the expenditure was paid or (ii) the date on which the property financed in whole or in part by the expenditure was placed in service. Expenditures do not qualify for reimbursement under this paragraph (C) if the period of time between the date on which an expenditure is made and the date of reimbursement exceeds three years.



(D) Expenditures paid within sixty (60) days prior to the date the Loan is funded.

**f. Notice of Material Adverse Change.** So long as the Loan is outstanding, Recipient shall promptly notify Department and the Trustee of any material adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project or in the ability of Recipient to make all Loan payments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents.

**g. Financial Statements and Reports.** So long as the Loan is outstanding, Recipient, if so requested by Department, the Issuer, or the Trustee, and at Recipient's expense, shall deliver to Department in form and detail satisfactory to Department such audited or unaudited financial statement or statements or other reports as to Recipient as Department, the Issuer or the Trustee, respectively, may reasonably request.

**h. Records Maintenance, Access and Confidentiality.**

**i. Access to Records and Facilities.** Department, the Trustee, the Secretary of State's Office of the State of Oregon, the federal government and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Loan Agreement, the Bond Indenture, the other Loan Documents, the Project, or the Loan proceeds provided hereunder, for the purpose of making audits and examinations. In addition, Department, the Trustee, the Secretary of State's Office of the State of Oregon, the federal government and their duly authorized representatives may make and retain excerpts, copies and transcriptions of the foregoing books, documents, papers and records. Recipient shall permit authorized representatives of Department, the Trustee, the Secretary of State's Office of the State of Oregon and the federal government to perform site reviews and inspections of the Project after reasonable prior written notice to Recipient.

**ii. Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Loan Agreement, the other Loan Documents, the Project or the Loan proceeds, for a minimum of three (3) years, or such longer period as may be required by other provisions of this Loan Agreement or applicable law, following the later of the actual completion of the Project, final repayment of the Loan, or final completion and satisfaction of all reporting requirements of Recipient under this Loan Agreement and the other Loan Documents. If there are unresolved issues at the end of the three-year period, Recipient shall retain the books, documents, papers and records until the issues are resolved.

**iii. Expenditure Records.** Recipient shall document the use of all Loan proceeds disbursed by Department under this Loan Agreement and the expenditure or utilization of all resources used in the Project. Unless applicable federal law requires Recipient to utilize a different accounting system, Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles consistently applied and in sufficient detail to permit Department to verify how the Loan proceeds were expended and how the other resources were expended or utilized.

**i. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Loan Agreement, the other Loan Documents, or the Project. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Loan Agreement, the other Loan Documents, or the Project: (A) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations and (B) ORS 659A.145, 659A.400, 659A.403, and 659A.406 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Project. These laws, regulations and

executive orders are incorporated by reference herein to the extent that they are applicable to the Loan Agreement, the other Loan Documents or the Project and required by law to be so incorporated. Recipient shall, to the maximum extent economically feasible in implementation of the Project, use recycled paper (as defined in ORS 279A.010(gg)), recycled PETE products (as defined in ORS 279A.010(hh)), and other recycled products (as “recycled product” is defined in ORS 279A.010(ii)). All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers’ Compensation coverage, unless such employers are exempt under ORS 656.126.

**j. Minority, Women & Emerging Small Business.** ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses...” Department encourages Recipient, in its contracting activities, to follow good faith efforts in accordance with ORS 200.045, available at <http://www.leg.state.or.us/ors/200.html>. Additional resources are provided by the Governor’s Advocate for Minority, Women & Emerging Small Business at <http://egov.oregon.gov/Gov/MWESB/index.shtml>. Also, the Office of Minority, Women, and Emerging Small Business at the Department of Consumer and Business Services maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <http://imd10.cbs.state.or.us/ex/dir/omwesb/>.

**k. Access for Disabled Persons.** If Recipient operates a commercial facility or public accommodations, as those terms are defined in the Americans with Disabilities Act of 1990, P.L. 101-336, Recipient shall comply with the Americans with Disabilities Act and ORS 447.210 to 447.280.

**l. Indemnity.** To the extent authorized by law, Recipient shall (subject to ORS chapter 180) defend, save, hold harmless, and indemnify the State of Oregon, Department, the Issuer, the Trustee and their officers, employees and agents from and against all claims, suits, actions, proceedings, losses, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of, arising out of, or relating to any act or omission (or alleged act or omission) by Recipient or its officers, employees, contractors, or agents under this Loan Agreement or any other Loan Document or with respect to the Project; provided, however, that the provisions of this subsection (l) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or other laws of the State of Oregon or under the laws of the United States.

**m.** [Reserved]

**n. Further Assurances.** Recipient shall, at the request of Department, the Issuer or the Trustee, authorize, execute, acknowledge and deliver such 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 Loan Agreement and the other Loan Documents.

**13. Event of Default.** Each of the following constitutes an Event of Default under this Loan Agreement:

**a.** Recipient fails to make any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Recipient when due.

**b.** Recipient fails to perform, observe or discharge any of its duties, covenants, agreements or obligations set forth in this Loan Agreement (other than as described in any other subsection of this Section 13), and such failure is not cured within fifteen (15) Business Days following written notice, specifying such failure and requesting that it be remedied, is given to Recipient by Department or the Trustee. Any event described in subsections (a), (c), (d), (e), or (f) of this Section 13 shall be referred to as an “Automatic Default.” If an Automatic Default occurs, or if in the case of default other than an

Automatic Default Recipient has been given a notice of breach of the same provision of any of the Loan Documents within the preceding twelve (12) months, Recipient shall be in default hereunder, without any requirement for any notice or opportunity to cure. If any default other than an Automatic Default is curable and if Recipient has not been given a notice of a breach of the same provision of any of the Loan Documents within the preceding twelve (12) months, Department shall send Recipient written notice describing such default. Recipient may cure such default within fifteen (15) Business Days after the date on which such notice is mailed to Recipient; however, if such cure requires more than fifteen (15) Business Days, Recipient shall not be in default if Recipient immediately initiates steps which Department deems in its sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practicable but in any event no later than one hundred twenty (120) days from the delivery of the written notice referred to above.

c. Any representation, warranty or statement made by or on behalf of Recipient herein, in any other Loan Document, or in any agreement, instrument, certificate, document or report furnished in compliance with or with reference to this Loan Agreement, any other Loan Document or the Loan or in connection with or with reference to the State Bonds, including but not limited to any representation, warranty or statement with respect to current or historical information relied upon by Department to monitor progress on the Project or the use of Loan proceeds, is false or misleading in any material respect;

d. Recipient (i) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated as bankrupt or insolvent, (v) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) acquiesces in writing to any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing;

e. A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Recipient, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets, or (iii) similar relief in respect to Recipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, or an order for relief against Recipient is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect); and

f. An event of default occurs under any other Loan Document or any financing document for any other loan made by any third party or parties to Recipient in connection with the Project.

**14. Notice of Event of Default.** Recipient shall give Department and the Trustee prompt telephone notice of the occurrence of any Event of Default described in Section 13(d) and (e) and of the occurrence of any other event or condition that constitutes an Event of Default under Section 13 at such time as any senior administrative or financial officer of Recipient becomes aware of the existence thereof. Any telephone notice pursuant to this Section 14 shall be confirmed in writing as soon as practicable by Recipient.

**15. Remedies upon Event of Default.** Upon the occurrence of an Event of Default, Department may pursue any remedies available under this Loan Agreement, the Bond Indenture or any other Loan Document and may take whatever other action at law or in equity that may appear to Department to be necessary or desirable to collect the amounts then due and thereafter to become due under this Loan Agreement or any Loan Document or to enforce the performance and observance of any duty, covenant, obligation or agreement of Recipient under this Loan Agreement or any Loan Document, including but not limited to the following remedies and actions:

a. Declaring all Loan payments and all other amounts to be paid by Recipient under this Loan Agreement or any other Loan Document (including, but not limited to Department's cost of defeasance of the portion of any State Bonds allocable to the Loan) to be immediately due and payable, and upon notice to Recipient the same shall become immediately due and payable without further notice or demand.

b. Terminating all further disbursements of Loan proceeds.

c. Declaring Recipient ineligible to receive future awards from Department.

d. Withholding all or a portion of any amounts otherwise due to Recipient and applying them to payments due pursuant to ORS 285B.449; however, if Recipient is a county, this provision is not to be construed in a way that Recipient's obligations would constitute debt that violates Section 10, Article XI of the Oregon Constitution.

e. Foreclosing liens or security interests or otherwise realizing upon any collateral securing Recipient's performance, observance and discharge of its duties, covenants, agreements and obligations under this Loan Agreement or any other Loan Document.

**16. No Remedy Exclusive; Waiver.** No remedy herein conferred upon or reserved to Department is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or any of the Loan Documents or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. No single or partial exercise of any right, power or privilege under this Loan Agreement or any of the Loan Documents shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. To entitle Department to exercise any remedy reserved to it in this Loan Agreement or any other Loan Document, it shall not be necessary to give any notice, other than such notice as is specifically and expressly required by this Loan Agreement or such Loan Document.

**17. Limitation of Recipient Remedies; Limitation of Liability of Department.** In the event of any failure by Department to perform, observe or discharge any of its covenants, agreements or obligation under this Loan Agreement, Recipient's remedy shall be limited to injunction, special action, action for specific performance, or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of Department, as may be necessary or appropriate. In no event shall Department or its agents be liable or responsible for any direct, indirect, incidental, special or consequential damages in connection with or arising out of this Loan Agreement, any other Loan Document or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided in connection therewith.

**18. Notice.** Except as otherwise expressly provided in this Loan Agreement, any notices to be given hereunder or under any other Loan Document shall be given in writing by personal delivery, (except to the Trustee) facsimile, or mailing the same, postage prepaid, to Recipient, Department, the Issuer and the Trustee at the address or number set forth below, or to such other addresses or numbers as a party may indicate pursuant to this Section 18. Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the party receiving the communication, or on the next Business Day, if transmission was outside normal business hours of the party receiving the communication. To be effective against Department, any notice transmitted by facsimile must be confirmed by telephone notice to Department's Community Development Division, Operations Manager, at (503) 986-0138. Any notice given by personal delivery shall be effective when actually delivered.

(a) Department: Oregon Business Development Department

Infrastructure Finance Authority  
Attn: Program Services Manager  
RE: Project Number B08003  
775 Summer Street N.E., Suite 200  
Salem, OR 97301-1280  
Facsimile Number: (503) 581-5115

(b) Issuer: State Treasurer

Attention Manager, Debt Management Division  
100 Labor & Industries Building  
Salem, OR 97301

(c) Trustee: Bank of New York Mellon Trust Company, N.A.

Attention: Corporate Trust Washington  
601 Union Street, Suite 520  
Seattle, WA 98101-2328

(d) Recipient: City of Sweet Home

Attention: Mayor  
1140 12<sup>th</sup> Avenue  
Sweet Home, OR 97386

**19. Severability.** The parties agree that if any term or provision of this Loan Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Loan Agreement did not contain the particular term or provision held to be invalid.

**20. Choice of Law; Designation of Forum; Federal Forum.**

(a) 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 Loan Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(b) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Loan 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.

(c) Notwithstanding Section 20(b), 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 Section 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 Section 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.

**21. Assignment of Loan Agreement, Successors in Interest.**

a. Recipient shall not assign or transfer any interest in this Loan Agreement or in any other Loan Document without the prior written approval of Department. Any such assignment or transfer, if approved, is subject to such conditions and provisions as Department, the Issuer or the Trustee may deem necessary. No approval by Department of any assignment or transfer shall be deemed to create any obligation of Department in addition to those set forth in the Loan Agreement or the other Loan Documents nor will Department's approval of an assignment or transfer relieve Recipient of any of its duties or obligations under this Loan Agreement or any of the other Loan Documents.

b. The provisions of this Loan Agreement and the other Loan Documents shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns. In addition, the Trustee shall be considered as a beneficial party to this Loan Agreement, with all attendant rights to enforce the duties, obligations, covenants and agreements of Recipient set forth herein, to the same extent as if the Trustee was a party hereto.

**22. Integration.** This Loan Agreement, including all exhibits, schedules and attachments, and the other Loan Documents constitute the entire agreement between the parties on the subject matter hereof. All exhibits, schedules and attachments are incorporated in this Loan Agreement by this reference. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Loan Agreement.

**23. Amendment.** No modification or change of terms of this Loan Agreement shall bind either party unless in writing and signed by both parties and, when required, the Oregon Department of Justice. No waiver or consent shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

**24. Construction and Interpretation.** Both parties acknowledge that they are each represented by and have sought the advice of Counsel in connection with this Loan Agreement and the other Loan Documents and the transactions contemplated hereby and thereby and have read and understand the terms of this Loan Agreement and the other Loan Documents. The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Loan Agreement or the other Loan Documents. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, partnerships, agencies and districts. Words importing one gender shall include any other gender.

**25. Time is of the Essence.** Recipient agrees that time is of the essence under this Loan Agreement and the other Loan Documents.

26. **Attorney 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 Loan Agreement shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal (which in the case of Department shall include without limitation the reasonable costs and expenses of the Issuer and the Trustee and the reasonable allocated costs of Department's Counsel, Bond Counsel and any other Counsel appointed by Department). Reasonable attorney fees shall not exceed the rate charged to Department by its attorneys.

27. **Counterparts.** This Loan Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Loan Agreement so executed shall constitute an original.

The parties hereto have executed this Loan Agreement by their duly authorized representatives. Recipient, by signature of its Authorized Officer, hereby acknowledges that it has read this Loan Agreement, understands it, and agrees to be bound by its terms and conditions.

**NOTICE TO RECIPIENT**

**Do not sign this Loan Agreement before you read it.**

**This Loan Agreement provides for the payment of a penalty in certain cases if you wish to repay the Loan in full or in part prior to the date provided for repayment in the Loan Agreement.**

**This Loan Agreement authorizes Department in certain cases to refuse to accept full or partial repayment of the Loan prior to the date provided for repayment in the Loan Agreement.**



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



**CITY OF SWEET HOME**

By: \_\_\_\_\_  
Jim Zelenka, Regional Services Manager  
Infrastructure Finance Authority

By: Craig Fentiman  
The Honorable Craig Fentiman  
Mayor of Sweet Home

Date: \_\_\_\_\_

Date: 7/27/2010

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

/s/Lynn T. Nagasako Sr. AAG (email dated July 12, 2010)  
Lynn T. Nagasako, Sr. Assistant Attorney General

Date: July 12, 2010