

AMENDMENT #3 TO LOAN AGREEMENT

THIS THIRD AMENDMENT TO LOAN AGREEMENT ("Amendment") is made and entered into as of the 15th day of December 2022, by and between the State of Oregon, acting by and through its Department of Transportation ("ODOT" or the "State"), and Yamhill County, Oregon (the "Borrower"). The reference number for this Loan Agreement is OTIF-0049. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement (as defined below).

WITNESSETH

WHEREAS, the State and the Borrower entered into Loan Agreement OTIF-0049 dated July 1, 2013 as amended from time to time, (the "Loan Agreement"), pursuant to which the State agreed to make a loan to Borrower in the principal amount of Ten Million Three Hundred Sixty-six Thousand Six Hundred Forty and No/100 Dollars (\$10,366,640.00) (the "Loan") to finance Borrower's portion of the costs of construction of the Newberg-Dundee Bypass (the "Project");

WHEREAS, in connection with the Loan, the Borrower executed and delivered to the State a promissory note dated July 1, 2013 (as amended, extended, or renewed from time to time, the "Note"); and

WHEREAS, the State and the Borrower desire to modify certain terms and conditions of the Loan Agreement consistent with the changes to the Loan Amount, Project and Project schedule.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the State and the Borrower mutually agree as follows:

1. The definition of "Maturity Date," in Section 1.01 of the Loan Agreement is amended and restated to read as follows:

"Maturity Date" means the date on which the Loan is payable in full, which date shall be July 01, 2069.

2. The definition of "Project Completion Date," in Section 1.01 of the Loan Agreement is amended and restated to read as follows:

"Project Completion Date" means the earlier of

(i) the date on which all of the proceeds of the Loan, including any investment earnings derived from the investment of such proceeds, have been spent; or

(ii) the date on which the State completes construction of the Project; or

(iii) July 1, 2036.

3. The definition of "Project Completion Deadline," in Section 1.01 of the Loan Agreement is amended and restated to read as follows:

"Project Completion Deadline" means July 1, 2036.

4. Section 2.01 of the Loan Agreement is amended and restated to read as follows:

Section 2.01. Loan Amount. On December 1, 2022, the State hereby agrees to make to the Borrower, and the Borrower agrees to borrow and accept from the State, (i) a refinancing of the Loan in the amount of Seven Million Eight Hundred Seventy-one Thousand Six Hundred Eighty-one and 18/100 Dollars (\$7,871,681.18) and (ii) an increase in the Loan in the principal amount of Eleven Million Three Hundred Ninety-six Thousand and No/100 Dollars (\$11,396,000) for a maximum aggregate principal Loan amount of Nineteen Million Two Hundred Sixty-seven Thousand Six Hundred Eighty-one and 18/100 Dollars (\$19,267,681.18).

5. Section 2.03 of the Loan Agreement is amended and restated to read as follows:

Section 2.03. Loan Term. The term of the Loan is set forth in the Note. The term of the Loan commences on the date of the last disbursement of the Loan and ends on the Maturity Date, which is July 1, 2068.

6. Section 2.04 of the Loan Agreement is amended and restated to read as follows:

Section 2.04. Interest. The principal balances due under the Note shall bear interest at the rate of Two and 90/100 percent (2.90%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months. Interest shall be due and payable in arrears and shall accrue on the outstanding principal balance from the date hereof until the principal amount of the Note, together with accrued unpaid interest thereon, is paid in full.

7. New Section 3.11 is added to the Loan Agreement as follows:

Section 3.11. Matching Funds. Matching funds of the Borrower in the amount of Nineteen Million Two Hundred Sixty-seven Thousand Six Hundred Eighty-one and 18/100 Dollars (\$19,267,681.18) are available and committed to the Project.

8. Section 4.01 of the Loan Agreement is amended and restated to read as follows:

Section 4.01. Conditions Precedent to Loan. The State shall be under no obligation to make the loan pursuant to the terms hereof unless the Borrower delivers to the State, on or prior to December 31, 2022, the following documents in form and substance satisfactory to the State and its Counsel:

(a) An opinion of Borrower's Counsel to the effect that:

(i) The Borrower is duly formed and operating under applicable State of Oregon law,

(ii) The Borrower has full legal right and authority to execute and deliver the Loan Agreement and to observe and perform its duties, covenants, obligations and agreements hereunder and to provide financing for the Borrower's Portion of the Costs of the Project,

(iii) The Loan Agreement has been authorized pursuant to official action of the Borrower that has been adopted and authorized in accordance with applicable Oregon law,

(iv) The Loan Agreement has been duly authorized and executed and delivered by Authorized Officers of the Borrower and constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms,

(v) The authorization, execution and delivery of the Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, the consummation of the transactions contemplated herein and the financing by the Borrower of the Borrower's Portion of the Costs of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over the Borrower or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing agreement to which the Borrower is a party or by which the Borrower or its property or assets is bound,

(vi) All approvals, consents or authorizations of, or registrations or filings with, any governmental or public agency, authority or person required on the part of the Borrower in connection with the authorization, execution, delivery and performance of the Loan Agreement and its undertaking to provide a portion of the financing for the Project have been obtained or made to the extent it is possible to obtain or make them on or prior to the Loan Closing Date, and

(vii) There is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State of Oregon or federal) questioning

the creation, organization or existence of the Borrower, the validity, legality or enforceability of the Loan Agreement or the Borrower's authority to finance Borrower's Portion of the Costs of the Project (such opinion or portions of such opinion may be given by one or more counsel).

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

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

(d) Copy of the official action of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement and the documents, instruments and agreements required by this Loan Agreement, certified by an Authorized Officer of the Borrower;

(e) Such other certificates, documents, opinions and information as the State may require.

9. Section 4.02(c) of the Loan Agreement is amended and restated to read as follows:

Section 4.02. Conditions to Disbursement.

(c) Further, the State shall have no obligation to make any disbursement to ODOT on behalf of the Borrower if:

(i) On or before 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;

(ii) If ODOT does not receive sufficient funding, appropriations, limitation, allotments and other expenditure authority to allow ODOT or OTIF, in the exercise of its reasonable administrative discretion, to provide such funding;

(iii) The requisition is submitted by the Borrower after the Project Completion Date; or

(iv) The closing(s) for the loans to be made by the State to the Other Applicants for the Project, which together with the Loan to the Borrower, total the Local Government Share, have not occurred.

10. Section 5.06 of the Loan Agreement is amended and restated to read as follows:

Section 5.06. Proportionality Formula for Payment Requisitions. At the time of the first payment requisition from Borrower, ODOT shall state its estimate of the total Costs of the

Project. The Borrower and the Other Applicants will be paying to ODOT a portion of the Costs of the Project for all three Project Phases in the maximum aggregate loan amount of \$33,773,470 (collectively, the "Local Government Share"), broken down as follows: (i) a maximum loan amount of \$16,000,000 for Phase 1, (ii) a maximum loan amount of \$9,000,000 for Phase 2(B) (as defined by ODOT); and (iii) no less than \$8,773,470 for Phase 3. Thus, the total maximum loan amount combined for Phases 2(b) and 3 equals \$17,773,470. The Local Government Share does not include the Loan Fees. As of June 24, 2020, OTIB has disbursed the entirety of the original loan proceeds in the amount of \$16,000,000. As between the Borrower and the Other Applicants for Phases 2 and 3 of the Project, an Applicant shall pay its portion of the aggregate payments made by all the Applicants for the Costs of Phases 2 and 3 of the Project in accordance with the applicable percentage set forth below:

Yamhill County	63.48%
City of McMinnville	20.17%
City of Newberg	14.57%
City of Dundee	1.78%

The Borrower Portion of the Costs of the Project and the portion of the Costs of the Project for each of the Other Applicants shall be determined by multiplying the applicable percentage set forth above for an Applicant by \$17,773,470 divided by the Costs of the Project estimated by ODOT at the time of the first payment requisition. These percentages for the Borrower and the Other Applicants, as well as ODOT's share of the Costs of the Project, shall remain constant during the Project with respect to all payment requisitions. For example:

If the Costs of the Project are estimated by ODOT at the time of the first payment requisition to be \$469,600,000, then the combined share of the Costs of the Project to be paid by the Borrower and the Other Applicants for the first and all subsequent requisitions will be 3.78481 percent of the Costs of the Project up to a maximum aggregate payment of \$17,773,470. If the first requisition is in the amount of \$10,000,000, then the portion of such requisition payable by Borrower and the Other Applicants shall be \$378,481.05 allocated to Borrower and the Other Applicants as follows:

Yamhill County	2.40248%	\$240,247.87
City of McMinnville	.76358%	\$76,358.18
City of Newberg	.55129%	\$55,128.83
City of Dundee	<u>.06746%</u>	<u>\$6,746.17</u>
Totals	3.78481%	\$378,481.05

10. Exhibit A to the Loan Agreement is amended and restated in the form of Revised Exhibit A attached hereto.

11. Exhibit B to the Loan Agreement is amended and restated in the form of Revised Exhibit B attached hereto.

12. Exhibit D to the Loan Agreement is amended and restated in the form of Revised Exhibit D attached hereto.

13. This Amendment may be signed in several counterparts. Each will be an original, but all of them together constitute the same instrument.

14. Except as specifically modified above, all other terms and conditions of the Loan Agreement and the Note remain unchanged and in full force and effect.

15. By its execution of this Amendment, the Borrower certifies to the State that the representations, warranties and certifications contained in the original Loan Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

IN WITNESS WHEREOF, the State and Borrower have caused this Third Amendment to Loan Agreement to be executed and delivered as of the date set forth in the first paragraph above.

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

YAMHILL COUNTY, OREGON
Borrower

By: 
Daniel Porter
Budget, Economic and Debt Services
Manager

By: 

Date: 1/24/2023

Name: Lindsay Berschauer

Title: Chair, Board of Commissioners

OREGON DEPARTMENT OF JUSTICE

By: Sam Zeigler, Senior AAG

Date: November 29, 2022 via email

Accepted by Yamhill County
Board of Commissioners on
12/1/22 by Board Order
22-366

IN WITNESS WHEREOF, the State and Borrower have caused this Third Amendment to Loan Agreement to be executed and delivered as of the date set forth in the first paragraph above.

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

YAMHILL COUNTY, OREGON
Borrower

By: _____
Daniel Porter
Budget, Economic and Debt Services
Manager

By: Lindsay Berschauer

Date: _____

Name: Lindsay Berschauer

Title: Chair, Board of Commissioners

OREGON DEPARTMENT OF JUSTICE

By: Sam Zeigler, Senior AAG

Date: November 29, 2022 via email

Approved As To Form
by Christian Boenisch
Christian Boenisch
County Counsel
Yamhill County

Revised Exhibit A to Loan Agreement

Project Description

Borrower: Yamhill County

ODOT will construct the Newberg-Dundee Bypass, consisting of three phases.

The Bypass encompasses a section of Oregon 99W that extends northeast across Yamhill County from the Oregon 99W/Oregon 18 intersection to Rex Hill east of Newberg. The Bypass corridor will be at least 330' wide, be located along the south sides of Newberg and Dundee, and be approximately 11 miles long. The eastern terminus is located east of Newberg in the Rex Hill area of Oregon 99W at mile post 20.08. The western terminus is located where Oregon 99W intersects with Oregon 18 (McDougal Corner) west of Dundee near Dayton at Oregon 18 mile post 51.84.

The Bypass includes the following proposed interchanges:

- Dayton Interchange – located at the junction of Oregon 99W and Oregon 18 and represents the western terminus of the Bypass; it replaces the existing Oregon 18/Oregon 99W intersection at McDougal Corner and the South Dundee Interchange.
- East Dundee Interchange – located between Dundee and Newberg; a new connector road will link the interchange at Oregon 99W to the Bypass.
- Oregon 219 Interchange – located in south Newberg along Oregon 219.
- East Newberg Interchange - located southwest of Rex Hill; this interchange will be the eastern terminus of the Bypass

Phase 1 of the Bypass will begin at a new signalized intersection on Oregon 219, traveling through south Newberg into Dundee. South of Dundee, Phase 1 will leave the eventual full Bypass alignment, proceeding west, parallel to the Dundee city limits, and cross over the Willamette and Pacific Railroad and Oregon 99W. After crossing over Oregon 99W, Phase 1 of the Bypass will loop around and connect to Oregon 99W at a new signalized intersection.

Other Phase 1 improvements include:

- Additional southbound left turn lane on Oregon 99W at Springbrook Road.
- Widening Springbrook Road to three lanes (one northbound lane, one southbound lane, and a center left turn between Oregon 99W and Oregon 219)

Phase 2 of the Bypass includes the design and construction of a two-lane roadway section from the current connection at OR-18/OR 219 to OR-99W north of the City of Newberg. This work will include:

- OR-219 Interchange – located in south Newberg along OR-219;
- Realigning Wyooski Road to meet the intersection of OR-219 and Wilsonville Road;
- Removing the old Wyooski Road alignment;
- Widening OR-219 for an additional travel lane, sidewalk, ADA ramps, and drainage.
- Sound walls to help reduce noise levels at locations identified in the environmental impact statement and confirmed during design;
- Pedestrian connections at the public golf course in coordination with Chehalem Park and Recreation District;
- Eight bridges to cross Fernwood Road, creeks, and local roads;
- Intersection improvements at the connection with OR-99W;
- Improvements to Veritas Lane and Corral Creek Road for safety and access to OR 99W.

Phase 3 of the Bypass includes a two-lane roadway section from current connections at OR-99W south of the City of Dundee to OR-18 north of the City of Dayton. This work will include:

- Sound walls to help reduce noise levels at locations identified in the environmental impact statement and confirmed during design;
- Adding Interchange near the City of Dundee;
- Adding interchange North of Dayton near the current location of the OR-18 and OR-99W intersection.

Revised Exhibit B to Loan Agreement

Approved Project Budget

Borrower: Yamhill County

Borrower's Portion of the Costs of Project (in dollars): \ \$19,267,681.18

Sources	Original Loan	Phases 2 and 3
ARPA	N/A	\$32,000,000
Other State and Federal Sources	N/A	To be determined
ODOT STIP	\$223,750,968	\$419,826,530*
Confederated Tribes of Grand Ronde	4,000,000	To be determined
City of Dundee (OTIB Loan, includes Loan Fee)	315,200 (original) 240,631.85 (refinanced)	320,000
City of McMinnville (OTIB Loan, includes Loan Fee)	3,209,600 (original) 2,294,230.20 (refinanced)	3,622,000
City of Newberg (OTIB Loan, includes Loan Fee)	2,211,200 (original) 1,574,746.73 (refinanced)	2,615,000
Yamhill County (OTIB Loan, includes Loan Fee)	10,366,640 (original) 7,871,681.18 (refinanced)	11,396,000
Total	\$243,853,609	\$469,779,530
Uses		
Construction	\$132,754,730	\$348,900,000
Preliminary Engineering	42,273,396	54,000,000
Right of Way	60,825,533	54,700,000
Utility Relocation	5,400,000	12,000,000
Loan Fees	\$160,000	179,530
Other	2,436,950	
Total	\$243,853,609	\$469,779,530

*This amount will be reduced by the amount of Other State and Federal Sources and Confederated Tribes of Grand Ronde, if any.

Revised Exhibit D to Loan Agreement

PROMISSORY NOTE

December 1, 2022
Yamhill County, Oregon

For value received, Yamhill County (hereinafter "Borrower") unconditionally promises to pay to the State of Oregon, acting by and through its Department of Transportation (hereinafter "State"), or order, at 350 Capitol St. NE, Salem, OR 97301-3871 or such other place as the State may designate in writing, the principal sum of Nineteen Million Two Hundred Sixty-seven Thousand Six Hundred Eighty-one and 18/100 Dollars (\$19,267,681.18), or so much thereof as is disbursed and not repaid (the "outstanding principal balance"), plus interest from the date hereof on the outstanding principal balance until paid. Any capitalized terms not defined in this Note shall have the meanings assigned to such terms in that certain loan agreement of even date herewith between the State and Borrower (as amended from time to time the "Loan Agreement").

The interest rate shall be Two and 90/100 Percent (2.90%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months.

Principal and interest shall be payable at the times and in the amounts specified on the repayment schedule on Revised Exhibit A attached hereto and by this reference made a part hereof, and the outstanding principal balance of the Note, together with accrued unpaid interest, shall be due and payable on the Maturity Date. Each payment made by the Borrower hereunder shall be applied first to the State's expenses under the Loan Agreement, then to interest then due and payable on the Loan, then to the principal of the Loan unless the Loan Agreement provides otherwise.

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

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

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

If an Event of Default occurs, the outstanding balance hereunder, including principal, interest and other charges, if any, shall, at the option of the State, become immediately due

and payable. Presentment, demand, protest, and notice of dishonor, protest and nonpayment are waived by the Borrower.

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

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

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

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

Yamhill County

By: 

Name & Title (print): Lindsay Berschauer
Chair, Board of Commissioners

NOTICE TO BORROWER

DO NOT SIGN THIS NOTE BEFORE YOU READ IT.

Revised Exhibit A to Promissory Note

Repayment Schedule

Borrower: Yamhill County

Payment Due Date:	Amount Due:
July 01, 2023 and the first day of each July thereafter	Installment payment of principal and interest of \$655,259.79
Maturity Date (July1, 2068)	The remaining principal and interest due on the Loan

Revised Exhibit F to Loan Agreement

Payment Requisition

TO: Oregon Transportation Infrastructure Bank
Oregon Department of Transportation
Financial Services, MS – 21
355 Capitol Street, NE
Salem, Oregon 97301-3871

RE: Oregon Transportation Infrastructure Fund, Loan Number OTIF-0049

On behalf of Yamhill County, I hereby request that the Oregon Transportation Infrastructure Fund (OTIF) disburse to the Oregon Department of Transportation the following amount from the account established in the OTIF for this Loan:

[Insert Amount]

The foregoing disbursement is for Costs of the Project as such term is defined in, and which are permitted under, the Loan Agreement dated December __, 2022, between the State of Oregon acting by and through its Department of Transportation and Yamhill County. I have attached all necessary documentation as required by Section 4.02(b)(vi) of the Loan Agreement. No Event of Default has occurred or is continuing under the Loan Agreement.

DATED this ____ day of _____, ____.

Yamhill County

By: _____
Authorized Officer

Name & Title (print): _____

Attachments