



AGENDA

CANBY CITY COUNCIL REGULAR MEETING

March 2, 2011

7:30 PM

Council Chambers

155 NW 2nd Avenue

Mayor Randy Carson

Council President Walt Daniels

Councilor Richard Ares

Councilor John Henri

Councilor Brian Hodson

Councilor Jason Padden

Councilor Greg Parker

WORK SESSION

6:00 P.M.

City Hall Conference Room

182 N Holly

This Work Session will be attended by the Mayor and City Council to discuss City funds and GASB 54 requirements.

CITY COUNCIL REGULAR MEETING

1. CALL TO ORDER

A. Pledge of Allegiance and Moment of Silence

2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

(This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Each citizen will be given 3 minutes to give testimony. Citizens are first required to fill out a testimony/comment card prior to speaking and hand it to the City Recorder. These forms are available by the sign-in podium. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter.)

4. MAYOR'S BUSINESS

5. COUNCILOR COMMENTS & LIAISON REPORTS

6. CONSENT AGENDA

(This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may be discussed if it is pulled from the consent agenda to New Business.)

A. Approval of Minutes of the February 16, 2011 City Council Work Session and Regular Meeting

B. Reappointments to the Transit Advisory Board

Pg. 1

C. Amendment to City Attorney Contract

Pg. 3

7. RESOLUTIONS & ORDINANCES

- A. Res. 1088, Delegating the Authority to Serve as the Local Contract Review Board to the Canby Urban Renewal Agency (URA) for All Matters in Which the URA is Required to Exercise Public Contracting Authority for its Projects Pg.4
- B. Res. 1089, Accepting a Loan of \$417,927 from Business Oregon to Establish Bancroft Bonding for Improvements to South Walnut Street in the Canby Pioneer Industrial Park and Authorizing the City Administrator to Execute the Contract and Loan Agreement Pg. 5
- C. Ord. 1341, Creating a New Chapter in Title 2 of the Canby Municipal Code and Amending Sections of Title 16 to Create a Public Art Mural Program (2nd Reading) Pg. 69

8. NEW BUSINESS

9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

10. CITIZEN INPUT

11. ACTION REVIEW

12. EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation

13. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer at 503.266.4021 ext. 233. A copy of this Agenda can be found on the City's web page at www.ci.canby.or.us. City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503.263.6287.

**CITY OF CANBY
APPLICATION
BOARD/COMMITTEES/COMMISSIONS/COUNCIL**

Date: 2/2/2011
 Name: Richard Ball Occupation: retired HS Teacher
 Home Address: Canby, OR 97013
 Employer: _____ Position: _____
 Daytime Phone: _____ Evening Phone: ← same
 E-Mail Address: _____

For which position are you applying? Canby Area Transit Advisory Comm.

What are your community interests (committees, organizations, special activities)?
served on Police Chief Search Committee
SW Canby Neighborhood Assn. chairman 2008-2010
has been on CAT Advisory Comm. since it was Founded

Experience and educational background: HS Diploma, DuFur (OR) HS, 1964;
BS Degree (Math), Portland St. Univ., 1968;
MS Degree (Math Teaching), Portland St. Univ., 1972
30 yr. career math teaching; L.A. School Dist., 1 yr.; Wheeler HS
(Fossil, OR) 1 yr; PSU Grad. Asst., 2 yr.; St. Paul (OR) HS, 6 yrs;
 Reason for your interest in this position: Canby HS, 21 yrs -- retired Jun 1999

Have been on the CAT advisory comm. since its founding.
I enjoy serving in my community and seeing that the
excellent CAT service continues.

List any other City or County positions on which you serve or have served:
Police Chief Search Comm. (ended upon selection of Bret Smith)
SW Canby Neighborhood chairman 2008-2010
I mentor a Canby middle school boy in the Big Brother - Big
 Information on any special membership requirements: Sister Foundation.

Referred by (if applicable): _____

Feel free to attach a copy of your resume and use additional sheets if necessary

THANK YOU FOR YOUR WILLINGNESS TO SERVE CANBY RECEIVED

Please return to: City of Canby
Attn: City Recorder
182 N Holly Street
PO Box 930
Canby, OR 97013

FEB 04 2011

CITY OF CANBY

Phone: 503.266.4021 Fax: 503.266.7961 Email: Scheaferk@ci.canby.or.us

Note: Please be advised that this information may be made available to anyone upon a public records request and may be viewable on the City's web site. 12-4-07

**CITY OF CANBY
APPLICATION
BOARD/COMMITTEES/COMMISSIONS/COUNCIL**

Date: 2-10-11
 Name: SANDRA CRANSTON Occupation: HR CONSULTANT
 Home Address: _____
 Employer: TTC REGENCY GROUP Position: HR BENEFITS CONSULTANT
 Daytime Phone: _____ Evening Phone: _____
 E-Mail Address: _____

For which position are you applying? CAT ADVISORY COMMITTEE MEMBER

What are your community interests (committees, organizations, special activities)?
MEMBER, CAT ADVISORY COMMITTEE
MEMBER, REVEREND EDUCATION TRUSTEE, ATKINSON MEMORIAL CHURCH

Experience and educational background:
AS, EASTERN OREGON UNIVERSITY
PHR
EXPERIENCE ON COMMITTEE; WORKED AT TRIMET FOR 4 YEARS

Reason for your interest in this position: DEDICATED PUBLIC TRANSIT
USER, CONCERN FOR A WELL-RUN, EFFICIENT TRANSIT AGENCY.

List any other City or County positions on which you serve or have served:
NO OTHER POSITIONS, ONLY CAT COMMITTEE

Information on any special membership requirements: _____

Referred by (if applicable): _____

Feel free to attach a copy of your resume and use additional sheets if necessary

THANK YOU FOR YOUR WILLINGNESS TO SERVE CANBY

Please return to: City of Canby
Attn: City Recorder
182 N Holly Street
PO Box 930
Canby, OR 97013

Phone: 503.266.4021 Fax: 503.266.7961 Email: Scheaferk@ci.canby.or.us

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12-4-07

AMENDMENT TO EMPLOYMENT AGREEMENT
City Attorney

This Amendment, dated March 2, 2011, to the Employment Agreement dated July 16, 2003 between the City of Canby, Oregon, a Municipal Corporation, and John H. Kelley, employee, is intended to memorialize negotiations between the parties regarding vacation benefits to increase the maximum accrual limit to seven hundred (700) hours for said employee, John H. Kelley.

Paragraph C of Section 6B, entitled "Benefits", of the current employment agreement is stricken as written and replaced with the following language:

"Employee shall be entitled to currently accrued sick leave and vacation days as of the date of the contract. In the future, Employee may accrue vacation and sick leave and shall be paid for unused sick leave and vacation leave upon retirement or termination with the maximum accrual limit of **seven hundred (700)** hours of vacation and five hundred (500) hours of sick leave."

All other terms and conditions of the employment agreement remain in full force and effect, except as previously amended.

IN WITNESS WHEREOF, the undersigned have executed this Amendment to Employment Agreement the day and year first written above.

CITY OF CANBY:

Randy Carson,
Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

John H. Kelley,
Employee

RESOLUTION NO. 1088

A RESOLUTION APPOINTING THE CANBY URBAN RENEWAL AGENCY (URA) TO SERVE AS THE LOCAL CONTRACT REVIEW BOARD (LCRB) FOR ALL MATTERS IN WHICH THE URA IS REQUIRED TO EXERCISE PUBLIC CONTRACTING AUTHORITY FOR ITS PROJECTS.

WHEREAS, the City of Canby (CITY) currently acts as the Local Contract Review Board (LCRB) for the Canby Urban Renewal Agency (URA) in public contracting matters; and

WHEREAS, the CITY, pursuant to ORS 279A.060 and ORS 279A.075, now wishes to authorize the URA to serve as the LCRB for public contracting matters associated with the business of the URA; and

WHEREAS, the URA wishes to act in the capacity of LCRB for future URA matters; and

WHEREAS, the CITY will retain its authority under ORS 279A.060 to act as the LCRB for matters associated with the business of the CITY;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City of Canby that the Canby URA is authorized and appointed to act as the LCRB for all public contracting matters associated with the business of the URA and shall have all the powers granted by state and local law to act in such capacity; and

BE IT FURTHER RESOLVED that the CITY shall continue to act as the LCRB for all public contracting matters associated with the business of the City.

This resolution shall take effect March 2, 2011.

ADOPTED this 2nd day of March, 2011 by the City of Canby.

Randy Carson
Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder



M E M O R A N D U M

TO: *Honorable Randy Carson and City Council*
FROM: *Sue Engels, Finance Director*
DATE: *February 22, 2011*
THROUGH: *Greg Ellis, City Administrator*

Issue: Approval of a \$417,927 loan at 5% for a term of 10 years from Business Oregon to fund the local improvement district for South Walnut Street improvements.

Synopsis: After receiving an agreement from OECDD (now Business Oregon) to loan to the City an amount equal to the unpaid principal balances of the assessments to benefitted properties of the Walnut Street improvements, the Urban Renewal Agency paid for the project. It was completed in September 2010.

The Urban Renewal Agency will receive the proceeds of the loan and an ODOT Immediate Opportunity grant. It has already received \$241,734 from the owners of benefitted properties who chose to pay their assessments in full.

The owners who chose to finance their assessments have executed contracts with the City that call for payment of their loans over 10 years at an interest rate of 6.5%. These property owners are free at any time to pay off their remaining assessment balance with no penalty.

Recommendation: Staff recommends that Council adopt Resolution 1089.

Attached: Resolution 1089
Exhibit "A"

RESOLUTION NO. 1089

A RESOLUTION ACCEPTING A LOAN OF \$417,927 FROM BUSINESS OREGON TO ESTABLISH BANCROFT BONDING FOR IMPROVEMENTS TO SOUTH WALNUT STREET IN THE CANBY PIONEER INDUSTRIAL PARK AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE THE CONTRACT AND LOAN AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, the City has formed a local improvement district and assessed the benefitted property owners for the improvements to South Walnut Street in the Canby Pioneer Industrial Park; and

WHEREAS, some of the benefitted property owners have paid in full their assessments, and the remaining benefitted property owners have executed agreements to pay their assessments over a ten-year period; and

WHEREAS, Business Oregon has agreed to loan to the City \$417,927 to finance a local improvement district for those benefitted properties whose owners chose the option of paying their assessment over 10 years, now therefore,

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

1. That the attached contract and loan agreement, marked as Exhibit "A" and by this reference incorporated here, are adopted between the City and Business Oregon.
2. That the City Administrator is directed to take the necessary action to implement the terms of the said contract and loan agreement.
3. That the City Administrator is authorized to sign the contract and loan agreement on behalf of the City.

ADOPTED this 2nd day of March, 2011, by the Canby City Council.

Randy Carson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

Exhibit "A"

STATE OF OREGON SPECIAL PUBLIC WORKS FUND FINANCIAL ASSISTANCE AWARD CONTRACT

"Canby Pioneer Industrial Park South Walnut Street Improvements"

This Contract, number X09004, dated as of the Effective Date (as defined below), is made by the STATE OF OREGON, ACTING BY AND THROUGH ITS BUSINESS DEVELOPMENT DEPARTMENT ("State") and the City of Canby ("Borrower").

SECTION 1 CERTAIN DEFINITIONS

As used in this Contract, the following terms shall have the meanings below, unless the context requires otherwise:

"Act" means ORS 285B.410 through 285B.482, as amended.

"Contract" means this financial assistance award contract between the State and the Borrower, including any exhibits, schedules and attachments thereto, as amended from time to time.

"Costs of the Project" has the meaning ascribed thereto in the Loan Agreement.

"Default" means an event which with notice or lapse of time or both would become an Event of Default as set out in Section 6 hereof.

"Event of Default" means any of the events described in Sections 6(A) through 6(C) of this Contract.

"Loan" has the meaning ascribed thereto in Section 2(A) of this Contract.

"Loan Agreement" means that certain loan agreement, substantially in the form of Exhibit 1 hereto, entered into between the State and the Borrower dated as of the date hereof, as such agreement may from time to time be amended or restated.

"Note" means that certain promissory note, substantially in the form of Exhibit F to the Loan Agreement, executed by the Borrower in favor of the State, as it may from time to time be amended, extended, renewed or restated.

"Project" has the meaning ascribed thereto in the Loan Agreement and described in Exhibit B of the Loan Agreement.

"Project Completion Date" has the meaning ascribed thereto in the Loan Agreement.

"Special Public Works Fund" or "Fund" means the Special Public Works Fund created by ORS 285B.455(1).

SECTION 2 FINANCIAL AWARD

- A. Amount of Loan. Subject to the terms and conditions of this Contract and the Loan Agreement, the State agrees to make to Borrower, and Borrower agrees to accept from the State, a non-revolving loan in the maximum aggregate principal amount of \$417,927 (the "Loan").
- B. [Reserved]
- C. Availability of Funds. The Loan is subject to the availability of moneys in the Fund.

Exhibit "A"

- D. Change in the Act. The State shall not be obligated to provide the Loan or make any disbursements under this Contract or the Loan Agreement if, on or prior to the time the Borrower satisfies all conditions for disbursement of the Loan proceeds under the Loan Agreement, there has been a change in the Act so that the Project is no longer eligible for the financial assistance authorized by this Contract or the Loan Agreement.
- E. Disbursements. The Borrower must submit disbursement requests for the Loan on a State-approved disbursement request form. The State's obligation to make, and the Borrower's right to request, disbursements under the Loan Agreement shall terminate on September 30, 2011.

SECTION 3

USE OF AWARD – ELIGIBLE ACTIVITIES

The use of the Loan is expressly limited to the Project activities described in Exhibit B of the Loan Agreement. The use of these funds is also expressly subject to the terms set out in Exhibit A to the Loan Agreement.

SECTION 4

REPRESENTATIONS OF THE BORROWER

The Borrower represents and warrants to the State that:

- A. Costs of the Project. A reasonable estimate of the Costs of the Project is \$872,061.
- B. Other Funds. Before any disbursement of funds under the Loan Agreement, Borrower shall submit documentation to the State that, in addition to the Loan, all funds necessary to complete the Project have been secured.
- C. Binding Obligation. This Contract has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms.

SECTION 5

COVENANTS OF BORROWER

The Borrower covenants as follows and understands that the requirements of the covenants may only be waived or amended by a written instrument executed by the State:

- A. Compliance with Laws. The Borrower will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority that relate to the construction of the Project and the operation of any utility system of which the Project is a component. In particular, but without limitation, the Borrower shall comply with the following, as applicable:
1. State procurement regulations found in the Oregon Public Contracting Code, ORS Chapters 279A, 279B and 279C.
 2. State labor standards and wage rates found in ORS Chapter 279C.
 3. State municipal finance and audit regulations found in ORS Chapter 297.
 4. State regulations regarding industrial accident protection found in ORS Chapter 656.
 5. State conflict of interest requirements for public contracts.
 6. State environmental laws and regulations enacted by agencies listed in Exhibit 2 hereto.
 7. Oregon Administrative Rules, Chapter 123, Division 42, as amended from time to time at the discretion of the State.
 8. State municipal bonding requirements found in the Act and in ORS Chapters 280, 284, 286A, and 287A.

Exhibit "A"

- B. ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses...” The Oregon Business Development Department encourages Borrower in any contracting activity to follow good faith efforts as described in 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 Business Development Department 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/>.
- C. [Reserved]
- D. Drawings. The Borrower shall obtain as-built drawings for all facilities constructed with the proceeds of the Loan. The Borrower shall obtain certification of completion per the as-built drawings from the Project engineer.
- E. Operation and Maintenance of the Project. By the Project Close-Out Deadline, the Borrower will have a program, documented to the satisfaction of the State, for the on-going maintenance, operation and replacement, at Borrower’s sole expense, of the public works service system, if any, of which the Project is a part. This program should include a plan for generating revenues sufficient to assure the operation, maintenance and replacement of the public works system, if any of which the Project is a part during the service life of the Project.
- F. Signs and Notifications. Borrower shall post a sign at the Project site or, if more than one site is included in the Project, at a site visible to the general public acknowledging the participation of the State. The sign shall be installed prior to construction and shall be maintained for the duration of the construction period. The State shall provide the sign to Borrower upon request.
- G. [Reserved]
- H. Insurance. Except as may be provided in Exhibit A of the Loan Agreement, in the event the Project, or any portion thereof, is destroyed and the Project is insured, any insurance proceeds shall be paid to the State and shall be applied to prepay the outstanding balance of the Loan, as provided in Section 2.04 of the Loan Agreement, unless the State agrees in writing that the insurance proceeds shall be used to rebuild the Project.
- I. Indemnity. To the fullest extent permitted by law, the Borrower shall indemnify the State and its officers, employees and agents against any claims, suits, actions, losses, damages, liability, costs and expenses of any nature whatsoever resulting from or for damage to life or property arising from the actions of Borrower or its subcontractors, agents or employees.
- J. Sales, Leases and Encumbrances. Borrower may not sell, lease, exchange, transfer or otherwise dispose of any property constituting a part of the Project or any interest therein unless it is worn out, obsolete or, in the reasonable business judgment of the Borrower, no longer useful in the operation of the Project, except if (i) the State consents thereto in writing upon ninety (90) days’ prior written notice to the State; (ii) Borrower assigns the Loan Agreement and the other Loan Documents pursuant to Article V of the Loan Agreement; and (iii) State shall not consent to any such sale, lease, exchange, abandonment, transfer or other disposition unless the State shall have received an opinion of Bond Counsel (as defined in the Loan Agreement) to the effect that such sale, lease, exchange, abandonment or other disposition complies with the Act.

Except as may be provided in Exhibit A of the Loan Agreement, proceeds of such sale, lease, exchange, transfer or other disposition which are not used to replace property that is part of the Project shall be paid to the State and shall be applied as a prepayment to the outstanding balance of the Loan, as provided in Section 2.04 of the Loan Agreement.

Exhibit "A"

- K. Condemnation Proceeds. Except as may be provided in Exhibit A of the Loan Agreement, in the event the Project or any portion thereof is condemned, any condemnation proceeds shall be paid to the State and applied to prepay the outstanding balance of the Loan in accordance with Section 2.04 of the Loan Agreement.
- L. [Reserved]
- M. Professional Services. Borrower shall ensure that any service providers retained for their professional expertise are certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.
- N. Economic Benefit Data. The State may request that the Borrower submit specific requested data on the economic development benefits of the Project, from the date hereof until six (6) years after the Project Completion Date. Upon such request by the State, the Borrower shall, at the Borrower's expense, prepare and file the requested data within the time specified in the request. Data shall document specific requested information such as any new direct permanent or retained jobs resulting from the Project and other information to evaluate the success and economic impact of the Project.

SECTION 6 DEFAULT

Time is of the essence of this Contract. If any of the following Events of Default occurs and is continuing, namely:

- A. Any representation with respect to current or historical information made to the State herein or in any other pertinent documents, certificates and reports relied upon by the State in gauging the progress of the Project, compliance with the requirements of the Act and performance of duties by the Borrower is untrue in any material respect; or
- B. Other than as provided in A and C of this Section 6, the Borrower fails to perform or observe any of its covenants or agreements contained herein and fails to correct such deficiencies within thirty (30) days of notice from the State of such deficiencies, or such longer period as the State may authorize in its sole discretion; or
- C. The occurrence of an Event of Default under the Loan Agreement;

thereupon, and in each such case, the State, upon notice to the Borrower, may exercise any remedy legally available to it, including but not limited to any or all of the remedies set forth in Section 7 of this Contract.

SECTION 7 REMEDIES

Upon the occurrence of an Event of Default under this Contract, the State may pursue any or all of the remedies set forth herein or in the Loan Agreement or Note and any other remedies available at law or in equity. Such remedies include, but are not limited to, termination of the State's commitment and obligation to make the Loan or disbursements under the Loan Agreement, acceleration of the Loan, declaration of the Borrower's ineligibility to receive future Lottery funded awards and the withholding pursuant to ORS 285B.449 of other State funds due the Borrower. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

SECTION 8
MISCELLANEOUS

- A. No Implied Waiver. No failure on the part of the State to exercise, and no delay in exercising, any right, power, or privilege under this Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.
- B. Notices. All notices to or upon the parties hereto shall be in writing and shall be deemed to have been duly given or made when delivered by hand or when deposited in the mails, postage prepaid, addressed to the party to which such notice is required or permitted to be given or made at the addresses set forth below or at such other address of which such party shall have notified in writing the other party hereto.

If to the State: Regional Services Manager, Infrastructure Finance Authority
Business Development Department
775 Summer Street NE, Suite 200
Salem, OR 97301-1280

If to the Borrower: Finance & Court Services Director
City of Canby
182 North Holly Street / PO Box 930
Canby, OR 97013

Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice given by personal delivery shall be effective when actually delivered.

- C. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or condition held to be invalid.
- D. No Construction against Drafter. The terms of this Contract shall not be construed against either party as the drafter hereof.
- E. Successors and Assigns; No Third Party Beneficiaries.
- (1) This Contract shall be binding upon and inure to the benefit of State, 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 State.
- (2) Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, whether directly, indirectly or otherwise, to any third persons any rights and benefits with respect to any obligations greater than those enjoyed by the general public.
- F. 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 Contract shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State reasonable expenses incurred by the State in the collection of Loan payments.

Exhibit "A"

G. Choice of Law; Designation of Forum; Federal Forum.

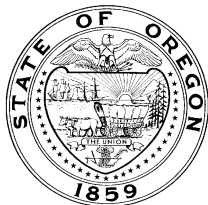
(1) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Loan Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(2) 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.

(3) Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This 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.

H. Merger. This Contract, including all any exhibits, schedules or attachments (which are by this reference incorporated herein), 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 Contract.

This Contract becomes effective on the date ("Effective Date") it is fully executed and approved as required by applicable law. The Borrower, by the signature below of its Authorized Officer (as defined in the Loan Agreement), acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Business Development Department



CITY OF CANBY

By: _____
Jim Zelenka, Regional Services Manager
Infrastructure Finance Authority

By: _____
Greg Ellis, City Administrator

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Lynn Nagasako (as per email dated 16 December 2010)

Lynn T. Nagasako, Sr. Assistant Attorney General

Date: _____ 16 December 2010

Exhibit 1: Form of Loan Agreement

Exhibit 2: Environmental and Natural Resource Agencies

LOAN AGREEMENT

BETWEEN

STATE OF OREGON

ACTING BY AND THROUGH ITS

BUSINESS DEVELOPMENT DEPARTMENT

AND

CITY OF CANBY

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EXHIBITS

- Exhibit A: Special Conditions of Award
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- Exhibit E: [Reserved]
- Exhibit F: Form of Promissory Note
- Exhibit G: Form of Legal Opinion

THIS LOAN AGREEMENT, dated as of the Effective Date (as defined below), is made and entered into by and between the STATE OF OREGON, ACTING BY AND THROUGH ITS BUSINESS DEVELOPMENT DEPARTMENT (the "State"), and the Borrower (as defined below).

ARTICLE I
DEFINITIONS

SECTION 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings assigned to them below:

"Act" means ORS 285B.410 through 285B.482, as amended.

"Authorized Officer" means, in the case of the Borrower, the person whose name or title is set forth in Exhibit D hereto or such other person authorized pursuant to an order, resolution, ordinance or other official action of the governing body of the Borrower to act as an authorized officer of the Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement and whose name or title is furnished in writing to the State.

"Bond Counsel" means a law firm having knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds.

"Borrower" means the Municipality that is a party to this Loan Agreement and is described on Exhibit D hereto, and its successors and assigns.

"Business Day" means any day other than a Saturday, Sunday or legal holiday or a day on which banking institutions in Salem, Oregon are closed.

"C.F.R." means the Code of Federal Regulations.

"Contract" means the financial assistance award contract, number X09004, including any exhibits, schedules or attachments thereto, between the State and the Borrower dated as of the date hereof, as amended from time to time.

"Costs of the Project" means those costs of the Borrower that are (a) reasonable, necessary and directly related to the Project, including any financing costs properly allocable to the Project and preliminary costs such as engineering and architectural reports, studies, surveys, permits, soil tests, designs, plans, working drawings and specifications that are necessary for the construction of the Project, and (b) permitted by generally accepted accounting principles to be costs of such Project.

"Counsel" means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, the State or the Borrower) duly admitted to practice law before the highest court of any state.

"Disbursement Request" means a request executed by the Borrower for a disbursement under this Loan Agreement on a form provided by the State.

"Event of Default" means any occurrence or event specified in Section 6.01 hereof.

"First Payment Date" means December 1, 2011.

"Loan" means the non-revolving loan to be made by the State to the Borrower to provide financing for a portion of the Costs of the Project pursuant to this Loan Agreement.

"Loan Agreement" means this loan agreement, including any exhibits, schedules and attachments hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

“Loan Closing Date” means the date on which all conditions to the Loan closing have been satisfied by Borrower (or waived by the State) and the Loan proceeds are available to disburse to the Borrower in accordance with Section 2.01(b) hereof.

“Loan Closing Deadline” means the date, as set forth in Exhibit D hereof, by which all conditions precedent to Loan closing must be satisfied by the Borrower (or waived by the State).

“Loan Documents” means the Loan Agreement, Note and any agreements, instruments and certificates required to be executed and delivered hereunder.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon payable solely from unobligated net lottery proceeds, if any, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

“Maturity Date” means the 9th anniversary of the First Payment Date; and in any event, the Maturity Date cannot be more than the usable life of the Project or 25 years from the year of Project Completion Date, whichever is less. The entire outstanding principal balance of the Loan and all accrued unpaid interest is due and payable in full on the Maturity Date.

“Municipality” means any entity described in ORS 285B.410(8).

“Note” means that certain promissory note of the Borrower, substantially in the form of Exhibit F hereto, executed by the Borrower in favor of the State, as it may from time to time be amended, extended, renewed or restated.

“Project” means the project described in Exhibit B hereof or the portion of such project which is financed or refinanced by the State pursuant to this Loan Agreement, as the context requires.

“Project Close-Out Deadline” means the date set forth in Exhibit D, by which date the Borrower must submit the final Project completion report and certification described in Section 3.02(d) of the Loan Agreement.

“Project Completion Date” means the date set forth in Exhibit D on which approximate date the Borrower in fact completed the Project and submitted to the State a notice of substantial completion executed by the Project engineer or architect.

“Special Public Works Fund” or “Fund” means the fund created by ORS 285B.455(1).

“System” means the Borrower’s system which includes the Project or components of the Project, as such system or systems may be modified or expanded from time to time. References in this Loan Agreement to the Borrower’s “System” shall be ignored to the extent that the Project is not a component of a utility, safe drinking water or wastewater system or systems.

SECTION 1.02. General Rules. 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.

**ARTICLE II
LOAN TO BORROWER****SECTION 2.01. Loan; Disbursements; Use of Proceeds.**

(a) Loan. Subject to the terms and conditions hereof, in particular Sections 4.01 and 4.02 hereof, the State hereby agrees to make and disburse to the Borrower, and the Borrower agrees to borrow and accept from the State, the Loan, in an aggregate principal amount not to exceed the principal amount set forth in Exhibit D hereto.

(b) Disbursements. Subject to Sections 4.01 and 4.02 hereof, the proceeds of the Loan shall be disbursed to the Borrower from time to time on an expense reimbursement or costs incurred basis upon receipt by the State of a Disbursement Request; provided, however, that the State's obligation to make, and the Borrower's right to request, disbursements under this Loan Agreement shall terminate on September 30, 2011.

(c) Use of Proceeds. The Borrower shall use the proceeds of the Loan strictly in accordance with Section 3.02(a) hereof and subject to and in compliance with Exhibit B and Exhibit C hereof.

SECTION 2.02. Loan Payment.

(a) Promise to Pay. The Borrower agrees to repay the Loan and all amounts due under the Note or any of the Loan Documents in accordance with the terms hereof and thereof. Unless earlier repayment is received hereunder or under the terms of the Note, the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full on the Maturity Date.

(b) Payments. Commencing on the First Payment Date and thereafter on December 1 of each year, the Borrower shall make level installment payments of principal and interest, which shall be calculated based on the assumption that the outstanding principal balance on the First Payment Date accrued interest for a full year prior to the First Payment Date; and each such installment shall be in an amount sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, at which time the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full; provided, however, that the first such installment payment shall be adjusted to include actual interest accrued to the First Payment Date.

(c) Payment Schedule. Notwithstanding Section 2.02(b) above, the State and the Borrower may, at any time, agree to payments different from the payments described in Section 2.02(b) or agree to attach a payment schedule to the Note. In such case the Borrower shall execute and deliver to the State a replacement Note which shall have attached thereto the agreed upon payment schedule as "Schedule 1 – Payment Schedule."

(d) Note with Schedule. In the event a "Schedule 1 – Payment Schedule" is attached to the Note pursuant to Section 2.02(c), the third paragraph of the Note shall read as follows:

"Commencing on the First Payment Date and thereafter on December 1 of each year, the Borrower shall pay all unpaid interest accrued to the date of payment and make the payments of principal as set forth in "Schedule 1 – Payment Schedule" (which is attached to this Note) until the Maturity Date, at which time the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full."

SECTION 2.03. Unconditional Obligations. The provisions of the Loan Agreement shall constitute a contract with the State and shall be enforceable by the State. Payments required under the Loan Documents are payable from the sources of repayment described in Section 2.06 hereof, and the obligation of the Borrower to make all payments required under the Loan Documents and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part to be performed or observed contained therein shall be absolute and unconditional. Payments hereunder and under any of the other Loan Documents shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, or any payments under this Loan Agreement or Note remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Loan Agreement or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

SECTION 2.04. Loan Prepayments

(a) **Mandatory Prepayment.** The Borrower shall prepay the outstanding balance of the Loan, including any unpaid accrued interest, upon the occurrence of any of the following events:

- (i) destruction of all or a substantial portion of the Project; or
- (ii) condemnation of the Project, or any portion thereof, to the extent of the condemnation proceeds; or
- (iii) as required by Section 3.02(e); or
- (iv) as required in Exhibit A of the Loan Agreement; or
- (v) as otherwise required by this Loan Agreement or any of the Loan Documents.

(b) **Optional Prepayment Prior to the Maturity Date.** The Borrower may prepay all or any portion of the outstanding balance of the Loan on any Business Day, and each Loan prepayment shall include payment of the accrued unpaid interest on the amount prepaid.

(c) **General.** Payments and prepayments by the Borrower shall be applied first to any costs and expenses incurred by State, then to unpaid accrued interest, and finally to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan prepayment shall be applied to the outstanding principal payments.

SECTION 2.05. Loan Agreement to Survive Lottery Bonds. The Borrower acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of any bond indenture applicable to the Lottery Bonds and payment of the principal of, redemption premium, if any, and interest on the Lottery Bonds.

SECTION 2.06. Sources of Payment of Borrower's Obligations.

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement and any of the other Loan Documents, including, without limitation, the amounts payable by the Borrower pursuant to Sections 2.02, 2.04, 2.07 and 6.04 hereof, are payable from the sources of repayment described in paragraph (b) of this Section 2.06; provided, however that nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement and the other Loan Documents from any other legally available source.

(b) The amounts payable by the Borrower under this Loan Agreement and the other Loan Documents are payable from the sources of repayment described in the Act and Exhibit A hereto; provided however that nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement and the other Loan Documents from any other legally available source. Funds from such sources shall be applied to the punctual payment of the principal of and interest on the Loan and all other amounts due under this Agreement and other Loan Documents according to their respective terms. The amounts payable by the Borrower under this Loan Agreement and the other Loan Documents are also payable from all legally available funds in the Borrower's general fund.

(c) The pledges made by the Borrower in Exhibit A hereto shall be valid and binding from the date of this Loan Agreement, pursuant to ORS 287A.310. The amounts so pledged and hereafter received by the Borrower shall immediately be subject to the lien of the pledge without physical delivery or further act except as may be stated in Exhibit A hereto and shall be superior to all other claims and liens whatsoever to the fullest extent permitted by ORS 287A.310.

(d) The Borrower expressly acknowledges that if the Borrower defaults on payments due under this Loan Agreement or any of the other Loan Documents, the State of Oregon, pursuant to ORS 285B.449, may withhold all or a portion of any amounts otherwise due to the Borrower and apply said amounts to payments due under this Loan Agreement and the other Loan Documents to the fullest extent permitted by law; provided however that the provisions of the Loan Agreement and the Note are not to be construed in a way that would cause the obligations of the Borrower thereunder to constitute debt which violates Section 10, Article XI of the Oregon Constitution.

SECTION 2.07. Disclaimer of Warranties; Limitation of Liability; Indemnification. The Borrower acknowledges and agrees that:

(a) the State makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto;

(b) in no event shall the State or its officers, employees or 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 of the other Loan Documents or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Loan Agreement; and

(c) to the extent authorized by law, the Borrower shall (subject to ORS chapter 180) defend, indemnify, save and hold harmless the State and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Borrower, or its employees, agents or subcontractors pursuant to the terms of this Loan Agreement or any of the other Loan Documents, provided, however, that the provisions of this paragraph (c) 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 under the laws of the United States or other laws of the State of Oregon.

ARTICLE III
REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

SECTION 3.01. Representations and Warranties of Borrower. The Borrower represents and warrants for the benefit of the State as follows:

(a) Organization and Authority.

(i) The Borrower is a Municipality.

(ii) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Project, other than licenses and permits relating to the Project which the Borrower expects to receive in the ordinary course of business, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement and the other Loan Documents.

(iii) The Project is a project that the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(iv) The proceedings of the Borrower's governing members and voters, if necessary, approving this Loan Agreement and the other Loan Documents and authorizing the execution and delivery of this Loan Agreement and other Loan Documents on behalf of the Borrower, and authorizing the Borrower to undertake and complete the Project have been duly and lawfully adopted in accordance with the laws of Oregon, and the actions of such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Oregon law, and at which quorums were present and acting throughout.

(v) This Loan Agreement and all other Loan Documents required hereunder to be executed by Borrower have been duly authorized and executed and delivered by an Authorized Officer of the Borrower; and, assuming that the State has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement and the Loan Documents required hereunder to be executed by the State, this Loan Agreement and other Loan Documents required hereunder to be executed by the Borrower constitute the legal, valid and binding obligation of the Borrower in accordance with their terms.

(vi) Borrower's Contract and the Loan Agreement have been authorized by an ordinance, order or resolution of the Borrower which was adopted in accordance with applicable law and the Borrower's requirements for filing public notices and holding public meetings.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the State in writing on the Borrower's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of the Borrower or the Project, or the ability of the Borrower to make all payments required by the Loan Documents and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents. Neither the Borrower's application for the Loan, nor the Borrower's representations in this Loan Agreement or any of the other Loan Documents contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The information contained in Exhibit B and Exhibit C hereto and in Sections 2, 3, and 9 of Exhibit D hereto is true and accurate in all respects.

(c) Pending Litigation. There are no proceedings pending, or, to the knowledge of the Borrower, threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or the Project, or the ability of the Borrower to make all payments required by the Loan Documents and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents, that have not been disclosed in writing to the State in the Borrower's application for the Loan or otherwise.

(d) Compliance with Existing Agreements, Etc. The authorization, execution and delivery of this Loan Agreement and the other Loan Documents by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements thereunder, the consummation of the transactions provided for in this Loan Agreement and the other Loan Documents, the compliance by the Borrower with the provisions of this Loan Agreement and the other Loan Documents and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or asset of the Borrower pursuant to, any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than any lien and charge of this Loan Agreement or any of the documents related hereto) to which the Borrower is a party or by which the Borrower, the Project or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, resolutions, governmental rules, regulations or court orders to which the Borrower, the Project or its properties or operations is or may be subject.

(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 Loan Documents or receipt of the amount of the Loan or any portion thereof, would constitute an Event of Default hereunder. The Borrower 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 Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or the Project or the ability of the Borrower to make all payments required by the Loan Documents or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents.

(f) Governmental Consent. The Borrower has obtained or will obtain all permits and approvals required to date by any governmental body or officer for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents or for the undertaking or completion of the Project and the financing or refinancing thereof; and the Borrower 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 and performance by the Borrower of its duties, covenants, obligations and agreements 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 the Borrower as a condition to the authorization, execution and delivery of this Loan Agreement or any other Loan Document.

(g) Compliance with Law. The Borrower:

(i) is in compliance with all 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 the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or the Project; and

(ii) has obtained or will obtain all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or the Project.

(h) The Project.

(i) The Project is feasible, and there will be adequate funds available to complete the Project and repay the Loan.

(ii) The Project is owned by the Borrower and will be operated by the Borrower or by a person under a management contract or operating agreement with Borrower and shall remain in municipal ownership until the Loan is repaid in full.

(i) Costs of the Project. The Borrower certifies that the Costs of the Project, as listed in Exhibit C and Exhibit D hereto, (i) are a reasonable and accurate estimation and based upon an engineer's feasibility report and engineer's estimate stamped by a registered professional engineer, a copy of which shall be promptly provided to the State upon request, and (ii) equal or exceed the maximum principal amount of the Loan shown on Exhibit D. The Borrower further agrees that a professional engineer registered and in good standing in Oregon will be responsible for the design and construction of the Project.

(j) Continuing Representations. The representations of the Borrower contained herein shall be true on the Loan Closing Date and at all times during the term of this Loan Agreement.

SECTION 3.02. Particular Covenants of the Borrower.

(a) Use of Proceeds. The Borrower will apply the proceeds of the Loan and interest earnings thereon to finance all or a portion of the Costs of the Project in accordance with Exhibit B and Exhibit C and strictly in accordance with the Act and Oregon law where applicable. None of the proceeds of the Loan shall be used for

i) costs in excess of one hundred percent (100%) of the total Costs of the Project,

- ii) costs not listed in the Project budget or which are not eligible under the Act, or
- iii) facilities that are or will, during the term of the Loan, be privately owned.

(b) Source of Repayment. The Loan shall be paid from such sources of repayment described in Section 2.06 hereof and Exhibit A hereto the Loan Agreement. Funds from such sources shall be applied to the punctual payment of the principal of and the interest on the Loan and all other amounts due under this Loan Agreement and the other Loan Documents according to their respective terms.

(c) Performance Under Loan Documents. The Borrower covenants and agrees (i) to maintain Project in good repair and operating condition; (ii) to cooperate with the State in the observance and performance of the respective duties, covenants, obligations and agreements of the Borrower and the State under this Loan Agreement and the other Loan Documents; and (iii) to comply with the covenants described in this Loan Agreement and the other Loan Documents.

(d) Completion of Project and Provision of Moneys Therefore. The Borrower shall obtain as-built drawings for all facilities of the Project and obtain certification of completion per as-built drawings from the Project engineer or architect no later than the Project Closeout Deadline. The Borrower shall supply a copy of such drawings and certification to the State upon request. The Borrower covenants and agrees to provide from its own fiscal resources all moneys, in excess of the total amount of Loan proceeds it receives pursuant to this Loan Agreement, required to pay for the Project. The Borrower shall have a program, documented to the satisfaction of the State, for the on-going maintenance, operation and repair, at its sole expense, of the Project. The program shall include a plan for generating revenues sufficient to assure the operation, maintenance and replacement of the Project during the useful life of the Project. Borrower shall provide such documentation to the State on or before the Project Close-Out Deadline.

(e) Disposition of Project. Unless worn out, obsolete, or in the reasonable business judgment of the Borrower, no longer useful in the operation of the Project, the Borrower shall not sell, lease, exchange, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or any system which provides revenues for payment of amounts due under this Loan Agreement and the Loan Documents, except if (i) the State consents thereto in writing upon ninety (90) days' prior written notice to the State; and (ii) Borrower assigns this Loan Agreement and the other Loan Documents pursuant to Article V hereof; and the State shall not consent to any such sale, lease, exchange, abandonment, transfer or other disposition unless the State shall have received an opinion of Bond Counsel to the effect that such sale, lease, exchange, abandonment or other disposition complies with the Act. Except as provided in Exhibit A, proceeds of any such transfer not used to replace property that is part of the Project shall be applied to the payment or prepayment of the outstanding principal of and interest on the Loan, as provided in Section 2.04 of this Loan Agreement

(f) Operation and Maintenance of Project. The Borrower covenants and agrees that it shall, in accordance with prudent ownership practice, (i) at all times operate the Project so as to preserve the long term public benefits of the Project and in an efficient manner, (ii) maintain the Project in good repair, working order and operating condition, and (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements as may be required with respect to the Project so that at all times the business carried on in connection therewith shall be properly and advantageously conducted.

(g) Records; Accounts. The Borrower shall keep accurate records and accounts for the revenues and funds that are the source of repayment of the Loan (the "Repayment Revenue Records"), separate and distinct from its other records and accounts (the "General Records"). Such Repayment Revenue Records shall be maintained in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time and shall be audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Borrower. Such Repayment Revenue Records and General Records shall be made available for inspection by the State at any reasonable time, and a copy of such annual audit(s) therefore, including all written comments and recommendations of such accountant, shall be furnished to the State within two hundred ten (210) days of the close of the fiscal year being so audited. The Borrower's financial management system must conform with the generally accepted accounting principles for state and municipal corporations established by the National Committee on Governmental Accounting as in effect from time to time.

(h) Inspections; Information. The Borrower shall permit the State and any party designated by the State to examine, visit and inspect, at any and all reasonable time, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the State may reasonably require in connection therewith. In addition, the Borrower shall provide the State with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of the Borrower that are issued after the Loan Closing Date.

(i) Insurance. The Borrower shall maintain or cause to be maintained, insurance policies with responsible insurers or self insurance programs insuring against risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is usually carried by governmental units constructing, operating and maintaining similar facilities, including liability coverage, all to the extent available at reasonable cost. Nothing herein shall be deemed to preclude the Borrower from exerting against any party, other than the State, a defense which may be available to the Borrower, including without limitation a defense of immunity. Except as provided in Exhibit A, in the event the Project or any portion thereof is destroyed, any insurance proceeds shall be paid to the State and shall be applied to prepay the principal of and interest on the Loan in accordance with Section 2.04 of this Loan Agreement unless the State agrees in writing that the insurance proceeds shall be used to rebuild the Project.

(j) Condemnation. Except as provided in Exhibit A, in the event the Project or any portion thereof is condemned, any condemnation proceeds shall be used to prepay the outstanding balance on the Loan in accordance with Section 2.04 of this Loan Agreement.

(k) Notice of Material Adverse Change. The Borrower shall promptly notify the State of any material adverse change in the activities, prospects or condition (financial or otherwise) of the Borrower or the Project, or in the ability of the Borrower to make all payments required by the Loan Documents and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents.

(l) Financial Statements; Reports. Borrower shall deliver to the State in form and detail satisfactory to the State such statements or reports as to the Borrower as the State may reasonably request.

(m) Contract Covenants. The Borrower covenants and agrees to comply with the terms of the Contract including without limitation the covenants of the Borrower in Section 5 of the Contract.

(n) Further Assurances. The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments 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.

ARTICLE IV CONDITIONS PRECEDENT

SECTION 4.01. Loan Closing. The State's obligations hereunder are subject to satisfaction of the following conditions precedent on or prior to the Loan Closing Deadline or such later date as the State may authorize in writing in State's sole and absolute discretion:

(a) the Borrower has caused to be executed and delivered to the State the following items, each in a form and substance satisfactory to State and its Counsel:

- (i) this Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;
- (ii) the Note duly executed and delivered by an Authorized Officer of the Borrower;
- (iii) the Contract duly executed and delivered by an Authorized Officer of the Borrower;
- (iv) copy of the ordinance, order or resolution of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement, the other Loan Documents, and the Borrower's Contract, certified by an Authorized Officer of the Borrower;
- (v) an opinion of the Borrower's Counsel, acceptable to the State, substantially in the form set forth in Exhibit G; and
- (vi) such other certificates, documents, opinions and information as the State may reasonably require; and

(b) there is money available in the Special Public Works Fund for the Project;

provided, however, the State shall be under no obligation to make this Loan or disburse funds under this Loan Agreement if there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

SECTION 4.02. Conditions to Disbursements. Notwithstanding anything in this Loan Agreement or any of the Loan Documents to the contrary, the State shall have no obligation to make the Loan or disburse funds under this Loan Agreement to the Borrower hereunder unless:

(a) No Event of Default, or event, omission or failure of a condition which would constitute an Event of Default as defined in this Loan Agreement or any of the Loan Documents after notice or lapse of time or both, has occurred and is continuing under this Loan Agreement or any of the Loan Documents;

(b) The representations or warranties of the Borrower made in this Loan Agreement are true and correct on the date of disbursement with the same effect as if made on such date;

(c) State has received (i) a completed Disbursement Request and (ii) any other written evidence of materials and labor furnished to or performed upon the Project, itemized receipts or invoices for the payment of the same, and releases, satisfactions and other signed statements and forms as the State may require as a condition for making disbursements of funds under this Loan Agreement. The State may, at its option, from time to time, either reimburse the Borrower for construction costs paid or may make direct payment for construction costs to suppliers, subcontractors and others for sums due them in connection with construction of the Project. Nothing herein contained shall require the State to pay any amounts for labor or materials unless satisfied that such claims are reasonable and that such labor and materials were expended and used in the construction of the Project. The State, at its option, from time to time, may also require that the Borrower have a contractor or subcontractor execute and deliver a surety bond or indemnification in form and substance acceptable to the State for the faithful performance of the construction contract or subcontract and payment of all liens and lienable expenses in connection therewith in a sum equal to the contract or subcontract price; and

(d) Money is available in the Special Public Works Fund to fund the disbursement.

Further, the State shall have no obligation to make any disbursement of funds to the Borrower if, on or before the time for disbursement, there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

ARTICLE V ASSIGNMENT

SECTION 5.01. Assignment and Transfer by the State. The Borrower hereby approves and consents to any assignment, sale or transfer of this Loan Agreement and the Loan Documents that the State deems to be necessary.

SECTION 5.02. Assignment by Borrower. This Loan Agreement and the other Loan Documents may not be assigned by the Borrower without the prior written consent of the State. The State may grant or withhold such consent in its sole discretion. In the event of an assignment of this Loan Agreement and the other Loan Documents by Borrower and assumption of the obligations hereunder, Borrower shall pay, or cause to be paid, to the State any fees or costs incurred by the State as the result of such assignment, including but not limited to, attorney fees of State's Counsel and Bond Counsel.

ARTICLE VI DEFAULTS AND REMEDIES

SECTION 6.01. Time is of the Essence; Event of Default. Time is of the essence of this Loan Agreement. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Failure by the Borrower to make, or cause to be made, any required payments of principal and interest on the Note when due, as provided in the Note and this Loan Agreement; or

(b) Failure by the Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other material obligations of the Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period; or

(c) Any representation made by or on behalf of the Borrower contained in this Loan Agreement or any other Loan Document, or in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement, any other Loan Document or the Loan or in connection with the Lottery Bonds, including but not limited to any representation with respect to current or historical information made to the State herein or in any other pertinent documents, certificates and reports relied upon by the State in gauging the progress of the Project, compliance with the requirements of the Act and performance of duties by the Borrower, is false or misleading in any material respect; or

(d) A petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Borrower, such petition shall be dismissed within twenty (20) calendar days after such filing, and such dismissal shall be final and not subject to appeal; or the Borrower shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator or trustee of the Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

(e) Failure of the Borrower's governing body to appropriate sufficient funds to fully fund all of the Borrower's obligations to make payments required by the Loan Documents for any future fiscal period; or

(f) The occurrence of any event of default under Section 6 of the Contract or under any of the Loan Documents; or

(g) Failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement or any other Loan Documents, other than as referred to in subsections (a) through (f) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State, unless the State shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State may not unreasonably withhold its consent to an extension of such time up to one hundred twenty (120) days from the delivery of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected.

SECTION 6.02. Notice of Default. The Borrower shall give the State prompt telephone notice of the occurrence of any Event of Default referred to in Section 6.01(d) hereof, and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section 6.02 shall be confirmed in writing as soon as practicable by the Borrower.

SECTION 6.03. Remedies on Default. Whenever an Event of Default referred to in Section 6.01 hereof shall have occurred and be continuing, the State shall have the right to take any action permitted or required pursuant to the Loan Agreement or any other Loan Document and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower hereunder, including, without limitation, (a) declaring all payments under the Note and all other amounts due hereunder and under the other Loan Documents to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand, (b) appointment of a receiver of the Project, (c) refusal to

disburse any funds under this Loan Agreement, (d) barring the Borrower from applying for future Special Public Works Fund assistance, or (e) withholding amounts otherwise due to the Borrower to apply to the payment of amounts due under this Loan Agreement as provided in ORS 285B.449.

SECTION 6.04. 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 Agreement shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State reasonable expenses incurred by the State in the collection of Loan payments.

SECTION 6.05. Application of Moneys. Any moneys collected by the State pursuant to Section 6.03 hereof shall be applied (a) first, to pay any attorney fees or other fees and expenses owed by the Borrower hereunder, (b) second, to pay interest due and payable on the Loan, (c) third, to pay principal due and payable on the Loan, and (d) fourth, to pay any other amounts due and payable under this Loan Agreement or any of the Loan Documents.

SECTION 6.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the State 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. To entitle the State to exercise any remedy reserved to it in this Article VI, it shall not be necessary to give any notice, other than such notice as may be required in this Article VI.

SECTION 6.07. Default by the State. In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default 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 the State hereunder as may be necessary or appropriate.

ARTICLE VII MISCELLANEOUS

SECTION 7.01. Notices. All notices hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed, postage prepaid, to the Borrower at the address specified on Exhibit D hereof and to the State at the following address:

Oregon Business Development Department
Attention: Regional Services Manager, Infrastructure Finance Authority
775 Summer Street NE, Suite 200
Salem, OR 97301-1280

Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice given by personal delivery shall be effective when actually delivered.

Any party may designate any further or different addresses to which subsequent notices shall be sent, by notice in writing given to the others.

SECTION 7.02. Successors and Assigns. This Loan Agreement shall inure to the benefit of and shall be binding upon the State and the 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 State.

SECTION 7.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

SECTION 7.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower. This Loan Agreement may not be amended, supplemented or modified in a manner that is not in compliance with the Act.

SECTION 7.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 7.06. No Construction against Drafter. Both parties acknowledge that they are each represented by and have sought the advice of Counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

SECTION 7.07. Choice of Law; Designation of Forum; Federal Forum.

- (1) 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.
- (2) 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.
- (3) Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This 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.

SECTION 7.08. Merger; No Waiver. This Loan Agreement and the attached exhibits (which by this reference are incorporated herein) constitute 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 Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall be binding unless in writing and signed by the party against whom it is sought to be enforced and all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

This Loan Agreement becomes effective on the date ("Effective Date") it is fully executed and approved as required by applicable law. The Borrower, by the signature below of its Authorized Officer, acknowledges that it has read this Loan Agreement, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Business Development Department



CITY OF CANBY

By: XXXXXXXXXXXXXXXXXXXXX
Jim Zelenka, Regional Services Manager
Infrastructure Finance Authority

By: XXXXXXXXXXXXXXXXXXXXX
Greg Ellis, City Administrator

Date: XXXXXXXXXXXXXXXXXXXXX

Date: XXXXXXXXXXXXXXXXXXXXX

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Lynn Nagasako (as per email dated 12/16/2010)
Lynn T. Nagasako, Sr. Assistant Attorney General

Date: December 16, 2010

SPECIAL CONDITIONS OF AWARD**I. General Fund as a Source of Repayment**

The Borrower 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 the Loan Agreement and the Note. The Loan Agreement and the Note are payable from all legally available funds of the Borrower.

II. Walnut Street Local Improvement District Assessment Installment Payment Contracts

The principal of and interest on the Loan are payable from the amounts due on all Walnut Street Local Improvement District assessment installment payment contracts ("LID Contract Payments"). The Borrower hereby grants to the State a security interest in and irrevocably pledges all LID Contract Payments to pay all of the obligations owed by the Borrower to the State under the Loan Agreement. The Borrower shall not incur any obligations payable from or secured by a lien on and pledge of the LID Contract Payments that are superior to or on a parity with the Loan.

Any mandatory or optional prepayments due or made on the Walnut Street Local Improvement District assessment installment payment contracts must be paid to State as a mandatory prepayment in accord with Section 2.04(a) of the Loan Agreement.

III. Pre-Award Expenses

The Borrower is authorized to request reimbursement for Costs of the Project incurred no earlier than July 1, 2008.

PROJECT DESCRIPTION

Borrower will design and construct a realignment and an extension of South Walnut Street, and half-street improvements on SE 4th Avenue, as well as related infrastructure in the Pioneer Industrial Park in southeastern Canby. Borrower will obtain right-of-way dedications and utility easements and perform the following work:

1. Realign South Walnut Street directly to a new intersection with South Sequoia Parkway that is approximately 800 feet north of its current intersection with South Sequoia Parkway and construct a northward extension of approximately 1,400 lineal feet. In connection with construction of the paved roadway, the Borrower will also install sanitary sewer, water, storm drainage, and electrical services along the new roadway and in the public right-of-way. Trenching and backfill will be provided for telephone, gas, and cable services.
2. Vacate approximately 800 feet of the existing South Walnut Street right-of-way, south of the point of diversion, including all roadway surfaces and existing utilities. Also, remove approximately the top 18 inches of surface, remove any identified contamination that would prevent the site from being used for industrial activity, and then replace with an acceptable native material.
3. Develop half-street improvements along approximately 220 feet of SE 4th Avenue in the vicinity of the easterly boundary of Tax Lot 1709, including any tax lot adjustments that may be negotiated with the adjoining Tax Lot 2400. In connection with construction of the paved roadway, the Borrower will also install sanitary sewer, water, storm drainage, and electrical services along the new roadway and in the public right-of-way. Trenching and backfill will be provided for telephone, gas, and cable services.

Exhibit "A"
Oregon Business Development Department
Project Budget

Loan Agreement Exhibit C
Page 1 of 1

Project Number: X09004
Project Name: Canby Pioneer Industrial Park South Walnut Street Improvements

Recipient: City of Canby
Funding Pgm(s): Special Public Works Fund

CTS # 033200776

Department Funds					Other/Matching Funds			All Funds
(A)	(B)	(C)	(D)	(E) = [B-C-D]	(F)	(G)	(H) = [F-G]	(I) = [C+D+G]
Activity	Approved Budget	Prior Disbursements	Current Request	Balance	Approved Budget	Expended To Date	Balance	Disbursed & Expended To Date
Industrial Street and Infrastructure								
Improvements - South Walnut Street	334,927			334,927	357,602		357,602	
Engineering/Surveying/Legal/Other	83,000			83,000	96,532		96,532	
Total	\$417,927			\$417,927	\$454,134		\$454,134	

Total Project Budget		
Funding Sources	Approved Budget	Expenditures To Date
Special Public Works Fund	\$417,927	
Other/Matching Funds	454,134	
Total Project Costs	\$872,061	

Non-Department Funds (Other/Matching)		
Sources Used for all Expenditures		
Funding Sources	Approved Budget	Expenditures To Date
Walnut LID property owners	\$241,734	
ODOT Immediate Opportunity Fund	171,446	
City of Canby	40,954	
Total Non-Department Funds	\$454,134	

DESCRIPTION OF THE LOAN

- | | |
|--|---|
| 1. Loan Closing Deadline: | February 18, 2011 |
| 2. Name and Address of Borrower: | City of Canby
182 North Holly Street / PO Box 930
Canby, OR 97013 |
| 3. Costs of the Project: | \$872,061 |
| 4. Project Completion Date: | September 30, 2010 |
| 5. Project Closeout Deadline | September 30, 2011 |
| 6. Maximum Aggregate Principal Amount of Loan: | \$417,927 |
| 7. Interest Rate: | Five percent (5%) per annum |
| 8. Maturity Date: | In accordance with Sections 1.01 and 2.02
hereof |
| 9. Authorized Officer(s) of Borrower: | City Administrator |

FORM OF PROMISSORY NOTE

(Dated) XXXXXXXXXXXXXXXX, XXXX

Canby, OR

FOR VALUE RECEIVED, the City of Canby, 182 North Holly Street / PO Box 930, Canby, OR 97013 (hereinafter "Borrower"), 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, OR 97301-1280 (hereinafter "State"), the principal sum of Four Hundred Seventeen Thousand, Nine Hundred Twenty-Seven Dollars (\$417,927) or so much thereof as is disbursed pursuant to the Loan Agreement (as defined below), plus interest on the outstanding principal balance at the interest rate of five percent (5%) per annum, from the date hereof until paid. Interest shall be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured pursuant to the terms and conditions of that certain loan agreement dated as of XXXXXXXXXXXXXXXX, XXXX, between the State and the Borrower (as amended from time to time the "Loan Agreement"). Capitalized terms not otherwise defined in this Note shall have the meanings assigned to them by the Loan Agreement.

Commencing on the First Payment Date and thereafter on December 1 of each year, the Borrower shall make level installment payments of principal and interest, which shall be calculated based on the assumption that the outstanding principal balance on the First Payment Date accrued interest for a full year prior to the First Payment Date; and each such installment shall be in an amount sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, at which time the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full; provided however that the first such installment payment shall be adjusted to include actual interest accrued to the First Payment Date.

This Note is subject to mandatory prepayment, and is payable prior to its Maturity Date, as provided for in Section 2.04 of the Loan Agreement.

Each payment made by the Borrower hereunder shall be applied first to the State's costs and expenses, then to unpaid accrued interest, and lastly to the principal of the Loan, unless the Loan Agreement provides otherwise.

This Note is given to avoid the execution by Borrower of an individual note for each disbursement of Loan proceeds by State to Borrower in accordance with Section 2.01 of the Loan Agreement. In consideration thereof, Borrower authorizes State to record in State's files the date and amount of each such disbursement, the date and amount of each payment and prepayment by Borrower hereunder and the amount of interest accrued and paid. Borrower further agrees that absent manifest error, such notations shall be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations shall not affect the obligations of Borrower hereunder or under any of the Loan Documents.

If any Event of Default occurs, the outstanding balance of the Note, including principal, interest and other charges, if any, shall, at the option of the State, become immediately due and payable in accordance with Section 6.03 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 of the parties on this Note shall be discharged by any action consented to above taken by any holder of this Note.

To the fullest 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, expenses and costs at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State reasonable expenses incurred by the State in the collection of Loan payments.

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.

CITY OF CANBY

By: _____XXXXXXXXXXXXXXXXXXXX

Title: _____XXXXXXXXXXXXXXXXXXXX

Notice to Borrower: Do not sign this Note before you read it.

**FORM OPINION OF MUNICIPALITY COUNSEL
[LETTERHEAD OF COUNSEL TO MUNICIPALITY]**

[DATED _____]

Oregon Business Development Department
755 Summer Street NE, Suite 200
Salem, OR 97301-1280

Ladies and Gentlemen:

[Insert "I" or "We"] have acted as counsel to the City of Canby (the "Municipality"), which has entered into a Loan Agreement (as hereinafter defined) with the Oregon Business Development Department (the "Department") pursuant to Sections 285B.410 through 285B.482 of the Oregon Revised Statutes (the "Act"), and have acted as such in connection with the authorization, execution and delivery by the Municipality of the Contract (as hereinafter defined) and the Loan Agreement. Capitalized terms not otherwise defined in this letter shall have the meanings assigned to them by the Loan Agreement.

In so acting [insert "I" or "we"] have examined the Constitution and laws of the State of Oregon and the Municipality's Charter, if any. [Insert "I" or "We"] have also examined originals, or copies certified or otherwise identified to [insert "my" or "our"] satisfaction, of the following:

A. The Loan Agreement dated as of _____, _____ by and between the Department and the Municipality and the Promissory Note dated _____, _____ in the principal amount of \$417,927 executed by the Municipality (collectively, the "Loan Agreement").

B. The Financial Assistance Award Contract number X09004 (the "Contract") dated as of _____, _____ by and between the Department and the Municipality;

C. Proceedings of the governing body of the Municipality relating to the approval of the Contract and the Loan Agreement and the execution, issuance and delivery thereof on behalf of the Municipality, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);

D. All outstanding instruments relating to bonds, notes or other indebtedness of or relating to the Municipality.

[insert "I" or "We"] have also examined and relied upon originals, or copies certified or otherwise authenticated to [insert "my" or "our"] satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in [insert "my" or "our"] judgment [insert "I" or "we"] have deemed necessary or appropriate to enable [insert "me" or "us"] to render the opinions expressed below.

Based upon the foregoing, [insert "I am" or "We are"] of the opinion that:

1. The Municipality is a duly formed and operating [insert specific nature of Municipality] described in ORS 285B.410(8), with the legal right to own and operate the Project.

2. The Municipality has full legal right and authority to execute and deliver the Contract and the Loan Agreement and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project.

3. Amounts due to the Department pursuant to the Contract and the Promissory Note are payable from the sources described in Section 2.06 of the Loan Agreement.

4. The Ordinance (the "Ordinance") of the Municipality approving the Contract and the Loan Agreement and authorizing their execution, issuance and delivery on behalf of the Municipality, and authorizing the Municipality to undertake and complete the Project has been duly and lawfully adopted and authorized in accordance with the Municipality's Charter, if any, the Act and other applicable Oregon law, and the Ordinance was adopted at a meeting or meetings which were duly called with public notice and held in accordance with the Municipality's Charter, if any, and applicable Oregon law, and at which quorums were present and acting throughout.

5. The Contract and the Loan Agreement have been duly authorized, executed and delivered by the authorized officers of the Municipality and constitute the legal, valid and binding obligation of the Municipality enforceable in accordance with their respective terms; subject, however, to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, debt adjustment and other similar laws affecting creditors' rights or remedies generally ("Creditor's Rights Limitations") heretofore or hereafter enacted and the application of equitable principles.

6. To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, the authorization, execution and delivery of the Contract and the Loan Agreement by the Municipality, the observation and performance by the Municipality of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Municipality or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, resolution, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Municipality is a party or by which it, the Project, or its property or assets is bound.

7. To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Municipality in connection with the authorization, execution, delivery and performance of the Contract and the Loan Agreement and the undertaking and completion of the Project have been obtained or made.

8. To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Municipality or of the validity, legality or enforceability of the Contract or the Loan Agreement or the undertaking or completion of the Project.

This opinion is rendered on the basis of the laws of the State of Oregon, including the Act, as enacted and construed on the date hereof. [insert "I" or "We"] express no opinion as to any matter not set forth in the numbered paragraphs herein.

Very truly yours,

ENVIRONMENTAL AND NATURAL RESOURCE AGENCIES

The federal, state, and local agencies listed have enacted ordinances or regulations relating to environmental pollution or the preservation of natural resources that may affect the performance of construction contracts.

FEDERAL AGENCIES

- Agriculture, Department of
 - Forest Service
 - Soil Conservation Service
- Army, Department of the
 - Corps of Engineers
- Coast Guard
- Energy, Department of
- Environmental Protection Agency
- Health & Human Services, Department of
- Heritage Conservation and Recreation Service
- Interior, Department of
 - Bureau of Indian Affairs
 - Bureau of Land Management
 - Fish and Wildlife Service
 - Office of Surface Mining, Reclamation and Enforcement
 - Bureau of Reclamation
- Labor, Department of
 - Occupational Safety & Health Administration
 - Mine Safety & Health Administration
- Transportation, Department of
 - Federal Highway Administration

STATE AGENCIES

- Agriculture, Department of
- Energy, Office of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Land Conservation and Development Commission
- State Lands, Division of
- State Soil & Water Conservation Commission
- Transportation, Department of
- Water Resources Department

LOCAL AGENCIES

- City Councils
- County Courts
- County Commissioners, Boards of
- Planning Commissions
- Special Districts: Ports, Water, Sewer, Roads

LOAN AGREEMENT

BETWEEN

STATE OF OREGON

ACTING BY AND THROUGH ITS

BUSINESS DEVELOPMENT DEPARTMENT

AND

CITY OF CANBY

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THIS LOAN AGREEMENT, dated as of the Effective Date (as defined below), is made and entered into by and between the STATE OF OREGON, ACTING BY AND THROUGH ITS BUSINESS DEVELOPMENT DEPARTMENT (the “State”), and the Borrower (as defined below).

ARTICLE I DEFINITIONS

SECTION 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings assigned to them below:

“Act” means ORS 285B.410 through 285B.482, as amended.

“Authorized Officer” means, in the case of the Borrower, the person whose name or title is set forth in Exhibit D hereto or such other person authorized pursuant to an order, resolution, ordinance or other official action of the governing body of the Borrower to act as an authorized officer of the Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement and whose name or title is furnished in writing to the State.

“Bond Counsel” means a law firm having knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds.

“Borrower” means the Municipality that is a party to this Loan Agreement and is described on Exhibit D hereto, and its successors and assigns.

“Business Day” means any day other than a Saturday, Sunday or legal holiday or a day on which banking institutions in Salem, Oregon are closed.

“C.F.R.” means the Code of Federal Regulations.

“Contract” means the financial assistance award contract, number X09004, including any exhibits, schedules or attachments thereto, between the State and the Borrower dated as of the date hereof, as amended from time to time.

“Costs of the Project” means those costs of the Borrower that are (a) reasonable, necessary and directly related to the Project, including any financing costs properly allocable to the Project and preliminary costs such as engineering and architectural reports, studies, surveys, permits, soil tests, designs, plans, working drawings and specifications that are necessary for the construction of the Project, and (b) permitted by generally accepted accounting principles to be costs of such Project.

“Counsel” means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, the State or the Borrower) duly admitted to practice law before the highest court of any state.

“Disbursement Request” means a request executed by the Borrower for a disbursement under this Loan Agreement on a form provided by the State.

“Event of Default” means any occurrence or event specified in Section 6.01 hereof.

“First Payment Date” means December 1, 2011.

“Loan” means the non-revolving loan to be made by the State to the Borrower to provide financing for a portion of the Costs of the Project pursuant to this Loan Agreement.

“Loan Agreement” means this loan agreement, including any exhibits, schedules and attachments hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

“Loan Closing Date” means the date on which all conditions to the Loan closing have been satisfied by Borrower (or waived by the State) and the Loan proceeds are available to disburse to the Borrower in accordance with Section 2.01(b) hereof.

“Loan Closing Deadline” means the date, as set forth in Exhibit D hereof, by which all conditions precedent to Loan closing must be satisfied by the Borrower (or waived by the State).

“Loan Documents” means the Loan Agreement, Note and any agreements, instruments and certificates required to be executed and delivered hereunder.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon payable solely from unobligated net lottery proceeds, if any, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

“Maturity Date” means the 9th anniversary of the First Payment Date; and in any event, the Maturity Date cannot be more than the usable life of the Project or 25 years from the year of Project Completion Date, whichever is less. The entire outstanding principal balance of the Loan and all accrued unpaid interest is due and payable in full on the Maturity Date.

“Municipality” means any entity described in ORS 285B.410(8).

“Note” means that certain promissory note of the Borrower, substantially in the form of Exhibit F hereto, executed by the Borrower in favor of the State, as it may from time to time be amended, extended, renewed or restated.

“Project” means the project described in Exhibit B hereof or the portion of such project which is financed or refinanced by the State pursuant to this Loan Agreement, as the context requires.

“Project Close-Out Deadline” means the date set forth in Exhibit D, by which date the Borrower must submit the final Project completion report and certification described in Section 3.02(d) of the Loan Agreement.

“Project Completion Date” means the date set forth in Exhibit D on which approximate date the Borrower in fact completed the Project and submitted to the State a notice of substantial completion executed by the Project engineer or architect.

“Special Public Works Fund” or “Fund” means the fund created by ORS 285B.455(1).

“System” means the Borrower’s system which includes the Project or components of the Project, as such system or systems may be modified or expanded from time to time. References in this Loan Agreement to the Borrower’s “System” shall be ignored to the extent that the Project is not a component of a utility, safe drinking water or wastewater system or systems.

SECTION 1.02. General Rules. 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.

ARTICLE II LOAN TO BORROWER

SECTION 2.01. Loan; Disbursements; Use of Proceeds.

(a) Loan. Subject to the terms and conditions hereof, in particular Sections 4.01 and 4.02 hereof, the State hereby agrees to make and disburse to the Borrower, and the Borrower agrees to borrow and accept from the State, the Loan, in an aggregate principal amount not to exceed the principal amount set forth in Exhibit D hereto.

(b) Disbursements. Subject to Sections 4.01 and 4.02 hereof, the proceeds of the Loan shall be disbursed to the Borrower from time to time on an expense reimbursement or costs incurred basis upon receipt by the State of a Disbursement Request; provided, however, that the State's obligation to make, and the Borrower's right to request, disbursements under this Loan Agreement shall terminate on September 30, 2011.

(c) Use of Proceeds. The Borrower shall use the proceeds of the Loan strictly in accordance with Section 3.02(a) hereof and subject to and in compliance with Exhibit B and Exhibit C hereof.

SECTION 2.02. Loan Payment.

(a) Promise to Pay. The Borrower agrees to repay the Loan and all amounts due under the Note or any of the Loan Documents in accordance with the terms hereof and thereof. Unless earlier repayment is received hereunder or under the terms of the Note, the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full on the Maturity Date.

(b) Payments. Commencing on the First Payment Date and thereafter on December 1 of each year, the Borrower shall make level installment payments of principal and interest, which shall be calculated based on the assumption that the outstanding principal balance on the First Payment Date accrued interest for a full year prior to the First Payment Date; and each such installment shall be in an amount sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, at which time the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full; provided, however, that the first such installment payment shall be adjusted to include actual interest accrued to the First Payment Date.

(c) Payment Schedule. Notwithstanding Section 2.02(b) above, the State and the Borrower may, at any time, agree to payments different from the payments described in Section 2.02(b) or agree to attach a payment schedule to the Note. In such case the Borrower shall execute and deliver to the State a replacement Note which shall have attached thereto the agreed upon payment schedule as "Schedule 1 – Payment Schedule."

(d) Note with Schedule. In the event a "Schedule 1 – Payment Schedule" is attached to the Note pursuant to Section 2.02(c), the third paragraph of the Note shall read as follows:

"Commencing on the First Payment Date and thereafter on December 1 of each year, the Borrower shall pay all unpaid interest accrued to the date of payment and make the payments of principal as set forth in "Schedule 1 – Payment Schedule" (which is attached to this Note) until the Maturity Date, at which time the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full."

SECTION 2.03. Unconditional Obligations. The provisions of the Loan Agreement shall constitute a contract with the State and shall be enforceable by the State. Payments required under the Loan Documents are payable from the sources of repayment described in Section 2.06 hereof, and the obligation of the Borrower to make all payments required under the Loan Documents and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part to be performed or observed contained therein shall be absolute and unconditional. Payments hereunder and under any of the other Loan Documents shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, or any payments under this Loan Agreement or Note remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Loan Agreement or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

SECTION 2.04. Loan Prepayments

(a) **Mandatory Prepayment.** The Borrower shall prepay the outstanding balance of the Loan, including any unpaid accrued interest, upon the occurrence of any of the following events:

- (i) destruction of all or a substantial portion of the Project; or
- (ii) condemnation of the Project, or any portion thereof, to the extent of the condemnation proceeds; or
- (iii) as required by Section 3.02(e); or
- (iv) as required in Exhibit A of the Loan Agreement; or
- (v) as otherwise required by this Loan Agreement or any of the Loan Documents.

(b) **Optional Prepayment Prior to the Maturity Date.** The Borrower may prepay all or any portion of the outstanding balance of the Loan on any Business Day, and each Loan prepayment shall include payment of the accrued unpaid interest on the amount prepaid.

(c) **General.** Payments and prepayments by the Borrower shall be applied first to any costs and expenses incurred by State, then to unpaid accrued interest, and finally to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan prepayment shall be applied to the outstanding principal payments.

SECTION 2.05. Loan Agreement to Survive Lottery Bonds. The Borrower acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of any bond indenture applicable to the Lottery Bonds and payment of the principal of, redemption premium, if any, and interest on the Lottery Bonds.

SECTION 2.06. Sources of Payment of Borrower's Obligations.

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement and any of the other Loan Documents, including, without limitation, the amounts payable by the Borrower pursuant to Sections 2.02, 2.04, 2.07 and 6.04 hereof, are payable from the sources of repayment described in paragraph (b) of this Section 2.06; provided, however that nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement and the other Loan Documents from any other legally available source.

(b) The amounts payable by the Borrower under this Loan Agreement and the other Loan Documents are payable from the sources of repayment described in the Act and Exhibit A hereto; provided however that nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement and the other Loan Documents from any other legally available source. Funds from such sources shall be applied to the punctual payment of the principal of and interest on the Loan and all other amounts due under this Agreement and other Loan Documents according to their respective terms. The amounts payable by the Borrower under this Loan Agreement and the other Loan Documents are also payable from all legally available funds in the Borrower's general fund.

(c) The pledges made by the Borrower in Exhibit A hereto shall be valid and binding from the date of this Loan Agreement, pursuant to ORS 287A.310. The amounts so pledged and hereafter received by the Borrower shall immediately be subject to the lien of the pledge without physical delivery or further act except as may be stated in Exhibit A hereto and shall be superior to all other claims and liens whatsoever to the fullest extent permitted by ORS 287A.310.

(d) The Borrower expressly acknowledges that if the Borrower defaults on payments due under this Loan Agreement or any of the other Loan Documents, the State of Oregon, pursuant to ORS 285B.449, may withhold all or a portion of any amounts otherwise due to the Borrower and apply said amounts to payments due under this Loan Agreement and the other Loan Documents to the fullest extent permitted by law; provided however that the provisions of the Loan Agreement and the Note are not to be construed in a way that would cause the obligations of the Borrower thereunder to constitute debt which violates Section 10, Article XI of the Oregon Constitution.

SECTION 2.07. Disclaimer of Warranties; Limitation of Liability; Indemnification. The Borrower acknowledges and agrees that:

(a) the State makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto;

(b) in no event shall the State or its officers, employees or 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 of the other Loan Documents or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Loan Agreement; and

(c) to the extent authorized by law, the Borrower shall (subject to ORS chapter 180) defend, indemnify, save and hold harmless the State and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Borrower, or its employees, agents or subcontractors pursuant to the terms of this Loan Agreement or any of the other Loan Documents, provided, however, that the provisions of this paragraph (c) 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 under the laws of the United States or other laws of the State of Oregon.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

SECTION 3.01. Representations and Warranties of Borrower. The Borrower represents and warrants for the benefit of the State as follows:

(a) Organization and Authority.

(i) The Borrower is a Municipality.

(ii) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Project, other than licenses and permits relating to the Project which the Borrower expects to receive in the ordinary course of business, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement and the other Loan Documents.

(iii) The Project is a project that the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(iv) The proceedings of the Borrower's governing members and voters, if necessary, approving this Loan Agreement and the other Loan Documents and authorizing the execution and delivery of this Loan Agreement and other Loan Documents on behalf of the Borrower, and authorizing the Borrower to undertake and complete the Project have been duly and lawfully adopted in accordance with the laws of Oregon, and the actions of such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Oregon law, and at which quorums were present and acting throughout.

(v) This Loan Agreement and all other Loan Documents required hereunder to be executed by Borrower have been duly authorized and executed and delivered by an Authorized Officer of the Borrower; and, assuming that the State has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement and the Loan Documents required hereunder to be executed by the State, this Loan Agreement and other Loan Documents required hereunder to be executed by the Borrower constitute the legal, valid and binding obligation of the Borrower in accordance with their terms.

(vi) Borrower's Contract and the Loan Agreement have been authorized by an ordinance, order or resolution of the Borrower which was adopted in accordance with applicable law and the Borrower's requirements for filing public notices and holding public meetings.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the State in writing on the Borrower's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of the Borrower or the Project, or the ability of the Borrower to make all payments required by the Loan Documents and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents. Neither the Borrower's application for the Loan, nor the Borrower's representations in this Loan Agreement or any of the other Loan Documents contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The information contained in Exhibit B and Exhibit C hereto and in Sections 2, 3, and 9 of Exhibit D hereto is true and accurate in all respects.

(c) Pending Litigation. There are no proceedings pending, or, to the knowledge of the Borrower, threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or the Project, or the ability of the Borrower to make all payments required by the Loan Documents and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents, that have not been disclosed in writing to the State in the Borrower's application for the Loan or otherwise.

(d) Compliance with Existing Agreements, Etc. The authorization, execution and delivery of this Loan Agreement and the other Loan Documents by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements thereunder, the consummation of the transactions provided for in this Loan Agreement and the other Loan Documents, the compliance by the Borrower with the provisions of this Loan Agreement and the other Loan Documents and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or asset of the Borrower pursuant to, any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than any lien and charge of this Loan Agreement or any of the documents related hereto) to which the Borrower is a party or by which the Borrower, the Project or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, resolutions, governmental rules, regulations or court orders to which the Borrower, the Project or its properties or operations is or may be subject.

(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 Loan Documents or receipt of the amount of the Loan or any portion thereof, would constitute an Event of Default hereunder. The Borrower 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 Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or the Project or the ability of the Borrower to make all payments required by the Loan Documents or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents.

(f) Governmental Consent. The Borrower has obtained or will obtain all permits and approvals required to date by any governmental body or officer for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents or for the undertaking or completion of the Project and the financing or refinancing thereof; and the Borrower 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 and performance by the Borrower of its duties, covenants, obligations and agreements 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 the Borrower as a condition to the authorization, execution and delivery of this Loan Agreement or any other Loan Document.

(g) Compliance with Law. The Borrower:

(i) is in compliance with all 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 the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or the Project; and

(ii) has obtained or will obtain all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or the Project.

(h) The Project.

(i) The Project is feasible, and there will be adequate funds available to complete the Project and repay the Loan.

(ii) The Project is owned by the Borrower and will be operated by the Borrower or by a person under a management contract or operating agreement with Borrower and shall remain in municipal ownership until the Loan is repaid in full.

(i) Costs of the Project. The Borrower certifies that the Costs of the Project, as listed in Exhibit C and Exhibit D hereto, (i) are a reasonable and accurate estimation and based upon an engineer's feasibility report and engineer's estimate stamped by a registered professional engineer, a copy of which shall be promptly provided to the State upon request, and (ii) equal or exceed the maximum principal amount of the Loan shown on Exhibit D. The Borrower further agrees that a professional engineer registered and in good standing in Oregon will be responsible for the design and construction of the Project.

(j) Continuing Representations. The representations of the Borrower contained herein shall be true on the Loan Closing Date and at all times during the term of this Loan Agreement.

SECTION 3.02. Particular Covenants of the Borrower.

(a) Use of Proceeds. The Borrower will apply the proceeds of the Loan and interest earnings thereon to finance all or a portion of the Costs of the Project in accordance with Exhibit B and Exhibit C and strictly in accordance with the Act and Oregon law where applicable. None of the proceeds of the Loan shall be used for

i) costs in excess of one hundred percent (100%) of the total Costs of the Project,

- ii) costs not listed in the Project budget or which are not eligible under the Act, or
- iii) facilities that are or will, during the term of the Loan, be privately owned.

(b) Source of Repayment. The Loan shall be paid from such sources of repayment described in Section 2.06 hereof and Exhibit A hereto the Loan Agreement. Funds from such sources shall be applied to the punctual payment of the principal of and the interest on the Loan and all other amounts due under this Loan Agreement and the other Loan Documents according to their respective terms.

(c) Performance Under Loan Documents. The Borrower covenants and agrees (i) to maintain Project in good repair and operating condition; (ii) to cooperate with the State in the observance and performance of the respective duties, covenants, obligations and agreements of the Borrower and the State under this Loan Agreement and the other Loan Documents; and (iii) to comply with the covenants described in this Loan Agreement and the other Loan Documents.

(d) Completion of Project and Provision of Moneys Therefore. The Borrower shall obtain as-built drawings for all facilities of the Project and obtain certification of completion per as-built drawings from the Project engineer or architect no later than the Project Closeout Deadline. The Borrower shall supply a copy of such drawings and certification to the State upon request. The Borrower covenants and agrees to provide from its own fiscal resources all moneys, in excess of the total amount of Loan proceeds it receives pursuant to this Loan Agreement, required to pay for the Project. The Borrower shall have a program, documented to the satisfaction of the State, for the on-going maintenance, operation and repair, at its sole expense, of the Project. The program shall include a plan for generating revenues sufficient to assure the operation, maintenance and replacement of the Project during the useful life of the Project. Borrower shall provide such documentation to the State on or before the Project Close-Out Deadline.

(e) Disposition of Project. Unless worn out, obsolete, or in the reasonable business judgment of the Borrower, no longer useful in the operation of the Project, the Borrower shall not sell, lease, exchange, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or any system which provides revenues for payment of amounts due under this Loan Agreement and the Loan Documents, except if (i) the State consents thereto in writing upon ninety (90) days' prior written notice to the State; and (ii) Borrower assigns this Loan Agreement and the other Loan Documents pursuant to Article V hereof; and the State shall not consent to any such sale, lease, exchange, abandonment, transfer or other disposition unless the State shall have received an opinion of Bond Counsel to the effect that such sale, lease, exchange, abandonment or other disposition complies with the Act. Except as provided in Exhibit A, proceeds of any such transfer not used to replace property that is part of the Project shall be applied to the payment or prepayment of the outstanding principal of and interest on the Loan, as provided in Section 2.04 of this Loan Agreement

(f) Operation and Maintenance of Project. The Borrower covenants and agrees that it shall, in accordance with prudent ownership practice, (i) at all times operate the Project so as to preserve the long term public benefits of the Project and in an efficient manner, (ii) maintain the Project in good repair, working order and operating condition, and (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements as may be required with respect to the Project so that at all times the business carried on in connection therewith shall be properly and advantageously conducted.

(g) Records; Accounts. The Borrower shall keep accurate records and accounts for the revenues and funds that are the source of repayment of the Loan (the "Repayment Revenue Records"), separate and distinct from its other records and accounts (the "General Records"). Such Repayment Revenue Records shall be maintained in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time and shall be audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Borrower. Such Repayment Revenue Records and General Records shall be made available for inspection by the State at any reasonable time, and a copy of such annual audit(s) therefore, including all written comments and recommendations of such accountant, shall be furnished to the State within two hundred ten (210) days of the close of the fiscal year being so audited. The Borrower's financial management system must conform with the generally accepted accounting principles for state and municipal corporations established by the National Committee on Governmental Accounting as in effect from time to time.

(h) Inspections; Information. The Borrower shall permit the State and any party designated by the State to examine, visit and inspect, at any and all reasonable time, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the State may reasonably require in connection therewith. In addition, the Borrower shall provide the State with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of the Borrower that are issued after the Loan Closing Date.

(i) Insurance. The Borrower shall maintain or cause to be maintained, insurance policies with responsible insurers or self insurance programs insuring against risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is usually carried by governmental units constructing, operating and maintaining similar facilities, including liability coverage, all to the extent available at reasonable cost. Nothing herein shall be deemed to preclude the Borrower from exerting against any party, other than the State, a defense which may be available to the Borrower, including without limitation a defense of immunity. Except as provided in Exhibit A, in the event the Project or any portion thereof is destroyed, any insurance proceeds shall be paid to the State and shall be applied to prepay the principal of and interest on the Loan in accordance with Section 2.04 of this Loan Agreement unless the State agrees in writing that the insurance proceeds shall be used to rebuild the Project.

(j) Condemnation. Except as provided in Exhibit A, in the event the Project or any portion thereof is condemned, any condemnation proceeds shall be used to prepay the outstanding balance on the Loan in accordance with Section 2.04 of this Loan Agreement.

(k) Notice of Material Adverse Change. The Borrower shall promptly notify the State of any material adverse change in the activities, prospects or condition (financial or otherwise) of the Borrower or the Project, or in the ability of the Borrower to make all payments required by the Loan Documents and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents.

(l) Financial Statements; Reports. Borrower shall deliver to the State in form and detail satisfactory to the State such statements or reports as to the Borrower as the State may reasonably request.

(m) Contract Covenants. The Borrower covenants and agrees to comply with the terms of the Contract including without limitation the covenants of the Borrower in Section 5 of the Contract.

(n) Further Assurances. The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments 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.

ARTICLE IV CONDITIONS PRECEDENT

SECTION 4.01. Loan Closing. The State's obligations hereunder are subject to satisfaction of the following conditions precedent on or prior to the Loan Closing Deadline or such later date as the State may authorize in writing in State's sole and absolute discretion:

(a) the Borrower has caused to be executed and delivered to the State the following items, each in a form and substance satisfactory to State and its Counsel:

- (i) this Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;
- (ii) the Note duly executed and delivered by an Authorized Officer of the Borrower;
- (iii) the Contract duly executed and delivered by an Authorized Officer of the Borrower;
- (iv) copy of the ordinance, order or resolution of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement, the other Loan Documents, and the Borrower's Contract, certified by an Authorized Officer of the Borrower;
- (v) an opinion of the Borrower's Counsel, acceptable to the State, substantially in the form set forth in Exhibit G; and
- (vi) such other certificates, documents, opinions and information as the State may reasonably require; and

(b) there is money available in the Special Public Works Fund for the Project;

provided, however, the State shall be under no obligation to make this Loan or disburse funds under this Loan Agreement if there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

SECTION 4.02. Conditions to Disbursements. Notwithstanding anything in this Loan Agreement or any of the Loan Documents to the contrary, the State shall have no obligation to make the Loan or disburse funds under this Loan Agreement to the Borrower hereunder unless:

(a) No Event of Default, or event, omission or failure of a condition which would constitute an Event of Default as defined in this Loan Agreement or any of the Loan Documents after notice or lapse of time or both, has occurred and is continuing under this Loan Agreement or any of the Loan Documents;

(b) The representations or warranties of the Borrower made in this Loan Agreement are true and correct on the date of disbursement with the same effect as if made on such date;

(c) State has received (i) a completed Disbursement Request and (ii) any other written evidence of materials and labor furnished to or performed upon the Project, itemized receipts or invoices for the payment of the same, and releases, satisfactions and other signed statements and forms as the State may require as a condition for making disbursements of funds under this Loan Agreement. The State may, at its option, from time to time, either reimburse the Borrower for construction costs paid or may make direct payment for construction costs to suppliers, subcontractors and others for sums due them in connection with construction of the Project. Nothing herein contained shall require the State to pay any amounts for labor or materials unless satisfied that such claims are reasonable and that such labor and materials were expended and used in the construction of the Project. The State, at its option, from time to time, may also require that the Borrower have a contractor or subcontractor execute and deliver a surety bond or indemnification in form and substance acceptable to the State for the faithful performance of the construction contract or subcontract and payment of all liens and lienable expenses in connection therewith in a sum equal to the contract or subcontract price; and

(d) Money is available in the Special Public Works Fund to fund the disbursement.

Further, the State shall have no obligation to make any disbursement of funds to the Borrower if, on or before the time for disbursement, there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

ARTICLE V ASSIGNMENT

SECTION 5.01. Assignment and Transfer by the State. The Borrower hereby approves and consents to any assignment, sale or transfer of this Loan Agreement and the Loan Documents that the State deems to be necessary.

SECTION 5.02. Assignment by Borrower. This Loan Agreement and the other Loan Documents may not be assigned by the Borrower without the prior written consent of the State. The State may grant or withhold such consent in its sole discretion. In the event of an assignment of this Loan Agreement and the other Loan Documents by Borrower and assumption of the obligations hereunder, Borrower shall pay, or cause to be paid, to the State any fees or costs incurred by the State as the result of such assignment, including but not limited to, attorney fees of State's Counsel and Bond Counsel.

ARTICLE VI DEFAULTS AND REMEDIES

SECTION 6.01. Time is of the Essence; Event of Default. Time is of the essence of this Loan Agreement. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Failure by the Borrower to make, or cause to be made, any required payments of principal and interest on the Note when due, as provided in the Note and this Loan Agreement; or

(b) Failure by the Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other material obligations of the Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period; or

(c) Any representation made by or on behalf of the Borrower contained in this Loan Agreement or any other Loan Document, or in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement, any other Loan Document or the Loan or in connection with the Lottery Bonds, including but not limited to any representation with respect to current or historical information made to the State herein or in any other pertinent documents, certificates and reports relied upon by the State in gauging the progress of the Project, compliance with the requirements of the Act and performance of duties by the Borrower, is false or misleading in any material respect; or

(d) A petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Borrower, such petition shall be dismissed within twenty (20) calendar days after such filing, and such dismissal shall be final and not subject to appeal; or the Borrower shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator or trustee of the Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

(e) Failure of the Borrower's governing body to appropriate sufficient funds to fully fund all of the Borrower's obligations to make payments required by the Loan Documents for any future fiscal period; or

(f) The occurrence of any event of default under Section 6 of the Contract or under any of the Loan Documents; or

(g) Failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement or any other Loan Documents, other than as referred to in subsections (a) through (f) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State, unless the State shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State may not unreasonably withhold its consent to an extension of such time up to one hundred twenty (120) days from the delivery of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected.

SECTION 6.02. Notice of Default. The Borrower shall give the State prompt telephone notice of the occurrence of any Event of Default referred to in Section 6.01(d) hereof, and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section 6.02 shall be confirmed in writing as soon as practicable by the Borrower.

SECTION 6.03. Remedies on Default. Whenever an Event of Default referred to in Section 6.01 hereof shall have occurred and be continuing, the State shall have the right to take any action permitted or required pursuant to the Loan Agreement or any other Loan Document and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower hereunder, including, without limitation, (a) declaring all payments under the Note and all other amounts due hereunder and under the other Loan Documents to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand, (b) appointment of a receiver of the Project, (c) refusal to

disburse any funds under this Loan Agreement, (d) barring the Borrower from applying for future Special Public Works Fund assistance, or (e) withholding amounts otherwise due to the Borrower to apply to the payment of amounts due under this Loan Agreement as provided in ORS 285B.449.

SECTION 6.04. 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 Agreement shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State reasonable expenses incurred by the State in the collection of Loan payments.

SECTION 6.05. Application of Moneys. Any moneys collected by the State pursuant to Section 6.03 hereof shall be applied (a) first, to pay any attorney fees or other fees and expenses owed by the Borrower hereunder, (b) second, to pay interest due and payable on the Loan, (c) third, to pay principal due and payable on the Loan, and (d) fourth, to pay any other amounts due and payable under this Loan Agreement or any of the Loan Documents.

SECTION 6.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the State 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. To entitle the State to exercise any remedy reserved to it in this Article VI, it shall not be necessary to give any notice, other than such notice as may be required in this Article VI.

SECTION 6.07. Default by the State. In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default 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 the State hereunder as may be necessary or appropriate.

ARTICLE VII MISCELLANEOUS

SECTION 7.01. Notices. All notices hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed, postage prepaid, to the Borrower at the address specified on Exhibit D hereof and to the State at the following address:

Oregon Business Development Department
Attention: Regional Services Manager, Infrastructure Finance Authority
775 Summer Street NE, Suite 200
Salem, OR 97301-1280

Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice given by personal delivery shall be effective when actually delivered.

Any party may designate any further or different addresses to which subsequent notices shall be sent, by notice in writing given to the others.

SECTION 7.02. Successors and Assigns. This Loan Agreement shall inure to the benefit of and shall be binding upon the State and the 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 State.

SECTION 7.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

SECTION 7.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower. This Loan Agreement may not be amended, supplemented or modified in a manner that is not in compliance with the Act.

SECTION 7.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

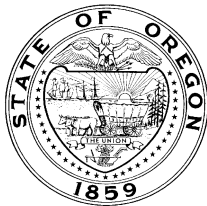
SECTION 7.06. No Construction against Drafter. Both parties acknowledge that they are each represented by and have sought the advice of Counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

SECTION 7.07. Choice of Law; Designation of Forum; Federal Forum.

- (1) 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.
- (2) 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.
- (3) Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This 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.

SECTION 7.08. Merger; No Waiver. This Loan Agreement and the attached exhibits (which by this reference are incorporated herein) constitute 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 Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall be binding unless in writing and signed by the party against whom it is sought to be enforced and all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

This Loan Agreement becomes effective on the date (“Effective Date”) it is fully executed and approved as required by applicable law. The Borrower, by the signature below of its Authorized Officer, acknowledges that it has read this Loan Agreement, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Business Development Department



CITY OF CANBY

By: _____
Jim Zelenka, Regional Services Manager
Infrastructure Finance Authority

By: _____
Greg Ellis, City Administrator

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Lynn Nagasako (as per email dated 12/16/2010)
Lynn T. Nagasako, Sr. Assistant Attorney General

Date: _____ December 16, 2010

SPECIAL CONDITIONS OF AWARD**I. General Fund as a Source of Repayment**

The Borrower 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 the Loan Agreement and the Note. The Loan Agreement and the Note are payable from all legally available funds of the Borrower.

II. Walnut Street Local Improvement District Assessment Installment Payment Contracts

The principal of and interest on the Loan are payable from the amounts due on all Walnut Street Local Improvement District assessment installment payment contracts ("LID Contract Payments"). The Borrower hereby grants to the State a security interest in and irrevocably pledges all LID Contract Payments to pay all of the obligations owed by the Borrower to the State under the Loan Agreement. The Borrower shall not incur any obligations payable from or secured by a lien on and pledge of the LID Contract Payments that are superior to or on a parity with the Loan.

Any mandatory or optional prepayments due or made on the Walnut Street Local Improvement District assessment installment payment contracts must be paid to State as a mandatory prepayment in accord with Section 2.04(a) of the Loan Agreement.

III. Pre-Award Expenses

The Borrower is authorized to request reimbursement for Costs of the Project incurred no earlier than July 1, 2008.

PROJECT DESCRIPTION

Borrower will design and construct a realignment and an extension of South Walnut Street, and half-street improvements on SE 4th Avenue, as well as related infrastructure in the Pioneer Industrial Park in southeastern Canby. Borrower will obtain right-of-way dedications and utility easements and perform the following work:

1. Realign South Walnut Street directly to a new intersection with South Sequoia Parkway that is approximately 800 feet north of its current intersection with South Sequoia Parkway and construct a northward extension of approximately 1,400 lineal feet. In connection with construction of the paved roadway, the Borrower will also install sanitary sewer, water, storm drainage, and electrical services along the new roadway and in the public right-of-way. Trenching and backfill will be provided for telephone, gas, and cable services.
2. Vacate approximately 800 feet of the existing South Walnut Street right-of-way, south of the point of diversion, including all roadway surfaces and existing utilities. Also, remove approximately the top 18 inches of surface, remove any identified contamination that would prevent the site from being used for industrial activity, and then replace with an acceptable native material.
3. Develop half-street improvements along approximately 220 feet of SE 4th Avenue in the vicinity of the easterly boundary of Tax Lot 1709, including any tax lot adjustments that may be negotiated with the adjoining Tax Lot 2400. In connection with construction of the paved roadway, the Borrower will also install sanitary sewer, water, storm drainage, and electrical services along the new roadway and in the public right-of-way. Trenching and backfill will be provided for telephone, gas, and cable services.

**Oregon Business Development Department
Project Budget**

Loan Agreement Exhibit C
Page 1 of 1

Project Number: X09004
Project Name: Canby Pioneer Industrial Park South Walnut Street Improvements

Recipient: City of Canby
Funding Pgm(s): Special Public Works Fund

CTS # 033200776

Department Funds					Other/Matching Funds			All Funds
(A)	(B)	(C)	(D)	(E) = [B-C-D]	(F)	(G)	(H) = [F-G]	(I) = [C+D+G]
Activity	Approved Budget	Prior Disbursements	Current Request	Balance	Approved Budget	Expended To Date	Balance	Disbursed & Expended To Date
Industrial Street and Infrastructure								
Improvements - South Walnut Street	334,927			334,927	357,602		357,602	
Engineering/Surveying/Legal/Other	83,000			83,000	96,532		96,532	
Total	\$417,927			\$417,927	\$454,134		\$454,134	

Total Project Budget		
Funding Sources	Approved Budget	Expenditures To Date
Special Public Works Fund	\$417,927	
Other/Matching Funds	454,134	
Total Project Costs	\$872,061	

Non-Department Funds (Other/Matching)		
Sources Used for all Expenditures		
Funding Sources	Approved Budget	Expenditures To Date
Walnut LID property owners	\$241,734	
ODOT Immediate Opportunity Fund	171,446	
City of Canby	40,954	
Total Non-Department Funds	\$454,134	

DESCRIPTION OF THE LOAN

1. Loan Closing Deadline: February 18, 2011
2. Name and Address of Borrower: City of Canby
182 North Holly Street / PO Box 930
Canby, OR 97013
3. Costs of the Project: \$872,061
4. Project Completion Date: September 30, 2010
5. Project Closeout Deadline: September 30, 2011
6. Maximum Aggregate Principal Amount of Loan: \$417,927
7. Interest Rate: Five percent (5%) per annum
8. Maturity Date: In accordance with Sections 1.01 and 2.02 hereof
9. Authorized Officer(s) of Borrower: City Administrator

FORM OF PROMISSORY NOTE

(Dated) XXXXXXXXXXXXXXXX, XXXX

Canby, OR

FOR VALUE RECEIVED, the City of Canby, 182 North Holly Street / PO Box 930, Canby, OR 97013 (hereinafter "Borrower"), 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, OR 97301-1280 (hereinafter "State"), the principal sum of Four Hundred Seventeen Thousand, Nine Hundred Twenty-Seven Dollars (\$417,927) or so much thereof as is disbursed pursuant to the Loan Agreement (as defined below), plus interest on the outstanding principal balance at the interest rate of five percent (5%) per annum, from the date hereof until paid. Interest shall be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured pursuant to the terms and conditions of that certain loan agreement dated as of XXXXXXXXXXXXXXXX, XXXX, between the State and the Borrower (as amended from time to time the "Loan Agreement"). Capitalized terms not otherwise defined in this Note shall have the meanings assigned to them by the Loan Agreement.

Commencing on the First Payment Date and thereafter on December 1 of each year, the Borrower shall make level installment payments of principal and interest, which shall be calculated based on the assumption that the outstanding principal balance on the First Payment Date accrued interest for a full year prior to the First Payment Date; and each such installment shall be in an amount sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, at which time the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full; provided however that the first such installment payment shall be adjusted to include actual interest accrued to the First Payment Date.

This Note is subject to mandatory prepayment, and is payable prior to its Maturity Date, as provided for in Section 2.04 of the Loan Agreement.

Each payment made by the Borrower hereunder shall be applied first to the State's costs and expenses, then to unpaid accrued interest, and lastly to the principal of the Loan, unless the Loan Agreement provides otherwise.

This Note is given to avoid the execution by Borrower of an individual note for each disbursement of Loan proceeds by State to Borrower in accordance with Section 2.01 of the Loan Agreement. In consideration thereof, Borrower authorizes State to record in State's files the date and amount of each such disbursement, the date and amount of each payment and prepayment by Borrower hereunder and the amount of interest accrued and paid. Borrower further agrees that absent manifest error, such notations shall be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations shall not affect the obligations of Borrower hereunder or under any of the Loan Documents.

If any Event of Default occurs, the outstanding balance of the Note, including principal, interest and other charges, if any, shall, at the option of the State, become immediately due and payable in accordance with Section 6.03 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 of the parties on this Note shall be discharged by any action consented to above taken by any holder of this Note.

To the fullest 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, expenses and costs at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State reasonable expenses incurred by the State in the collection of Loan payments.

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.

CITY OF CANBY

By: XXXXXXXXXXXXXXXXXXXXX

Title: XXXXXXXXXXXXXXXXXXXXX

Notice to Borrower: Do not sign this Note before you read it.

**FORM OPINION OF MUNICIPALITY COUNSEL
[LETTERHEAD OF COUNSEL TO MUNICIPALITY]**

[DATED _____]

Oregon Business Development Department
755 Summer Street NE, Suite 200
Salem, OR 97301-1280

Ladies and Gentlemen:

[Insert "I" or "We"] have acted as counsel to the City of Canby (the "Municipality"), which has entered into a Loan Agreement (as hereinafter defined) with the Oregon Business Development Department (the "Department") pursuant to Sections 285B.410 through 285B.482 of the Oregon Revised Statutes (the "Act"), and have acted as such in connection with the authorization, execution and delivery by the Municipality of the Contract (as hereinafter defined) and the Loan Agreement. Capitalized terms not otherwise defined in this letter shall have the meanings assigned to them by the Loan Agreement.

In so acting [insert "I" or "we"] have examined the Constitution and laws of the State of Oregon and the Municipality's Charter, if any. [Insert "I" or "We"] have also examined originals, or copies certified or otherwise identified to [insert "my" or "our"] satisfaction, of the following:

A. The Loan Agreement dated as of _____, _____ by and between the Department and the Municipality and the Promissory Note dated _____, _____ in the principal amount of \$417,927 executed by the Municipality (collectively, the "Loan Agreement").

B. The Financial Assistance Award Contract number X09004 (the "Contract") dated as of _____, _____, by and between the Department and the Municipality;

C. Proceedings of the governing body of the Municipality relating to the approval of the Contract and the Loan Agreement and the execution, issuance and delivery thereof on behalf of the Municipality, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);

D. All outstanding instruments relating to bonds, notes or other indebtedness of or relating to the Municipality.

[insert "I" or "We"] have also examined and relied upon originals, or copies certified or otherwise authenticated to [insert "my" or "our"] satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in [insert "my" or "our"] judgment [insert "I" or "we"] have deemed necessary or appropriate to enable [insert "me" or "us"] to render the opinions expressed below.

Based upon the foregoing, [insert "I am" or "We are"] of the opinion that:

1. The Municipality is a duly formed and operating [insert specific nature of Municipality] described in ORS 285B.410(8), with the legal right to own and operate the Project.

2. The Municipality has full legal right and authority to execute and deliver the Contract and the Loan Agreement and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project.

3. Amounts due to the Department pursuant to the Contract and the Promissory Note are payable from the sources described in Section 2.06 of the Loan Agreement.

4. The Ordinance (the “Ordinance”) of the Municipality approving the Contract and the Loan Agreement and authorizing their execution, issuance and delivery on behalf of the Municipality, and authorizing the Municipality to undertake and complete the Project has been duly and lawfully adopted and authorized in accordance with the Municipality’s Charter, if any, the Act and other applicable Oregon law, and the Ordinance was adopted at a meeting or meetings which were duly called with public notice and held in accordance with the Municipality’s Charter, if any, and applicable Oregon law, and at which quorums were present and acting throughout.

5. The Contract and the Loan Agreement have been duly authorized, executed and delivered by the authorized officers of the Municipality and constitute the legal, valid and binding obligation of the Municipality enforceable in accordance with their respective terms; subject, however, to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, debt adjustment and other similar laws affecting creditors’ rights or remedies generally (“Creditor’s Rights Limitations”) heretofore or hereafter enacted and the application of equitable principles.

6. To the best of [insert “my” or “our”] knowledge, after such investigation as [insert “I” or “we”] have deemed appropriate, the authorization, execution and delivery of the Contract and the Loan Agreement by the Municipality, the observation and performance by the Municipality of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Municipality or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, resolution, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Municipality is a party or by which it, the Project, or its property or assets is bound.

7. To the best of [insert “my” or “our”] knowledge, after such investigation as [insert “I” or “we”] have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Municipality in connection with the authorization, execution, delivery and performance of the Contract and the Loan Agreement and the undertaking and completion of the Project have been obtained or made.

8. To the best of [insert “my” or “our”] knowledge, after such investigation as [insert “I” or “we”] have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Municipality or of the validity, legality or enforceability of the Contract or the Loan Agreement or the undertaking or completion of the Project.

This opinion is rendered on the basis of the laws of the State of Oregon, including the Act, as enacted and construed on the date hereof. [insert “I” or “We”] express no opinion as to any matter not set forth in the numbered paragraphs herein.

Very truly yours,

ORDINANCE NO. 1341

AN ORDINANCE CREATING A NEW CHAPTER IN TITLE 2 OF THE CANBY MUNICIPAL CODE AND AMENDING SECTIONS OF TITLE 16 OF THE CANBY MUNICIPAL CODE TO CREATE A PUBLIC ART MURAL PROGRAM, AND DECLARING AN EMERGENCY

WHEREAS, the Canby Urban Renewal Agency initiated and approved the Public Art Mural Program; and

WHEREAS, the Canby Planning Commission, after providing appropriate public notice, conducted a public hearing on the proposed new code and code amendments required to implement the Public Art Mural Program, during which the citizens of Canby were given the opportunity to come forward to present testimony on these proposed changes; and

WHEREAS, the Planning Commission found that the standards and criteria of Section 16.88.160 of the Land Development and Planning Ordinance, concerning Text Amendments were met, and recommended approval to the City Council on a 5-0 vote; and

WHEREAS, the City Council, after reviewing the record of the Canby Planning Commission regarding the subject new code and code amendments, concluded that the Planning Commission's findings of fact and the new code and code amendments itself are appropriate.

NOW, THEREFORE, THE CANBY CITY COUNCIL ORDAINS AS FOLLOWS:

- (1) TA 11-01 is hereby approved, and Chapter 2.80 of Canby Municipal Code is adopted; and Title 16 of Canby Municipal Code is hereby amended as detailed in Exhibit "A".

SUBMITTED to the Canby City Council and read the first time at a special meeting thereof on Wednesday, February 16, 2011 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, March 2, 2011, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers located at 155 N.W. 2nd Avenue, Canby, Oregon.

Kimberly Scheafer, CMC
City Recorder

2nd Reading

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on March 2, 2011 by the following vote:

YEAS _____ NAYS _____

Randy Carson
Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

2nd Reading

Management Team Meeting Minutes
February 14, 2011
2:00 PM
City Hall Conference Room

In attendance: Greg Ellis, Bryan Brown, Sue Engels, Julie Wehling, Eric Laitinen, Darwin Tramel, Penny Hummel, Suzan Duffy, and Kim Scheafer.

Sue Engels

- Suzan Duffy handed out budget preparation packets. General fund worksheets need to be returned in two weeks. Overhead transfer amounts will be available in two weeks.
- Has started collecting on several delinquent accounts the past few weeks
- She and Suzan will be at training on February 15
- Will be out of office on February 18

Penny Hummel

- Oregon's Poet Laureate Paulann Petersen will be at the library on February 22
- New additions have been made to the on-line catalog

Eric Laitinen

- Two swim meets were held at the pool on Sunday drawing in over 200 people to the City

Bryan Brown

- The Police Department Project Planner will be submitting paperwork to Planning soon

Kim Scheafer

- Need items for the March 2 City Council and URA meetings by Friday
- Next Management Team Meeting will be at 9 AM on February 15

Greg Ellis

- Received a letter from Dr. Perman regarding his private road. Will be responding in writing to him that road is not up to city standards and that the Council has said no to his proposition.

Darvin Tramel

- Working on budget and various annual reports
- Will be off on February 22

Julie Wehling

- Will be off the afternoon of February 17 and all day February 18
- Transit Advisory Committee changed policy regarding buses stopping on 99E

Minutes taken by Kim Scheafer

Management Team Meeting Minutes
February 22, 2011
11:00 AM
City Hall Conference Room

In attendance: Greg Ellis, Bryan Brown, Sue Engels, Julie Wehling, Eric Laitinen, Penny Hummel, Amanda Klock, John Kelley, Bret Smith, and Kim Scheafer.

Kim Scheafer

- Reviewed March 2 URA and City Council Agendas
- Will put Letter of Understanding with CAPRD on April 6 CC Agenda

Greg Ellis

- Will hold next Management Team Meeting on March 1 at 9 AM and discuss general fund budgets and staffing
- Inclement weather phone line and FlashAlert will be used if inclement weather occurs and City openings are changed

Bret Smith

- Administrative Assistant will start in a few weeks
- Still working on filling officer positions

Amanda Klock

- Will be sending out an email to staff regarding new hires and start dates
- Need to know how many departments need New Horizon vouchers
- Attended CIS Conference last week
- City received plaque from CIS for 30 years of continuous membership

Bryan Brown

- Let him know if you have any concerns regarding proposed land use bills
- Tracking traffic study results

Eric Laitinen

- Adult swim lesson and triathlon classes are starting
- Several State swim meets are being held in the new few weeks
- CAPRD did a presentation at the February 16 City Council meeting

Julie Wehling

- Adjusting her work schedule the next few weeks
- Working on Job Access Reverse Commute Grant
- Doing RFP for transit services
- Gearing up for snow

Sue Engels

- Will be eliminating two funds and adding two funds in upcoming budget
- Concern has been expressed regarding need for departmental procedures

Penny Hummel

- New librarian will start in a few weeks
- Poet Laureate went well last week
- New tools are available in the LINCC Catalog
- National Library Week celebrations will be held in April

Minutes taken by Kim Scheafer