



RESOLUTION 2025-016

AUTHORIZING THE CITY MANAGER TO EXECUTE AN OREGON TRANSPORTATION INFRASTRUCTURE BANK LOAN FOR CONSTRUCTION OF ICE AGE DRIVE

WHEREAS, SW Ice Age Drive is an identified improvement in the City's Transportation System Plan and Tonquin Employment Area Concept Plan; and

WHEREAS, SW Ice Age Drive will serve over 1.3 million square feet of new flex light industrial space that has recently been constructed in the Tonquin Employment Area since 2019; and

WHEREAS, SW Ice Age Drive will provide new development opportunities for properties within the interior of Tonquin Employment Area; and

WHEREAS, during a work session on August 20, 2024, the City Council directed staff to pursue low-interest loan financing options for the construction of SW Ice Age Drive; and

WHEREAS, on January 7, 2025, the City Council authorized the City Manager to apply for a \$5,000,000 Oregon Department of Transportation (ODOT) Transportation Infrastructure Bank loan via Resolution 2025-005; and

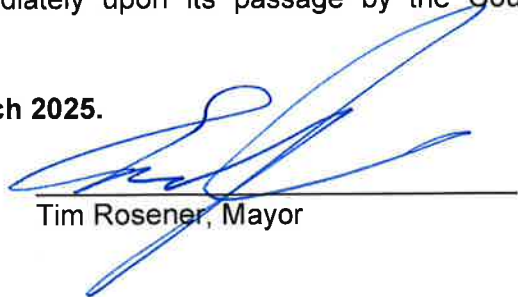
WHEREAS, city staff subsequently applied for the loan and on January 30, 2025, the City received a commitment letter from ODOT allowing the loan to proceed subject to the execution of a complete loan agreement including authorization from the City's governing body.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

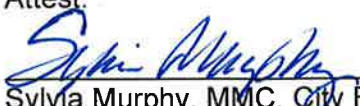
Section 1. The City Council authorizes the City Manager to execute the ODOT Transportation Infrastructure Bank loan for the construction of SW Ice Age Drive in a form substantially similar to the loan agreement included as Attachment 1 to this resolution in an amount not to exceed \$5,000,000.

Section 2. This Resolution shall take effect immediately upon its passage by the Council and signature by the Mayor.

Duly passed by the City Council this 18th day of March 2025.


Tim Rosener, Mayor

Attest:


Sylvia Murphy, MMC, City Recorder

LOAN AGREEMENT

between

STATE OF OREGON

acting by and through its

DEPARTMENT OF TRANSPORTATION

and

City of Sherwood, Oregon
PROJECT: Ice Age Drive
OTIF-0079

OTIF-0079

THIS LOAN AGREEMENT, is made and entered into on the date on which all parties have signed by and between the State of Oregon, acting by and through its Department of Transportation (the “State” or “ODOT”), and the Borrower (as defined below). The reference number for this Loan Agreement is OTIF-0079. Terms not otherwise defined in this Loan Agreement shall have the meanings assigned to them by Section 1.01 below.

RECITALS

1. The State, in accordance with the Act, will provide funds from the Oregon Transportation Infrastructure Fund for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of transportation projects (as that term is defined in the Rules);

2. The Borrower has applied to the State for a loan to finance all or a portion of the cost of a transportation project, and the Oregon Transportation Commission or the State have approved the Borrower's application for a loan to finance all or a portion of the cost of such project;

3. The Borrower has agreed to make payments sufficient to pay, when due, the principal of, premium, if any, and interest on the Loan from the State pursuant to the terms of the Note and this Loan Agreement; and

NOW, THEREFORE, for and in consideration of the Loan by the State, the Borrower agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth below:

ARTICLE 1

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 367.010 to 367.050 and related provisions, as the same may be from time to time amended and supplemented.

"Agreement" or "Loan Agreement" means this loan agreement, including the attached Exhibits, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Authorized Officer" means, in the case of the Borrower, the person or persons authorized pursuant to a resolution or ordinance 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 is furnished in writing to the State.

"Borrower" means City of Sherwood, and its successors and permitted assigns.

"Costs of the Project" shall mean only those specified costs listed in Exhibit B. The term "Costs of the Project" does not include:

- (i) costs in excess of one-hundred percent (100%) of the total Project cost;
- (ii) the purchase of equipment and other property not directly related to the Project;
- (iii) costs incurred prior to the date of the Loan, except as provided in Section 5.01; and
- (iv) administrative expenses of the Borrower unrelated to the 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.

"Event of Default" means any occurrence or event specified in Section 7.01 of this Agreement.

"Full Faith & Credit of the Borrower" means an obligation of the Borrower that is secured by all "lawfully available funds" (as defined in ORS 287A.001(11)) of the Borrower, including, but not limited to, funds of the Borrower's Urban Renewal Area Transportation Infrastructure Fund, System Development Charges, Property Sales within the Tonquin Employment Area.

"Loan" means the loan evidenced by the Note and made by the State to the Borrower to finance or refinance a portion of the Costs of the Project pursuant to this Loan Agreement. The Loan may be funded by the State from amounts held in the OTIF.

"Loan Execution Date" means the date on which all conditions are satisfied by the Borrower (or waived by State) and all parties have signed the Loan.

"Loan Prepayment" means, as to any payment, the amount paid by the Borrower that is in excess of the amount required to be paid as a Loan Repayment.

"Loan Repayment(s)" means the scheduled payment(s) of principal and interest of One Hundred Forty-four Thousand Seven Hundred Fifty-nine Dollars (\$144,759) each required to be made by the Borrower pursuant to the provisions of the Note and this Loan Agreement.

"Maturity Date" means the date on which the Loan is payable in full, which date shall be March 1, 2056.

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"Municipality" means a city, county, road district, school district, special district, metropolitan service district, the Port of Portland, or an intergovernmental entity organized under ORS 190.010.

"Note" means the promissory note of the Borrower substantially in the form of Exhibit C, as it may be amended, extended or renewed.

"Oregon Transportation Infrastructure Bank" or "OTIB" means the program authorized by Section 350 of the National Highway System Designation Act of 1995, Public Law 104-59, and a cooperative agreement between the Federal Highway Administration, Federal Transit Administration, of the United States Department of Transportation and the Oregon Department of Transportation dated August 20, 1996.

"Oregon Transportation Infrastructure Fund" or "OTIF" means the fund created by the Act. Loans from the OTIF may include OTIB loans or loans to finance transportation projects from any accounts established within the OTIF.

"Pledged Revenues" means:

- (i) Full Faith & Credit of the Borrower.
- (ii) Any funds payable from the State to the Borrower, including, but not limited to, any amounts due to the Borrower from the State pursuant to ORS 366.785 to 366.820.

"Project" means the transportation project of the Borrower described in Exhibit A, a portion of the Costs of the Project of which is financed or refinanced by the State through the making of the Loan under this Loan Agreement.

"Project Completion Date" means the date on which the Borrower completes construction of the Project.

"Project Completion Deadline" means December 30, 2026.

"Rule" or "Rules" means Oregon Administrative Rules, chapter 731, division 30, as they may be supplemented, modified or amended from time to time.

"State" means the State of Oregon, acting by and through its Department of Transportation.

"State Highway Fund" means the fund described in ORS 366.505.

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, agencies and districts.

ARTICLE II

LOAN

Section 2.01. Loan Amount. On the Loan Execution Date the State hereby agrees to make to the Borrower, and the Borrower agrees to borrow and accept from the State, a Loan in the maximum aggregate principal amount of Five Million and No/100 Dollars (\$5,000,000).

Section 2.02. Use of Loan Proceeds. The Borrower shall use the proceeds of the Loan strictly in accordance with Section 5.01 of this Agreement.

Section 2.03. Loan Term. The term of the Loan is set forth in the Note.

Section 2.04. Interest. The Note shall bear interest at the rate of Three and 64/100 percent (3.64%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months. Interest shall be due and payable in arrears and shall accrue on the outstanding principal balance from the date of this Agreement until the principal amount of the Note, together with accrued unpaid interest thereon, is paid in full.

Section 2.05. Payments.

(a) The Loan shall be due and payable in scheduled payments of principal and interest as set forth herein and in the Note. The Loan Repayments, when taken together, shall be in an amount sufficient to amortize the original principal amount of the Note, together with interest thereon, from the date of this Agreement to the Maturity Date.

(b) A scheduled payment received before the scheduled Loan Repayment date will be applied to interest and principal on the scheduled Loan Repayment date, rather than on the day such payment is received, and will be applied first to the State's expenses (if any) and any fees due, then to interest, and then to principal according to the applicable Loan Repayment schedule.

Section 2.06. Prepayments. Each Loan Prepayment shall include all unpaid interest on the amount prepaid that accrued to the date of prepayment.

(a) *Mandatory Prepayment.* The Borrower shall prepay the outstanding balance of the Loan upon the destruction of all or a substantial portion of the Project.

(b) *Optional Prepayment.* The Borrower may make Loan Prepayments without penalty or premium.

(c) *General.* Loan Prepayments shall be applied first to any expenses of the State and accrued interest on the portion of the Loan prepaid, and then to principal payments on the Loan. In the case of a Loan Prepayment that does not prepay all of 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. After a partial Loan Prepayment, the State may, in

its sole and absolute discretion, reamortize the outstanding Loan amount at the same interest rate for the same number of remaining payments to decrease the Loan Repayment amount; provided, however, that nothing in this Agreement requires the State to reamortize the outstanding Loan amount upon receiving a partial Loan Prepayment.

Section 2.07. Unconditional Obligation. The Borrower's obligation to make the Loan Repayments is absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments under this Loan Agreement remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) the following: 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, this Loan Agreement, or any intergovernmental agreement related to the Project; 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 under the Agreement shall not constitute a waiver of any such rights.

Section 2.08. Disclaimer of Warranties and Indemnification. The Borrower acknowledges and agrees that:

(a) the State does not make any warranty or representation, either expressed 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 of the Project or any other warranty or representation;

(b) in no event shall the State or its commissioners, officers, agents or employees be liable or responsible for any direct, incidental, indirect, special, consequential, punitive or other damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Project; and

(c) to the extent authorized by law, the Borrower shall indemnify, save, hold harmless and defend the State and its commissioners, officers, agents and employees, against any and all claims, 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 officers, employees, agents or subcontractors pursuant to the terms of this Loan Agreement; provided, however, that the provisions of this subsection (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 the laws of the United States of America or other laws of the State of Oregon.

Section 2.09. Termination of Availability. The State shall have no obligation to make any disbursements to the Borrower under this Loan Agreement after the Project Completion

Deadline, except for Costs of the Project incurred by the Borrower prior to the Project Completion Deadline.

Section 2.10. Sources of Repayment of the Borrower's Obligations.

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement, including, without limitation, the amounts payable by the Borrower pursuant to Section 2.05, Section 2.06, Section 2.08 and Section 7.04 of this Loan Agreement, are payable from the sources of repayment described in subsections (b) and (c) of this Section 2.10. Nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement from any other legally available source.

(b) The amounts payable by the Borrower under this Loan Agreement are payable from the Pledged Revenues.

(c) The Borrower pledges its full faith and credit and taxing power, within the limitations of Article XI, sections 11 and 11 b of the Oregon Constitution, to pay the amounts payable by Borrower under this Loan Agreement. The amounts payable by Borrower under this Loan Agreement are secured by and payable from all lawfully available funds of the Borrower.

(d) The Borrower acknowledges that the State of Oregon is entitled to withhold all or a portion of the Pledged Revenues, including but not limited to any amounts due to the Borrower from the State of Oregon pursuant to ORS 366.785 to 366.820, and to apply any such amounts to payments due under this Loan Agreement to the fullest extent permitted by law if the Borrower defaults on payments due under this Loan Agreement.

(e) Borrower hereby grants a security interest in and irrevocably pledges its Pledged Revenues to pay the Borrower's obligations. The Pledged Revenues so pledged and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery, filing or other act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent permitted by ORS 287A.310. The Borrower hereby represents and warrants that the pledge of Pledged Revenues hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310.

Section 2.11. Loan Fee. The Borrower shall pay to the State a one-time Loan fee equal to one percent (1%) of the Loan. This fee shall be in addition to any interest charged on the Loan. The Borrower may elect to:

☐ pay the entire amount of this Loan fee on the Loan Execution Date; or

☒ authorize the State to deduct the Loan fee from the Loan proceeds.

Section 2.12. Late Fee. If any Loan Repayment required under the Note is delinquent more than fifteen (15) calendar days, the Borrower shall pay to the State a late charge of five percent (5%) of the delinquent Loan Repayment in addition to the Loan Repayment due under the Note.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower represents and warrants to the State as follows:

Section 3.01. Organization and Authority.

- (a) The Borrower is a Municipality.
- (b) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date of this Agreement 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 to the Project, 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.
- (c) The Project is a project which the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.
- (d) The proceedings of the Borrower's governing members and voters, if necessary, approving this Loan Agreement and the Note and authorizing the execution, issuance and delivery of this Loan Agreement and the Note 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 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.
- (e) This Loan Agreement has been duly authorized, 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, this Loan Agreement constitutes the legal, valid and binding obligation of the Borrower in accordance with its terms, and the information contained in Exhibits A and B is true and accurate in all respects.
- (f) This Loan Agreement is duly authorized by a resolution of the Borrower which was adopted as required by ORS 367.035(4), and was adopted in accordance with applicable law and the Borrower's requirements for filing public notices and holding public meetings.

Section 3.02. 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 the condition (financial or otherwise) of the Borrower or the Project or the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement. Neither the Borrower's application for the Loan nor the Borrower's representations and warranties in this Loan Agreement 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.

Section 3.03. 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 (a) the Project, (b) properties, activities, prospects or the condition (financial or otherwise) of the Borrower, or (c) the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 3.04. Compliance with Existing Laws and Agreements. The authorization and execution of, and the performance of all obligations required by, this Loan Agreement will not: (i) cause a breach of any agreement or instrument to which the Borrower is a party; (ii) violate any provision of the charter or other document pursuant to which the Borrower was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to the Borrower or its properties or operations.

Section 3.05. No Defaults. No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or receipt of the amount of the Loan, would constitute an Event of Default under this Loan Agreement. 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 or its properties may be bound, which violation would materially adversely affect the (a) Project, (b) properties, activities, prospects or the condition (financial or otherwise) of the Borrower, or (c) the ability of the Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 3.06. Governmental Consent. The Borrower has obtained or will obtain all permits and approvals required by any governmental body or officer for the making, observance or performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or for the undertaking or completion of the Project and the financing or refinancing of the Project. 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 or with the undertaking or completion of the Project and the financing or refinancing of the Project.

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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.

Section 3.07. Compliance with Law. The Borrower:

(a) is in compliance with all laws, ordinances, rules and regulations to which it is subject, non-compliance with which would materially adversely affect the condition (financial or otherwise) of the Borrower or the ability of the Borrower to conduct its activities or undertake or complete the Project; and

(b) 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.

Section 3.08. The Project.

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

Section 3.09. Costs of the Project.

(a) The Costs of the Project is a reasonable and accurate estimation and based upon an engineer's feasibility report and engineer's estimate stamped by a registered professional engineer.

(b) The principal amount of the Loan is not in excess of the Costs of the Project.

ARTICLE IV

CONDITIONS TO LOAN AND DISBURSEMENTS

Section 4.01. Conditions Precedent to Loan. The State shall be under no obligation to make the Loan to the Borrower pursuant to the terms of this Loan Agreement unless:

(a) the Borrower delivers to the State, on or prior to the Loan Execution, the following documents in form and substance satisfactory to the State and its Counsel:

(i) An opinion of the Borrower's Counsel on the power and authority of the Borrower, the validity and enforceability of the Loan Agreement, and such other matters as the State may require;

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(ii) This Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;

(iii) The Note duly executed and delivered by an Authorized Officer of the Borrower;

(iv) A copy of the ordinance/resolution, duly adopted by the governing body of the Borrower, authorizing this Loan, the pledge of Borrower's full faith and credit and taxing power, the pledge of the Pledged Revenues and execution of the Loan documents, which copy of ordinance/resolution shall be certified by an Authorized Officer of the Borrower; and

(v) Such other certificates, documents, opinions and information as the State requests; and

(b) there is availability of moneys in the OTIF for use in the Project.

Notwithstanding the Borrower's satisfaction of the conditions above, the State shall be under no obligation to make the Loan if there has been a change in the Act such that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

Section 4.02. Conditions to Disbursement.

(a) The obligation of the State to make any disbursement to the Borrower is subject to the following conditions:

- (i) All the conditions set forth in Section 4.01 of this Loan Agreement have been satisfied;
- (ii) There is no Event of Default, or event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both;
- (iii) All representations and warranties of the Borrower made in this Loan Agreement shall be true and correct on the date of disbursement;
- (iv) The State has received documentation satisfactory to the State evidencing that the Borrower has obtained any matching funds that are needed to pay for the Costs of the Project; and
- (v) The State receives an executed requisition form - Exhibit D that includes 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 the Loan.

(b) 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

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and others for sums due them in connection with construction of the Project. Nothing in this Loan Agreement 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 actually 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 form acceptable to the State for the faithful performance of the construction contract or subcontract and payment of all liens and lienable expenses in connection with such performance in a sum equal to the contract or subcontract price. Disbursements for the Costs of the Project shall be subject to a retainage at the rate of five percent (5%) which will be released upon satisfactory completion of the Project.

(c) The State shall have no obligation to make any disbursement 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 or if ODOT does not receive sufficient funding, appropriations, limitation, allotments and other expenditure authority to allow ODOT or OTIF, in the exercise of its reasonable administrative discretion, to provide such funding.

ARTICLE V

COVENANTS OF BORROWER

Section 5.01. Use of Proceeds. The Borrower will apply the proceeds of the Loan:

- (a) to finance all or a portion of the Costs of the Project; and
- (b) to reimburse the Borrower for a portion of the Costs of the Project, which portion was paid or incurred in anticipation of reimbursement by the State, up to 12 months prior to the Loan Execution Date.

Section 5.02. Source of Repayment. The Loan shall be paid from the sources of repayment described in Section 2.10 of this Loan Agreement. 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 according to the terms of this Agreement.

Section 5.03. Performance Under Loan Agreement. The Borrower covenants and agrees 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.

Section 5.04. Disposition of Project. Unless it is worn out, obsolete or, in the reasonable opinion of the Borrower, no longer useful in the operation of the Project, the Borrower shall not sell, lease, abandon, exchange or otherwise dispose of (collectively for the purposes of this Section "transfer") all or substantially all or any substantial portion of the Project or any other properties or assets which provide revenues for the payment of the amounts due under this Loan Agreement except on ninety (90) days' prior written notice to the State and, in any event, shall not so transfer the same unless the State consents to such transfer. Proceeds of any such transfer not used to replace property that is part of the Project shall be applied to payment of the

outstanding principal and interest of the Loan as a Loan Prepayment, as provided in Section 2.06 of this Agreement.

Section 5.05. Operation and Maintenance of Project. The Borrower covenants and agrees that it shall, in accordance with prudent practice, maintain the Project in good repair, working order and operating condition.

Section 5.06. Records; Accounts. The Borrower shall keep accurate records and accounts for the revenues and funds that are the sources of repayment of the Loan, including but not limited to those Pledged Revenues (the "Repayment Revenues Records"), separate and distinct from its other records and accounts (the "General Records"). Such Repayment Revenues 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 Revenues Records and General Records shall be made available for inspection by the State and the federal government at any reasonable time, and a copy of such annual audit(s), including all written comments and recommendations of such accountant, shall be furnished to the State within two hundred ten (210) calendar days of the close of the fiscal year being so audited.

Section 5.07. Inspections; Information. The Borrower shall permit the State and any party designated by any of such parties to examine, visit and inspect, at any and all reasonable times, 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 and any other matters relating to the Project and to its financial standing, and shall supply such reports and information as the State may reasonably require in connection with this Agreement. 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 documents relating to any bonds, notes or other indebtedness of the Borrower that are issued after the Loan Execution Date and are secured by the Pledged Revenues.

Section 5.08. Insurance. The Borrower shall maintain or cause to be maintained insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is usually carried, or self-insurance is usually provided for, by governmental units constructing, operating and maintaining facilities of the nature of the Borrower's Project, including liability coverage, all to the extent available at reasonable cost. Unless otherwise prohibited by law, the Borrower shall cause the State to be listed on such insurance policies as a loss payee on such policy. Nothing herein shall be deemed to preclude the Borrower from asserting against any party, other than the State, a defense which may be available to the Borrower, including, without limitation, a defense of immunity. 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 the principal and interest on the Loan, unless the State agrees in writing that the insurance proceeds shall be used to rebuild the Project.

Section 5.09. Condemnation. In the event the Project or any portion of the Project is condemned, any condemnation proceeds shall be used to prepay the outstanding principal on the Loan.

Section 5.10. Engineer's Report. Upon request by the State, the Borrower shall promptly provide the stamped engineer's feasibility report and estimate described in Section 3.09(a) to the State.

Section 5.11. Notice of Material Adverse Change. The Borrower shall promptly notify the State of any material adverse change in the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or the Project or in the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 5.12. Financial Statements; Reports. The Borrower shall deliver to the State in form and detail satisfactory to the State, upon request:

(a) Audited financial statements of Borrower, including revenues, expenditures, cash flows, and changes in retained earnings for each of the funds constituting the Pledged Revenues for the fiscal year just ended, prepared by an independent certified public accountant(s) satisfactory to the State, all financial statements to be prepared in accordance with generally accepted accounting principles.

(b) Such other statement or statements or reports as to the Borrower as the State may reasonably request.

Section 5.13. Compliance with Applicable Laws. The Borrower will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority that relate to the financing, construction and operation of the Project. In particular, but without limitation, the Borrower shall comply with the following, **as applicable**:

- a. The National Environmental Policy Act (NEPA), and other environmental laws and requirements;
- b. The Uniform Relocation Assistance Act (Right of Way);
- c. The Civil Rights Act of 1964 and other civil rights laws and requirements including the DBE program;
- d. The Davis Bacon Act and other labor laws and requirements;
- e. The Common Rule (49 C.F.R.19) with respect to procurement;
- f. The Brooks Act;
- g. Competitive bidding requirements and state labor standards and wage rates found in the Oregon Public Contracting Code, ORS 279A, 279B, and 279C, as applicable, including but not limited to ORS 279B.220, 279B.225 (if applicable to this Agreement), 279B.230, and 279B.235 (if applicable to this Agreement), ORS 279C.800–279C.870, and the administrative rules promulgated thereunder (OAR Chapter 839, Division 25), as amended from time to time,

which provisions are hereby incorporated by reference, and ORS 279B.280, as amended from time to time;

- h. Buy America;
- i. Manual of Uniform Traffic Control Devices;
- j. The Americans with Disabilities Act (ADA) and other federal and state laws prohibiting discrimination against persons with disabilities;
- k. OAR, Chapter 731, Division 30, as amended from time to time at the discretion of the State; and
- l. State municipal bonding requirements found in ORS Chapters 280, 286A, and 287A.

Section 5.14. Continuing Representations. The representations of the Borrower contained in this Loan Agreement shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.

Section 5.15. Additional Indebtedness. Except as provided in this Agreement, the Borrower shall not create or incur any additional indebtedness for which the aggregate annual debt service amount exceeds \$3,615,000, or become liable as a surety, guarantor, accommodation endorser, or otherwise, for or upon the obligation of any other Municipality, person, firm or corporation which indebtedness or obligation is payable or satisfied from all or a portion of the Pledged Revenues.

Section 5.16. 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 assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

ARTICLE VI

ASSIGNMENT

Section 6.01. Assignment and Transfer by State.

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

Section 6.02. Assignment by Borrower. This Loan Agreement 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 by the Borrower and assumption of the Borrower's obligations under this Agreement, the 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.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Event of Default. 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 pay, or cause to be paid, any Loan Repayment required to be paid hereunder on the due date thereof; 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 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 in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement or the Loan, 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 trustee, receiver, custodian, liquidator, or the like 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) RESERVED

(f) The Borrower fails to proceed expeditiously with, or to complete, the Project or any segment or phase of the Project in accordance with the plans and schedules approved by the State, provided that the Borrower may request the State's written approval of reasonable modifications to such plans and schedules, which approval shall not be unreasonably withheld; or

(g) The Borrower defaults in the performance or observance of any covenants or agreements contained in any loan documents between itself and another lender or lenders (including but not limited to other Oregon state agencies) or in any loan documents between itself and the Department of Transportation for another loan, and the default remains uncured upon the expiration of any cure period provided for such a default by said loan documents; or

(h) 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, other than as

referred to in subsections (a) through (g) 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 agrees 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) calendar days 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 7.02. Notice of Default. The Borrower shall give the State prompt notice of the occurrence of any Event of Default referred to in Section 7.01(d) of this Agreement 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.

Section 7.03. Remedies on Default. Whenever an Event of Default referred to in Section 7.01 of this Agreement shall have occurred and be continuing, the State shall have the right to take any action permitted or required pursuant to the Loan Agreement 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 under this Loan Agreement or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower under this Agreement, including, without limitation:

- (a) declaring all Loan Repayments and all other amounts due under this Loan Agreement 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,
- (c) refusal to disburse any Loan proceeds,
- (d) barring the Borrower from applying for future OTIF assistance, or
- (e) withholding other State of Oregon funds, including but not limited to, the Borrower's apportionment of State Highway Fund revenues due under ORS 366.785 to 366.820, to the extent permitted by Section 2.10.

Section 7.04. 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 Repayments.

Section 7.05. Application of Moneys. Except as otherwise provided in another provision of this Loan Agreement, any moneys collected by the State pursuant to Section 7.03 of this Agreement shall be applied in the following order:

- (a) to pay any attorney fees, or other fees, costs and expenses incurred by the State,
- (b) to pay interest due and payable on the Loan, and
- (c) to pay principal due and payable on the Loan.

Section 7.06. 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 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, it shall not be necessary to give any notice, other than such notice as may be required in this Article VII.

Section 7.07. Retention of State's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions of this Agreement, or anything else to the contrary contained in this Agreement, the State shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Borrower at law or in equity, as the State may, in its discretion, deem necessary to enforce the obligations of the Borrower to the State pursuant to Sections 2.05, 2.08 and 7.04 hereof.

Section 7.08. 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 VIII

MISCELLANEOUS

Section 8.01. Notices. All notices permitted or required under this Agreement shall be given in writing by personal delivery, email or mail, to the Borrower or the State, as the case may be, at the addresses or numbers set forth below or at such other address or number of which such party shall have notified in writing the other party:

If to the State:	Oregon Department of Transportation Financial Services
	Attention: OTIF Program Manager
	355 Capitol Street NE
	Salem, Oregon 97301-3872

OTIF-0079

Email: Cindy.L.Lesmeister@odot.oregon.gov and
ODOTDebtMgt@odot.oregon.gov
Telephone: (503) 983-1935

If to the Borrower: City of Sherwood
22560 SW Pine Street
Sherwood Oregon 97140
Attn: Eric Rutledge
Email: rutledgee@sherwoodoregon.gov
Telephone: (503) 625-4242

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 notice delivered by email shall be deemed to be given when the recipient acknowledges receipt of the email.

Section 8.02. Successors and Assigns; No Third Party Beneficiaries.

(a) 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.

(b) The State and the Borrower are the only parties to this Loan Agreement and are the only parties entitled to enforce its terms. Nothing in this Loan Agreement gives or provides any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name in this Loan Agreement and expressly described as intended beneficiaries of the terms of this Loan Agreement.

Section 8.03. 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 8.04. 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 or the Rules.

Section 8.05. Choice of Law; Designation of Forum; Federal Forum.

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

(b) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the

State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(c) Notwithstanding Section 8.05(b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Section 8.06. Loan not an Obligation of the United States of America. The covenants, agreements and obligations of the State contained in this Loan Agreement shall not be construed to be covenants, agreements or obligations of the United States of America.

Section 8.07. Headings. The Section headings in this Loan Agreement are intended to be for reference purposes only and shall in no way modify or restrict any of the terms or provisions hereof.

Section 8.08. No Construction against Drafter. Both parties acknowledge that they have each had the opportunity to obtain the advice of counsel in connection with, and the transactions contemplated by, this Loan Agreement 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.

Section 8.09. Merger; No Waiver. This Loan Agreement and attached exhibits (that are by this reference 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 bind either party unless in writing and signed by both parties 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.

Section 8.10. 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.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed and delivered as of the date first above written.

OTIF-0079

STATE OF OREGON, acting by and through its Department of Transportation

Daniel Porter, Budget, Economic & Debt Services Manager (Date)

Borrower

Signature (Date)

Printed Name and Title

Exhibits:

- Exhibit A: Project Description
- Exhibit B: Approved Project Budget
- Exhibit C: Form of Promissory Note
(with Attachment A: Repayment Schedule)
- Exhibit D: Form of Payment Requisition

Exhibit A to Loan Agreement

Project Description

Borrower: City of Sherwood

Project Need - The City of Sherwood is planning to construct a new east-west collector roadway (SW Ice Age Drive) between SW Oregon Street and SW 124th Avenue within the City's Tonquin Employment Area (TEA). The TEA is an approximately 300-acre employment area within the larger Tualatin-Sherwood industrial corridor. Since 2019, the Tonquin Employment Area has experienced rapid growth and has added over 1 million square feet of new flex industrial space. SW Ice Age Dr. is the primary east-west collector within the TEA.

SW Ice Age Dr. is intended to serve new businesses in the Tonquin Employment Area and serves as an east-west alternative to SW Tualatin-Sherwood Rd. When constructed, the road will provide direct access to SW 124th Avenue for more convenient access to Interstate 5. Construction of the roadway will also provide street access to landlocked properties within TEA, opening up new opportunities for employment related development.

Scope of Work - the scope includes a new collector roadway including sidewalks and landscaping. The roadway project will also provide City water, storm sewer and sanitary sewer service to the parcels within TEA, construct a regional water quality facility and include installation of underground dry utilities (power and communications).

The proposed roadway alignment will tie in with the roadway segment currently being constructed in conjunction with the Willamette Water Supply development at the intersection of SW 124th Avenue / Ice Age Drive-Blake Street, on the east end of the project limits. The west terminus along SW Oregon Street will align with an existing private driveway to 21389 SW Oregon Street that is just north of Allied Systems, as determined by an Access Management Plan led by the City in 2021.

To facilitate project construction, the City has already relocated a Kinder Morgan fuel pipeline that was in conflict with the roadway alignment.

Exhibit B to Loan Agreement

Approved Project Budget

Borrower: City of Sherwood

	Estimated Project Amounts	Amount to be funded through OTIB Loan
Preliminary Engineering	\$1,275,000	\$
Construction	\$18,267,900	\$4,950,000
Land Acquisition & Site Preparation	\$1,770,900	
Contingency	Included under construction	
Loan Fees (1% of Loan)	\$50,000	\$50,000
Other: City Staff Time, Gas Line Relocation (previous work)	\$1,097,268	
Total	\$22,461,068	\$5,000,000

Exhibit C to Loan Agreement

Form of Promissory Note

PROMISSORY NOTE

\$5,000,000

For value received, the City of Sherwood (hereinafter "Borrower") unconditionally promises to pay to the State of Oregon, acting by and through its Department of Transportation (hereinafter "State"), or order, at 355 Capitol St. NE, Salem, OR 97301-3871 or such other place as the State may designate in writing, the principal sum of Five Million Dollars (\$5,000,000), or so much thereof as is disbursed and not repaid, plus interest from the date of disbursement on the unpaid principal balance until paid. Any capitalized terms not defined in this Note have the meanings assigned to such terms in OTIB Loan agreement OTIF-0079 between the State and Borrower (as amended from time to time the "Loan Agreement").

Interest shall accrue on the unpaid principal balance at the rate of Three and 64/100 percent (3.64%) per annum and shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months.

Principal and interest shall be payable at the times and in the amounts specified in Attachment A to Promissory Note: Repayment Schedule (attached to this Note and by this reference made a part hereof), and the outstanding principal balance of the Note, together with accrued unpaid interest, shall be due and payable on the Maturity Date. Each payment made by the Borrower under this Note shall be applied first to the State's expenses (if any) and any fees due, then to interest due, and then to the principal of the Loan unless the Loan Agreement provides otherwise.

This Note is given to avoid the execution by the Borrower of an individual note for each advance by the State to the Borrower. In consideration thereof, the Borrower agrees that the State's record entries of transactions pursuant to this Note, shall be conclusive evidence of borrowings and payments made pursuant to this Note, absent manifest error.

In the event that the Borrower receives written notification from the State that payments made pursuant to the Loan Agreement have been assigned, all payments hereunder shall be made directly to the assignee pursuant to such assignment.

If an Event of Default occurs, the outstanding balance under this Note, including principal, interest and other charges, if any, shall, at the option of the State, become immediately due and payable. Presentment, demand, protest, and notice of dishonor, protest and nonpayment are waived by the Borrower.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State its reasonable expenses incurred in the collection of Loan payments.

The terms, provisions and covenants contained in this Note shall apply to, inure to the benefit of, and bind the parties hereto and their respective successors and assigns.

This Note shall be governed by and construed in accordance with the laws of the State of Oregon (without giving effect to its conflicts of law principles).

This Note is subject to the terms and conditions of the Loan Agreement. The indebtedness evidenced by this Note is secured by the collateral described in the Loan Agreement.

NOTICE TO BORROWER

DO NOT SIGN THIS NOTE BEFORE YOU READ IT.

By: _____

Name & Title (print): _____

Attachment A to Promissory Note

Repayment Schedule

Borrower: City of Sherwood

Payment Due Date:	Amount Due:
September 1, 2025, and every September 1 through September 1, 2027	Any unpaid accrued interest
March 1, 2026, and every March 1 through March 1, 2028	Any unpaid accrued interest
September 1, 2028, and the first of each September and March thereafter	\$144,759
Maturity Date – March 1, 2056	The remaining principal and interest due on the Loan

OTIF-0079

Exhibit D to Loan Agreement

Form of Payment Requisition

TO: Oregon Transportation Infrastructure Bank
Oregon Department of Transportation
355 Capitol St. NE, MS #21
Salem, Oregon 97301-3871

RE: Oregon Transportation Infrastructure Fund, Loan Number OTIF-0079

On behalf of City of Sherwood, I request that the Oregon Transportation Infrastructure Fund (OTIF) disburse to the following payees the following amounts from the account established in the OTIF for this loan:

[Insert Payee]

[Insert Amount]

The foregoing disbursements are all for Costs of the Project as such term is defined in, and which are permitted under, the Loan Agreement. I have attached all necessary documentation as required by Section 4.02(a)(v) of the Loan Agreement. No Event of Default has occurred or is continuing under the Loan Agreement.

DATED this _____ day of _____, _____.

By: _____
Authorized Officer

Attachments