

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter Authorizing a Loan from the Special Public Works Fund by Entering into a Loan Contract with the Oregon Economic and Community Development Department)
) Order No. 16-2004
)

WHEREAS, Columbia County is a "municipality" within the meaning of ORS 285B.410(4);
and

WHEREAS, ORS 285B.410 through 285B.479 (the "Act") authorizes any municipality to file an application with the Oregon Economic and Community Development Department ("OECDD") to obtain financial assistance from the Special Public Works Fund; and

WHEREAS, Columbia County has filed an application for a loan from the Special Public Works Fund to design and build the Columbia County Transfer Station, which is an "infrastructure project" within the meaning of the Act; and

WHEREAS, OECDD has approved Columbia County's application for financial assistance from the Special Public Works Fund pursuant to the Act; and

WHEREAS, Columbia County is required, as a prerequisite to the receipt of financial assistance from OECDD, to enter into a Financial Assistance Award Contract and a Loan Agreement with OECDD, in substantially the form attached hereto as Attachments "A" and "B"; and

WHEREAS, the project described in Exhibit "B" to the Loan Agreement (the "Project") is an "infrastructure project" within the meaning of the Act which is needed by and is in the public interest of Columbia County; and

WHEREAS, Notice relating to Columbia County's consideration of the adoption of this Order was published at least once in a newspaper of general circulation within Columbia County. Such notice was published at least 14 days in advance of the adoption of this Order.

NOW, THEREFORE, IT IS HEREBY ORDERED, as follows:

1. Loan Authorized. The Board of County Commissioners authorizes its Chair to execute the Financial Assistance Award Contract, Loan Agreement, the Promissory Note attached as Exhibit "F" to the Loan Agreement (the "Financing Documents") and such other documents as may be required to obtain interim financial assistance including a line of credit loan from OECDD on the condition that the principal amount of the loan from OECDD to the County does not exceed Two Million, Eight Hundred Seventy-Five Thousand, Five Hundred and Eighty-Nine Dollars

(\$2,875,589.00), and the interest rate on such loan is deemed reasonable by the Board and is in the best interest of the County. The proceeds of the loan from OECDD shall be applied solely to the "Costs of the Project" as such term is defined in the Loan Agreement.

2. Security. Amounts payable by Columbia County shall be payable from the sources described in Section 2.07 of the Loan Agreement and ORS 285B.433(2) which include:
 - a. Any sources of funds that are legally available to Columbia County;
 - b. The revenues, if any, of the Project, including special assessment revenues, if any; and
 - c. Columbia County's General Fund, including the tax and other general revenues of Columbia County, subject only to the restrictions of Article XI, Sections 10, 11, and 11b of the Constitution of the State of Oregon. Columbia County acknowledges its current intention to make all payments due pursuant to the Financing Documents and, to the extent that funds are appropriated to make payments, the full faith and credit of Columbia County are pledged to such payments.
3. Documents. The Chair of the Board of County Commissioners is hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to obtain financial assistance from OECDD for the Project pursuant to the Financial Assistance Award Contract and the Loan Agreement.
4. Tax-Exempt Status. Columbia County covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by Columbia County pursuant to the Loan Agreement not to qualify for the exclusion from gross income provided by Section 103(a) of the Board of the Internal Revenue Code of 1986, as amended. The Chair of the Board of County Commissioners of Columbia County may enter into covenants on behalf of Columbia County to protect the tax-exempt status of the interest paid by Columbia County pursuant to the Loan Agreement and may execute any Tax Certificate, Internal Revenue Service forms or other documents as shall be required by OECDD or their bond counsel to protect the tax-exempt status of such interest.
5. Reimbursement Bonds. Columbia County may reimburse expenditures for the Project with amounts received from OECDD pursuant to the Financing Documents. Additionally, Columbia County understands that the Department may fund or reimburse itself for the funding of the amounts paid to Columbia County pursuant to the Financing Documents with the proceeds of bonds issued by the State of Oregon

pursuant to the Act. This Order shall constitute "official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations promulgated by the United States Department of Treasury with respect to the funding or the reimbursement for the funding of the costs of the Project with the proceeds of Columbia County's loan pursuant to the Financing Documents and with the proceeds of any bonds issued by the State of Oregon pursuant to the Act.

Dated this 17th day of March 2004.

Approved as to form

By: *Samuel Tison*
Office of the County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY OREGON

By: *Rita M. Bernhard*
Rita Bernhard, Chair

By: *Anthony Hyde*
Anthony Hyde, Commissioner

By: *Joe Corsiglia*
Joe Corsiglia, Commissioner

STATE OF OREGON
SPECIAL PUBLIC WORKS FUND - COMMUNITY FACILITIES
FINANCIAL ASSISTANCE AWARD CONTRACT

This Contract is made and entered into as of March 17, 2004 by and between the STATE OF OREGON, ACTING BY AND THROUGH ITS ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT ("State") and Columbia County ("Borrower"). The reference number of this Contract is J04007. Capitalized terms used in this Contract not otherwise defined herein shall have the meanings assigned to them by Section 1 below.

RECITALS

WHEREAS, the award of financial assistance which is the subject of this Contract is authorized by ORS 285B.410 through 285B.482; and

WHEREAS, a reasonable estimate of the Costs of the Project is two million eight hundred seventy-five thousand five hundred eighty-nine dollars (\$2,875,589); and

WHEREAS, the Borrower is authorized to enter into this contract with the State under ORS 285B.437(1); and

WHEREAS, the State has reviewed the Borrower's application and determined the Project meets the eligibility requirements and merits funding; and

WHEREAS, the State is willing to provide to the Borrower, and Borrower wishes to borrow and accept from the State, a Loan of two million, eight hundred seventy-five thousand, five hundred eighty-nine dollars (\$2,875,589) to the Borrower on the terms and conditions of this Contract and the Loan Agreement.

NOW, THEREFORE, the parties agree as follows:

SECTION 1
CERTAIN DEFINITIONS

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

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

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

"Costs of the Project" shall have the meaning ascribed thereto in the Agreement.

"Default" shall mean an event which with notice or lapse of time or both would become an Event of Default as set out in Section 7 hereof.

"Event of Default" shall mean any of the events described in Sections 7(A) through 7(E) of this Contract.

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

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

"Loan Closing Date" shall have the meaning ascribed thereto in the Loan Agreement.

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

"Project" shall have the meaning ascribed thereto in the Loan Agreement and described in Exhibit A of the Loan Agreement.

"Project Completion Date" shall mean the date on which the Borrower has in fact completed the construction of the Project.

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

SECTION 2 FINANCIAL AWARD

- A. Amount of Loan. Subject to the terms and conditions of this Contract and the Loan Agreement, the State agrees to make on a non-revolving basis and disburse to Borrower, and Borrower agrees to borrow and accept from State, a loan in the maximum aggregate principal amount of two million, eight hundred seventy-five thousand, five hundred eighty-nine dollars (\$2,875,589) (the "Loan").
- B. Availability of Funds. The Loan set out in Section 2(A) above is subject to the availability of moneys in the Fund.
- C. Change in the Act. The State shall not be obligated to provide the Loan or make any disbursements under the Loan Agreement if, on or prior to the time the Borrower satisfies all conditions for disbursement of the Loan proceeds under the Loan Agreement, there has been a change in the Act so that the Project is no longer eligible for the financial assistance authorized by this Contract.
- D. Disbursements. The Borrower must submit disbursements requests for the Loan on a State-approved cash request form. The State's obligation to make, and the Borrower's right to request, disbursements under this Contract or the Loan Agreement shall terminate on the earlier of (1) thirty-six (36) months after the date Loan proceeds are first disbursed and (2) forty-two (42) months after the Loan Closing Date.

SECTION 3 USE OF AWARD

- A. Eligible Activities. The use of the Loan is expressly limited to the Project activities described in Exhibit A of the Loan Agreement. The use of these funds is also expressly subject to the terms and conditions set out in Exhibit D to the Loan Agreement.
- B. Ineligible Activities

No part of the Loan shall be used for:

1. Administrative costs;
2. Costs incurred prior to award of funds to the Borrower except in the case of preliminary and final engineering, surveying, architectural reports and other support activities necessary to the construction of the Project;
3. Assistance to facilities which are or will be privately owned;
4. Purchase of equipment, such as motor vehicles, not directly appurtenant to the Project;
5. Purchase of off-site property for project-related purposes such as wetland mitigation or other uses not directly related to the Project; or
6. Operation and maintenance expenses.

**SECTION 4
[RESERVED]**

**SECTION 5
REPRESENTATIONS OF THE BORROWER**

The Borrower represents and warrants to the State that:

- A. Costs of the Project. A reasonable estimate of the Costs of the Project is two million, eight hundred seventy-five thousand, five hundred eighty-nine dollars (\$2,875,589).
- B. Binding Obligation. This Contract has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms.

**SECTION 6
COVENANTS OF BORROWER**

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

- A. Compliance with Laws. The Borrower will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority that relate to the construction of the Project and the operation of any utility system of which the Project is a component. In particular, but without limitation, the Borrower shall comply with:
 1. State procurement regulations found in ORS Chapter 279.
 2. State labor standards and wage rates found in ORS Chapter 279.
 3. State municipal finance and audit regulations found in ORS Chapter 297.
 4. State regulations regarding industrial accident protection found in ORS Chapter 656.
 5. State conflict of interest requirements for public contracts.
 6. State environmental laws or regulations enacted by agencies listed in Exhibit 2 hereto.

7. Oregon Administrative Rules, chapter 123, Division 42, as amended from time to time at the discretion of the State.

8. State municipal bonding requirements found in the Act and in ORS Chapters 280, 284, 286, 287 and 288.

The State's performance under this Contract is conditioned upon the Borrower's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, as amended from time to time, which are incorporated by reference herein.

- B. Drawings. The Borrower shall obtain as-built drawings for all facilities constructed with the proceeds of the Loan. The Borrower shall obtain certification of completion per the as-built drawings from the Project engineer or architect, as applicable.
- C. Operation and Maintenance of the Project. By the Project Completion Date, the Borrower will have a program, documented to the satisfaction of the State, for the on-going maintenance, operation and replacement, at Borrower's sole expense, of the public works service system, if any, of which the Project is a part. This program should include a plan for generating revenues sufficient to assure the operation, maintenance and replacement of the public works system, if any, of which the Project is a part during the service life of the Project.
- D. Signs and Notifications. The Borrower shall display a sign near the Project construction site stating that the Project is being funded by Lottery proceeds. The Borrower shall include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the Project:
- "This Project was funded in part with a financial award from the Special Public Works Fund, funded by the Oregon State Lottery and administered by the State of Oregon, Economic and Community Development Department."
- E. Insurance. Except as may be provided in Exhibit D to the Loan Agreement, in the event the Project, or any portion thereof, is destroyed and the Project is insured, any insurance proceeds shall be paid to the State and shall be applied to the outstanding balance of the Loan in such manner as the State in its sole discretion shall determine unless the State agrees in writing that the insurance proceeds shall be used to rebuild the Project.
- F. Indemnity. To the extent permitted by law, the Borrower shall indemnify the State and its officers, employees and agents against any liability for damage to life or property arising from the actions of Borrower or its subcontractors, agents or employees.
- G. Registered Engineer/ Licensed Architect. A registered professional engineer, or a licensed architect in lieu of a registered professional engineer if use of a licensed architect has been approved by the Department, will be responsible for design and construction of the Project. The Borrower will check with the Oregon Board of Engineering Examiners or the Oregon Board of Architect Examiners, as applicable, to verify an engineer's or architect's registration and complaint history prior to contracting with the engineer or architect, respectively.
- H. Creation of Construction Account. The Borrower shall establish and maintain a segregated construction account. The Loan proceeds (as and when the Loan proceeds are disbursed by the State

to the Borrower) shall be deposited in this account. Earnings on this account shall be credited to this account. Moneys in this account shall only be used to pay the Costs of the Project.

- I. Economic Benefits Reports. The Borrower shall submit reports on the economic development benefits of the Project for the period from the date hereof until two (2) years after the Project Completion Date, or such longer period as State may reasonably request in order to evaluate the general economic benefits of the Project to the community, at such intervals and in such form as the State shall specify. Reports shall document temporary construction jobs associated with the Project and any new direct permanent or retained jobs resulting from the Project. The reports shall document the general economic benefits of the Project to the community and provide other information necessary to evaluate the success of the Project. The preparation and filing of these reports shall be at the Borrower's expense.
- J. Proceeding with Project. The Borrower shall proceed expeditiously 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 DEFAULT

If any of the following Events of Default occurs and is continuing, namely:

- A. 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; or
- B. Any representation with respect to current or historical information made to the State herein or in any other pertinent documents, certificates and reports relied upon by the State in gauging the progress of the Project, or compliance with the requirements of the Act and performance of duties by the Borrower is untrue in any material respect; or
- C. The Borrower fails to perform or observe any of its covenants or agreements contained herein and fails to correct such deficiencies within thirty (30) days of notice from the State of such deficiencies, or such longer period as the State may authorize in its sole discretion; or
- D. If, within six (6) months from the date of this Contract, the Borrower has not entered into binding legal agreements with all private parties necessary to complete the Project; or
- E. The occurrence of an Event of Default under the Loan Agreement;

thereupon, and in each such case, the State, upon notice to the Borrower, may pursue any remedy legally available, including but not limited to the remedies set forth in Section 8.

SECTION 8 REMEDIES

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

SECTION 9

MISCELLANEOUS

- A. No Implied Waiver, Cumulative Remedies. No failure on the part of the State to exercise, and no delay in exercising, any right, power, or privilege under this Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.
- B. Notices. All notices, requests, demands, and other communications to or upon the parties hereto shall be in writing and shall be deemed to have been duly given or made when deposited in the mails, postage prepaid, addressed to the party to which such notice, request, demand, or other communication is requested or permitted to be given or made at the addresses set forth below or at such other address of which such party shall have notified in writing the other party hereto.

If to the State: Infrastructure Manager, Capital Projects Division
Economic and Community Development Department
775 Summer Street NE, Suite 200
Salem, OR 97301-1280

If to the Borrower: Columbia County
Board of Commissioners
230 Strand Street
St. Helens, OR 97051-0010

- C. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or condition held to be invalid.
- D. No Construction against Drafter. The terms of this Contract shall not be construed against either party as the drafter hereof.
- E. Binding Effect. This Contract shall inure to the benefit of and shall be binding upon the State and the Borrower and their respective successors and assigns.
- F. Applicable Law. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon, including the Act. Any claim, action, suit or proceeding (collectively, "Claim") between the State (and/or any agency or department of the State of Oregon) and the Borrower that arises from or related 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. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.
- G. Merger; Amendments. This Contract, including all Exhibits (which are attached hereto and by this reference incorporated herein), constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not

specified herein regarding this Contract. The terms of this Contract, including timeframes for Project completion, will not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by the parties (or, in the case of a waiver, by the party against whom the waiver is being asserted).

- H. Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of the last date set forth below the signatures of their respective representatives. The Borrower, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON

acting by and through its Economic and
Community Development Department

COLUMBIA COUNTY



OREGON

COLUMBIA COUNTY

(Borrower)

By: _____
Laird Bryan, Infrastructure Manager
Capital Projects Division

By: _____
Joe Corsiglia, Chair
Columbia County Board of Commissioners

Date: _____

Date: March 17, 2004

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Lynn T. Nagasako (per email dated 02/09/2004)
Lynn T. Nagasako, Assistant Attorney General

Date: February 9, 2004

Exhibit 1 – Loan Agreement

Exhibit 2 - Environmental and Natural Resource Agencies

**Special Public Works Fund
Community Facility
Loan Agreement**

between

STATE OF OREGON

acting by and through its

ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

and

COLUMBIA COUNTY

TABLE OF CONTENTS

Page

**ARTICLE I
DEFINITIONS**

SECTION 1.01. Definitions.....	4
SECTION 1.02. General Rules	6

**ARTICLE II
LOAN TO BORROWER**

SECTION 2.01. Loan; Disbursements; Use of Proceeds.....	6
SECTION 2.02. Loan Payment.....	6
SECTION 2.03. Unconditional Obligations	7
SECTION 2.04. Loan Agreement to Survive Lottery Bonds	7
SECTION 2.05. Loan Prepayments	7
SECTION 2.06. Loan Agreement to Survive Lottery Bonds	8
SECTION 2.07. Sources of Payment of Borrower's Obligations.....	8
SECTION 2.08. Disclaimer of Warranties; Limitation of Liability; Indemnification.....	9

**ARTICLE III
REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER**

SECTION 3.01. Representations and Warranties of Borrower	9
SECTION 3.02. Particular Covenants of the Borrower.....	12

**ARTICLE IV
CONDITIONS PRECEDENT**

SECTION 4.01. Loan Closing	16
SECTION 4.02. Conditions to Disbursements	17

**ARTICLE V
ASSIGNMENT**

SECTION 5.01. [Reserved]	18
SECTION 5.02. Assignment by Borrower	18

ARTICLE VI DEFAULTS AND REMEDIES

SECTION 6.01. Event of Default	18
SECTION 6.02. Notice of Default.....	19
SECTION 6.03. Remedies on Default.....	19
SECTION 6.04. Attorney's Fees and Other Expenses	19
SECTION 6.05. Application of Moneys.....	19
SECTION 6.06. No Remedy Exclusive; Waiver; Notice	19
SECTION 6.07. Default by the State	20

ARTICLE VII MISCELLANEOUS

SECTION 7.01. Notices	20
SECTION 7.02. Binding Effect	20
SECTION 7.03. Severability	20
SECTION 7.04. Amendments, Supplements and Modifications	20
SECTION 7.05. Time is of the Essence	20
SECTION 7.06. No Construction against Drafter	20
SECTION 7.07. Applicable Law	20
SECTION 7.08. Consents and Approvals.....	21
SECTION 7.09. Merger; No Waiver	21
SECTION 7.10. Execution in Counterparts.....	21

EXHIBITS

Exhibit A	Project Description
Exhibit B	Project Budget
Exhibit C	Description of the Loan
Exhibit D	Special Conditions
Exhibit E	Form of Draw Certificate
Exhibit F	Form of Promissory Note
Exhibit G	Form of Legal Opinion

THIS LOAN AGREEMENT, is made and entered into as of XXXXXXXXXXXXXXXXXX, XXXX, by and between the STATE OF OREGON, ACTING BY AND THROUGH ITS ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT (the "State"), and the Borrower (as defined below). Capitalized terms not otherwise defined herein shall have the meanings assigned to them in Section 1.01 hereof.

WITNESSETH THAT:

WHEREAS, the State, in accordance with the Act, will provide funds in the Special Public Works Fund for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of community facility projects within the meaning of ORS 285B.410 and 285B.422; and

WHEREAS, the Borrower has made timely application to the State for a Loan to finance all or a portion of the Costs of the Project, and the State has approved the Borrower's application for a Loan in the amount set forth in Exhibit C to finance a portion of the Costs of the Project; and

WHEREAS, the Borrower agrees under this Loan Agreement to make payments sufficient to pay when due the principal of, premium, if any, and interest on the Loan from the State in accordance with the Note and the terms herein;

NOW, THEREFORE, for and in consideration of the award of the Loan by the State, the Borrower agrees to perform its obligation under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein.

**ARTICLE I
DEFINITIONS**

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

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

"Authorized Officer(s)" means, in the case of the Borrower, the person(s) who is authorized pursuant to an order, resolution, ordinance or other official action of the governing body of the Borrower to act as an authorized officer(s) of the Borrower to perform any act or execute any document relating to this Agreement.

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

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

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

"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.

"Contract" means that certain contract dated as of XXXXXXXXXXXXXXXXXX, XXXX between the State and Borrower, as amended from time to time.

"Costs of the Project" means those costs that are (a) reasonable, necessary and directly related to an "infrastructure project" within the meaning of ORS 285B.410(2), including any financing costs properly allocable to the Project and preliminary costs such as engineering and architectural reports, studies, surveys, soil tests, designs, plans, working drawings and specifications that are necessary for the construction of the Project, and (b) permitted by generally accepted accounting principles to be costs of such Project.

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

"Department" means the Oregon Economic and Community Development Department.

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

"First Payment Date" means the December 1 following the earlier of (1) the Project Completion Date, (2) the third (3rd) anniversary of the first Loan disbursement under the Loan Agreement, and (3) the date availability hereunder is terminated pursuant to Section 2.01(c).

"Loan" means the non-revolving loan made by the State to the Borrower to finance or refinance all or a portion of the Costs of the Project pursuant to this Loan Agreement. The Loan may be funded by the State from Lottery Bonds or from other amounts held in the Fund.

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

"Loan Closing Date" means the date on which Loan closes.

"Loan Closing Deadline" means the date, as set forth in Exhibit C by which all conditions precedent to Loan closing must be satisfied (unless waived by the State).

"Loan Documents" means the Loan Agreement, Note, and any agreements, instrument and certificates executed and delivered pursuant hereto.

"Loan Prepayment" means any 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 the terms of this Loan Agreement.

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

"Maturity Date" means the December 1st preceding twenty-fifth (25th) anniversary of the date of the first disbursement of Loan proceeds hereunder (unless such anniversary falls on December 1st, in which case the Maturity Date shall be such twenty-fifth (25th) anniversary), on which date the outstanding balance of the Loan must be paid in full.

"Municipality" means any entity described in ORS 285B.410(4).

"Note" means the promissory note of the Borrower substantially in the form of Exhibit F hereof as it may be renewed, extended, amended, and/or restated or any replacement promissory note or other promissory note issued by Borrower pursuant to Section 2.02 of this Agreement.

"Project" means an "infrastructure project" (which includes a community facility), within the meaning of ORS 285B.410(3), of the Borrower described in Exhibit A hereof, all or a portion of the of which is financed or refinanced by the State pursuant to this Loan Agreement.

"Project Completion Date" means the date on which the Borrower completes construction of the Project, as described in Section 3.02(d).

"Revenues" means the revenues identified in Section 2.07 and in Exhibit D hereof and all legally available funding as a source of repayment for the Loan.

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

"System" means the utility system or systems, if any, of the Borrower which includes the Project or components of the Project, as such system or systems may be modified or expanded from time to time. References in this Loan Agreement to the Borrower's "System" shall be ignored to the extent that the Project is not a component of a utility system or systems.

SECTION 1.02. General Rules. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, partnerships, agencies and districts. Words importing one gender shall include any other gender.

ARTICLE II LOAN TO BORROWER

SECTION 2.01. Loan; Disbursements; Use of Proceeds.

(a) Loan. Subject to the terms and conditions hereof, in particular Sections 4.01 and 4.02 hereof, the State hereby agrees to make and disburse to the Borrower, and the Borrower agrees to borrow and accept from the State, the Loan which, in the aggregate, shall not exceed the maximum principal amount of the Loan set out in Exhibit C hereof.

(b) [Reserved]

(c) Disbursements. Subject to Sections 4.01 and 4.02 hereof, the proceeds of the Loan shall be disbursed to the Borrower on an expense reimbursement or cost incurred basis upon receipt by the State of a requisition executed by the Borrower in the form prescribed by the Department; provided, however, that the State shall have no obligation to make, and Borrower shall not request, any disbursement after thirty-six (36) months after the date Loan proceeds are first disbursed but in no event later than forty-two (42) months after the Loan Closing Date.

(d) Use of Proceeds. The Borrower shall use the proceeds of the Loan strictly in accordance with Section 3.02(a) hereof and subject to and in compliance with the terms set forth in Exhibit D.

SECTION 2.02. Loan Payment.

(a) Promise to Pay. The Borrower hereby covenants and agrees to repay the Loan in accordance with the terms hereof and of the Note and the Loan Documents.

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

(c) Replacement Note. The State may, at its option, require the Borrower to execute a replacement Note with a payment schedule attached as "Schedule 1 – Payment Schedule" showing the principal amortization described in Section 2.02(b) above.

(d) Different Amortization Schedule. Notwithstanding Section 2.02(b) above, the State and the Borrower may, on or prior to the First Payment Date, agree to a payment schedule different from the payment schedule described in Section 2.02(b). In such case the Borrower shall execute and deliver to the State a Note which shall have attached thereto the agreed upon payment schedule as "Schedule 1 – Payment Schedule."

SECTION 2.03. Unconditional Obligations. The provisions of the Loan Agreement shall constitute a contract with the State and shall be enforced by the State. Loan Repayments and all other payments required under the Loan Documents are payable from the sources of repayment described in Section 2.07 hereof. The Loan shall be a full faith and credit obligation of Borrower, and the obligation of the Borrower to make the Loan Repayments and all other payments required under the Loan Documents and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part to be performed or observed contained therein shall be absolute and unconditional. Payments hereunder and under any of the other Loan Documents shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, or any payments under this Loan Agreement or Note remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of considerations, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Loan Agreement or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

SECTION 2.04. Loan Agreement to Survive Lottery Bonds. The Borrower acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of any bond indenture applicable to the Lottery Bonds and payment of the principal of, redemption premium, if any, and interest on the Lottery Bonds.

SECTION 2.05. Loan Prepayments.

(a) Mandatory Prepayment. The Borrower shall prepay the outstanding balance of the Loan upon

(i) the destruction of all or a substantial portion of the Project,

(ii) the transfer of all or substantially all or any substantial portion of the Project as required by Section 3.02(e),

(iii) the condemnation of the Project or a portion thereof as required by Section 3.02(k) hereof, or

(iv) as otherwise required by this Loan Agreement or any of the Loan Documents.

(b) Optional Prepayment. Subject to the following terms and conditions, the Borrower, from time to time, may make Loan Prepayments without premium or penalty;

(i) no Loan Prepayment shall be made on other than a Loan Repayment date; and

(ii) each Loan Prepayment shall include payment of the accrued interest on the amount prepaid.

(c) General. Loan Prepayments shall be applied first to accrued interest on the portion of the Loan prepaid, and finally to principal payment(s) on the Loan. In the case of a Loan Prepayment that does not prepay all of the principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments.

SECTION 2.06. Loan Agreement to Survive Lottery Bonds. The Borrower acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of any bond indenture applicable to the Lottery Bonds and payment of the principal of, redemption premium, if any, and interest on the Lottery Bonds.

SECTION 2.07. Sources of Payment of Borrower's Obligations.

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement and any of the other Loan Documents, including, without limitation, the amounts payable by the Borrower pursuant to Sections 2.02, 2.05, 2.08 and 6.04 hereof, are payable from the sources of repayment described in the Act and paragraph (b) of this Section 2.07; provided however that nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement and the other Loan Documents from any other legally available source.

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

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

SECTION 2.08. Disclaimer of Warranties; Limitation of Liability; Indemnification. The Borrower acknowledges and agrees that:

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

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

(c) to the extent authorized by law, the Borrower shall indemnify, save and hold harmless the State 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 or any of the other Loan Documents, provided, however, that the provisions of this paragraph (c) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

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

(a) Organization and Authority.

(i) The Borrower is a Municipality

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

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

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

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

(vi) Borrower's Contract and the Loan Agreement have been authorized by ORS 285B.437(1) and an ordinance of the Borrower which was adopted in accordance with ORS 285B.443(3) after proper publication at least fourteen (14) days prior notice published at least once in a newspaper of general circulation within the Borrower's jurisdiction and was adopted in accordance with applicable law and the Borrower's requirements for filing public notices and holding public meetings.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the State in writing on the Borrower's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of the Borrower, the Project or the Borrower's System, 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 and the other Loan Documents. Neither the Borrower's application for the Loan or the Borrower's representations in this Loan Agreement or any of the other Loan Documents contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The information contained in Exhibits A and B hereto and in Sections 2, 3, 4 and 8 of Exhibit C hereto is true and accurate in all respects.

(c) Pending Litigation. There are no proceedings pending, or, to the knowledge of the Borrower threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or its System, 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 and the other Loan Documents, that have not been disclosed in writing to the State in the Borrower's application for the Loan or otherwise.

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

(e) No Defaults. No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or any of the Loan Documents or receipt of the amount of the Loan, 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, its System or its property may be bound, which violation would materially adversely affect the Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or its System or 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 and the other Loan Documents.

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

(g) Compliance with Law. The Borrower:

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

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

The State's performance under this Loan Agreement is conditioned upon the Borrower's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.

(h) The Project.

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

(ii) The Borrower has been provided with a copy of the rules adopted by the State under ORS 285B.419(1), and the Project is in compliance with such rules.

(iii) The Loan term is not in excess of the useful life of the Project.

- (iv) The Borrower has adequate financial resources to ensure the Project's success.
- (v) The Project will benefit a broad cross-section of the community.
- (vi) The Project is situated in a city or county with a comprehensive land use plan that allows industrial and commercial development of a type and scale that is sufficient to produce revenues to repay the costs of the Project.

(i) Costs of the Project. The Borrower certifies that the Costs of the Project, as listed in Exhibit B and Exhibit C hereto, (i) are a reasonable and accurate estimation and based upon an engineer's feasibility report and estimate or an architect's feasibility report and estimate, as applicable, and (ii) exceed the sum of the principal amount of the Loan shown on Exhibit C. If a part of the Loan proceeds will be used to obtain an engineer's/architect's feasibility report, the Costs of the Project as listed herein, the scope of work in Exhibit A and the Project budget in Exhibit B are, on the date hereof, based on the Borrower's reasonable commercial judgment and estimate of the Costs of the Project, budget and the scope of work for the Project. As soon as possible after completion of the engineer's/architect's feasibility report, Exhibit A and Exhibit B shall be updated and revised to reflect such report, and the Costs of the project shall be the amount indicated in such report. The Borrower shall promptly provide to the State upon request (i) an engineer's/architect's estimate stamped by a registered professional engineer/licensed architect, as the case may be, and (ii) (in the case of acquisition of property) an appraisal by a licensed appraiser, or such other professional certification as is acceptable to the State. The Borrower further certifies that a registered professional engineer or licensed architect, in good standing in Oregon, will be responsible for design and construction of the Project.

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

SECTION 3.02. Particular Covenants of the Borrower.

(a) Use of Proceeds. The Borrower will apply the proceeds of the Loan finance all or a portion of the Costs of the Project. None of the proceeds of the Loan shall be used for ineligible activities as specified in Section 3.B. of the Contract.

(b) Source of Repayment. The Loan shall be paid from such sources of repayment described in Section 2.07 hereof and the Exhibit D to the Loan Agreement. Funds from such sources shall be applied to the punctual payment of the principal of and the interest on the Loan and all other amounts due under this Loan Agreement and the other Loan Documents according to their respective terms.

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

(d) Completion of Project and Provision of Moneys Therefore. The Borrower covenants and agrees to provide the State with copies of all plans and specifications relating to the Project for review and approval by the State, but in any event no later than ten days prior to the date on which bids are advertised. The Borrower shall obtain as-built drawings for all facilities of the Project and obtain certification of completion per as-built drawings from the Project engineer or architect within ninety (90) days of the Project Completion Date. The Borrower shall supply a copy of such drawings and

certification to the State upon request. The Borrower further covenants and agrees (i) 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 set forth in Exhibit C; (ii) to proceed expeditiously with, and complete the Project in accordance with plans reviewed and approved by the State and (iii) to provide from its own fiscal resources all moneys, in excess of the total amount of Loan proceeds it receives pursuant to this Loan Agreement, required to complete the Project. For purposes of (ii) of the preceding sentence, if the State does not review the plans and specifications or suggests modifications thereto within thirty (30) days of the receipt by the State of the plans and specifications, they shall be deemed approved. The 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. Upon request by the State the Borrower shall provide such documentation to the State.

(e) Disposition of Project. Unless worn out, obsolete, or in the reasonable business judgment of the Borrower, no longer useful in the operation of the Project, the Borrower shall not sell, lease, exchange, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project, except if (1) the State consents thereto in writing upon ninety (90) days' prior written notice to the State and (2) Borrower assigns this Agreement and the other Loan Documents pursuant to Article V hereof. Proceeds of any such transfer not used to replace property that is part of the Project shall be applied to the payment of the outstanding principal of and interest on the Loan as a Loan Prepayment, as provided in Section 2.05 of this Agreement.

(f) Exclusion of Interest from Federal Gross Income and Compliance with Code.

(i) 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 from gross income for purposes of federal income taxation as that status is governed by Section 103(a) of the Code.

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

(iii) 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 an "arbitrage bond" within the meaning of Section 148(a) of the Code.

(iv) 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.

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

(vi) The Borrower agrees to assist the State 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 such amounts as may be directed by the State 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 Lottery 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 for the portion of any expenses incurred by them that relate to the Loan and are necessary to satisfy the requirements of Section 148(f) of the Code.

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

(viii) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Loan, the covenants contained in this Section 3.02(f) shall survive the payment of the Loan and the Lottery Bonds, and the interest thereon, including any payment pursuant to Section 2.05 of this Agreement. The Borrower acknowledges that the Loan may be funded with the proceeds of the Lottery Bonds and that failure to comply with the requirements of this Section 3.02(f) could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.

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

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

1. Preliminary expenditures such as architectural, engineering, surveying, soil testing, bond issuance and similar costs that, in the aggregate, are not in excess of 20% of the proceeds of the Loan. Costs of land acquisition, site preparation and similar costs incident to commencement of construction are not preliminary expenditures.
2. Expenditures for issuance costs.
3. Expenditures that are described in a reimbursement resolution and paid no earlier than 60 days prior to the adoption of such resolution.
4. Expenditures paid within 60 days prior to the date the Loan is funded.

(g) Operation and Maintenance of Project and System. The Borrower covenants and agrees that it shall, in accordance with prudent ownership practice, (i) at all times operate the Project so as to preserve the long term public benefits of the Project, and (ii) maintain the Project in good repair, working order and operating condition, including from time to time making all necessary and proper repairs, renewals, replacements, additions, betterments and improvements as may be required.

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

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

(j) 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 by governmental units constructing, operating and maintaining similar facilities, including liability coverage, all to the extent available at reasonable cost. Nothing herein shall be deemed to preclude the Borrower from exerting against any party, other than the State, a defense which may be available to the Borrower, including without limitation a defense of immunity. 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 of and

interest on the Loan, unless the State agrees in writing that the insurance proceeds shall be used to rebuild the Project.

(k) Condemnation. In the event the Project or any portion thereof is condemned, any condemnation proceeds shall be used to prepay the outstanding balance on the Loan

(l) Notice of Material Adverse Change. The Borrower shall promptly notify the State of any material adverse change in the activities, prospects or condition (financial or otherwise) of the Borrower, 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 and the other Loan Documents.

(m) [Reserved]

(n) Financial Statements; Reports. The Borrower shall deliver to the State in form and details satisfactory to the State:

(i) 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 revenues for 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.

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

(o) Contract Covenants. The Borrower covenants and agrees to comply with the terms of the Contract including the covenants of the Borrower in Section 6 of the Contract.

(p) Further Assurances. The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

(q) Access for Disabled Persons. If the Borrower operates a commercial facility or public accommodations, as those terms are defined in the Americans with Disabilities Act of 1990, P.L. 101-336, the Borrower shall comply with the Americans with Disabilities Act and ORS 447.210-80.

ARTICLE IV CONDITIONS PRECEDENT

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

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

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

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

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

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

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

(a) an Event of Default, or event, omission or failure of a condition which would constitute an Event of Default as defined in this Loan Agreement or any of the Loan Documents after notice or lapse of time or both, has occurred and is continuing;

(b) The representations and warranties of the Borrower made in this Loan Agreement are not true and correct on the date of disbursement with the same effect as if made on such date;

(c) State has not received (i) a requisition executed by the Borrower in form and substance satisfactory to the State or has not received (ii) such 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 disbursement 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 in form and substance acceptable to the State for the faithful performance of the construction contract or subcontract and payment of all liens and lienable expenses in connection therewith in a sum equal to the contract or subcontract price. Disbursements for the Costs of the Project shall be subject to a retainage at the rate of five percent (5%) (unless such retainage is waived in writing by the State) which will be released upon satisfactory completion of the Project; or

(d) there is insufficient money available in the Special Public Works Fund for the Project.

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

**ARTICLE V
ASSIGNMENT**

SECTION 5.01. [RESERVED]

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

**ARTICLE VI
DEFAULTS AND REMEDIES**

SECTION 6.01. 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 amount 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 any other Loan Document, or in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement, any other Loan Document or the Loan or in connection with the 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 receiver, liquidator or trustee of the Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or
- (e) Failure of the Borrower's governing body to appropriate sufficient funds to fully fund all of the Borrower's obligations to make Loan Repayments hereunder for any future fiscal period; or
- (f) The occurrence of any event of default under Section 7 of the Contract or under any of the Loan Documents or any financing documents for any other loan or grant made by the State for the Project; 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 or any other Loan Documents, other than as referred to in subsections (a) through (f) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State, unless the State shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State may not unreasonably withhold its consent to an extension of such time up to one hundred

twenty (120) days from the delivery of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected; 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 6.02. Notice of Default. The Borrower shall give the State prompt telephonic notice of the occurrence of any Event of Default referred to in Section 6.01(d) hereof, and of the occurrence of any other event or condition that with notice and/or lapse of time constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section 6.02 shall be confirmed in writing as soon as practicable by the Borrower.

SECTION 6.03. Remedies on Default. Whenever an Event of Default referred to in Section 6.01 hereof shall have occurred and be continuing, the State shall have the right to take any action permitted or required pursuant to the Loan Agreement or any other Loan Document and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower hereunder, including without limitation, (a) declaring all Loan Repayments and all other amounts due hereunder and under the other Loan Documents to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand, (b) appointment of a receiver of the System, (c) refusal to disburse any Loan proceeds, (d) barring the Borrower from applying for future Special Public Works Fund assistance, or (e) withholding amounts otherwise due to the Borrower to apply to the payment of amounts due under this Loan Agreement as provided in ORS 285B.449.

SECTION 6.04. Attorney's Fees. To the fullest extent permitted by law, if any suit or action arising out of or related to this Loan Agreement is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including without limitation reasonable attorney's fees, the fees and costs of experts and consultants, copying, courier, and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including without limitation any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action; provided, however, that recovery from the State under this section is subject the limitations of the Oregon Constitution, Article XI, section 7, and other relevant statutes.

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

SECTION 6.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the State is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or any of the Loan Documents or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. To entitle the State to exercise any remedy reserved to it

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

SECTION 6.07. Default by the State. In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the State hereunder as may be necessary or appropriate.

ARTICLE VII MISCELLANEOUS

SECTION 7.01. Notices. All notices, 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 at the address specified on Exhibit C hereof and to the State at the following addresses:

Economic and Community Development Department
Attention: Infrastructure Manager, Capital Projects Division
775 Summer Street NE, Suite 200
Salem, OR 97301-1280

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

SECTION 7.02. 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.

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

SECTION 7.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower.

SECTION 7.05. Time is of the Essence. Time is of the essence of this Agreement.

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

SECTION 7.07. Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, including the Act. Any claim, action, suit or proceeding (collectively, "Claim") between the State (and/or any agency or department of the State of Oregon) 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. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

SECTION 7.08. 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.

SECTION 7.09. Merger; No Waiver. This Loan Agreement and the attached exhibits (which by this reference are incorporated herein) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall bind either party unless in writing and signed by the party against whom such waiver or consent is sought to be enforced and all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure or delay of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

SECTION 7.10 Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed and delivered, effective as of the date of the last signature below. The Borrower, by the signature below of its Authorized Representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its Economic and
Community Development Department



COLUMBIA COUNTY
(Borrower)

By: XXXXXXXXXXXXXXXXXXXXX
Laird Bryan, Infrastructure Manager
Capital Projects Division

By: XXXXXXXXXXXXXXXXXXXXX
Joe Corsiglia, Chair
Columbia County Board of Commissioners

Date: XXXXXXXXXXXXXXXXXXXXX

Date: XXXXXXXXXXXXXXXXXXXXX

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

XXXXXXXXXXXXXXXXXXXXX
Lynn T. Nagasako, Assistant Attorney General

Date: XXXXXXXXXXXXXXXXXXXXX

Exhibit A
PROJECT DESCRIPTION

Borrower shall construct a new solid waste transfer station on the 6.32-acre site at 36525 Railroad Avenue in St. Helens, Oregon. The Project shall consist of engineering, design and construction. Improvements shall consist of:

Installation of utility service (water, storm, sewer, power) to serve the Project site

Paving for a trailer staging and storage area and parking for employees and visitors

Construction of an office space and maintenance and storage facility and wood/yard waste storage

Landscaping of the Project site

Construction of a scale house and installation of a scale system

Construction of a new transfer station building

Acquisition of equipment, including computer software, material compaction unit and a baler

Improvements to a rail crossing at the Project site

Construction of a recycling drop off center

Loan Agreement Exhibit B
Page 1 of 2

Special Public Works Fund, Community Facilities

Total Project Budget		
Funding Sources	Approved Budget	Expenditures To Date
Oregon Economic & Community Development Dept.	\$2,875,589	
Matching Funds		
Total Project Costs	\$2,875,589	
Participation Rate	100.00%	

005900 Page 1 of 2

**Oregon Economic & Community Development Department
Project Budget**

Project Number:

J04007

Project Name:

Columbia County Solid Waste Transfer Station

Project Goals (report for every cash request)

Proposed Work Plan	Estimated Completion Date	Results Achieved
1 Project Start	December 31, 2003	
2 Engineering Design Work	June 30, 2004	
3 Study/plans/specs submitted/approved	July 31, 2004	
4 Construction bid awarded	August 31, 2004	
5 Construction started	September 30, 2004	
6 Construction 50% complete	January 31, 2005	
7 Construction 100% complete	May 31, 2005	
8 Notice of substantial completion/occupancy permit obtained	June 30, 2005	
9 Project complete	September 30, 2005	
10		

DESCRIPTION OF THE LOAN

1. Loan Closing Deadline: March 15, 2004
2. Name and Address of Borrower: Columbia County
230 Strand Street
St. Helens, OR 97051-0010
3. Costs of the Project: \$2,875,589
4. Estimated Project Completion Date: December 1, 2005
5. Maximum Aggregate Principal Amount of Loan: \$2,875,589
6. Interest Rate: 4.97% per annum
7. Principal Payments: As described in Exhibit F
8. Authorized Officer(s) of Borrower: Chair, Board of Commissioners

SPECIAL CONDITIONS

I. General Fund as a Source of Repayment

The Loan shall be payable from the general fund of the Borrower, including the tax and other revenues of the Borrower, subject only to the restrictions of Article XI of the Oregon Constitution, and to the extent that funds are appropriated to make payments under the Loan, the full faith and credit of the Borrower are pledged to such payments.

II. Other

Borrower shall request review by County Bond Counsel of the operations management contract for the Project (Solids Waste Transfer Station) to ensure it meets requirements for public financing of tax exempt bonds.

Loan Agreement Exhibit E
Page 1 of 2

Request Number: # _____ Final Draw? ☐ Yes ☐ No Reporting Period: _____ to _____
Project Number: _____ Recipient: _____
Project Name: _____ Funding Program(s): _____

	Department Funds				Non-Department Funds (Other/Matching)			All Funds
(A)	(B)	(C)	(D)	(E) = [B-C-D]	(F)	(G)	(H) = [F-G]	(I) = [C+D+G]
Activity	Approved Budget	Prior Disbursements	Current Request	Balance	Approved Budget	Expended To Date	Balance	Disbursed & Expended To Date
Total								

Total Project Budget		
Funding Sources	Approved Budget	Expenditures To Date
Oregon Economic & Community Development Dept.		
Matching Funds		
Total Project Costs		
Participation Rate		

Non-Department Funds (Other/Matching)		
Sources Used for all Expenditures		
Funding Sources	Approved Budget	Expenditures To Date
Total Non-Dept. Funds		

Certification: We certify that the data are correct and that the amount requested is not in excess of current needs.

Authorized Signature & Title	Date
------------------------------	------

Authorized Signature & Title	Date
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Contact Person	Phone Number
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ENVIRONMENTAL AND NATURAL RESOURCE AGENCIES

The following list is provided in compliance with ORS 279.318. The federal, state, and local agencies listed have enacted ordinances or regulations relating to environmental pollution or the preservation of natural resources that may affect the performance of construction contracts.

FEDERAL AGENCIES

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

STATE AGENCIES

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

LOCAL AGENCIES

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

**Special Public Works Fund
Community Facility
Loan Agreement**

between

STATE OF OREGON

acting by and through its

ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

and

COLUMBIA COUNTY

THIS LOAN AGREEMENT, is made and entered into as of March 17, 2004, by and between the STATE OF OREGON, ACTING BY AND THROUGH ITS ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT (the "State"), and the Borrower (as defined below). Capitalized terms not otherwise defined herein shall have the meanings assigned to them in Section 1.01 hereof.

WITNESSETH THAT:

WHEREAS, the State, in accordance with the Act, will provide funds in the Special Public Works Fund for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of community facility projects within the meaning of ORS 285B.410 and 285B.422; and

WHEREAS, the Borrower has made timely application to the State for a Loan to finance all or a portion of the Costs of the Project, and the State has approved the Borrower's application for a Loan in the amount set forth in Exhibit C to finance a portion of the Costs of the Project; and

WHEREAS, the Borrower agrees under this Loan Agreement to make payments sufficient to pay when due the principal of, premium, if any, and interest on the Loan from the State in accordance with the Note and the terms herein;

NOW, THEREFORE, for and in consideration of the award of the Loan by the State, the Borrower agrees to perform its obligation under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein.

**ARTICLE I
DEFINITIONS**

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

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

"Authorized Officer(s)" means, in the case of the Borrower, the person(s) who is authorized pursuant to an order, resolution, ordinance or other official action of the governing body of the Borrower to act as an authorized officer(s) of the Borrower to perform any act or execute any document relating to this Agreement.

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

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

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

"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.

"Contract" means that certain contract dated as of March 17, 2004 between the State and Borrower, as amended from time to time.

“Note” means the promissory note of the Borrower substantially in the form of Exhibit F hereof as it may be renewed, extended, amended, and/or restated or any replacement promissory note or other promissory note issued by Borrower pursuant to Section 2.02 of this Agreement.

“Project” means an “infrastructure project” (which includes a community facility), within the meaning of ORS 285B.410(3), of the Borrower described in Exhibit A hereof, all or a portion of the of which is financed or refinanced by the State pursuant to this Loan Agreement.

“Project Completion Date” means the date on which the Borrower completes construction of the Project, as described in Section 3.02(d).

“Revenues” means the revenues identified in Section 2.07 and in Exhibit D hereof and all legally available funding as a source of repayment for the Loan.

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

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

SECTION 1.02. General Rules. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, partnerships, agencies and districts. Words importing one gender shall include any other gender.

ARTICLE II LOAN TO BORROWER

SECTION 2.01. Loan; Disbursements; Use of Proceeds.

(a) Loan. Subject to the terms and conditions hereof, in particular Sections 4.01 and 4.02 hereof, the State hereby agrees to make and disburse to the Borrower, and the Borrower agrees to borrow and accept from the State, the Loan which, in the aggregate, shall not exceed the maximum principal amount of the Loan set out in Exhibit C hereof.

(b) [Reserved]

(c) Disbursements. Subject to Sections 4.01 and 4.02 hereof, the proceeds of the Loan shall be disbursed to the Borrower on an expense reimbursement or cost incurred basis upon receipt by the State of a requisition executed by the Borrower in the form prescribed by the Department; provided, however, that the State shall have no obligation to make, and Borrower shall not request, any disbursement after thirty-six (36) months after the date Loan proceeds are first disbursed but in no event later than forty-two (42) months after the Loan Closing Date.

(d) Use of Proceeds. The Borrower shall use the proceeds of the Loan strictly in accordance with Section 3.02(a) hereof and subject to and in compliance with the terms set forth in Exhibit D.

SECTION 2.02. Loan Payment.

(a) Promise to Pay. The Borrower hereby covenants and agrees to repay the Loan in accordance with the terms hereof and of the Note and the Loan Documents.

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

(c) Replacement Note. The State may, at its option, require the Borrower to execute a replacement Note with a payment schedule attached as "Schedule 1 – Payment Schedule" showing the principal amortization described in Section 2.02(b) above.

(d) Different Amortization Schedule. Notwithstanding Section 2.02(b) above, the State and the Borrower may, on or prior to the First Payment Date, agree to a payment schedule different from the payment schedule described in Section 2.02(b). In such case the Borrower shall execute and deliver to the State a Note which shall have attached thereto the agreed upon payment schedule as "Schedule 1 – Payment Schedule."

SECTION 2.03. Unconditional Obligations. The provisions of the Loan Agreement shall constitute a contract with the State and shall be enforced by the State. Loan Repayments and all other payments required under the Loan Documents are payable from the sources of repayment described in Section 2.07 hereof. The Loan shall be a full faith and credit obligation of Borrower, and the obligation of the Borrower to make the Loan Repayments and all other payments required under the Loan Documents and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part to be performed or observed contained therein shall be absolute and unconditional. Payments hereunder and under any of the other Loan Documents shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, or any payments under this Loan Agreement or Note remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of considerations, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Loan Agreement or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

SECTION 2.04. Loan Agreement to Survive Lottery Bonds. The Borrower acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of any bond indenture applicable to the Lottery Bonds and payment of the principal of, redemption premium, if any, and interest on the Lottery Bonds.

SECTION 2.05. Loan Prepayments.

(a) Mandatory Prepayment. The Borrower shall prepay the outstanding balance of the Loan upon

(i) the destruction of all or a substantial portion of the Project,

(ii) the transfer of all or substantially all or any substantial portion of the Project as required by Section 3.02(e),

(iii) the condemnation of the Project or a portion thereof as required by Section 3.02(k) hereof, or

(iv) as otherwise required by this Loan Agreement or any of the Loan Documents.

(b) Optional Prepayment. Subject to the following terms and conditions, the Borrower, from time to time, may make Loan Prepayments without premium or penalty;

(i) no Loan Prepayment shall be made on other than a Loan Repayment date; and

(ii) each Loan Prepayment shall include payment of the accrued interest on the amount prepaid.

(c) General. Loan Prepayments shall be applied first to accrued interest on the portion of the Loan prepaid, and finally to principal payment(s) on the Loan. In the case of a Loan Prepayment that does not prepay all of the principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments.

SECTION 2.06. Loan Agreement to Survive Lottery Bonds. The Borrower acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of any bond indenture applicable to the Lottery Bonds and payment of the principal of, redemption premium, if any, and interest on the Lottery Bonds.

SECTION 2.07. Sources of Payment of Borrower's Obligations.

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement and any of the other Loan Documents, including, without limitation, the amounts payable by the Borrower pursuant to Sections 2.02, 2.05, 2.08 and 6.04 hereof, are payable from the sources of repayment described in the Act and paragraph (b) of this Section 2.07; provided however that nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement and the other Loan Documents from any other legally available source.

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

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

SECTION 2.08. Disclaimer of Warranties; Limitation of Liability; Indemnification. The Borrower acknowledges and agrees that:

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

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

(c) to the extent authorized by law, the Borrower shall indemnify, save and hold harmless the State 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 or any of the other Loan Documents, provided, however, that the provisions of this paragraph (c) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

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

(a) Organization and Authority.

(i) The Borrower is a Municipality

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

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

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

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

(vi) Borrower's Contract and the Loan Agreement have been authorized by ORS 285B.437(1) and an ordinance of the Borrower which was adopted in accordance with ORS 285B.443(3) after proper publication at least fourteen (14) days prior notice published at least once in a newspaper of general circulation within the Borrower's jurisdiction and was adopted in accordance with applicable law and the Borrower's requirements for filing public notices and holding public meetings.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the State in writing on the Borrower's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of the Borrower, the Project or the Borrower's System, 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 and the other Loan Documents. Neither the Borrower's application for the Loan or the Borrower's representations in this Loan Agreement or any of the other Loan Documents contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The information contained in Exhibits A and B hereto and in Sections 2, 3, 4 and 8 of Exhibit C hereto is true and accurate in all respects.

(c) Pending Litigation. There are no proceedings pending, or, to the knowledge of the Borrower threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or its System, 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 and the other Loan Documents, that have not been disclosed in writing to the State in the Borrower's application for the Loan or otherwise.

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

(e) No Defaults. No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or any of the Loan Documents or receipt of the amount of the Loan, 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, its System or its property may be bound, which violation would materially adversely affect the Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or its System or 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 and the other Loan Documents.

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

(g) Compliance with Law. The Borrower:

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

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

The State's performance under this Loan Agreement is conditioned upon the Borrower's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.

(h) The Project.

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

(ii) The Borrower has been provided with a copy of the rules adopted by the State under ORS 285B.419(1), and the Project is in compliance with such rules.

(iii) The Loan term is not in excess of the useful life of the Project.

(iv) The Borrower has adequate financial resources to ensure the Project's success.

(v) The Project will benefit a broad cross-section of the community.

(vi) The Project is situated in a city or county with a comprehensive land use plan that allows industrial and commercial development of a type and scale that is sufficient to produce revenues to repay the costs of the Project.

(i) Costs of the Project. The Borrower certifies that the Costs of the Project, as listed in Exhibit B and Exhibit C hereto, (i) are a reasonable and accurate estimation and based upon an engineer's feasibility report and estimate or an architect's feasibility report and estimate, as applicable, and (ii) exceed the sum of the principal amount of the Loan shown on Exhibit C. If a part of the Loan proceeds will be used to obtain an engineer's/architect's feasibility report, the Costs of the Project as listed herein, the scope of work in Exhibit A and the Project budget in Exhibit B are, on the date hereof, based on the Borrower's reasonable commercial judgment and estimate of the Costs of the Project, budget and the scope of work for the Project. As soon as possible after completion of the engineer's/architect's feasibility report, Exhibit A and Exhibit B shall be updated and revised to reflect such report, and the Costs of the project shall be the amount indicated in such report. The Borrower shall promptly provide to the State upon request (i) an engineer's/architect's estimate stamped by a registered professional engineer/licensed architect, as the case may be, and (ii) (in the case of acquisition of property) an appraisal by a licensed appraiser, or such other professional certification as is acceptable to the State. The Borrower further certifies that a registered professional engineer or licensed architect, in good standing in Oregon, will be responsible for design and construction of the Project.

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

SECTION 3.02. Particular Covenants of the Borrower.

(a) Use of Proceeds. The Borrower will apply the proceeds of the Loan finance all or a portion of the Costs of the Project. None of the proceeds of the Loan shall be used for ineligible activities as specified in Section 3.B. of the Contract.

(b) Source of Repayment. The Loan shall be paid from such sources of repayment described in Section 2.07 hereof and the Exhibit D to the Loan Agreement. Funds from such sources shall be applied to the punctual payment of the principal of and the interest on the Loan and all other amounts due under this Loan Agreement and the other Loan Documents according to their respective terms.

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

(d) Completion of Project and Provision of Moneys Therefore. The Borrower covenants and agrees to provide the State with copies of all plans and specifications relating to the Project for review and approval by the State, but in any event no later than ten days prior to the date on which bids are advertised. The Borrower shall obtain as-built drawings for all facilities of the Project and obtain certification of completion per as-built drawings from the Project engineer or architect within ninety (90) days of the Project Completion Date. The Borrower shall supply a copy of such drawings and

certification to the State upon request. The Borrower further covenants and agrees (i) 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 set forth in Exhibit C; (ii) to proceed expeditiously with, and complete the Project in accordance with plans reviewed and approved by the State and (iii) to provide from its own fiscal resources all moneys, in excess of the total amount of Loan proceeds it receives pursuant to this Loan Agreement, required to complete the Project. For purposes of (ii) of the preceding sentence, if the State does not review the plans and specifications or suggests modifications thereto within thirty (30) days of the receipt by the State of the plans and specifications, they shall be deemed approved. The 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. Upon request by the State the Borrower shall provide such documentation to the State.

(e) Disposition of Project. Unless worn out, obsolete, or in the reasonable business judgment of the Borrower, no longer useful in the operation of the Project, the Borrower shall not sell, lease, exchange, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project, except if (1) the State consents thereto in writing upon ninety (90) days' prior written notice to the State and (2) Borrower assigns this Agreement and the other Loan Documents pursuant to Article V hereof. Proceeds of any such transfer not used to replace property that is part of the Project shall be applied to the payment of the outstanding principal of and interest on the Loan as a Loan Prepayment, as provided in Section 2.05 of this Agreement.

(f) Exclusion of Interest from Federal Gross Income and Compliance with Code.

(i) 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 from gross income for purposes of federal income taxation as that status is governed by Section 103(a) of the Code.

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

(iii) 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 an "arbitrage bond" within the meaning of Section 148(a) of the Code.

(iv) 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.

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

(vi) The Borrower agrees to assist the State 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 such amounts as may be directed by the State 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 Lottery 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 for the portion of any expenses incurred by them that relate to the Loan and are necessary to satisfy the requirements of Section 148(f) of the Code.

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

(viii) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Loan, the covenants contained in this Section 3.02(f) shall survive the payment of the Loan and the Lottery Bonds, and the interest thereon, including any payment pursuant to Section 2.05 of this Agreement. The Borrower acknowledges that the Loan may be funded with the proceeds of the Lottery Bonds and that failure to comply with the requirements of this Section 3.02(f) could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.

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

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

1. Preliminary expenditures such as architectural, engineering, surveying, soil testing, bond issuance and similar costs that, in the aggregate, are not in excess of 20% of the proceeds of the Loan. Costs of land acquisition, site preparation and similar costs incident to commencement of construction are not preliminary expenditures.
2. Expenditures for issuance costs.
3. Expenditures that are described in a reimbursement resolution and paid no earlier than 60 days prior to the adoption of such resolution.
4. Expenditures paid within 60 days prior to the date the Loan is funded.

(g) Operation and Maintenance of Project and System. The Borrower covenants and agrees that it shall, in accordance with prudent ownership practice, (i) at all times operate the Project so as to preserve the long term public benefits of the Project, and (ii) maintain the Project in good repair, working order and operating condition, including from time to time making all necessary and proper repairs, renewals, replacements, additions, betterments and improvements as may be required.

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

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

(j) 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 by governmental units constructing, operating and maintaining similar facilities, including liability coverage, all to the extent available at reasonable cost. Nothing herein shall be deemed to preclude the Borrower from exerting against any party, other than the State, a defense which may be available to the Borrower, including without limitation a defense of immunity. 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 of and

interest on the Loan, unless the State agrees in writing that the insurance proceeds shall be used to rebuild the Project.

(k) Condemnation. In the event the Project or any portion thereof is condemned, any condemnation proceeds shall be used to prepay the outstanding balance on the Loan

(l) Notice of Material Adverse Change. The Borrower shall promptly notify the State of any material adverse change in the activities, prospects or condition (financial or otherwise) of the Borrower, 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 and the other Loan Documents.

(m) [Reserved]

(n) Financial Statements; Reports. The Borrower shall deliver to the State in form and details satisfactory to the State:

(i) 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 revenues for 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.

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

(o) Contract Covenants. The Borrower covenants and agrees to comply with the terms of the Contract including the covenants of the Borrower in Section 6 of the Contract.

(p) Further Assurances. The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

(q) Access for Disabled Persons. If the Borrower operates a commercial facility or public accommodations, as those terms are defined in the Americans with Disabilities Act of 1990, P.L. 101-336, the Borrower shall comply with the Americans with Disabilities Act and ORS 447.210-80.

ARTICLE IV CONDITIONS PRECEDENT

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

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

- (i) this Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;
- (ii) the Note duly executed and delivered by an Authorized Officer of the Borrower;

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

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

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

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

(a) an Event of Default, or event, omission or failure of a condition which would constitute an Event of Default as defined in this Loan Agreement or any of the Loan Documents after notice or lapse of time or both, has occurred and is continuing;

(b) The representations and warranties of the Borrower made in this Loan Agreement are not true and correct on the date of disbursement with the same effect as if made on such date;

(c) State has not received (i) a requisition executed by the Borrower in form and substance satisfactory to the State or has not received (ii) such 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 disbursement 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 in form and substance acceptable to the State for the faithful performance of the construction contract or subcontract and payment of all liens and lienable expenses in connection therewith in a sum equal to the contract or subcontract price. Disbursements for the Costs of the Project shall be subject to a retainage at the rate of five percent (5%) (unless such retainage is waived in writing by the State) which will be released upon satisfactory completion of the Project; or

(d) there is insufficient money available in the Special Public Works Fund for the Project.

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

ARTICLE V
ASSIGNMENT

SECTION 5.01. [RESERVED]

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

ARTICLE VI
DEFAULTS AND REMEDIES

SECTION 6.01. 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 amount 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 any other Loan Document, or in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement, any other Loan Document or the Loan or in connection with the 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 receiver, liquidator or trustee of the Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

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

(f) The occurrence of any event of default under Section 7 of the Contract or under any of the Loan Documents or any financing documents for any other loan or grant made by the State for the Project; 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 or any other Loan Documents, other than as referred to in subsections (a) through (f) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State, unless the State shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State may not unreasonably withhold its consent to an extension of such time up to one hundred

twenty (120) days from the delivery of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected; 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 6.02. Notice of Default. The Borrower shall give the State prompt telephonic notice of the occurrence of any Event of Default referred to in Section 6.01(d) hereof, and of the occurrence of any other event or condition that with notice and/or lapse of time constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section 6.02 shall be confirmed in writing as soon as practicable by the Borrower.

SECTION 6.03. Remedies on Default. Whenever an Event of Default referred to in Section 6.01 hereof shall have occurred and be continuing, the State shall have the right to take any action permitted or required pursuant to the Loan Agreement or any other Loan Document and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower hereunder, including without limitation, (a) declaring all Loan Repayments and all other amounts due hereunder and under the other Loan Documents to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand, (b) appointment of a receiver of the System, (c) refusal to disburse any Loan proceeds, (d) barring the Borrower from applying for future Special Public Works Fund assistance, or (e) withholding amounts otherwise due to the Borrower to apply to the payment of amounts due under this Loan Agreement as provided in ORS 285B.449.

SECTION 6.04. Attorney's Fees. To the fullest extent permitted by law, if any suit or action arising out of or related to this Loan Agreement is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including without limitation reasonable attorney's fees, the fees and costs of experts and consultants, copying, courier, and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including without limitation any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action; provided, however, that recovery from the State under this section is subject the limitations of the Oregon Constitution, Article XI, section 7, and other relevant statutes.

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

SECTION 6.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the State is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or any of the Loan Documents or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. To entitle the State to exercise any remedy reserved to it

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

SECTION 6.07. Default by the State. In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the State hereunder as may be necessary or appropriate.

ARTICLE VII MISCELLANEOUS

SECTION 7.01. Notices. All notices, 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 at the address specified on Exhibit C hereof and to the State at the following addresses:

Economic and Community Development Department
Attention: Infrastructure Manager, Capital Projects Division
775 Summer Street NE, Suite 200
Salem, OR 97301-1280

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

SECTION 7.02. 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.

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

SECTION 7.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower.

SECTION 7.05. Time is of the Essence. Time is of the essence of this Agreement.

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

SECTION 7.07. Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, including the Act. Any claim, action, suit or proceeding (collectively, "Claim") between the State (and/or any agency or department of the State of Oregon) 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. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

SECTION 7.08. 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.

SECTION 7.09. Merger, No Waiver. This Loan Agreement and the attached exhibits (which by this reference are incorporated herein) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall bind either party unless in writing and signed by the party against whom such waiver or consent is sought to be enforced and all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure or delay of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

SECTION 7.10 Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed and delivered, effective as of the date of the last signature below. The Borrower, by the signature below of its Authorized Representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its Economic and
Community Development Department



COLUMBIA COUNTY
(Borrower)

By: _____
Laird Bryan, Infrastructure Manager
Capital Projects Division

By: _____
Rita Bernhard
Columbia County Board of Commissioners

Date: _____

Date: March 17, 2004

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Lynn T. Nagasako (per email dated 02/09/2004)
Lynn T. Nagasako, Assistant Attorney General

Date: February 9, 2004

Exhibit A
PROJECT DESCRIPTION

Borrower shall construct a new solid waste transfer station on the 6.32-acre site at 36525 Railroad Avenue in St. Helens, Oregon. The Project shall consist of engineering, design and construction. Improvements shall consist of:

Installation of utility service (water, storm, sewer, power) to serve the Project site

Paving for a trailer staging and storage area and parking for employees and visitors

Construction of an office space and maintenance and storage facility and wood/yard waste storage

Landscaping of the Project site

Construction of a scale house and installation of a scale system

Construction of a new transfer station building

Acquisition of equipment, including computer software, material compaction unit and a baler

Improvements to a rail crossing at the Project site

Construction of a recycling drop off center

**Oregon Economic & Community Development Department
Project Budget**

Loan Agreement Exhibit B
Page 1 of 2

Project Number:

J04007

Project Name:

Columbia County Solid Waste Transfer Station

Recipient:

Columbia County

Funding Program(s):

Special Public Works Fund, Community Facilities

(A)	Department Funds				Non-Department Funds (Other/Matching)			All Funds
	(B)	(C)	(D)	(E) = [B-C-D]	(F)	(G)	(H) = [F-G]	(I) = [C+D+G]
Activity	Approved Budget	Prior Disbursements	Current Request	Balance	Approved Budget	Expended To Date	Balance	Disbursed & Expended To Date
Engineering	\$171,039			\$171,039				
Construction	1,554,902			1,554,902				
Equipment - Baler, Compactor	770,000			770,000				
Off-Site Improvements, Traffic Control, Storm Water	53,119			53,119				
Contingency	326,529			326,529				
Total	\$2,875,589			\$2,875,589				

Total Project Budget		
Funding Sources	Approved Budget	Expenditures To Date
Oregon Economic & Community Development Dept.	\$2,875,589	
Matching Funds		
Total Project Costs	\$2,875,589	
Participation Rate	100.00%	

Non-Department Funds (Other/Matching) Sources Used for all Expenditures		
Funding Sources	Approved Budget	Expenditures To Date
Total Non-Dept. Funds		

**Oregon Economic & Community Development Department
Project Budget**

Project Number:

J04007

Project Name:

Columbia County Solid Waste Transfer Station

Project Goals (report for every cash request)

Proposed Work Plan	Estimated Completion Date	Results Achieved
1 Project Start	December 31, 2003	
2 Engineering Design Work	June 30, 2004	
3 Study/plans/specs submitted/approved	July 31, 2004	
4 Construction bid awarded	August 31, 2004	
5 Construction started	September 30, 2004	
6 Construction 50% complete	January 31, 2005	
7 Construction 100% complete	May 31, 2005	
8 Notice of substantial completion/occupancy permit obtained	June 30, 2005	
9 Project complete	September 30, 2005	
10		