

RESOLUTION NO. 1998-99-2

RESOLUTION OF THE PORT OF HOOD RIVER  
AUTHORIZING A LOAN FROM THE  
OREGON TRANSPORTATION INFRASTRUCTURE FUND  
BY ENTERING INTO A LOAN AGREEMENT  
WITH THE OREGON DEPARTMENT OF TRANSPORTATION

The Port of Hood River Commission of the Port of Hood River (the "Municipality") finds:

A. ORS 367.010 to 367.050 (the "Act") authorizes any municipality to file an application with the Oregon Department of Transportation (the "Department") to obtain financial assistance from the Oregon Transportation Infrastructure Fund.

B. The Municipality is a "municipality" within the meaning of the Act.

C. The Municipality has filed an application with the Department to obtain financial assistance for a "transportation project" within the meaning of the Act.

D. The Oregon Transportation Commission has approved the Municipality's application for financial assistance from the Oregon Transportation Infrastructure Fund pursuant to Oregon Administrative Rules, Chapter 731, Division 30.

E. The Municipality is required, as a prerequisite to the receipt of financial assistance from the Department, to enter into a Loan Agreement with the Department in substantially the form attached hereto as Exhibit "A."

F. The project described in Exhibit "A" to the Loan Agreement (the "Project") is a "transportation project" within the meaning of the Act.

G. Notice relating to the Municipality's consideration of the adoption of this Resolution was published in accordance with Section 7(3) of the Act, at least 14 days in advance of the adoption of this Resolution in a newspaper of general circulation within the boundaries of the Municipality, and this Resolution was adopted in accordance with the Municipality's requirements for filing public notices and holding public meeting.

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

1. Loan Authorized. The Governing Body of the Municipality authorizes its President to execute the Local Agency Agreement High Priority Project, the Local Agency Agreement Oregon Transportation Infrastructure Bank Project, the Loan Agreement and the Promissory

Note attached as Exhibit "D" to the Loan Agreement (the "Financing Documents"), in substantially the forms attached, and such other agreements, documents or certificates as may be required to obtain a loan from the Department on the condition that the principal amount of the loan from the Department to the Municipality is not in excess of \$600,000 and the interest rate on such loan is not in excess of 3.56 percent. The proceeds of the loan from the Department shall be applied solely to the "Costs of the Project" as such term is defined in the Loan Agreement. The President of the Municipality's governing body or the Municipality's Executive Director are designated as an "Authorized Officer" for the purpose of the Loan or the Loan Agreements.

2. Security. Repayment of the Municipality's obligations under the Financing Documents is secured by a pledge of Port of Hood River revenues.

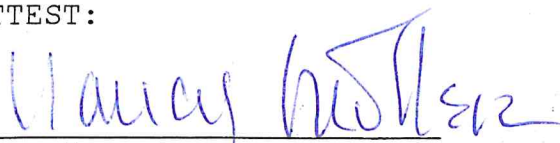
3. Tax-Exempt Status. The Municipality covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Municipality pursuant to the Financing Documents not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal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


4. Reimbursement Bonds. The Municipality may reimburse expenditures for the Project with amounts received from the Department pursuant to the Financing Documents. Additionally, the Municipality understands that the Department may fund or reimburse itself for the funding of amounts paid to the Municipality pursuant to the Financing Documents with the proceeds of bonds issued by the State of Oregon pursuant to ORS 367.655 and ORS 367.700 to 367.750. This Resolution shall constitute "official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations promulgated by the United States Department of the Treasury with respect to the funding or the reimbursement for the funding of the Costs of the Project with the proceeds of the Municipality's loan pursuant to the Financing Documents and with the proceeds of any bonds issued by the State of Oregon pursuant to ORS 367.655 and ORS 367.700 to 367.750.

DATED this 3 day of June, 1999.

ATTEST:

PORT OF HOOD RIVER

  
Secretary

  
President

**DRAFT**

Misc. Contracts & Agreements  
No. 17,171

**LOCAL AGENCY AGREEMENT  
HIGH PRIORITY PROJECT  
Hood River Interstate Bridge #6645**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the PORT OF HOOD RIVER, hereinafter referred to as "Agency".

**RECITALS**

1. By the authority granted in ORS 190.110, 366.770, and 366.775, State may enter into cooperative agreements with the counties, cities, and units of local government for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

2. State and Agency have entered into or intend to enter into additional agreements related to the project and its funding, including "Local Agency Agreement, Oregon Transportation Infrastructure Bank Project", (hereinafter, the OTIB Project Agreement) and "Loan Agreement Between State of Oregon and Port of Hood River", (hereinafter, the OTIB Loan Agreement). This Agreement, the OTIB Project Agreement, and the OTIB Loan are intended to be complimentary.

**NOW THEREFORE**, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under said provisions, Agency plans and proposes to replace the existing control system, drive brakes, drive motors, control console, and lighting; install air horn, public address and bridge telecommunications system, and closed circuit television system, hereinafter referred to as "project". The location of the project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

2. The project shall be conducted as a part of the Transportation Equity Act for the 21<sup>st</sup> Century, Subtitle F, Section 117, High Priority Projects. The total project cost is estimated at \$2,200,000. The Federal Funds are limited to \$1,000,193, subject to annual obligation authority imposed by the appropriations bill. (See *table below*). The Federal pro-rata share funding on this project is 80 percent. Agency shall be

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responsible for the match for the federal funds and any portion of the project not covered by federal funding. No State Gas Tax Funds shall be used on this project, other than State Gas Tax Funds included as a portion of the OTIB funds, which will be repaid by Agency. The estimate for the total project cost is subject to change.

Key #09788

**HOOD RIVER BRIDGE**  
 KEY NO. 9788  
 (\$1.125 Million Fed \$ over 6 yrs)

YEAR	TOTAL FED \$ FOR PROJECT	YEAR'S % ALLOCATION	TOTAL FED \$ FOR YEAR	CUMULATIVE TOTALS	ANTICIPATED LIMITATION FOR THE YEAR	TOTAL FED \$ FOR YEAR W/ LIMITATION	CUMULATIVE TOTALS	20% MATCH	TOTAL DOLLARS
1998	\$ 1,125,000	11%	\$ 123,750	\$ 123,750	** 89.1%	\$ 110,261	\$ 110,261	\$ 27,565	\$ 137,827
1999	\$ 1,125,000	15%	\$ 168,750	\$ 292,500	** 88.3%	\$ 149,006	\$ 259,268	\$ 37,252	\$ 186,258
2000	\$ 1,125,000	18%	\$ 202,500	\$ 495,000	89.0%	\$ 180,225	\$ 438,493	\$ 45,056	\$ 225,281
2001	\$ 1,125,000	18%	\$ 202,500	\$ 697,500	89.0%	\$ 180,225	\$ 618,718	\$ 45,056	\$ 225,281
2002	\$ 1,125,000	19%	\$ 213,750	\$ 911,250	89.0%	\$ 190,238	\$ 808,956	\$ 47,559	\$ 237,797
2003	\$ 1,125,000	19%	\$ 213,750	\$ 1,125,000	89.0%	\$ 190,238	\$ 1,000,193	\$ 47,559	\$ 237,797
<b>TOTALS</b>		100%	\$ 1,125,000			\$ 1,000,193		\$ 250,048	\$ 1,250,241

\*\* ACTUAL/CONFIRMED LIMITATION FOR THE YEAR  
 SHADED AREAS INDICATE UNCONFIRMED PROJECTIONS FOR FEDERAL DOLLARS WITH LIMITATION

3. The work is to begin on the date all required signatures are obtained and shall be completed no later than December 31, 2005, on which date this agreement automatically terminates unless extended by a fully executed amendment.

4. This agreement may be terminated by mutual written consent of both parties.

State may terminate this agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

a. If Agency fails to provide services called for by this agreement within the time specified herein or any extension thereof.

b. If Agency fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.

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c. If Agency fails to provide payment of its share of the cost of the project.

d. If State fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the agreement.

e. If Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this agreement is prohibited or State is prohibited from paying for such work from the planned funding source.

Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

5. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.

6. Agency, as a recipient of grant funds, pursuant to this agreement with the State, shall assume sole liability for Agency's breach of the conditions of the grant, and shall, upon Agency's breach of grant conditions that requires the State to return funds to the Federal Highway Administration, the grantor, hold harmless and indemnify the State for an amount equal to the funds received under this agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this agreement.

7. Agency shall enter into and execute this agreement during a ~~regular~~, duly authorized Agency meeting.

8. This agreement and attached exhibits 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 agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of

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State to enforce any provision of this agreement shall not constitute a waiver by State of that or any other provision.

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IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

Pursuant to Subdelegation Order 5 dated December 17, 1997, the Region Manager approved on March 10, 1999 adding this project as an amendment to the 1998-2001 Statewide Transportation Improvement Program.

The Oregon Transportation Commission on June 18, 1998, approved Subdelegation Order No. 2 in which the Director grants authority to the Deputy Director to approve and execute agreements over \$50,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

APPROVAL RECOMMENDED

By \_\_\_\_\_  
Region 1 Manager

STATE OF OREGON, by and through  
its Department of Transportation

By \_\_\_\_\_  
Deputy Director

Date \_\_\_\_\_

APPROVED AS TO  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Port Attorney

PORT OF HOOD RIVER, By and  
through its Port Commission

By \_\_\_\_\_

Date \_\_\_\_\_

ATTACHMENT NO. 1 TO AGREEMENT #17,171  
SPECIAL PROVISIONS

1 Agency, or its consultant shall, at own expense, conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right-of-way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments.

2. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the project. Agency further guarantees that adequate Agency funds are available prior to advertisement for bids to accommodate 110 percent of the engineer's estimate.

3. Agency shall, at its own expense, maintain and operate the project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.

4. Agency shall maintain and account for the federal and/or state financial interest in project property and assets.

5. Agency understands that the federal funding is allocated over a six-year period. If Agency wishes to construct the project prior to the sixth year, which is Federal Fiscal Year 2003, Agency must deposit sufficient funds to ODOT to cover all project costs in excess of currently available federal funds. As federal funds become available, Agency will be reimbursed that portion of the advance deposit. These funds must be deposited per paragraph 22 of the Standard Provisions.



**DRAFT**

March 2, 1999

Misc. Contracts & Agreements  
No. 17,174

**LOCAL AGENCY AGREEMENT  
OREGON TRANSPORTATION INFRASTRUCTURE BANK PROJECT  
Hood River Interstate Bridge #6645**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the PORT OF HOOD RIVER, hereinafter referred to as "Agency."

1. By the authority granted in ORS 190.110, 366.770, and 366.775, State may enter into cooperative agreements with counties, cities, and other municipalities for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. Under provisions of Section 350 of the National Highway Systems Designation Act of 1995, and a cooperative agreement between the Federal Highway Administration and Federal Transit Administration of the U.S. Department of Transportation and the State dated August 20, 1996, the State has established the Oregon Transportation Infrastructure Bank ("OTIB") for the purpose of making loans for transportation projects.
3. Under said provisions, Agency plans and proposes to replace the existing control system, drive brakes, drive motors, control console, and lighting; install air horn, public address and bridge telecommunications systems, and closed circuit television system, hereinafter referred to as "project." The location of the project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
4. The project shall be financed in part by the OTIB under Title 23, U.S.C. 101 Note, Public Law 104-59. The OTIB funds are limited to **\$600,000**; provided that aggregate disbursements shall not **exceed fifty percent (50%)** of the costs of the project. Agency shall be responsible for all remaining costs and any costs not covered by OTIB (federal) funding.
5. The parties hereto mutually agree to the terms and conditions set forth in the attached Special Provisions marked Attachment 1 and by this reference made a part hereof.

6. Agency shall enter into and execute a loan agreement with the State for the project. This agreement shall be attached to, and incorporated by reference in, said loan agreement as Exhibit E. Agency agrees to be bound by the terms and conditions of said loan agreement. This agreement shall be null and void if a loan agreement is not executed within 90 days from execution of this local agency agreement. Any work done prior to the date of the loan agreement will not be eligible for reimbursement, except with the prior written approval of the State.

## **JOINT OBLIGATIONS**

### **PROJECT ADMINISTRATION**

7. State is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this project, and Agency hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if determined necessary by State, State will further act for the Agency in other matters pertaining to the project. State and Agency shall actively cooperate in fulfilling the requirements of the Oregon Action Plan. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases for all projects.

8. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by State prior to advertisement for bid proposals, regardless of the source of funding for construction.

### **PRELIMINARY & CONSTRUCTION ENGINEERING**

9. Preliminary and construction engineering may be performed by State, Agency, or others. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal service consultant to perform any work covered by this agreement, Agency and Consultant shall enter into a State reviewed and approved personal service contract process and resulting contract document. State shall concur in the contract prior to beginning any work. State's personal service contracting process & resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, Oregon Revised Statutes 279.051, the current State administrative rule and ODOT Personal Services Contracting Procedures as approved by the Federal Highway Administration (FHWA). Such personal service contract shall describe the work to be performed and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in this agreement.

10. On all construction projects, regardless of whether Agency or State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency agrees to accept all responsibility for and defend lawsuits involving tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

## **REQUIRED STATEMENT FOR USDOT FINANCIAL ASSISTANCE AGREEMENT**

11. If as a condition of assistance, the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into this agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out the approved program, the US Department of Transportation shall impose such sanctions as noted in Title 49, Code of Federal Regulations, Part 23, Subpart E, which sanctions may include termination of the agreement or other measures that may affect the ability of the Agency to obtain future US Department of Transportation financial assistance.

12. The Agency further agrees to comply with all applicable civil rights and rehabilitation laws, rules and regulations, including Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Title VI of the Civil Rights Act of 1964.

13. The parties hereto agree and understand that they will comply with all applicable statutes and regulations, including but not limited to the laws set forth in Attachment 2 hereto and by this reference made a part hereof, Title 49 CFR, Parts 23 and 90, Audits of State and Local Governments; Title 41, USC, Anti-Kickback Act; Title 23, USC, Federal-Aid Highway Act; 42 USC, Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended; provisions of Federal-Aid Policy Guide (FAPG), Title 23 Code of Federal Regulations (23 CFR) 1.11, 710, and 140; and the Oregon Action Plan.

## **STATE OBLIGATIONS**

### **FINANCE**

14. State shall, in the first instance, pay all reimbursable costs of the project, and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the project has been computed, State shall furnish Agency with an itemized statement of final costs.

## **PROJECT ACTIVITIES**

15. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if it prepares these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts. Upon award of a construction contract, State shall perform all necessary laboratory testing of materials, obtain "Record Samples" at specified intervals for testing in the State Materials Laboratory in Salem, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the project. The actual cost of services, such as, but not limited to, final quantities, costs check, and inspection services provided by State will be charged to the project engineering expenditure account(s) and will be included in the total cost of the project. The State shall, at project expense, assign a liaison person to provide project monitoring as needed and throughout all phases of project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement of federal participation costs.

## **RIGHT-OF-WAY**

16. State is responsible for proper acquisition of the necessary right-of-way and easements for construction and maintenance of the project. Agency may perform acquisition of the necessary right-of-way and easements for construction and maintenance of the project, provided Agency (or its consultant) is qualified to do such work as required by the ODOT Right of Way Manual and has obtained prior approval from the ODOT Region Right of Way office to do such work.

17. Regardless of who acquires or performs any of the right-of-way activities, a right-of-way services agreement shall be prepared by the Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall coordinate certification of the right-of-way, and provide oversight and monitoring. All projects must have right-of-way certification coordinated through Region Right of Way offices. Agency should contact Region Right of Way office for additional information or clarification.

18. State shall review all right-of-way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right-of-way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policy Act of 1970, as amended, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 74D and Title 49, Part 24.

19. Agency insures that all project right-of-way monumentation will be conducted in conformance with ORS 209.150.

20. State and Agency grants each other authority to enter onto each other's right-of-way for the performance of the project.

## **AGENCY OBLIGATIONS**

### **FINANCE**

21. Agency shall, prior to the commencement of the preliminary engineering, utility, right-of-way acquisition and miscellaneous phases, deposit with State Agency's estimated share of each phase upon receipt of a written request from State.

22. Agency's share of construction shall be deposited in two parts. The initial deposit shall represent 65 percent of the Agency's share, based on the engineer's estimate and shall be requested three weeks prior to opening bids on the project. The deposit must be received before the contract will be awarded. Upon award of the contract, the balance of the Agency's share shall be requested and deposited with the State in a timely manner.

23. Pursuant to ORS 366.425, the advance deposit may be in the form of: 1) money deposited in the Oregon State Treasury (Local Government Investment Pool), together with an Irrevocable Limited Power of Attorney which shall be sent to the Oregon Department of Transportation, Financial Services Branch, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of the State. The deposit may also be in the form of cash.

24. Deposits may be applied to any phase of a project under the same agreement.

25. Additional deposits, if any, shall be made as needed upon request from the State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the project. If the estimated cost to complete the project exceeds the OTIB loan amount, and if the Agency requests it, the State may ask the Transportation Commission to increase the OTIB loan amount. The Agency and the State shall mutually agree on any changes to the terms of the OTIB loan. Additional OTIB loan proceeds, if any, may then be used, with the State's consent, to reduce the amount on deposit. Any remaining advance deposit will be released or refunded at the completion of the project.

26. Agency shall present properly certified bills for 100 percent of actual costs incurred by Agency on behalf of the project directly to State's Liaison Person for review and approval. Such bills shall be in a form acceptable to State and documented in such a manner as to be easily verified. Billings shall be presented for periods of not less than one month duration, based on actual unpaid expenses to date. All billings received

from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of FAPG, 23 CFR 1.11, 710, and 140.

27. The cost records and accounts pertaining to work covered by this agreement are to be kept available for inspection by representatives of State and the FHWA for a period of three (3) years following the date of final payment on the OTIB loan. Copies of such records and accounts shall be made available upon request.

28. This agreement is subject to the provisions of the Single Audit Act of 1984 (49 CFR, Part 90) as stated in Circular A-128 of the United States Office of Management and Budget.

### **RAILROADS**

29. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the appropriate State Region contact or Railroad & Utility Engineer. Only those costs allowable under 23 CFR 646B & 23 CFR 140I, shall be included in the total project costs; all other costs associated with railroad work will be at the sole expense of the Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, the State is under no obligation to agree to perform said duties.

### **UTILITIES**

30. Agency shall relocate or cause to be relocated, all utility conduits, lines, poles, mains, pipes, and other such facilities where such relocation is necessary in order to conform said utilities and facilities with the plans and ultimate requirements of the project. Only those utility relocations which are eligible for OTIB participation shall be included in the total project costs; all other utility relocations shall be at the sole expense of the Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State and, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than 21 weeks prior to bid let date. However, the State is under no obligation to agree to perform said duties.

31. Agency shall follow established State utility relocation policy and procedures. The policy and procedures are available through the appropriate Region Utility Specialist or ODOT Right of Way Section's Railroad and Utility Coordinator.

### **STANDARDS**

32. Design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to Standards specified in the

current ODOT Highway Design Manual and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction."

33. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan," unless otherwise requested by Agency and approved by State.

34. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements."

35. All plans and specifications shall be developed in general conformance with the current "Contract Road Plans Guide" and the current "Guideline to Region/Consultants/Local Agency for the Preparation of Highway Contract Specifications."

36. The standard unit of measurement for all aspects of the project will be System International (SI) units. This includes, but is not limited to right-of-way, environmental documents, plans and specifications, and utilities.

#### **GRADE CHANGE LIABILITY**

37. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

38. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.

39. Agency, if a City, by execution of agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the agreement.

#### **CONTRACTOR CLAIMS**

40. Agency shall hold State harmless and provide legal defense against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this agreement.

## **WORKERS' COMPENSATION COVERAGE**

41. Agency, its subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

## **LOBBYING RESTRICTIONS**

42. Agency certifies by signing this agreement that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, US Code.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

43. Agency certifies that it has entered into and executed this agreement or authorized execution of this agreement, during a duly authorized Agency meeting.



Paragraphs 30 and 31 of this agreement are not applicable to any local agency on state highway projects.

This project was approved for OTIB funding by the Oregon Transportation Commission on March 18, 1999.

Oregon Administrative Rule (OAR) Chapter 731, Division 30 and Oregon Department of Transportation Policy ACC 14, grants authority to the Chief Financial Officer to approve and execute agreements for OTIB projects.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

APPROVAL RECOMMENDED

By \_\_\_\_\_  
Region 1 Manager

STATE OF OREGON, by and through  
its Department of Transportation

By \_\_\_\_\_  
Chief Financial Officer

Date \_\_\_\_\_

REVIEWED FOR AGENCY

By \_\_\_\_\_  
Port Attorney

PORT OF HOOD RIVER, by and  
through its Port Commission

By \_\_\_\_\_

Date \_\_\_\_\_

ATTACHMENT NO. 1 TO AGREEMENT #17,174  
SPECIAL PROVISIONS

1. Agency, or its consultant shall, at own expense, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies; perform all preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right-of-way; obtain all required permits; arrange for all utility relocations or reconstruction; and perform all construction engineering, including all required materials testing and quality documentation.
2. Agency shall, upon State's award of contract, furnish all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
3. If Agency hires a consultant, Agency agrees to follow State's adopted procedures for selection and hiring of consultants. Agency shall initially review all consultant billings, approve as appropriate, and pay consultant. Agency shall submit consultant billings to State for reimbursement.
4. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the project. Agency further guarantees that adequate Agency funds are available prior to advertisement for bids to accommodate 110 percent of the engineer's estimate.
5. In the event that the Agency terminates this agreement after the Loan Closing Date as defined in the OTIB Loan Agreement, all applicable termination provisions in the OTIB Loan Agreement shall prevail.

## Attachment 2 to Local Agency Agreement

### COMPLIANCE WITH APPLICABLE LAW (EXCERPTS)

279.312 Conditions of public contracts concerning payment of laborers and materialmen, contributions to Industrial Accident Fund, liens and withholding taxes. Every public contract shall contain a condition that the contractor shall:

(1) Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.

(2) Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.

(3) Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

279.314 Condition concerning payment of claims by public officers. (1) Every public contract shall also contain a clause or condition that, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract.

(2) The payment of a claim in the manner authorized in this section shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

279.316 Condition concerning hours of labor. (1)(a) Every public contract shall also contain a condition that no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279.051, the laborer shall be paid at least time and a half pay:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279.334.

(b) An employer must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(2) In the case of contracts for personal services as defined in ORS 279.051, the contract shall contain a provision that the laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.

279.320 Condition concerning payment for medical care and providing workers' compensation. (1) Every public contract shall also contain a condition that the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

(2) Every public contract also shall contain a clause or condition that all employers working under the contract are subject employers that will comply with ORS 656.017.

OAR 150-305.385(6)-(B) For purposes of this certificate, 'Oregon tax laws' means the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self-Employment Tax).

#### RECYCLING

#### RECYCLING

As required by ORS 279.555, in the performance of this Contract, Contractor shall use, to the maximum extent economically feasible, recycled products.

**DRAFT**

**DRAFT – 4/13/99**

**LOAN AGREEMENT**

between

**STATE OF OREGON**

acting by and through its

**DEPARTMENT OF TRANSPORTATION**

and

**PORT OF HOOD RIVER**

THIS LOAN AGREEMENT, is made and entered into on the \_\_\_\_ day of June, 1999, by and between the State of Oregon, acting by and through its Department of Transportation (the “State”), and the Borrower (as defined below). The reference number for this Loan Agreement is OTIF-0015. Terms not otherwise defined herein shall have the meanings assigned to them by Section 1.01 of this Loan Agreement.

**WITNESSETH:**

WHEREAS, the State, in accordance with the Act and/or the Bond Indenture, will provide funds in the Oregon Transportation Infrastructure Fund and/or will issue its bonds for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of transportation projects;

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

WHEREAS, 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

WHEREAS, the Borrower's obligations under this Loan Agreement may be assigned to the Trustee under the Bond Indenture to provide for the payment of and security for the State Bonds issued by the State of Oregon.

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 herein:

## 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 Enrolled House Bill 2097 (1997 Legislative Session) and related provisions, as the same may be from time to time amended and supplemented.

"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.

"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.

"Bond Indenture" means the indenture of trust between the Issuer, the State and the Trustee pursuant to which the State Bonds are issued, and all amendments and supplements thereto adopted in accordance with the provisions thereof.

"Borrower" means the Port of Hood River, Hood River, Oregon and its successors and permitted assigns.

"Borrower's Account" means an account established and maintained by the State on behalf of Borrower in the OTIF and into which the State shall deposit the proceeds of the Loan. The State shall disburse moneys from such account in accordance with the terms and provisions of this Agreement. All gains, losses and investment earnings of the account's moneys shall accrue to the account.

"Business Day" means any day other than (i) a Saturday, Sunday or legal holiday, (ii) a day on which banking institutions in Salem, Oregon or in the city in which the principal office of the Trustee is located are closed; or (iii) a day on which the New York Stock Exchange is closed.

"Code" means the Internal Revenue Code of 1986, as the same may be amended or supplemented from time to time, including any regulations promulgated thereunder and any administrative or judicial interpretations thereof.

"Costs of the Project" shall mean only those specified costs listed in Exhibit B attached hereto and by this reference made a part hereof. The term "Costs of the Project" does not include (i) costs in excess of one-hundred percent (100%) of the total cost of the Project, (ii) the purchase of equipment and other property not directly related to the Project, (iii)

construction or repair of facilities owned or operated by private parties, (iv) costs incurred prior to the date of the Loan, except as provided in Section 5.01, and (v) administrative expenses of the Borrower.

"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, the Issuer, the Trustee 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 hereof.

"Issuer" means the State of Oregon, acting by and through the State Treasurer.

"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 the proceeds of the State Bonds or from other amounts held in the OTIF.

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

"Loan Closing Date" means June \_\_\_\_, 1999.

"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 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 September 30, 2005.

"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 D attached hereto and by this reference made a part hereof.

"Oregon Transportation Infrastructure Bank" or "OTIB" means the program authorized by Section 350 of the National Highway System Designation Act of 1995, 23 U.S.C. 101 note, 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 Enrolled House Bill 2097 (1997 Legislative Session). Loans from the OTIF may include OTIF loans or loans to finance transportation projects from any accounts established within the OTIF.

"Pledged Revenues" means the net revenues of Borrower's enterprise fund.

"Proceeds" as used in this Loan Agreement has the meaning assigned to that term by Section 141 of the Code.

"Project" means the transportation project of the Borrower described in Exhibit A attached hereto and made a part hereof, 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 earlier of (a) June 30, 2000; (b) the date on which all of the proceeds of the Loan, including any investment earnings derived from the investment of such proceeds, have been spent; or (c) the date on which the Borrower completes construction of the Project.

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

"Senior Lien(s)" means a lien given as security for Borrower's Revenue Advance Refunding Bonds, Series 1993.

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

"State Bonds" means the series of bonds, if any, authorized by the Bond Indenture, together with any refunding bonds authenticated and delivered pursuant to the Bond Indenture, in each case to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

"State Treasurer" means the State Treasurer of the State of Oregon.

"Transportation project" has the meaning assigned to that term by the Rule.

"Trustee" means the Trustee pursuant to the Bond Indenture, and its successors or assigns.

"Underwriter" means the broker, dealer or municipal securities dealer acting as an underwriter in the primary offering of the State Bonds.



**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. Words importing one gender shall include the other gender.

**Section 1.03. Loan Agreement Not Assigned to Trustee.** DURING ANY PERIOD OF TIME IN WHICH THIS LOAN AGREEMENT HAS NOT BEEN ASSIGNED TO THE TRUSTEE, ALL REFERENCES IN THIS LOAN AGREEMENT TO "TRUSTEE," "BOND INDENTURE," "STATE BONDS," "UNDERWRITER" AND "ISSUER" AND THE PROVISIONS OF THIS LOAN AGREEMENT PERTAINING THERETO SHALL BE VOID AND OF NO FORCE OR EFFECT.

## ARTICLE II

### LOAN

**Section 2.01. Loan Amount.** On the Loan Closing Date the State hereby agrees to loan to the Borrower, and the Borrower agrees to borrow and accept from the State, the principal amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00); provided however that disbursements hereunder shall not exceed in the aggregate one hundred percent (100%) ("Participation Rate") of the Costs of the Project.

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

**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 fifty-six hundredths percent (3.56%) 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 from the date Loan proceeds are deposited in the Borrower's Account 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 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 Loan proceeds are deposited in the Borrower's Account to the Maturity Date.

(b) In the event that the Borrower receives written notification from the State, the Issuer or the Trustee that payments made pursuant to the Note and this Loan Agreement have been assigned by the State to the Trustee under the Bond Indenture, all payments hereunder or

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

**Section 2.06. Prepayments.**

(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 on or after the Prepayment Date.* Subject to the following terms and conditions, the Borrower may make Loan Prepayments upon prior written approval of the State. The Borrower shall provide prior written notice of not less than one hundred twenty (120) days to the State (and the Trustee) and upon payment by the Borrower to the State or the Trustee of the principal amount of the Loan Prepayments, plus the unpaid interest accrued on such amount to the date of prepayment, and any applicable prepayment premium; provided, however, that:

(i) No Loan Prepayment shall be made pursuant to this subsection (b) prior to the Prepayment Date shown on Exhibit C attached hereto and by this reference incorporated herein or, if later, the date on which the State Bonds are first subject to optional redemption (the applicable date is referred to in this Section 2.06 as the “Prepayment Date”); and

(ii) Each Loan Prepayment shall include the prepayment premium, if any, applicable to such Loan Prepayment as determined in accordance with Exhibit C to this Loan Agreement or such greater amount required to prepay and/or defease the State Bonds (including the payment of any expenses of the Trustee associated with such prepayment and/or defeasance).

(c) *Optional Prepayment before the Prepayment Date.* Loan Prepayments may be made prior to the Prepayment Date if (i) the Borrower obtains the prior written approval of the State, (ii) an opinion is obtained from the State’s Bond Counsel to the effect that such Loan Prepayment will not adversely affect the exclusion from gross income for federal and State income tax purposes of the interest on the State Bonds and the Loan, (iii) an escrow fund is established with the State or with an escrow agent acceptable to the State and a deposit shall have been made to such escrow fund of cash and/or United States Treasury obligations which are not subject to redemption or prepayment and maturing as to principal and interest in such amounts and at such times as will, in the opinion of an independent certified public accountant delivered to the State, provide sufficient moneys, without reinvestment of any matured amounts, to make all payments of principal and interest on the Loan or portion to the Loan to be prepaid to and including the Prepayment Date together with any applicable prepayment premium, and (iv) the investment of amounts held in the escrow fund satisfies the requirements of Section 148 of the Code.

(d) *General.* Loan Prepayments shall be applied first to any expenses of the Trustee and accrued interest on the portion of the Loan prepaid, and then to principal payments (including premium, if any) 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, at its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments.

**Section 2.07. Unconditional Obligation.** Except as provided in Section 2.11, the obligation of the Borrower to make the Loan Repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein is payable solely from the sources of repayment described in Section 2.11 hereto and shall be 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) 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 Issuer, the State or the Trustee 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, the Bond Indenture, 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 Issuer, the State, the Trustee or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights. The Borrower shall not be obligated to make any payments required to be made by any other Municipality, or any other borrower under any separate loan agreement or the Bond Indenture.

**Section 2.08. Loan Agreement to Survive Bond Indenture and State Bonds.** The Borrower acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of the Bond Indenture applicable to the State Bonds and payment of the principal of, redemption premium, if any, and interest on the State Bonds.

**Section 2.09. Disclaimer of Warranties and Indemnification.** The Borrower acknowledges and agrees that: (a) neither the Issuer, the State nor the Trustee makes 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 thereof or any other warranty or representation with respect thereto; (b) in no event shall the Issuer, the State or the Trustee or their respective 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 Issuer, the State, and the Trustee and their respective 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 employees, agents or subcontractors pursuant to the terms of this Loan Agreement; provided, however, that the provisions of this clause (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 2.10. Unexpended Loan Proceeds.** Any proceeds of the Loan remaining in the Borrower's Account on the second anniversary of the Loan Closing Date shall be applied, on the next July 1 that is not less than forty five (45) days after such second anniversary date, or any earlier date specified in the Bond Indenture or the State Bonds, to pay unpaid interest accrued to the date of payment, then to prepay principal on the Loan in an amount equal to the amount of such unexpended proceeds less any amounts necessary to pay any arbitrage rebate due with respect to the Loan pursuant to Section 148(f) of the Code. Such prepayment shall not be subject to the prepayment provisions and premium set forth in Section 2.06 of this Agreement. The State shall determine, in its sole discretion, the method by which any principal prepaid on the Loan pursuant to this Section 2.10 shall be applied to the outstanding principal payments. If any amounts remain in the Borrower's Account after payment of the entire outstanding principal balance of the Loan and all accrued and unpaid interest due under the Note, such amounts shall be the property of the State, and the Borrower shall have no claim to such amounts.

**Section 2.11. Sources of Repayment of 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 2.09 and Section 7.04 of this Loan Agreement, are payable from the sources of repayment described in subsections (b) and (c) of this Section 2.11. 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 acknowledges that the State of Oregon is entitled to withhold any amounts due to the Borrower from the State of Oregon, 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 if the Borrower defaults on payments due under this Loan Agreement.

(d) Borrower hereby grants a security interest in and irrevocably pledges its Pledged Revenues to pay Borrower's obligations hereunder. The lien on and pledge of the Pledged Revenues are subordinate to the lien and pledge of the Senior Lien(s). The Pledged Revenues so

pledged and hereafter received by Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, except for the Senior Lien(s), to the fullest extent permitted by ORS 288.594. Borrower hereby represents and warrants that the pledge of Pledged Revenues hereby made by Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 288.594.

**Section 2.12. 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: (a) pay the entire amount of this loan fee on the Loan Closing Date; or (b) authorize the State to deduct the loan fee from the loan proceeds deposited into the Borrower's Account; provided however that if the Loan is not fully disbursed, the State shall refund to the Borrower the portion of the Loan fee allocated to the undisbursed portion of the Loan.

**Section 2.13. Late Fee.** If the payment of any Loan Repayment required under the Note is delinquent more than fifteen (15) 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.

**Section 2.14. Maintenance of Records by State.** The State shall maintain records of all amounts held in the Borrower's Account. All earnings derived from the investment of the proceeds of the State Bonds and allocable to the Loan shall be retained in and credited to the Borrower's Account and shall be available for disbursement to the Borrower subject to Section 4.02 hereof. The State shall provide the Borrower records relating to the Borrower's Account at least once each year.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower represents and warrants to the State and the holders of the State Bonds, if any, 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 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.

(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 authorizing the execution, issuance and delivery of this Loan Agreement 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 in accordance with Section 7(3) of the Act, after proper publication at least 14 days in advance of notice in a newspaper of general circulation within the boundaries of the Borrower, 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, execution and delivery of this Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder and the consummation of the transactions provided for in this Loan Agreement, 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 assets 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 arising under this Loan Agreement or any of the documents related hereto or to the Bond Indenture) to which the Borrower is a party or by which the Borrower 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, rules, regulations or court orders to which the Borrower or its properties or operations is subject.

**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 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 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 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 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.

**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.

(b) The Borrower has been provided with a copy of the Rules, and the Project is in compliance with such Rules.

**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 reasonable Costs of the Project.

**Section 3.10. Term of the Loan.** The term of the Loan is not in excess of the useful life of the Project.

**Section 3.11. Matching Funds.** Matching funds of Borrower in the amount of Zero and No/100 Dollars (\$0.00) are available and committed to the Project.

## ARTICLE IV

### CONDITIONS TO LOAN AND DISBURSEMENTS

**Section 4.01. Conditions Precedent to Loan.** The State shall be under no obligation to deposit Loan proceeds in Borrower's Account unless:

(a) the Borrower delivers to the State (regardless of whether the Loan Agreement is assigned to the Trustee), on or prior to the Loan Closing Date, the following documents in form and substance satisfactory to the State and its Counsel:

(i) An opinion of Borrower's Counsel to the effect that (A) the Borrower is duly formed and operating under applicable State of Oregon law, (B) the Borrower has full legal right and authority to execute and deliver the Loan Agreement and to observe and perform its duties, covenants, obligations and agreements hereunder and to undertake and complete



the Project, (C) the Loan Agreement has been authorized pursuant to official action of the Borrower that has been adopted and authorized in accordance with applicable Oregon law, (D) the Loan Agreement has been duly authorized and executed and delivered by Authorized Officers of the Borrower and constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms, (E) the authorization, execution and delivery of the Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, the consummation of the transactions contemplated herein and the undertaking and completion of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over the Borrower 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 agreement to which the Borrower is a party or by which the Borrower or its property or assets is bound, (F) all approvals, consents or authorizations of, or registrations or filings with, any governmental or public agency, authority or person required on the part of the Borrower in connection with the authorization, execution, delivery and performance of the Loan Agreement and the undertaking and completion of the Project have been obtained or made to the extent it is possible to obtain or make them on or prior to the Loan Closing Date, and (G) there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State of Oregon or Federal) questioning the creation, organization or existence of the Borrower, the validity, legality or enforceability of the Loan Agreement or the undertaking or completion of the Project (such opinion or portions of such opinion may be given by one or more counsel); provided, however, that the State and the State's Counsel may permit, in its sole discretion, variances in the form of such opinion if such variances are not to the material detriment of the interests of the holders of the State Bonds;

- (ii) Counterparts of 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) Copies of the official action of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement and the documents, instruments and agreements required by this Loan Agreement, certified by an Authorized Officer of the Borrower;
- (v) An intergovernmental agreement duly executed by all parties thereto and delivered by Borrower, substantially in the form of Exhibit E attached hereto and by this reference incorporated herein; and
- (vi) Such other certificates, documents, opinions and information as the State, the Trustee, the Issuer, the Bond Counsel or the Underwriter may require; and

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

provided, however, the State shall be under no obligation to deposit Loan proceeds in Borrower's Account 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.

In the event (a) and/or (b) above occurs and the State does not deposit the Loan proceeds in the Borrower's Account, this Agreement and the Note shall be null and void.

**Section 4.02. Conditions to Disbursement.** The obligation of the State to make any disbursement to the Borrower is subject to the following conditions:

- (a) All the conditions set forth in Section 4.01 of this Loan Agreement have been satisfied;

- (b) There shall exist no Event of Default as defined in this Loan Agreement or the Bond Indenture, or event, omission or failure of a condition which would constitute an Event of Default as defined in this Loan Agreement or the Bond Indenture after notice or lapse of time or both;

- (c) All representations and warranties of the Borrower made in this Loan Agreement shall be true and correct on the date of disbursement with the same effect as if made on such date;

- (d) 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

- (e) Receipt by the State of (i) a requisition executed by the Borrower in substantially the form of Exhibit F attached hereto and by this reference made a part hereof 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 the Loan. 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 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/or 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 therewith 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.

Further, the State shall have no obligation to make any disbursement to the Borrower if, on or before the time for deposit of 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

### 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) with the advance written approval of the State, 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; provided however that all such reimbursements shall satisfy the requirements of Section 1.150-2 of the Code. None of the proceeds of the Loan shall be used for administrative purposes by the Borrower.

**Section 5.02. Source of Repayment.** The Loan shall be paid from the sources of repayment described in Section 2.11 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 hereof.

**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. Completion of Project and Provision of Moneys Therefor.** Borrower covenants and agrees to provide State with copies of all permits, plans and specifications relating to the Project promptly, but in any event no later than December 31, 1999. 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 within ninety (90) days of the Project Completion Date. Borrower shall supply a copy of such drawings and certification to the State upon request. The Borrower further covenants and agrees: (a) to exercise its best efforts in accordance with prudent practice to complete the Project and to so accomplish such completion on or before the estimated Project Completion Date; (b) to proceed expeditiously with, and complete, the Project; and (c) to provide from its own fiscal resources all moneys in excess of the total amount of proceeds it receives pursuant to this Loan Agreement required to complete the Project. Borrower shall have a program, documented to the satisfaction of the State, for the on-going maintenance, operation and replacement, 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 December 31, 1999.

**Section 5.05.** 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 and, if State Bonds have been issued, either:

(a) the Borrower demonstrates to the satisfaction of the Trustee that such transfer will not adversely affect the rating of the State Bonds;

(b) a rating of the Loan is obtained which addresses such transfer and is no lower than the rating of the State Bonds; or

(c) the State certifies to the Borrower that this Loan Agreement has not been assigned to the Trustee and provides a copy of such certification to the Trustee.

The State shall not consent to any such transfer unless the State shall have received an opinion of the State's Counsel to the effect that such transfer complies with the Act and will not adversely affect the exclusion of interest on the Loan and on the State Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. Proceeds of any such transfer not used to replace property that is part of the Project shall be applied to payment of the outstanding principal and interest of the Loan as a Prepayment subject to a prepayment premium, if any, as provided in Section 2.06 of this Agreement.

**Section 5.06.** Exclusion of Interest from Federal Gross Income and Compliance with Code.

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

(b) The Borrower shall not take any action or omit to take any action, which action or omission would cause the Loan and the State Bonds to be a "private activity bond" (within the meaning of Section 141(a) of the Code). Accordingly, unless the Borrower receives the prior written approval of the State, the Borrower shall neither (i) permit in excess of ten percent (10%) of either (A) the proceeds of the Loan, or (B) the Project financed or refinanced with the proceeds of the Loan, to be used directly or indirectly in any manner that would constitute "private business use" (within the meaning of Section 141(b)(6) of the Code), nor (ii) use directly or indirectly any of the proceeds of the Loan to make or finance loans to persons other than governmental units (as such term is used in Section 141(c) of the Code); provided further, that at least one half of the private business use permitted by clause (i) shall be neither disproportionate

related business use, nor private business use not related to the government use of such proceeds of the Loan.

(c) The Borrower shall not directly or indirectly use or permit the use of any of the "gross proceeds" (within the meaning of Section 148 of the Code) of the Loan or any other funds or take any action or omit to take any action, which use or action or omission would cause the Loan to be "arbitrage bonds" (within the meaning of Section 148 (a) of the Code).

(d) The Borrower shall not use directly or indirectly the proceeds of the Loan in any manner that would constitute an "advance refunding" (within the meaning of Section 149(d)(5) of the Code) and shall not prepay the Loan or any part of the Loan without prior written approval of the State and as provided in this Agreement.

(e) The Borrower will not cause the Loan to be treated as a "federally guaranteed" obligation for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to "federally guaranteed" obligations described in Section 149(b) of the Code. For purposes of this paragraph, the Loan shall be treated as "federally guaranteed" if: (i) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof; or (ii) five percent (5%) or more of the proceeds of the Loan will be (A) used in making loans, the payment of principal or interest with respect to which is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (B) invested directly or indirectly in federally insured deposits or accounts; and (iii) none of the exceptions described in Section 149(b)(3) of the Code apply.

(f) The Borrower agrees to assist the State, the Issuer and the Trustee to ensure that all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code are rebated to the United States of America. The Borrower agrees to provide all amounts necessary to satisfy the requirements of Section 148(f) applicable to the Loan and to pay to the State, the Issuer or the Trustee such amounts as may be directed by the State, the Issuer or the Trustee and at such times as the Borrower may be so directed to satisfy the requirements of Section 148(f) of the Code applicable to the portion of the proceeds of any State Bonds, including any proceeds or other amounts held in a reserve fund, applied to fund or refinance the Loan. The Borrower further agrees to reimburse the State, the Issuer or the Trustee for the portion of any expenses incurred by them that relate to the Loan and are necessary to satisfy the requirements of Section 148(f) of the Code.

(g) In furtherance of the foregoing, the Borrower covenants that it will comply with the provisions of any tax certificate as to compliance with the provisions of Section 103 and Sections 141 through 150 of the Code executed by the Borrower, the State or the Issuer with respect to the Loan and will furnish to the State, the Issuer or the Trustee in writing, upon reasonable request, information regarding investments and use of proceeds of the Loan or the State Bonds and of any facilities financed or refinanced therewith.

(h) The Borrower shall not enter into any management agreement for the operation of the Project that would cause the Loan to be or become a "private activity bond" (within the meaning of Section 141(a) of the Code).

(i) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Loan, the covenants contained in this Section 5.06 shall survive the payment of the Loan and the State Bonds, and the interest thereon, including any payment pursuant to Section 2.06 of this Loan Agreement. The Borrower acknowledges that the Loan may be funded in whole or in part with the proceeds of the State Bonds and that failure to comply with the requirements of this Section 5.06 could adversely affect any exclusion of the interest on the State Bonds from gross income for federal income tax purposes.

(j) Neither the Borrower nor any related party to the Borrower shall purchase State Bonds in an amount related to the amount of the Loan.

**Section 5.07. 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 5.08. 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, the Issuer, the Trustee and the federal government (including but not limited to Federal Highway Administration, Federal Transit Administration) at any reasonable time, and a copy of such annual audit(s) therefor, 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 5.09. Inspections; Information.** The Borrower shall permit the State, the Issuer, the Trustee and the federal government (including but not limited to Federal Highway Administration, Federal Transit Administration) 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, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the State or the Trustee may reasonably require in connection herewith. 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 other bonds, notes or other indebtedness of the Borrower that are issued after the Loan Closing Date and are secured by the Pledged Revenues.

**Section 5.10. 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 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. Any application of insurance proceeds to prepay the outstanding principal of the Loan shall not be subject to the prepayment premium, if any, as provided in Section 2.06.

**Section 5.11. Condemnation.** In the event the Project or any portion thereof is condemned, any condemnation proceeds shall be used to prepay the outstanding principal on the Loan, and shall not be subject to the prepayment premium, if any, as provided in Section 2.06.

**Section 5.12. 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 5.13. Notice of Material Adverse Change.** The Borrower shall promptly notify the State and (if this Loan Agreement has been assigned to the Trustee) the Trustee 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 5.14. Continuing Disclosure Requirements.** The Borrower shall, upon request of the State, provide the State with any information needed to comply with paragraph (b)(5) of the Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. § 240.15c2-12) (the "SEC Rule"), with respect to the State Bonds. In addition, if the Borrower becomes an "obligated person" within the meaning of the SEC Rule or an "Obligated Borrower," (as such term is defined by the State or the State Treasurer) for State Bonds the Borrower shall upon request of the State, in addition to the requirements of Sections 5.08 and 5.09, provide the following to the State and/or a nationally recognized securities information repositories:

(a) Any and all financial information or operating data that may reasonably be requested by the State to comply with the SEC Rule; and

(b) Audited financial statements, when and if prepared and available, prepared in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time; provided, however, that if audited financial statements are not available, unaudited financial statements will be provided with audited financial statements to follow when and if available.

**Section 5.15. Financial Statements; Reports.** The Borrower shall deliver to the State in form and detail satisfactory to the State:

(a) As soon as reasonably possible and in any event within ninety (90) days after the close of each fiscal year of the Borrower, unaudited statements of revenues, expenditures, cash flows, and changes in retained earnings for each of the funds constituting the Pledged Revenues for such period and for the portion of the fiscal year ended with such period, all in comparative form and all in reasonable detail and certified by the chief financial officer of the Borrower, subject to year-end audit adjustments.

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

**Section 5.16. 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 construction and operation of the Project. In particular, but without limitation, the Borrower shall comply with:

- 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;
- 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 person with disabilities;
- k. OAR, Chapter 731, Division 30, as amended from time to time at the discretion of the State;
- l. State municipal bonding requirements found in ORS Chapters 280, 286, 287 and 288;



- m. Sections 103 and 141 through 150 of the Code; and
- n. ORS 279.312, 279.314, 279.316, 279.320, and 279.555, as amended from time to time, which provisions are hereby incorporated by reference.

**Section 5.17.** Compliance with State Handbook. The Borrower agrees that it will at all times comply with the provisions of any project management handbook of the State for OTIF loans.

**Section 5.18.** Continuing Representations. The representations of the Borrower contained herein 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 5.19.** Additional Indebtedness. Except as provided in this Agreement, the Borrower shall not create or incur any additional indebtedness for borrowed money which in the aggregate amount exceeds \$1,000,000., or become liable as a surety, guarantor, accommodation endorser, or otherwise, for or upon the obligation of any other person, firm or corporation which indebtedness or obligation is payable or satisfied from all or a portion of the Pledged Revenues.

## **ARTICLE VI**

### **ASSIGNMENT**

**Section 6.01.** Assignment and Transfer by State.

(a) The Borrower expressly acknowledges that, other than the right, title and interest of the State under Sections 2.09 and 7.04 of this Loan Agreement, all right, title and interest of the State in, to and under this Loan Agreement either has been or may, at the sole discretion of the State, be assigned to the Trustee as security for the State Bonds as provided in the Bond Indenture, and that if any Event of Default shall occur and if this Loan Agreement has been assigned to the Trustee, the Trustee, pursuant to the Bond Indenture, shall be entitled to act hereunder in the place and stead of the State. The Borrower consents to assignment of this Loan Agreement and appointment of the Trustee under the Bond Indenture. The State acknowledges that the Borrower is not a party to the Bond Indenture and has no obligation to perform any of the State's covenants, agreements or obligations under the Bond Indenture or the State Bonds, and that the Borrower is only required to observe and perform its covenants, agreements and obligations under this Loan Agreement and the Note and, if and when requested by the State, to cooperate with the State in order to enable the State to comply with the State's covenants, agreements or obligations under the Bond Indenture. This Loan Agreement, including, without limitation, the right to receive payments required to be made by the Borrower hereunder and to compel or otherwise enforce observance and performance by the Borrower of its other duties, covenants, obligations and agreements hereunder, may be sold by the State to a third party or may be further transferred, assigned and reassigned in whole or in part to one or more assignees or subassignees by the Trustee at any time subsequent to its execution without the necessity of obtaining the consent of, but after giving prior written notice to, the Borrower.

In the event of the assignment of this Loan Agreement to the Trustee, the State shall retain the right to compel or otherwise enforce observance and performance by the Borrower of its duties, covenants, obligations and agreements under Section 3.06 and Section 5.04 of this Loan Agreement; provided, however, that in no event shall the State have the right to accelerate the outstanding balance payable pursuant to the Loan Agreement in connection with the enforcement of Sections 3.06 and 5.04 of this Loan Agreement.

(b) The Borrower hereby approves and consents to any assignment, sale or transfer of this Loan Agreement that the State deems to be necessary, including any assignment, sale or transfer in connection with any refunding of the State Bonds or the issuance of additional bonds under the Bond Indenture or otherwise in connection with any pooled loan program of the State.

**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 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 Bond Counsel or in-house Counsel.

## 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 or in connection with the State Bonds, 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 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 Borrower's governing body to appropriate sufficient funds to fully fund all of the Borrower's obligations to make Loan Repayments hereunder for any future fiscal period; or

(f) The Borrower has not entered into binding agreements with all private parties necessary to complete the Project within one hundred eighty (180) days of the date of this Agreement; or

(g) Failure by the Borrower to observe and perform any duty, covenant, obligation or agreement (including that described in subsection (h) below) on its part to be observed or performed under this Loan Agreement, 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 or the Trustee, unless the State or the Trustee 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 or the Trustee may not unreasonably withhold their 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; or

(h) 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.

**Section 7.02. Notice of Default.** The Borrower shall give the State and (if this Loan Agreement has been assigned to the Trustee) the Trustee prompt telephonic notice of the occurrence of any Event of Default referred to in Section 7.01(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 telephonic notice pursuant to this Section 7.02 shall be confirmed in writing as soon as is practicable by the Borrower.

**Section 7.03. Remedies on Default.** Whenever an Event of Default referred to in Section 7.01 hereof shall have occurred and be continuing, the State shall have the right to take, or to direct the Trustee to take, any action permitted or required pursuant to the Loan Agreement or the Bond Indenture 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 Loan Repayments and all other amounts due hereunder to be immediately due and payable, and upon notice to 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 funds, including but not limited to, the Borrower's apportionment of State Highway Fund revenues due under ORS 366.525 to 366.540 and ORS 366.785 to 366.820, to the extent permitted by Section 2.11(c).

In addition, if an Event of Default referred to in Section 7.01(a) hereof shall have occurred and be continuing and if all or a portion of the principal of and interest on the State Bonds has been accelerated pursuant to the Bond Indenture, the State shall have the right to declare, or to direct the Trustee to declare, all Loan Repayments and all other amounts due hereunder (including but not limited to the State's cost of defeasance of any State Bonds allocable to the Loan) to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand. State shall apply any proceeds of the Loan remaining in the Borrower's Account to the amounts due hereunder.

**Section 7.04. Attorney's Fees and Other Expenses.** In compliance with ORCP 68, a party shall, on demand, pay to the prevailing party(ies) the reasonable fees and expenses of attorneys, whether at trial or on appeal, and other reasonable expenses (including without limitation expert witness fees and the reasonable allocated costs of in-house Counsel and legal staff) incurred by said prevailing party(ies) in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the party.

**Section 7.05. Application of Moneys.** Any moneys collected by the State or the Trustee pursuant to Section 7.03 hereof shall be applied in the following order: (a) to pay any attorney's fees, Trustee's fees or other fees and expenses owed by the Borrower hereunder, (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 or the Trustee 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 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 or the Trustee 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 hereof or of the Bond Indenture, or anything else to the contrary contained herein, 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, 2.09 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. The State shall on demand pay to the Borrower the reasonable fees and expenses of attorneys and other reasonable expenses in the enforcement of such performance or observation.

**ARTICLE VIII**

**MISCELLANEOUS**

**Section 8.01. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower, the State, the Issuer and the Trustee at the addresses set forth below or at such other address of which such party shall have notified in writing the other parties hereto:

If to the State: Oregon Department of Transportation  
355 Capitol Street NE, Room 434  
Salem, Oregon 97301  
Attn: Chief Financial Officer

If to the Trustee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to the Issuer: Oregon State Treasury  
350 Winter Street NE, Suite 100  
Salem, Oregon 97310  
Attn: Debt Management Division

If to the Borrower: Port of Hood River  
Post Office Box 239  
Hood River, Oregon 97031  
Attn: Greg Baker, Executive Director

**Section 8.02. Binding Effect.** 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. In addition, the Trustee shall be considered as a beneficial party to this Loan Agreement, with all

attendant rights to enforce the duties, obligations, covenants and agreements of the Borrower set forth herein, to the same extent as if the Trustee was a party hereto.

**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, the Rules and the Bond Indenture or so as to adversely affect the interest of the owners of the State Bonds.

**Section 8.05.** 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 8.06.** 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 8.07.** 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 8.08.** Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, suit or proceeding (collectively, "Claim") between the State and the Borrower that arises from or relates to this Loan Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**Section 8.09.** 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 8.10.** Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the State unless otherwise provided by law or by rules, regulations or resolutions of the State or unless expressly delegated to the Trustee.

**Section 8.11. Compliance with Bond Indenture.** The Borrower covenants and agrees to observe and comply with, and to enable the State to observe and comply with, all duties, covenants, obligations and agreements contained in the Bond Indenture.

**Section 8.12. 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.

**Section 8.13. Merger; No Waiver.** This Loan Agreement and attached exhibits 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.

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.

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

Port of Hood River, Oregon  
Borrower

By: \_\_\_\_\_  
David W. Tyler

By: \_\_\_\_\_  
Greg Baker

Title: Chief Financial Officer

Title: Executive Director

Date: June \_\_\_\_, 1999

Date: June \_\_\_\_, 1999

**DRAFT – 4/13/99**

**Exhibit A to Loan Agreement**

**Project Description**

Borrower: Port of Hood River

The Hood River Interstate Bridge #6645, Lift Control Update project as described in Borrower's OTIB application dated January 21, 1999 and project prospectus dated \_\_\_\_\_, 1999.



DRAFT – 4/13/99

Exhibit B to Loan Agreement

**Approved Project Budget**

Borrower: Port of Hood River

Uses of Funds:

<u>Project Element</u>	<u>Cost</u>
Preliminary Engineering	\$ 228,713
Structures	1,295,000
Temporary Protection	450,000
Engineering, Contingencies, Financing Costs	<u>174,500</u>
Total Project Cost and Uses of Funds	\$2,148,213

Sources of Funds:

Oregon Transportation Infrastructure Fund	\$ 600,000
TEA-21 High Priority Project Funds	
Local Funds	
Total Sources of Funds	\$2,148,213

DRAFT – 4/13/99

Exhibit C to Loan Agreement

**Prepayment Premium**

Borrower: Port of Hood River

Prepayment Date (assuming no State Bonds are issued): January 1, 2001

Prepayment Premium:

Redemption Dates:	Redemption Prices
From Loan Closing Date to 01/01/2001	102% of the outstanding principal amount
From 01/01/2001 to 01/01/2002	101% of the outstanding principal amount
From 01/01/2002 and thereafter	100% of the outstanding principal amount

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Exhibit F to Loan Agreement

**Payment Requisition**

TO: Oregon Transportation Infrastructure Bank  
Oregon Department of Transportation  
355 Capitol Street NE, Room 434  
Salem, Oregon 97301

RE: Oregon Transportation Infrastructure Fund, Loan Number OTIF-0015

On behalf of the Port of Hood River, I hereby 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(e)(ii) of the Loan Agreement.

DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer

Attachments

Exhibit D**PROMISSORY NOTE**

\$600,000.00

June \_\_\_\_, 1999  
Hood River, Oregon

For value received, the Port of Hood River, Hood River, Oregon (hereinafter "Borrower"), promises to pay to the State of Oregon, acting by and through its Department of Transportation (hereinafter "State"), or order, at Room 434, Transportation Building, Salem, Oregon 97310 or such other place as the State may designate in writing, the principal sum of SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00) plus interest from the date hereof on the unpaid balance until paid. Any capitalized terms not defined in this Note shall have the meanings assigned to such terms in the Loan Agreement.

The interest rate shall be three and sixty-one hundredths percent (3.56%) per annum. Interest 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 on the repayment schedule on Exhibit A attached hereto and by this reference made a part hereof. Each payment made by the Borrower hereunder shall be applied first to interest then due and payable on the Loan, then to the principal of the Loan.

This Note is not payable prior to its maturity except as provided for in Sections 2.06 and 2.10 of the Loan Agreement.

In the event that the Borrower receives written notification from the State, the Issuer or the Trustee that payments made pursuant to the Loan Agreement have been assigned to the Trustee under the Bond Indenture, all payments hereunder shall be made directly to the Trustee for the account of the State pursuant to such assignment.

If an Event of Default occurs, the outstanding balance hereunder, 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.

The Borrower shall, on demand, pay to the State, the Issuer, or the Trustee the reasonable fees and expenses of attorneys, whether at trial or on appeal, and other reasonable expenses (including without limitation expert witness fees and the reasonable allocated costs of in-house Counsel and legal staff) incurred by either of the State, the Issuer or the Trustee in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the Borrower.

**DRAFT – 4/13/99**

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. Any claim, action, suit or proceeding (collectively, "Claim") between the State and the Borrower that arises from or relates to this Note shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

This Note is subject to the terms and conditions of that certain loan agreement of even date herewith between the State and Borrower (as amended from time to time the "Loan Agreement"). The indebtedness evidenced by this Note is secured by the collateral described in the Loan Agreement.

PORT OF HOOD RIVER

By: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTICE TO BORROWER**

**DO NOT SIGN THIS NOTE BEFORE YOU READ IT. FULL OR PARTIAL REPAYMENT BEFORE THE DATE PROVIDED FOR REPAYMENT IN THIS NOTE AND IN THE LOAN AGREEMENT IS NOT PERMITTED, AND A PREMIUM FOR ANY SUCH PREPAYMENT MAY BE CHARGED AND COLLECTED.**

Exhibit A to Promissory Note

**Repayment Schedule**

Borrower: Port of Hood River

<b>Payment Due Date:</b>	<b>Amount Due:</b>
September 30, 2002	\$ _____ plus accrued interest from the Loan Closing Date shall be due and payable.
September 30, 2003	\$ _____ plus accrued interest shall be due and payable.
September 30, 2004	\$ _____ plus accrued interest shall be due and payable.
September 30, 2005	\$ _____ plus accrued interest shall be due and payable.

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**DRAFT****GENERAL CERTIFICATE**STATE OF OREGON  
DEPARTMENT OF TRANSPORTATION  
OREGON TRANSPORTATION INFRASTRUCTURE FUND

Municipality: Port of Hood River, Oregon

Loan Amount: \$600,000.00

Loan Closing Date: June \_\_\_, 1999

Authorized Officer

(Name and Title): Greg Baker, Executive Director

1. In General. This Certificate is being executed by the Municipality with respect to a loan (the "Loan") from the State of Oregon (the "State"), acting by and through its Department of Transportation (the "Department") to the Municipality pursuant to a Loan Agreement (the "Loan Agreement") made and entered into as of the Loan Closing Date by and between the Department and the Municipality. The Loan is being made by the Department to finance a portion of the cost of the "project" described in Exhibit A to the Loan Agreement (the "Project") to be owned and operated by the Municipality. The Municipality has executed a Promissory Note (the "Note") to evidence its obligation to make payments due pursuant to the Agreement. The Loan is being made pursuant to the "Act" as such term is defined in the Loan Agreement.

2. Purpose. I understand that the State is issuing or may issue a series of its Oregon Transportation Infrastructure Fund Revenue Bonds (the "State Bonds") to fund or refinance all or a portion of the Loan with the proceeds of the State Bonds. The Municipality is making the representations and covenants in this General Certificate in consideration for the Loan by the State to the Municipality.

3. Transcript Documents. On behalf of the Municipality, I hereby certify that the documents included in the transcript with this General Certificate are originals or true copies of the documents which were assembled for the closing of the Municipality's Loan.

4. Loan Agreement and Note. The Loan Agreement and the Note have been signed by the Authorized Officer. The Authorized Officer was, on the date on which the Authorized Officer signed the Loan Agreement and the Note, and is as of the date of this Certificate, the duly chosen, qualified and acting officer indicated therein and authorized to execute the same.

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5. Litigation. No litigation of any nature is now pending or threatened restraining or enjoining the amounts due to the State or the Department pursuant to the Agreement or the Note, or in any manner questioning the proceedings and the authority by which the same is made, or affecting the validity of the Agreement or the Note, and that neither the corporate existence nor boundaries, nor the title of any of the present officers of the Municipality, including the Authorized Officer, to their respective offices is being contested.

6. Tax Exemption.

A. One of the purposes of this General Certificate is to provide the representations and covenants of the Municipality that are necessary for the Loan to qualify as a “state or local bond” within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”). If the requirements of Section 103(a) of the Code are satisfied, the interest on the Loan is tax-exempt to the holder of the Loan. The Department requires that the Loan qualify under Section 103(a) of the Code in order for the Department to either pledge or allocate the Loan to the State Bonds issued by the State or fund or refinance all or a portion of the Loan with the proceeds of State Bonds.

B. The Municipality understands that the Department is and will be relying upon the representations and covenants in this General Certificate in connection with the issuance of State Bonds and that the Department’s counsel is and will be relying upon the covenants in this General Certificate in rendering their opinion that the interest paid on the Loan and on the State Bonds is excludable from gross income pursuant to Section 103(a) of the Code. The facts, estimates and expectations stated in this General Certificate are known by the Municipality to be correct, complete and reasonable. The Municipality has covenanted in paragraph (e) of Section 2.02 of the Loan Agreement to comply with the requirements of the Code that relate to the exclusion of the interest on the Loan and the State Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. The Municipality incorporates these covenants into this General Certificate by reference.

7. The Project. On the basis of the facts, estimates and circumstances of which the Municipality has knowledge and which are in existence on the date of this General Certificate, the Municipality hereby certifies the Project will be owned and operated by the Municipality, and used for its governmental purposes. No use will be made of the Project that would cause the Loan to be considered to be a “private activity bond” within the meaning of Section 141(a) of the Code. The Municipality does not expect that any proceeds of the Loan will be used by anyone other than the State of Oregon, the Municipality, a member of the general public or another governmental unit. The Municipality hereby covenants that no use will be made of the Project by anyone other than the State of Oregon, the Municipality, a member of the general public or another governmental unit except with the prior approval of the Department and the Department’s counsel. No proceeds of the Loan will be loaned by the Municipality to any person without the prior approval of the Department and the Department’s counsel.



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8. Arbitrage and Rebate Compliance.

A. The Municipality acknowledges that the treatment of the Loan as a tax-exempt “state or local bond” for purposes of Section 103(a) of the Code depends, in part, upon compliance with the arbitrage limitations imposed by Section 148 of the Code, including the rebate requirement described below. The Municipality hereby agrees and covenants that it shall not permit at any time or times any of the proceeds of the Loan to be used in a manner that would cause the Loan to be treated as an “arbitrage bond” for purposes of Section 148 of the Code. The Municipality further agrees and covenants that it will do and perform all acts and things necessary to ensure that the requirements of Section 148 of the Code are met.

B. The Municipality is a governmental unit with general taxing powers and the Loan is not a private activity bond within the meaning of Section 141(a) of the Code. All of the proceeds of the Loan will be used for local governmental activities of the Municipality. The Municipality does not expect to issue more than \$5,000,000 of tax-exempt obligations (including the Loan, but excluding any private activity bonds) during the current calendar year. Accordingly, the Municipality expects that the exception to arbitrage rebate for governmental units issuing \$5,000,000 or less of tax-exempt obligations in a calendar year will apply to the Loan.

C. Even though the Municipality expects that the exception to arbitrage rebate described in paragraph B. of this Section 8 will apply, the Municipality will calculate and pay any arbitrage rebate due pursuant to Section 148(f) of the Code if it is determined that any funds or investments are subject to arbitrage rebate.

9. Expenditure of Loan Proceeds. The Municipality has entered into, or will enter into within six months after the Loan Closing Date, a substantially binding obligation to a third party to spend Loan proceeds in an amount at least equal to five percent of the Loan Amount. The Municipality will proceed to construct or acquire the Project with due diligence. The Municipality reasonably expects to spend all of the proceeds of the Loan including all investment earnings thereon within three years after the Loan Closing Date.

10. Debt Service Fund.

A. All amounts deposited in any fund established by the Municipality to provide for the payment of amounts due pursuant to the Loan Agreement will be spent within a thirteen-month period beginning on the date of deposit, and any amount received from the investment of money held in any such fund will be spent within a one-year period beginning on the date of receipt.

B. Any fund established by the Municipality as described in paragraph A. of this Section 10 will be a fund that is used primarily to achieve a proper matching of revenues and principal and interest payments within each bond year. Such fund will be completely depleted at least once each year except for an amount not in excess of the greater of (i) one-twelfth of the debt service on the Loan for the previous year, or (ii) the previous year’s earnings on such fund.

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C. Other than any debt service fund described in paragraphs A. and B. of this Section 10 there is, and will be no other funds or accounts established, or to be established, by or on behalf of the Municipality that will constitute a sinking fund or a pledged fund within the meaning of Section 1.148-1(c) of the Income Tax Regulations.

11. Reimbursement of Prior Expenditures.

None of the proceeds of the Loan will be applied to reimburse the Municipality for any expenditures paid prior to the funding of the Loan by the Department other than expenditures described in paragraphs A., B., C. or D. below:

A. Preliminary expenditures such as architectural, engineering, surveying, soil testing, bond issuance costs and similar costs can be reimbursed with the proceeds of the Loan to the extent that such preliminary expenditures are not in excess of 20 percent of the principal amount of the Loan. The costs of land acquisition, site preparation and similar costs incident to commencement of construction are not considered to be “preliminary expenditures” for purposes of the preceding sentence.

B. Expenditures equal to the lesser of (i) 5% of the principal amount of the Loan or (ii) \$100,000.

C. Expenditures that are described in a reimbursement resolution or ordinance and paid after the adoption by the Municipality of such resolution or ordinance, that satisfies the requirements of Section 1.150-2 of the Income Tax Regulations can be reimbursed with the proceeds of the Loan if the Loan is funded no later than 18 months after the later of (i) the date on which the expenditure was paid or (ii) the date on which the property financed in whole or in part by the expenditure was placed in service. In no event shall the period of time between the date on which an expenditure is made and the Loan Closing Date exceed 3 years. The 18-month period referred to above shall be a 3-year period if the Municipality issues less than \$5 million of tax exempt obligations in the calendar year in which the Loan Closing Date occurs.

D. Expenditures that are paid within 60 days prior to the Loan Closing Date or within 60 days prior to the adoption by the Municipality of any reimbursement resolution or ordinance that describes such expenditures.

12. Miscellaneous.

A. This General Certificate is being executed and delivered pursuant to the Act and Section 103 and Sections 141 through 150 of the Code and the Income Tax Regulations proposed or promulgated thereunder and in effect on the Loan Closing Date.

B. The proceeds of the Loan, together with any investment earnings thereon, are not expected to exceed the amount necessary for the acquisition or construction of the Project.

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C. The undersigned officer is one of the officers of the Municipality charged with responsibility for issuing the Loan. The representations contained in this General Certificate are made for the benefit of the State of Oregon, the Department, any subsequent holder of the Loan, the Department's counsel and any holder of any State Bonds, and may be relied upon by such persons in determining whether the Loan (i) is a "state or local bond" within the meaning of Section 103(a) of the Code, (ii) constitutes an issue of "arbitrage bonds" within the meaning of Section 148 of the Code or (iii) constitutes an issue of "private activity bonds" within the meaning of Section 141(a) of the Code. To the best of the knowledge and belief of the undersigned, the Municipality's expectations are reasonable, and there are no other facts, estimates, or circumstances that would materially change the foregoing conclusions.

IN WITNESS WHEREOF, this General Certificate has been executed on behalf of the Municipality as of the Loan Closing Date.

By: \_\_\_\_\_  
Greg Baker  
Title: Executive Director

**PROMISSORY NOTE**

ECONOMIC DEVELOPMENT DEPARTMENT  
STATE OF OREGON

\$677,000

\_\_\_\_\_, 19\_\_\_\_  
\_\_\_\_\_, Oregon

FOR VALUE RECEIVED, the Port of Hood River (hereinafter "Borrower"), 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 ECONOMIC DEVELOPMENT DEPARTMENT, at its principal office at 775 Summer Street NE, Salem, Oregon 97310 (hereinafter "State"), the principal sum of six hundred seventy-seven thousand dollars (\$677,000), plus interest at the rate of six percent (6%) per annum from the date hereof until paid; provided however that on the Bond Closing Date the interest rate shall be adjusted by the State (and such rate shall be retroactive to the date of this Note) to equal the lowest rate (in one basis point increments) that will be sufficient to ensure that the annual amounts paid by the Borrower pursuant to this Note shall be no less than the Borrower's pro-rata portion of the maximum annual debt service on the State Bonds. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12) thirty- (30-) day months.

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

Principal and Interest shall be payable as follows:

- (a) The Borrower shall pay the principal of this Note at the times and in the amounts specified on the repayment schedule set forth in Exhibit D to the Loan Agreement.
- (b) All payments required hereunder shall be paid by the Borrower no later than the first day of December of each year.
- (c) This note is not payable prior to its maturity except as provided for in Sections 2.05 and 2.06 of the Loan Agreement.
- (d) In the event that the Borrower receives written notification from the State, the Issuer or the Trustee that this Note, the Loan Agreement and the other Loan Documents have been assigned to the Trustee under the Bond Indenture, all payments hereunder shall be made directly to the Trustee for the account of the State.

Each payment made by the Borrower hereunder shall be applied first to interest then due and payable on the Loan, then to the principal of the Loan.

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. The liability of all parties on this Note shall not be discharged by any action consented to above taken by any holder of this Note.

If this Note is placed in the hands of an attorney for collection, the Borrower shall, on demand, pay to the State, the Issuer or the Trustee the reasonable fees and expenses of attorneys, whether at trial or on appeal, and other reasonable expenses (including without limitation the reasonable costs of the State's Counsel, Bond Counsel and legal staff) incurred by either of the State, the Issuer or the Trustee in the collection of Loan Repayments or any other sum due hereunder or under any of the Loan Documents in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the Borrower.

This Note is made with reference to, and is to be construed in accordance with, the laws of the State of Oregon.

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

IN WITNESS WHEREOF, Borrower has caused this Note to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

**PORT OF HOOD RIVER**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTICE TO BORROWER**

DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THIS NOTE IS NOT SUBJECT TO FULL OR PARTIAL PREPAYMENT BEFORE THE DATE PROVIDED FOR REPAYMENT IN THIS NOTE AND IN THE LOAN AGREEMENT AND A PENALTY FOR ANY SUCH PREPAYMENT MAY BE CHARGED AND COLLECTED.