

RESOLUTION NO. 829

A RESOLUTION ACCEPTING A \$25,000 LOAN AND A \$25,000 GRANT FROM THE STATE OF OREGON'S SMALL COMMUNITY INCENTIVE FUND.

WHEREAS, The City of Canby applied for, and was awarded, \$50,000 in funding from the State of Oregon's Small Community Incentive Fund ("SCIF"); and

WHEREAS, the State of Oregon requires that said funds be accepted by Resolution of the City Council; and


WHEREAS, the City Council has determined that funds are available to finance the \$25,000 loan over a period of five years;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Canby, as follows:


- (1) The City of Canby accepts the SCIF grant and loan as detailed in Exhibits A-D.
- (2) The Community Development & Planning Director is authorized to sign all documents related to this SCIF funding.

This resolution will take effect on June 4, 2003.

ADOPTED this 4th day of June, 2003 by the Canby City Council.


Melody Thompson, Mayor

ATTEST:


Chaunee Seifried
City Recorder, Pro-Tem

**STATE OF OREGON
HOUSING AND COMMUNITY SERVICES DEPARTMENT**

SMALL COMMUNITY DEVELOPMENT INCENTIVE PROJECT FUND PROGRAM

SECURITY AGREEMENT

This Small Community Development Incentive Project Fund Program Security Agreement (the "Security Agreement") is made and entered into by and between the State of Oregon, acting by and through its Housing and Community Services Department (the "Department" or "Lender") and the City of Canby (the "Borrower"). The parties enter into this Security Agreement in conjunction with and pursuant to the Loan Agreement between them of even date with respect to the NW 2nd Avenue Street Improvements and Wait Park Restrooms project in Canby, Oregon known as CANBY DOWNTOWN IMPROVEMENTS (the "Project"), and agree that this Security Agreement is the Security Instrument identified in such Loan Agreement and incorporated therein by reference.

RECITALS

WHEREAS, the Borrower desires that the Department provide a Loan to the Borrower pursuant to the Department's authority under ORS 458.705 through 458.740 for financing of the Project; and

WHEREAS, the Department is willing to provide such Loan consistent with the terms of the Loan Agreement, including without limitation, the execution of this Security Agreement; and

WHEREAS, the Borrower is willing to execute this Security Agreement and, hereby, convey to the Department the security interests and pledge of funds herein described,

NOW, THEREFORE, for good and valuable consideration, including the terms and conditions herein, the parties agree as follows:

**SECTION 1.
SOURCE OF LOAN REPAYMENT**

The Loan to Borrower from the Department further described in the Loan Agreement and other Loan Documents shall be payable from any revenues (the "Revenues") derived or derivable by the Borrower from the General Fund of the Borrower and shall be a full faith and credit obligation of the Borrower which is payable from any taxes that the Borrower may levy within the limitations of Article XI of the Oregon Constitution.

**SECTION 2.
SECURITY**

The Borrower hereby grants to the Department a security interest in and irrevocably pledges the Revenues, including without limitation any taxes levied to fund same, to pay all of the Obligations owed by the Borrower to the Department under the Loan Agreement. Pursuant to ORS 288.594, the pledge of the Revenues hereby made by the Borrower shall be valid and binding from the date of this Security Agreement.

**SECTION 3.
ADDITIONAL PROVISIONS**

Section 3.01. Incorporation. All provisions of the Loan Agreement are incorporated in this Security Agreement by reference.

Section 3.02. Cross-Default. Any Event of Default under the other Loan Documents shall constitute an event of default under this Security Agreement. Any event of default under this Security Agreement shall constitute an Event of Default under the other Loan Documents.

STATUTORY NOTICE: UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY THE DEPARTMENT AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS, WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THE LENDER TO BE ENFORCEABLE.

IN WITNESS WHEREOF, the parties have caused this Security Agreement to be executed by their duly authorized representatives this _____ day of _____, 2003.

THE DEPARTMENT:

STATE OF OREGON acting by and through its
HOUSING and COMMUNITY SERVICES DEPARTMENT

By: _____

Title: _____

STATE OF OREGON)
) ss.

**STATE OF OREGON
OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT
SMALL COMMUNITY DEVELOPMENT INCENTIVE PROJECT FUND PROGRAM
PROMISSORY NOTE**

\$ \$25,000

Date

FOR VALUE RECEIVED, City of Canby , an Oregon Municipality ("Borrower") promises to pay to the order of the State of Oregon, acting by and through its Housing and Community Services Department ("Lender" or "Department"), at 1600 State Street, Salem, Oregon 97301-4246, or at such other address as Lender may specify in writing, the principal sum of Twenty Five Thousand Dollars (\$ 25,000), together with interest thereon as set forth herein (the "Loan").

1. AMORTIZATION

Interest shall accrue on the unpaid principal balance of this Promissory Note from the above date at the rate of one percent (1%) per annum. Principal and interest are payable in equal yearly installments of Five Thousand One Hundred Fifty and 99/100 Dollars (\$ 5,150.99) commencing First Payment 2004 and due the Date Longhand of each succeeding year and payable in full, if not sooner paid, on Note Maturity 2008 .

All payments on this Promissory Note shall be applied first to the payment of any late charges due hereunder, then to the payment of any accrued interest, and then to the reduction of principal, or in such other order or manner as the Department, in its sole discretion, may require.

2. PREPAYMENT

Borrower may prepay principal and interest in whole or in part at any time without penalty. All prepayments will be applied first to late charges due hereunder, then to the payment of any accrued interest, and then to the reduction of principal, or in such other order or manner as the Department, in its sole discretion, may require. Partial prepayments will not affect the obligation of the Borrower to pay the yearly installments provided for above or to perform any other obligation under this Promissory Note.

3. RESTRICTION AGAINST UNAPPROVED TRANSFERS

The interest rate on this Promissory Note is subsidized by public funds and is below the prevailing market rate for similar loans obtainable from private lenders, and is intended solely for the public benefit of the initial Borrower or for successors as may be approved by the Department. The Borrower also understands that the Loan is not intended to be of a direct benefit to the Borrower or to any transferee as the result of a subsequent transfer. It is, therefore, intended that no sale or transfer of any of the real or personal property securing this Note shall be made without prior written approval of the Department.

4. DUE ON UNAPPROVED SALE OR TRANSFER

THIS NOTE AND ANY SUMS SECURED BY THE SECURITY INSTRUMENT EXECUTED IN CONJUNCTION WITH THIS NOTE MAY BE DECLARED BY THE DEPARTMENT TO BE DUE AND PAYABLE IMMEDIATELY UPON ANY UNAPPROVED SALE OR TRANSFER (OR ANY SUCH ATTEMPTED SALE OR TRANSFER) OF ALL OF, OR ANY INTEREST IN, THE REAL PROPERTY OR OTHER COLLATERAL SECURING THIS NOTE OR ANY PART THEREOF. FOR PURPOSES OF THE PRECEDING SENTENCE, THE "REAL PROPERTY" INCLUDES INTERESTS IN REAL PROPERTY, OF WHATEVER NATURE, WHICH SECURE THIS NOTE.

DEFINITION

As used herein, sale or transfer of all, or any interest in, the real property or other collateral shall include, without limitation,

within its meaning any transfer by deed or assignment, any contract for the sale of the property over time, any assumption of the Loan by a transferee of the Borrower, any assignment for the benefit of creditors, any assignment or transfer of the rents, issues, or profits, any lease whereby the lease contains an option to purchase, the appointment of a receiver, a foreclosure of any nature, any gift, any assignment or transfer of any partnership interest in the Borrower if the borrower is a partnership, any sale or transfer (whether in one transaction or a series of transactions) of a controlling membership interest in a limited liability company, economic or voting interest in stock of the Borrower if the Borrower is a corporation, any corporate dissolution, or any dissolution or winding-up of partnership affairs. Included within the above meaning is any attempt to sell or transfer. The terms sale or transfer shall not include any attempt to sell or transfer. The terms of sale or transfer shall not include any transfer by way of subordinate encumbrance, or by way of a lease that does not contain an option to purchase.

5. DELINQUENT PAYMENTS

If any installment, or portion thereof, due hereunder shall be delinquent for more than fifteen (15) days, there shall be due, in addition to any other sums due hereunder, a late charge of two percent (2%) of the delinquent amount the first month and an additional one percent (1%) of the delinquent amount per month thereafter.

All unpaid late charges shall be secured by the Security Instrument securing this Note and shall, along with accrued interest, become due and payable concurrently with any or all of the principal balance of the original debt becoming due and payable.

6. OTHER CHARGES

If the Borrower breaches any covenant or other Obligation in the Security Instrument securing this Note or in any of the other Loan Documents executed in conjunction with the Note including, but not limited to any breach for failure to timely and properly pay any tax, lien, assessment, charge, or insurance premium when due, the holder of this Note shall have the option to pay the same, including the payment of other Obligations necessary to cure said breach, and the amount of any such payment made shall be added to the principal balance of this Note and shall be secured by the Security Instrument securing this Note, and such amount shall bear interest at the rate provided in the first section ("AMORTIZATION") of this Note as part of the principal balance. No payment pursuant to the preceding sentence shall be a waiver of any default or of any of the Department's remedies.

7. ATTORNEY FEES

In case suit or action is instituted to collect the Note or any portion hereof, the party who substantially prevails shall receive from the losing party in such suit or action such additional sum as the court may adjudge reasonable as attorneys' fees, expenses, and costs in said suit or action, or on any appeal therefrom, including, but not limited to, those fees and expenses permitted or defined by statutory law, and including without limitation, all fees and expenses incurred before trial, at trial, on appeal, on petition for review, for arbitration, for mediation, or for bankruptcy proceedings. Further, in the event of default in any payment, whether or not suit or action is instituted, the Borrower promises to pay all reasonable costs, including attorney fees, of collecting such delinquent payment and late charges even though no suit or action is instituted or no sale of the property has been directed under the Security Instrument securing these Obligations. Such fees and costs may, at the option of the Note holder, be added to the principal balance of this Note.

8. DEFAULT; ACCELERATION

If default occurs in the payment of any installment due under this Note, and if such default is not cured within thirty (30) days, or if a default otherwise occurs under this Note or any other of the Loan Documents, and such default is not cured within the time required by the Loan Documents, or upon discovery by the Department of either a failure by the Borrower to disclose any fact material to the making of the Loan or material to any other agreement, or of any misrepresentation by, on behalf of, or for the benefit of the Borrower, or upon the insolvency of the Borrower, or the commencement by it, or on its behalf, of a proceeding under the Federal Bankruptcy Act as now or hereafter enacted, the entire remainder of the unpaid balance, including principal, accrued interest and other charges (including, but not limited to attorneys' fees), if any, shall, at the option of the holder of this Note, become due and payable without notice.

9. INTEREST AFTER JUDGMENT

If this Note is reduced to judgment, any judgment will bear interest on the unpaid balance at the rate that the law permits for interest on judgments, or at the rate of twelve percent (12%) per annum, whichever is greater.

10. ADDITIONAL PROVISIONS

- (a) Nothing herein contained shall be deemed to allow or require an interest rate which would be prohibited by law. If at any time Borrower pays interest in an amount greater than the amount required by the rate in effect pursuant to this Note at the time of such payment, any excess amount paid shall, at the sole option of the Department, or other holder hereof, either be refunded promptly to Borrower or be credited to Borrower's next payment due.
- (b) The Department shall notify Borrower in writing of sale, assignment or transfer of this note within 30 days of the date of such sale, transfer or assignment, but failure to give such notice shall not affect the Obligations of Borrower hereunder, except for amounts thereafter paid to the Department.
- (c) This Note is the Note referred to in the other Loan Documents. Capitalized terms not defined herein shall have the meanings otherwise ascribed to in other Loan Documents.
- (d) All parties to this Note, whether principal or endorser, hereby waive presentment for payment, demand, protest and notice of dishonor.
- (e) This Note shall be the joint and several obligation of all makers and endorsers, and shall be binding upon them and their successors and assigns.
- (f) This Note shall be governed by and construed in accordance with the laws of Oregon without regard to principles of choice or conflicts of law.
- (g) The exclusive venue for any and all litigation with respect to this Note or of any of the other Loan Documents shall be the Circuit Court of the State of Oregon for the County of Marion, except and only where necessary, in the U.S. District Court for the District of Oregon. The Borrower and any endorser of the Note specifically waive any objections or defense to the exclusive jurisdiction of such courts.
- (h) Payment of this Note is secured by a Security Instrument of the same date, the terms of which are by this reference, incorporated herein together with the terms of all other Loan Documents.
- (i) Time is of the essence of this Note.
- (j) In construing this Note, it is understood that the reference to any party include singular or plural, individual or other entity, as the case may be and includes successors and assigns. This clause does not, however, empower the Borrower to assign its rights or to delegate its duties.

STATUTORY NOTICE: UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY US AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION, AND BE SIGNED BY THE LENDER TO BE ENFORCEABLE.

BORROWER: City of Canby, An Oregon Municipality

By: _____

By: _____

STATE OF OREGON
OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT
SMALL COMMUNITY DEVELOPMENT INCENTIVE PROJECT FUND PROGRAM
LOAN AGREEMENT

This Small Community Development Incentive Project Fund Program Loan Agreement (the "Agreement") is made and entered into by and between the State of Oregon, acting by and through its Housing and Community Services Department (the "Department" or "Lender") and CITY OF CANBY, an Oregon MUNICIPALITY (the "Borrower"). The Department hereby, in return for certain performance from Borrower and subject to the terms and conditions hereof, is making a loan to Borrower from the Small Community Development Incentive Project Fund (the "Fund") in the amount of TWENTY FIVE THOUSAND Dollars (\$25,000) (the "Loan") to meet a portion of the costs of street improvements and restroom construction in CANBY, Oregon known as CANBY DOWNTOWN IMPROVEMENTS (the "Project").

RECITALS

WHEREAS, pursuant to ORS 458.705 through 458.740, Lender is authorized to administer the Small Community Development Incentive Project Fund Program (the "Program"); and

WHEREAS, as part of the Program, Lender is authorized to make loans from the Fund to help finance certain costs of appropriate community development projects; and

WHEREAS, the Borrower desires that the Department provide the Loan to it in the amount and for the purposes specified herein; and

WHEREAS, the Department is willing to provide such Loan from the Fund to Borrower, subject to the terms and conditions of the Program and of this Agreement; and

WHEREAS, the Program includes, without limitation, ORS 458.705 through 458.740 (the "Act"), any administrative rules, orders, policies or procedures adopted by the Department pursuant thereto, as amended from time to time, and any other applicable laws; and

WHEREAS, the Borrower is willing to comply with the terms and conditions of this Agreement, including its requirement of compliance with the Program; and

WHEREAS, the Department has reviewed the Borrower's loan application (the "Application") and determined therefrom that the Project, as accepted by the Department and as hereinafter more fully detailed, is feasible and merits financing;

NOW, THEREFORE, for good and valuable consideration, including the terms and conditions herein, the parties agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement, capitalized terms have the following meanings or the meanings previously given above:

- 1.01. Adjacent Property. “Adjacent Property” means any real property that is within 1,000 feet of any border of the Project.
- 1.02. Bankruptcy Code. “Bankruptcy Code” means the United States Bankruptcy Code, as amended, 11 U.S.C. 101, et seq.
- 1.03. Begin Production. “Begin Production” means the point in time when construction begins on the Project.
- 1.04. Closing Date. “Closing Date” means the date of the Note.
- 1.05. Disabilities Laws. “Disabilities Laws” means all applicable federal, state, and local laws and regulations related to usability of and accessibility to the Project by people with disabilities. The term “Disabilities Laws” includes, but is not limited to, the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act of 1990 and all regulations adopted thereunder.
- 1.06. Environmental Law. “Environmental Law” means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended, 42 USC §§ 9601-9675, the Resource Conservation and Recovery Act of 1976 (“RCRA”), as amended, 42 USC §§ 6901-6992 and ORS Chapters 465, 466, 468A, and 468B, and any similar federal, state or local law, statute, ordinance, rule, or regulation to and including those related to land use and zoning, energy and industrial facilities siting or occupational safety and health.
- 1.07. Event of Default. “Event of Default” means any Event of Default described in Section 6 hereof.
- 1.08. Financing Statements. “Financing Statements” means the Uniform Commercial Code financing statements, if any, required to be filed in order to perfect the security interests in personal property granted to the Department under the Security Instrument in accordance with the requirements of the Uniform Commercial Code as adopted in Oregon statutes.
- 1.09. Governmental Authority. “Governmental Authority” or “Governmental Authorities” means any federal, state, regional, county or municipal governmental agency, board, commission, officer or official whose consent or approval is required or whose regulations must be followed as a prerequisite to (a) the commencement or continuation of the Project, (b) the continued operation and occupancy of the Project, or (c) the performance of any act or obligation or the observance of any agreement, provision or condition of whatever nature contained in this Agreement or the other Loan Documents.

- 1.10. Hazardous Substances. “Hazardous Substances” means and includes all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, petroleum products or crude oil or any fraction thereof, asbestos, polychlorinated biphenyls, radioactive materials; explosives - except such explosives as are used during construction in accordance with law, and raw materials which include hazardous constituents), or other similar substances, or materials which are included now or in the future under or regulated by any Environment Law and including, without limitation, as designated pursuant to 40 CFR Part 302, 40 CFR §261.3, 40 CFR Part 355, 29 CFR § 1910.1200(c, 40 CFR Part 372, 49 USC §§ 1801-1819, 49 CFR Part 172, Section 311 of the Clean Water Act – 33 USC §§1251-1387 (33 USC § 1317), ORS 466.005(7), and amendments, orders or other rules promulgated pursuant to such laws and regulations.
- 1.11. Loan. “Loan” means the Loan described above and further detailed in Section 2.01 hereof.
- 1.12. Loan Documents. “Loan Documents” means this Agreement, the Note, the Security Instrument, the Financing Statements (if any), and all other instruments and agreements required to be executed in connection with the Loan, and any amendments or supplements to any such documents.
- 1.13. Note. “Note” means the promissory note or notes issued pursuant to Section 2.02 hereof.
- 1.14. Obligations. “Obligations” means the performance requirements, liabilities, covenants, representations, warranties, agreements and other obligations of Borrower as contained in the Loan Documents.
- 1.15. Permitted Encumbrances. “Permitted Encumbrances” means, at any particular time, (a) liens for taxes, assessments or governmental charges not then due and payable or not then delinquent, (b) liens created or contemplated by the Loan Documents, and (c) the liens, encumbrances and restrictions on the Project which are otherwise approved in writing by the Department.
- 1.16. Person. “Person” means any individual, firm, corporation, trust, association, partnership, limited liability company, joint venture, tribunal, Governmental Authority or other entity.
- 1.17. Project. “Project” means the Project described above including, without limitation, all real and personal property related thereto, the acquiring, designing, constructing, equipping, furnishing, operating and maintaining of same, and as further detailed in Exhibit A, which exhibit is attached hereto and incorporated herein by reference.
- 1.18. Security Instrument. “Security Instrument” means the deed of trust, security agreement or other security instrument securing payment of the Note and performance of the other Obligations of the Borrower including, without limitation, the Obligations under this Agreement and the other Loan Documents.
- 1.19. Other Definitions. Capitalized terms that are not defined above, but are defined elsewhere in this Agreement, shall have the same meanings given them in such provisions of this Agreement. Capitalized terms that are not defined in this Agreement, but are defined in the Security Instrument or other Loan Documents, shall have the same meanings as are given them in the Security Instrument or other Loan Documents as the context requires.

SECTION 2. THE LOAN

Section 2.01. Amount, Interest and Term of Loan. The Loan shall be a non-revolving loan and shall be in the principal sum as provided above and in the Note. The Loan shall bear interest on the total principal sum of the Note from the date of the Note and otherwise pursuant to the terms of the Note. The Loan shall mature and be subject to payment on the dates and terms specified in the Note, which Note is incorporated herein by reference.

Section 2.02. Note. The Loan shall be made, evidenced by, and repayable in accordance with the Note, payable by Borrower to the order of Lender at Lender's office, dated the Closing Date, in the principal amount provided above and in the Note, and duly executed and delivered on behalf of Borrower.

Section 2.03. Late Payments. If payment of any installment required under this Agreement, the Note, the Security Instrument or under any of the other Loan Documents is delinquent more than fifteen (15) days, Borrower shall pay a late charge of two percent (2%) of the delinquent installment the first month and an additional charge of one percent (1%) per month thereafter for the duration of the delinquency in addition to any further installments then due.

Section 2.04. Application of Payments. Lender may apply any payments to amounts then due, first to outstanding charges or costs, if any, then to outstanding accrued interest, and then to outstanding principal, or in such other order or priority as to the Lender seems appropriate.

Section 2.05. Disbursement of Loan; No Interest; Conditions Precedent. Lender will disburse the Loan to Borrower within thirty (30) days after receipt by Lender of this Agreement and the Note, both duly executed and delivered on behalf of Borrower. Lender has no obligation to pay interest to Borrower on Loan funds prior to, on, or subsequent to the date of disbursement. Notwithstanding any other provision herein, any disbursement of Loan funds by Lender is specifically conditioned upon and subject to the following conditions precedent:

(a) Representations. The representations contained in Section 4 hereof shall be true and correct on and as of the date(s) of Loan disbursement with the same force and effect as if made on and as of such date.

(b) No Default. No Event of Default shall have occurred prior to or be continuing on the date(s) of Loan disbursement.

(c) Insurance. Borrower has obtained and is currently maintaining as of the Closing Date and thereafter effective fire, casualty, general liability, and other insurance policies as are required by and satisfactory to the Department.

(d) Statutory Compliance. If Borrower is a public entity then it shall be in compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and other applicable laws that are incorporated by reference herein.

(e) Availability of Funds. Monies currently are appropriated and available to the Department within the Fund to finance the Loan.

(f) Proceedings and Documents. All proceedings taken by Borrower in connection with the Loan shall be in form and substance satisfactory to the Department and its counsel, and the Department shall have received from Borrower: (i) executed original Loan Documents; (ii) properly certified resolutions, duly authorizing the execution and delivery of the Loan Documents, and the consummation of the transaction contemplated thereby; (iii) such authorizations and other documents as the Department, in its sole discretion, may require; and (iv) such authenticated copies of any other documents as the Department may reasonably request.

(g) Environmental Disclosure Statement. If requested by the Department, Borrower shall have provided to the Department a completed environmental disclosure statement satisfactory to the Department.

(h) Environmental Audit. If requested by the Department, Borrower shall have provided to the Department at Borrower's expense a Phase I audit acceptable to the Department from an environmental engineer satisfactory to the Department. If requested by the Department, each exception noted in the audit shall be remedied by Borrower at Borrower's expense with satisfactory evidence or certification thereof, acceptable to the Department, provided to the Department prior to the Closing Date.

(i) Legal Description. Borrower shall have furnished to the Department for its approval a complete legal description of the Project.

(m) Zoning. Borrower shall have furnished to the Department evidence, satisfactory to the Department, that the relevant real property is duly and validly zoned for the construction, maintenance and operation of the Project.

SECTION 3. SPECIAL CONDITIONS OF LOAN

Section 3.01. Project Commencement; Completion; Use of Loan. Borrower specifically agrees, warrants, and covenants that:

(a) Borrower shall Begin Production of the Project no later than four months from the date of this Agreement unless an extension of this condition is approved in writing by the Department at its sole discretion.

(b) Borrower shall complete the Project to the Department's satisfaction no later than one year from the date of this Agreement.

(c) Borrower shall use the Loan for no purpose other than to pay appropriate costs incurred to complete the Project.

(d) Borrower shall submit to the Department such documentation, satisfactory to Lender in form, content and timing, that the above conditions have been satisfied. At a minimum, such documentation shall include copies of all invoices of expenses paid with Loan monies.

Section 3.02. Prepayments. Borrower shall have the right from time to time to prepay the Loan in whole or in part. All payments may be applied first to unpaid charges, if any, next to unpaid and accrued interest, and the balance, if any, to unpaid principal.

Section 3.03. Place of Payments. All payments and prepayments of principal and interest to Lender hereunder will be made to Lender at its office located at PO Box 14508, Salem, Oregon 97309-0409, or at such other place designated by Lender in writing to Borrower.

Section 3.04 Other Special Terms and Conditions Borrower shall comply with all terms and conditions listed in the Reservation Letter and in any other Loan Document which documents are incorporated herein by reference.

SECTION 4. BORROWER'S REPRESENTATIONS AND WARRANTIES

Borrower further represents, warrants, and agrees as follows:

Section 4.01. Existence and Power. Borrower has full power and authority to transact the business in which it is engaged, and full power, authority, and legal right to execute this Agreement and the other Loan Documents, and to incur and perform its obligations hereunder and under the other Loan Documents and shall provide prior to execution hereof, if required by the Department, an opinion letter of legal counsel, in form and substance satisfactory to the Department, affirming same.

Section 4.02. Authority, No Contravention. The making and performance by Borrower of this Agreement and of the other Loan Documents, and the borrowing by Borrower hereunder: (a) have been duly authorized by all necessary action of Borrower; (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Borrower's articles of incorporation, organizational certificate, or bylaws; and (c) do not and will not result in the breach of, or constitute a default or require any consent under, or result in the creation of any lien upon any properties or assets of Borrower pursuant to any other agreement or instrument to which Borrower is a party or by which Borrower or any of its properties may be bound or affected.

Section 4.03. Binding Obligation. This Agreement and the other Loan Documents have been duly executed and delivered by Borrower and will constitute the legal, valid, and binding obligations of Borrower, enforceable in accordance with their terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

Section 4.04. Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by Borrower of this Agreement, or of the other Loan Documents, or for the borrowing hereunder.

Section 4.05. Misleading Statements. No representation or warranty by Borrower in this Agreement or on any written statement, including information, data, exhibits, and other materials submitted in connection with the Loan, furnished to Lender pursuant to this Agreement, or the other Loan Documents, or in connection with the transactions contemplated by this Agreement, when taken together, contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make the statements not misleading.

Section 4.06. No Material Change. Since Borrower applied to the Department for the Loan, there has been no material adverse change in the financial condition of Borrower.

Section 4.07. Sole Borrower; Ownership. Borrower is the sole borrower under the Loan.

Section 4.08. No Litigation. No litigation or proceeding is pending or, to the knowledge of the Borrower, threatened against the Borrower or its general partners, if any, or with respect to the Project which has a reasonable probability of having a material adverse effect on its financial condition or business, or the transactions contemplated by the Loan Documents or which in any way would adversely affect the validity or enforceability of the Loan, the Loan Documents, or the ability of the Borrower to perform its obligations under this Agreement or the other Loan Documents.

Section 4.09. Conformance With Law. The Project conforms in all material respects with all applicable zoning, planning, building and Environmental Laws, Disabilities Laws, and ordinances, orders and regulations of Governmental Authorities. All necessary utilities are available to the Project. The Borrower will obtain all requisite zoning, planning, building and environmental and other permits which may become necessary with respect to the Project. The Borrower has obtained all licenses, permits and approvals necessary for the ownership, operation and management of the Project, including all approvals essential to the transactions contemplated by the Loan Documents and any other documents contemplated hereby or thereby.

Section 4.10. No Event of Default. No event has occurred and no condition exists with respect to the Borrower or the Project that would constitute an Event of Default or which, with the lapse of time, if not cured, or with the giving of notice or both, would become an Event of Default.

Section 4.11. Insurance. If requested, Borrower shall have in force and shall have delivered to the Department any policies of insurance reasonably required by the Department.

SECTION 5. COVENANTS OF BORROWER

Borrower covenants and agrees to all of the following:

Section 5.01. Performance of Obligations. Borrower shall pay its debts and perform all other Obligations under the Loan Documents when due.

Section 5.02. No Discrimination. The Project shall be developed, maintained and operated in compliance with applicable law and shall be open to all persons without discrimination as to race, color, creed, religion, national origin, sex, marital status, or status with regard to public assistance or local residency, unless otherwise specified by law or the Loan Documents.

Section 5.03. Unexpended Funds. Any Loan monies disbursed to Borrower, or any interest earned by Borrower on the Loan monies, that are not used as set out herein or which remain after the Project is complete or which are not needed for the Project shall immediately be returned to Lender, unless otherwise directed by Lender.

Section 5.04. Public Notification. Borrower shall reasonably acknowledge in one or more public ways acceptable to the Department, such as on project signs, training materials and in public statements, that the Project was funded in part with Small Community Development Incentive Project Fund moneys administered by the Department.

Section 5.05. Compliance With Laws. Borrower will comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, except to the extent and only for so long as an order of a Governmental Authority is contested in good faith and by proper proceedings.

Section 5.06. Books, Inspection. Borrower shall keep proper books of account and records on all activities associated with the Loan and the Project, including, but not limited to, invoices and canceled checks documenting the use of the Loan and reports as may be required by Lender. Borrower will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records at least until three (3) years from the date the principal balance of the Loan is zero. Borrower shall permit Lender, the Secretary of State of the State of Oregon, and their duly authorized representatives, to inspect the Project upon reasonable notice to the Borrower, and to review and make excerpts and transcripts of its books of account and other records in any way related to the Project or the Loan. Borrower shall cooperate fully with the Department, the Secretary of State, and their representatives, as requested by them, in such reviews and inspections.

Access by the Department, the Secretary of State, and their representatives to these books of account and records shall not be limited to the retention period, but shall be permitted for as long as the records are maintained.

Section 5.07. Taxes. Borrower shall pay and discharge all taxes, assessments, and governmental charges or any levies imposed upon it or upon its income or profits or upon any property belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien upon its property, provided that it shall not be required to pay any such tax, assessment, charge, levy, or claim the payment of which is being contested in good faith and by proper proceedings and in respect of which it is maintaining adequate reserves.

Section 5.08. Insurance. At all times, Borrower shall have in full force and effect the policies of insurance with respect to the Project as may be reasonably required by the Department. Policies of insurance, if any, reasonably requested by the Department shall be in form, substance, amount and with companies satisfactory to the Department and shall contain any endorsements requested by the Department. All losses payable under such policies of insurance shall be payable to the Department pursuant to a loss payable clause in form and substance satisfactory to the Department. The originals or certified copies of all such policies of insurance shall be deposited with the Department if so requested by the Department. Each insurer shall agree by endorsement upon requested policies of insurance issued by it, and/or by independent instruments furnished to the Department, that it will give the Department not less than ten (10) days' prior written notice before any such policy of insurance shall be altered or canceled, and that no act or default of Borrower or any other Person shall affect the right of the Department to recover under any such policy of insurance in case of loss or damage.

Section 5.09. Damage or Destruction. If any portion of the Project is damaged or destroyed by flood, earthquake, fire, wind, other acts of God, by Borrower, any other persons, or by any other means, the, unless the Department applies insurance proceeds otherwise or directs Borrower in writing to the contrary, Borrower shall restore the Project to the condition in which it was in prior to such damage or destruction as soon as is reasonably possible.

Section 5.10. Liens. Borrower shall not, without the prior written consent of the Department, create or suffer to be created, any mechanic's, materialmen's, laborer's, tax, statutory, construction, or other lien or charge upon the Project or any part thereof, except liens, security interests or charges approved in writing by the Department and liens for taxes or assessments not yet payable

Section 5.11. Absence of Hazardous Waste. Borrower shall (1) prevent any person or entity from releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping any Hazardous Substance into waters or onto the Project or from the Project to Adjacent Property and otherwise comport with environmental requirements under the Loan Documents, and (2) immediately notify the Department (and not later than within 15 days) in writing should Borrower become aware of any Hazardous Substance or other environmental problem or liability with respect to any of Borrower's property, including but not limited to the Project. At the Department's request, Borrower, at its own cost and expense, shall take all actions as shall be necessary or advisable for the clean-up of any such property, including but not limited to the Project, including but not limited to all removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to the Department) and shall further pay or cause to be paid at no expense to the Department all clean-up, administrative, and enforcement costs of applicable governmental authorities which may be asserted against the Project. The Department also may require other performance from Borrower consistent with the Loan Documents.

Section 5.12. Indemnification of the Department. Borrower shall (consistent with ORS chapter 180) indemnify, defend and hold harmless the Department and its officers, directors, employees, representative, agents and assigns, from any and all claims, liability, loss, damage or expense (including but not limited to reasonable attorney fees and disbursements incurred before, at trial, on appeal or in the event of threatened litigation) asserted against the Department by any person, entity, or governmental authority or arising out of or in connection with the Loan, the Loan Documents, or the development, sale or use of the Project or any part thereof, including but not limited to (1) any violation of any applicable laws and regulations, including but not limited to Environmental Laws or Disabilities Laws with respect to the Project, or any governmental or judicial claim, order or judgment with respect to the Project, or any governmental or judicial claim, order or judgement with respect to the cleanup of Hazardous Substances or any investigatory or remedial action at or with respect to the Project and (2) any breach of any of the warranties, representations, agreements or covenants contained in this Agreement. The Department may appear in any action or proceeding to defend itself against such claims, and all costs incurred by the Department in connection therewith, including but not limited to reasonable attorney fees, shall be paid by Borrower to the Department upon request without any requirement of waiting for ultimate outcome of any litigation, claim or other proceeding. Borrower shall pay such liability, losses, claims, damages and expenses to the Department as so incurred within thirty (30) days after notice from the Department itemizing the amounts incurred to the date of such notice. The Department, at its sole option, shall be entitled to settle or compromise any asserted claim against it, and such settlement shall be binding upon Borrower for purposes of this indemnification. Payment thereof by the Department or the payment by the Department of any reasonable attorney fees, judgment or claim successfully asserted against the Department shall constitute an additional principal advance under the Loan, shall bear interest at the default rate applicable to the Loan, and shall be payable upon demand.

This indemnification covenant is in addition to and not in lieu of any other indemnification provisions in this or in any other Loan Document, shall survive the repayment of the Loan and the delivery of a deed in lieu of foreclosure to the Department or any successor of the Department and shall survive any foreclosure, whether judicial or nonjudicial, of the Project by the Department or any successor of the Department, and shall be for the benefit of the Department, and any successor to the Department, as holder of any security interest in the Project, in the Loan, or otherwise, or as owner of the Project or any property of Borrower following foreclosure or the delivery of a deed in lieu of foreclosure.

Section 5.14. Information. Borrower shall: (1) give the Department written notice with ten (10) days after Borrower first receives notice of (A) any litigation or claims of any kind which might subject Borrower to any liability, whether covered by insurance or not, and (2) all complaints and charges filed by any governmental authority or any other person or entity affecting the Project or Borrower or its business which may delay or require changes in construction of the Project or impair the security of the Department or adversely affect any of the Department's rights under this Agreement; (2) promptly notify the Department of any condition or event which constitutes a breach or Event of Default under any of the Loan Documents or any other agreement or instrument executed by Borrower in connection with the Project or of any materially adverse change in the financial condition of such Borrower; and (3) furnish to the Department promptly such data and information, financial or otherwise, concerning Borrower, as from time to time may reasonably be requested by the Department.

Section 5.15. Maintenance of Legal Existence. Borrower shall maintain its present legal structure in good standing and shall not amend, modify or terminate its constituent documents, true and correct copies of which Borrower represents have been provided to the Department, without prior written approval of the Department.

Section 5.16. Expenses. Borrower shall pay to the Department upon the Department's demand: (1) all reasonable legal expenses incurred by the Department consist with the terms of the Loan Documents.

Section 5.17. Additional Acts. Borrower, at any time upon request of the Department, shall do, make execute and deliver all such additional and further acts, instruments or papers as the Department may require to assure the Department its rights hereunder and to the Project and its proceeds or other proceeds. The Department, at any time and at its option without further authorization from Borrower, may file copies of this Agreement as a financing statement.

SECTION 6. NEGATIVE COVENANTS OF THE BORROWER

Borrower further covenants and agrees that, without the express prior written approval of the Department:

Section 6.01. No Transfer. Borrower shall not sell, lease, convey or otherwise transfer or encumber any material or essential part of or interest in the Project, or permit such sale, lease, conveyance, or other transfer or encumbrance of the Project or any portion thereof, without the prior written consent of the Department, which consent the Department will not unreasonably withhold.

Section 6.02. Disposition of Personal Property. Borrower shall not sell, assign, dispose of, or otherwise transfer or encumber any personal property of the Project, including rents, or pay out any money except for reasonable operating expenses and necessary repairs. This subsection does not prohibit the sale or other reasonable disposition of personal property replaced by Borrower in the ordinary and prudent operation of the Project.

Section 6.03. Waste. Borrower shall not cause or allow any waste, destruction, demolition, diminution or abandonment of the Project.

Section 6.04. Use. Borrower shall not cause or allow any use of the Project for any purposed except those uses as originally approved by the Department.

Section 6.05. Debt or Other Obligations. Borrower shall not incur any obligations on behalf of the Project to any of Borrower's officers, directors, stockholders, members, trustees, partners, beneficiaries under a trust, or any of their nominees or relations (natural, legal, or in-fact).

Section 6.06. Substitution or Withdrawal. If Borrower is a limited partnership or a limited liability company, no general partner or principal member respectively may voluntarily withdraw from or be substituted by the partnership or company.

SECTION 7. EVENTS OF DEFAULT

Any of the following events shall constitute an Event of Default, namely:

(a) If Borrower fails to perform or observe any of its covenants, warranties, representations, agreements, or other Obligations contained herein or in the other Loan Documents; or

(b) If any representation or warranty with respect to current or historical information made to the Department herein or in any certificate, notice, report, or other instrument or document furnished to Lender hereunder or in connection herewith proves to have been incorrect in any material respect when made; or

(c) If any authorization, consent, license, approval, filing, or registration now or hereafter necessary to enable Borrower to comply with its Obligations hereunder or under the other Loan Documents fails to be timely issued or granted, or expires or lapses and is not forthwith renewed or extended, or is revoked, withdrawn, withheld or modified so as to materially interfere with such compliance; or

(d) If Borrower (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of 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) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated a bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under such Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing; or

(e) If a proceeding or case is commenced, without the application or consent of Borrower seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Borrower, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Borrower or of all or any substantial part of its assets, or (iii) similar relief in respect to Borrower under any law relating to insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed; or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Borrower is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); or

(f) If, except as may be permitted under the Loan Documents, Borrower effects a change of ownership, a change of control of its business, or relocates its business conducted at the Project location without the prior written consent of Lender.

SECTION 8. REMEDIES UPON AN EVENT OF DEFAULT

If an Event of Default shall occur and continue for 30 days or for such lesser period as the Department may provide by written notice or as otherwise allowed in the Loan Documents, the Department or a trustee appointed pursuant to the Loan Documents may, without further notice, exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available at law, in equity, or pursuant to the Loan Documents or otherwise:

- (1) **Acceleration.** The Department may declare all or any portion of the Obligations immediately due and payable.
- (2) **Receiver.** If the Loan is secured by a trust deed on the Project in favor of the Department, the Department may have a receiver appointed for the Project. The Department shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Project exceeds the amount of the indebtedness secured by the Trust Deed. Employment by Trustee or the Department shall not disqualify a person from serving as receiver. Borrower consents to the appointment of a receiver at the Department's option and waives any and all defenses to such an appointment.
- (3) **Possession.** If the Loan is secured by a trust deed on the Project in favor of the Department, the Department may, either through a receiver or as a lender-in-possession, enter and take possession of all or any part of the Project and use, operate, manage, and control it as the Department shall deem appropriate in its sole discretion. Upon request after an Event of Default, Borrower shall peacefully relinquish possession and control of the Project to the Department or any receiver appointed under this Agreement or otherwise under the Loan Documents.
- (4) **Rents.** If the Loan is secured by a trust deed on the Project, the Department may revoke Borrower's right to collect the rents, and may, either itself or through a receiver, collect the same. The Department shall not be deemed to be in possession of the Project solely by reason of exercise of the rights contained in this subsection (4).

- (5) Specific Performance or Other Relief. The Department may bring an action for specific performance, for injunction, for the appointment of a receiver to take over and operate the Project, or for any other appropriate relief with respect to the Loan, the Project, any of the Loan Documents, or otherwise.

SECTION 9. MISCELLANEOUS

Section 9.01. No Implied Waiver, Cumulative Remedies. No failure on the part of Lender to exercise, and no delay in exercising, any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

Section 9.02. Governing Law; Venue; Consent to Jurisdiction. This Agreement and the other Loan Documents shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. The courts of the State of Oregon (and to the degree possible, the courts of the State of Oregon in Marion County) shall have exclusive jurisdiction over any action brought by or against the Department under this Agreement, under the other Loan Documents, or otherwise with respect to the Loan or the Project. The Borrower hereby consents to such exclusive jurisdiction and waives any and all objections it might have thereto.

Section 9.03. Notices. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery or first class mail, postage prepaid, at the addresses specified below, or at such other addresses as may be specified in writing by the Department or the Borrower:

To the Department: Oregon Housing and Community Services
1600 State Street
PO Box 14508
Salem, Oregon 97309-0409
Attention: Loren Shultz

To the Borrower: CITY OF CANBY
An Oregon MUNICIPALITY
182 N. Holly, Box 930
CANBY, OR 97013
Attention: John R. Williams

Section 9.04. Amendments. This Agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties. Such written modification will be made a part of this Agreement and subject to all other provisions of this Agreement.

Section 9.05. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.06. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, Borrower, and their respective successors and assigns, except that Borrower may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Lender.

Section 9.07. Titles and Subtitles. The titles in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.

Section 9.08. Counterparts. This Agreement may be executed in more than one counterpart, which, taken together, shall constitute one and the same instrument, and either party hereto may execute this Agreement by signing any such counterpart.

Section 9.09. Entire Agreement. This Agreement, the other Loan Documents and any agreements, instruments or exhibits executed pursuant thereto, constitute the entire agreement between the parties. Any waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given.

Section 9.10. Time is of the Essence. Borrower agrees that time is of the essence under this Agreement.

Section 9.11 No limitations on Actions of Department in Exercise of its Governmental Powers
Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of the Department in the exercise of its governmental powers. It is the express intention of the parties hereto that the Department shall retain the full right and ability to exercise its governmental powers with respect to the Borrower, the Project, the Loan Documents, and the transaction contemplated by this Agreement to the same extent as if it were not a party to this Agreement, and in no event shall the Department have any liability in contract arising under this Agreement by virtue of any exercise of its governmental powers.

STATUTORY NOTICE: UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY THE DEPARTMENT AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS, WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THE LENDER TO BE ENFORCEABLE.

Borrower acknowledges receipt of a copy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives this _____ day of _____, 2003.

LENDER

STATE OF OREGON acting by and through
its HOUSING and COMMUNITY SERVICES
DEPARTMENT

By: _____

Title: _____

BORROWER:

CITY OF CANBY
An Oregon MUNICIPALITY

By: _____

Title: _____

STATE OF OREGON)

)ss:

County of Marion)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by

_____, who is a _____ of the Department, on

behalf of the Department.

Notary Public for the State of Oregon

My commission expires: _____

STATE OF OREGON)

)ss:

County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by

_____, who is a _____ of _____, on behalf of the
Borrower.

Notary Public for the State of Oregon

My commission expires: _____

Exhibit A

Project Description (Please include general nature of all work to be done and the time frame planned.)

Incorporated by reference from the Application # 00000122a and subsequent approved amendments.

Project legal description (Please provide or attach a legal description of the land upon which the project will take place.)

NA

STATE OF OREGON

SMALL COMMUNITY DEVELOPMENT INCENTIVE FUND PROGRAM

GRANT AGREEMENT

This Small Community Development Incentive Project Fund Program (SCIF) Grant Agreement (the "Agreement") is made and entered into by and between the State of Oregon, acting by and through its Housing and Community Services Department (the "Department" or "OHCS"), and City of Canby, ("Grantee"). The Department hereby, in return for certain performance from Grantee and subject to the terms and conditions hereof, is making available to Grantee a conditional grant from the Small Community Development Incentive Project Fund (the "Fund") in the amount of Twenty Five Thousand Dollars (\$25,000) (the "Grant") to partially meet the costs of Canby Downtown Improvements (the "Project") in Canby, Oregon.

RECITALS

WHEREAS, Grantee desires that the Department provide the Grant to it in the amount and for the purposes specified herein; and

WHEREAS, the Department is willing to provide such Grant to Grantee, subject to the terms and conditions of this Agreement and of the Small Community Development Incentive Project Fund Program (the "Program"); and

WHEREAS, the Program includes, without limitation, ORS 458.705 through 458.740 (the "Act"), any administrative rules, orders, policies or procedures adopted by the Department pursuant thereto, as amended from time to time, and any other applicable laws; and

WHEREAS, Program grants are financed from the Fund, in part, by federally taxable bond proceeds (backed by Oregon Lottery revenues), which bonds must be issued and proceeds used in accordance with governing federal and state laws, which laws are hereby deemed applicable to the Program; and

WHEREAS, Grantee is willing to comply with the terms and conditions of this Agreement, including its requirement of compliance with the Program; and

WHEREAS, the Department has reviewed the Grantee's grant application (the "Application") and determined therefrom that the Project, as accepted by the Department and as hereinafter more fully detailed, is feasible and merits funding;

NOW, THEREFORE, the parties, for good and valuable consideration, including the terms and conditions herein, agree as follows:

1. Agreement. This Agreement includes the following, which, in the event of inconsistency between any of the terms, if any, are to be interpreted in the following order of precedence:

- A. This Agreement, without any Exhibits;
- B. The Project Scope of Work, attached as Exhibit A;
- C. The Special Conditions of Award, attached as Exhibit B, if any;
- D. The Grantee's Application, as accepted by the Department (incorporated herein by reference).

2. Grant. In reliance upon the Grantee's Application, as accepted by the Department, and as conditioned herein, the Department approves the Grant of \$25,000 to Grantee, the use of which by

Grantee shall be, and is, expressly limited to reimbursement of appropriate costs of Project activities as described in Exhibit A. The use of Grant funds also shall be, and is, subject to the Special Conditions in Exhibit B, if any.

Subject to the terms and conditions of this Agreement, the Department will disburse the Grant to Grantee on an expense reimbursement basis. Grantee shall provide the Department from time to time with expense reimbursement requests and attached invoice documentation, all in form and content satisfactory to the Department in its sole discretion. The Department will then review and approve or disapprove all or part of each reimbursement request. Upon approval of any part of a reimbursement request from Grantee, the Department will thereafter, to the extent of available Grant funds, provide reimbursement payment to Grantee of such approved expenses.

3. Project Completion Date. The Project activities described in Exhibit A must be completed by Grantee, and all expense reimbursement requests (with accompanying documentation) provided to the Department, within one year from the date of this Agreement unless otherwise allowed by the Department.

4. Grantee's Covenants – Conformance with Agreement, Program and other Applicable Laws.

- A. Grantee shall comply, and shall cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with the terms and conditions of this Agreement, the Program, and all otherwise applicable laws, (including, without limitation, all applicable federal, state and local statutes, rules, regulations, ordinances and orders affecting the Project or activities related thereto).
- B. If Grantee or a relevant subgrantee or assignee is a public entity procuring property or services to be paid for in whole or in part with Fund moneys or other public moneys, Grantee shall comply with all laws related to the use and management of such funds by such an entity including, but not limited to Chapters 244, 279 and 295 of the Oregon Revised Statutes, and Chapters 137 (Divisions 030, 035, and 040) and 125 (Divisions 300, 310, and 360) of the Oregon Administrative Rules. The Department's performance under this Agreement is expressly conditioned upon the Grantee's compliance with applicable laws including, but not limited to the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555.

Where applicable, the state's model rules for public bidding and public contract exemptions shall govern procurements under this Agreement if the Grantee or its public contract review board does not adopt those, or similar, rules. If the Grantee or its public contract review board has validly adopted similar rules, those similar rules shall apply.

5. Other Covenants of Grantee.

- A. Grantee shall maintain in an organized format available for inspection and copying by the Department all records relating to this Agreement, the Program, the Project, or Grantee's receipt or use of Grant funds. Records subject to this requirement include, without limitation, all records related to performance by or on behalf of Grantee of activities or obligations arising from the Agreement or the Program as contained in Exhibits A and B, or in the Application or otherwise. Grantee shall prepare and maintain such records in accordance with generally accepted accounting principles ("GAAP") including, where applicable, principles for state and municipal corporations established by the National Committee on Governmental Accounting in the publication entitled "Governmental Accounting, Auditing and Financial Reporting (GAAFR)."
- B. Grantee specifically acknowledges and agrees that the Department, the Oregon Secretary of State's Office, and their duly authorized representatives, have the right hereunder of

reasonable access to the Project and to the above-described records for inspection, copying or other purposes determined by them to be appropriate. Grantee shall retain and keep accessible for inspection and copying all such records or other property for a minimum of three (3) years from closeout of the Grant, for such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever period of time is longer.

6. Termination and Remedies.

A. The Department may terminate this Agreement, without further liability, immediately upon notice to the Grantee:

- (1) If Grantee fails to perform or breaches any of the terms of this Agreement; or
- (2) If the Grantee is unable or fails to commence the Project within four (4) months from the date of this Agreement, unless an extension is allowed by OHCS at its sole discretion;
- (3) If the Department loses the authority to administer the Program or Grant, is determined by its counsel or otherwise as lacking the authority to administer the Program or Grant, or fails to receive or loses necessary funding, appropriations, limitations or other expenditure or position authority sufficient to carry out the terms of this Agreement; or
- (4) If federal or state laws, regulations or guidelines are modified or interpreted in such a way that the Project cannot be funded with federally taxable moneys, or the Grant or expense reimbursement payments to be made hereunder are invalidated or otherwise prohibited.

B. The Department may exercise any one or more of the following remedies, including by the imposition of sanctions, with or without terminating this Agreement, if Grantee is unable or fails timely and satisfactorily to comply with or perform any obligations hereunder including, without limitation, obligations arising under this Agreement (including any exhibits), the Program, or otherwise:

- (1) Withhold from Grantee all or part of any unallocated (unpaid) Grant funds;
- (2) Require the return from Grantee of any or all unexpended Grant funds received by Grantee;
- (3) Require Grantee to repay any or all expended Grant funds;
- (4) Cancel or suspend the Grant;
- (5) Declare the Grantee ineligible to receive other Program grants; or
- (6) Take any other action available pursuant to this Agreement, available at law, or available otherwise.

7. Miscellaneous

A. No Third-Party Beneficiaries. Department and Grantee are the only parties to this

Agreement except to the extent the Oregon Secretary of State's Office is a third-party beneficiary under Paragraph 5. Only these parties are entitled to enforce any term of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly, indirectly or otherwise, to third persons except the Oregon Secretary of State's Office, and then only as relevant to enforcement of Paragraph 5.

- B. Governing Law; Venue. This Agreement is and shall be governed by the laws of the State of Oregon. The courts of the State of Oregon (and to the degree possible, the courts of the State of Oregon in Marion County) shall have exclusive jurisdiction over any action brought by or against the Department under this Agreement. The Grantee hereby consents to such exclusive jurisdiction and venue, and hereby waives any and all objections it might have thereto.
- C. Notice. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery or first class mail, postage prepaid, at the addresses specified below, or at such other addresses as may be specified from time to time in writing by the Department or the Grantee:

To the Department: Oregon Housing and Community Services
PO Box 14508
Salem, Oregon 97309-0409
Attention: Housing Resources Section

To the Grantee: City of Canby
182 N. Holly, Box 930
Canby, OR 97013
Attention: John R. Williams

- D. Entire Agreement; No Waiver or Modification. This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and unless all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.

- E. Authority. Grantee hereby represents, warrants and certifies that:

- (1) It possesses legal authority to apply for and accept the terms and conditions of the Grant and to carry out the proposed Project;
- (2) Its governing body, if any, has duly authorized the filing of the application, including all understandings and assurances contained therein;
- (3) The person identified as the official representative of the Grantee in the application is duly authorized to act in connection therewith and to provide such additional information as may be required. The Grantee's official representative has sufficient authority to make all certifications on its behalf;
- (4) This Agreement does not and will not violate any provision of any applicable law, rule, regulation or order of any court, regulatory commission, board or administrative

agency applicable to the Grantee or any provision of the Grantee's organic laws or documents;

(5) This Agreement has been duly executed by an official representative of Grantee, delivered by Grantee, and will constitute the legal, valid and binding obligations of the Grantee, enforceable in accordance with their terms.

- F. Cross Default. A breach of an obligation under the Program or of applicable laws shall be deemed a breach or default under this Agreement.
- G. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.
- H. Construction. The parties to this Agreement acknowledge that each party has participated in the drafting and revision of this Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of the foregoing or of any exhibit to this Agreement.
- I. No Limitations on Actions of Department in Exercise of its Governmental Powers. Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of the Department in the exercise of its governmental powers. It is the express intent of the parties hereto that the Department shall retain the full right and ability to exercise its governmental powers with respect to the Grantee, this Agreement, the Program, the Project, or otherwise, to the same extent as if it were not a party to this Agreement, and in no event shall the Department have any liability in contract arising under this Agreement by virtue of any exercise of its governmental powers.
- J. Independent Contractor. Grantee acknowledges and agrees that it is acting in its own independent capacity under this Agreement and not as an agent or subcontractor for the Department. Grantee assumes full responsibility for its own actions and shall provide for its own insurance and other compliance responsibilities, including providing for its own workers' compensation and other insurance coverage, as needed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

THE DEPARTMENT:

GRANTEE:

THE STATE OF OREGON, acting by and through
its HOUSING AND COMMUNITY SERVICES
DEPARTMENT

City of Canby

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATE OF OREGON)
)ss:
County of Marion)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, who is a _____ of the Oregon Housing and Community Department, on behalf of the Department.

Notary Public for the State of Oregon
My commission expires:_____

STATE OF OREGON)
)ss:
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, who is a _____ of _____, on behalf of the Grantee.

Notary Public for the State of Oregon
My commission expires:_____

Exhibit A

PROJECT SCOPE OF WORK

To Be Completed by Grantee and Returned with Signed Copy

Exhibit B

SPECIAL CONDITIONS OF AWARD

Special conditions pertinent to this grant are set forth below:

None

EXHIBIT A

PROJECT SCOPE OF WORK

Canby received SCIF funding for two projects, as described below:

- **2nd Avenue/N. Ivy Street.** This project includes a complete reconstruction of all road surfaces and sidewalks on five blocks in downtown Canby. The project includes decorative stonework, vintage street lights, planters, landscaping, pedestrian bumpouts, benches, bike racks, and other amenities.
- **Wait Park restrooms.** This project includes demolition of the existing restroom facilities and construction of a completely new building. The project will provide ADA restrooms, a water fountain and a maintenance and storage room.