

RESOLUTION NO. 5637

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE FINANCING CONTRACT WITH THE OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT TO PROVIDE FINANCING FOR INFRASTRUCTURE IMPROVEMENTS RELATED TO THE SVC DEVELOPMENT AGREEMENT AND THE OAK CREEK REVITALIZATION AREA.

WHEREAS, in October, 2006 the City of Albany entered into a development agreement with SVC Manufacturing, Inc., the state of Oregon Economic and Community Development Department (OECDD), and other state and local partners; and

WHEREAS, the agreement requires the City to complete transportation, sewer, and water improvements to support the SVC manufacturing facility and future development of other properties in the area; and

WHEREAS, the agreement further requires OECDD to provide short and long term financing for construction of the improvements; and

WHEREAS, the City and OECDD have set forth the terms and conditions of a Special Public Works Fund loan in the maximum aggregate principal amount of \$14,200,000; and

WHEREAS, the financing contract has been reviewed by staff and by the Albany City Council; and

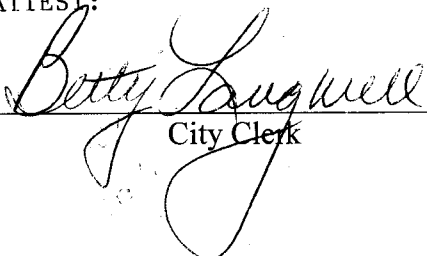
WHEREAS, the Albany City Council hereby determines that it is in the public interest to execute the financing contract.

NOW, THEREFORE, BE IT RESOLVED that the Mayor of the City of Albany is hereby authorized to execute, on behalf of the City of Albany, the financing contract with OECDD in a form substantially the same as the financing contract attached as Exhibit A, and incorporated herein, and is authorized to deliver the other financing documents required by the contract.

DATED AND EFFECTIVE THIS 23rd DAY OF JULY, 2008.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

**OREGON**  
ECONOMIC & COMMUNITY  
DEVELOPMENT DEPARTMENT

Main Office  
775 Summer St, NE, Suite 200  
Salem, OR 97301-1280  
Phone 503-986-0123  
TTY 1-800-735-2900  
Fax 503-581-5115  
<http://www.econ.state.or.us/>

May 14, 2008

**RECEIVED**

MAY 15 2008

City of Albany  
City Managers Office

The Honorable Dan Bedore  
Mayor of Albany  
333 Broadalbin Street / PO Box 490  
Albany, OR 97321

RE: Special Public Works Fund, Project Number L08001, (\$14,425,000), City of Albany, Municipally-Owned Infrastructure for SVC Manufacturing, Inc.

Dear Mayor Bedore:

Enclosed are two originals of the financing contract between the State of Oregon and the City of Albany. Please note the requirements of Section 9 "Certain Covenants of Borrower" and the special conditions in Exhibit D. Also enclosed are the following:

- The **Promissory Note** (previously sent to you)
- A **Signature Card**, which authorizes cash drawdowns for the project. The directions for filling it out are on the back. Please retain a copy of the signed signature card for your official file (previously sent to you).
- A **Deposit Option Notification** form where you indicate the method to receive funds (previously sent to you)
- A **Checklist** with sample documents that must be completed and returned with the contracts (previously sent to you)
- A sample **Disbursement Request** form for your future use, which is also available electronically by request in Microsoft Excel<sup>®</sup> format (previously sent to you)

Please return the following to our office by July 15, 2008:

- Two signed original **Financing Contracts**
- The signed original **Promissory Note**
- One fully executed original **Signature Card**
- One original completed and signed **Deposit Option Notification** form
- The **Checklist** and the Checklist documents

Please let us know when your project nears construction so we can send you a sign to post in a visible location, noting the participation of the Special Public Works Fund and the Oregon Lottery.

The public, the media, and governmental agencies will view your project with great interest. We are most anxious for your project to succeed and wish to extend any help you need. If you have any questions, please call Louise Birk, Regional Coordinator, at (503) 986-0130.

Sincerely,



Laird Bryan, Infrastructure Manager  
Community Development Division  
Enclosures

Contract Services\L08001 Albany Letter Rev 2008 05 14.doc

COME FOR A WEEK. STAY FOREVER.

GOVERNOR THEODORE R. KULONGOSKI



**STATE OF OREGON  
ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT  
SPECIAL PUBLIC WORKS FUND  
FINANCING CONTRACT**

PROJECT NUMBER: L08001

PROJECT NAME: Municipally-Owned Infrastructure for SVC Manufacturing, Inc.

This Financing Contract ("Contract") is entered into between the State of Oregon acting by and through its Economic and Community Development Department ("Department") and the City of Albany ("Borrower") with respect to financing for the Project, which is described in Exhibit B. Unless the context requires otherwise, capitalized words and phrases not defined in the main body of this Contract shall have the meanings assigned to them in Exhibit A attached hereto.

The parties agree as follows:

**1. Effective Date and Contract.** This Contract shall become effective on the date this Contract is fully executed and approved as required by applicable law. This Contract consists of the following parts:

- The Contract without Exhibits
- Exhibit A: General Definitions
- Exhibit B: Project Description
- Exhibit C: Project Budget
- Exhibit D: Special Conditions of Award
- Exhibit E: [Reserved]
- Exhibit F: Form of Promissory Note
- Exhibit G-1: Form of Legal Opinion (Borrower)
- Exhibit G-2: Form of Legal Opinion (URA)

**2. Department Financing.**

a. In accordance with the terms and conditions of this Contract and in order to finance the Project, Department shall provide Borrower from the Special Public Works Fund ("Fund") created by ORS 285B.455, and Borrower shall accept from Department, (1) a grant ("Grant") in the maximum aggregate amount of \$225,000, subject to Sections 2(b) and 2(c) below, and (2) a non-revolving loan ("Loan") in the maximum aggregate principal amount of \$14,200,000. All Department Financing is subject to, and Borrower shall comply with, the terms and conditions of this Contract.

b. Grant proceeds shall only be used to pay for costs incurred by Borrower on the Project for short-term safety mitigation improvements required by ODOT that (1) relate to the continued use of the Ellingson Road railroad crossing until the 53rd Avenue road extension improvements are completed as described in the Development Agreement, (2) are required by the Traffic Impact Analysis (TIA) as described in the Development Agreement, (3) meet the statutory and administrative rule requirements for municipal ownership and (4) are required by the Development Agreement. The mitigation improvements referred to above will be short-term and not be sufficient to require an ODOT 'rail crossing order.'

c. If the 53rd Avenue road extension improvements are completed prior to the need to undertake the safety mitigation improvements described in (b) above, this Grant shall terminate, except that \$100,000 of the Grant proceeds will be credited by the Department as a prepayment of \$100,000 toward the outstanding balance of the Loan. The Borrower acknowledges and agrees that when Grant proceeds are credited to the outstanding balance of the Loan, the amount of the Loan that is repaid will not be available for borrowing by the Borrower.

**3. Disbursement of Department Financing Proceeds.**

**a. Disbursement of the Loan and Grant.** Subject to Sections 2 and 3(b), Department shall disburse the Loan and Grant proceeds to Borrower on an expense reimbursement or cost incurred basis. Borrower shall submit a disbursement request on a form provided by Department; provided, however, that the Department 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 or later than forty-two (42) months after the Loan Closing Date.

**b. Conditions Precedent to Disbursement.** Department's obligation to disburse Department Financing proceeds to Borrower under this Contract is subject to satisfaction of each of the following conditions precedent:

(1) Department has received from Borrower the following, in form and substance satisfactory to Department and its Counsel and recorded, when required by Department:

(a) The Note, duly executed by an Authorized Officer of Borrower.

(b) A copy of the ordinance, order or resolution of the governing body of Borrower authorizing the execution and delivery of this Contract and the other Financing Documents and Borrower's performance, observance and discharge of its duties, covenants, agreements and obligations hereunder and thereunder.

(c) An opinion of Borrower's Counsel substantially in the form set forth in Exhibit G-1.

(d) A copy of the ordinance, order or resolution of the governing body of the URA authorizing the execution and delivery of the IGA between the URA and Borrower and the URA's performance, observance and discharge of its duties, covenants, agreements and obligations thereunder, or if such ordinance, order or resolution is not required by law and not done, evidence of such authorization.

(e) An opinion of URA's Counsel, substantially in the form set forth in Exhibit G-2.

(f) A certified copy of the Urban Renewal Plan for the Oak Creek Urban Renewal Area.

(g) A certified copy of the IGA between Borrower and the URA.

(h) Evidence that Borrower has paid at least \$25,000 of the costs incurred for the short-term safety mitigation improvements described in Section 2(b) above (For initial disbursement of Grant).

(2) All other agreements, certificates, documents and information required by this Contract to be submitted by Borrower prior to the disbursement or otherwise reasonably requested by Department, all duly executed and acknowledged as reasonably requested by Department.

(3) Department and the Fund have received sufficient funding, appropriations and other expenditure authorizations to allow Department, in the exercise of its reasonable administrative discretion, to make the disbursement and there are sufficient moneys in the accounts or funds to be used to cover the disbursement, as determined by Department in the reasonable exercise of its administrative discretion, to permit Department to make the disbursement.

(4) No Default or Event of Default has occurred.

(5) Department has received from Borrower a disbursement request on the form provided by Department.

(6) All other conditions precedent to disbursement set forth elsewhere in this Contract or in the other Financing Documents have been satisfied.

**4. Interest; Loan Repayment.** Borrower shall repay the Loan in accordance with the terms and conditions thereof as set forth in this Contract and the Note and as set forth below:

**a. Interest.**

(1) **Interest Only Payments.** Up to the fifth Payment Date, interest shall accrue on the outstanding principal balance of the Loan at the rate of 4.91% per annum.

(2) **Principal and Interest Payments.** Commencing the Fifth Payment Date, interest shall accrue as follows:

(a) **If the Loan is included in a State Bonds issue.** Interest shall be calculated to be the coupon rates on the State Bonds, but in any event the True Interest Cost shall not be more than 5.50%.

(b) **If the Loan is not included in a State Bonds issue.** 5.50% per annum.

(3) **Interest Computation.** Interest shall be computed on the outstanding principal balance on the basis of a 360-day year, consisting of twelve (12) thirty-day (30-day) months.

**b. Payments.**

(1) **Interest Only Payments.** On the first five Payment Dates, Borrower shall pay all unpaid interest accrued to the Payment Date on the outstanding principal balance of the Loan. However, if the Incremental Property Tax Revenues plus LIDs Assessment Revenues pledged to Loan repayment are not sufficient to pay all interest accrued to an interest only Payment Date, the unpaid portion of accrued interest shall be payable on the next Payment Date. Any interest accrued but unpaid on the day after the fifth Payment Date (i.e., after the end of the interest-only period) shall be added to the principal balance unless there is a sixth interest only Payment Date, pursuant to Section 4.b(2), in which case any interest accrued but unpaid on the day after the sixth Payment Date shall be added to the principal balance.

(2) **Additional Interest Only Payment Date.** Borrower may request to extend the interest only payment period for one additional year, provided that the additional interest only Payment Date is no more than six (6) years from the date of the first Loan disbursement hereunder and provided that Borrower submits a written request for the extension to Department at least thirty (30) days prior to the Payment Date that is the subject of the extension request.

(3) **Payment of Principal and Interest.** Commencing the Payment Date following the final interest only Payment Date and on each Payment Date thereafter, Borrower shall make level installment payments of principal and interest, 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 (including the capitalized interest referred to in Section 4.b(1)) by the Maturity Date at which time the entire outstanding principal balance and all accrued unpaid interest of the loan shall be due and payable in full.

(4) **Inclusion in State Bonds issue:** At the Department's sole discretion, the Loan may be included in a State Bonds issue, but only if the result will be a lower all-in True Interest Cost to the Borrower, and any modification of this Contract required for the Loan to be included in the State Bonds issue does not change the underlying terms and conditions of the Loan other than as set forth herein. The Department may require revision or restatement of this Contract to permit inclusion of the Loan in a State Bonds issue.

c. **Note with Schedule.** In the event the Department requires that the principal and interest payment amounts and dates to be shown in a schedule attached to the Note and a "Schedule 1 - Payment Schedule" is attached to the Note pursuant to this Section 4.c, the third paragraph of the Note shall read as follows:

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

d. **Mandatory Prepayment.** Borrower shall prepay the Loan upon the occurrence of any of the following:

(1) Borrower's receipt and to the extent of the proceeds of any lease, exchange, transfer or other disposition of any portion of or interest in the Project permitted under Section 9(d), that are not used to replace property that is part of the Project.

(2) Borrower's receipt and to the extent of the proceeds arising from any condemnation of the Project or any portion thereof;

(3) Borrower's receipt and to the extent of any insurance proceeds arising from the destruction of or damage to the Project or any portion thereof;

(4) Borrower's receipt and to the extent of the proceeds arising from any suit or negotiated settlement against SVC due to its breach of the Development Agreement or any portion thereof;

(5) As required by any other provisions of this Contract or any other Financing Document.

Upon the occurrence described in ii or iii above, proceeds shall be paid to Department and (a) shall be applied to prepay the principal of and interest on the Loan in accordance with Sections 4.d. and 5 of this Contract or (b), upon the request of Borrower, but only so long as the Borrower is not in default under any of the Financing Documents, may be applied to rebuilding and restoration of the Project or a portion thereof, on such terms and conditions as Department shall require in its sole discretion.

e. **Optional Prepayment.** The Borrower may prepay principal or interest upon 30 days notice to Department without penalty; provided, however, that if the Loan is included in a State Bonds issue, the Bond Indenture will govern optional prepayments.

5. **Application of Payments.** Unless otherwise restricted by applicable law, Department shall apply all payments received under this Contract or any Financing Document, and regardless of how Borrower labels or designates them, to Borrower's obligations under this Contract and the other Financing Documents in the following order:

a. First, to satisfy any obligation of Borrower to pay attorneys fees, other fees and expenses.

b. Second, to pay any interest due and payable under the Loan

c. Third, to pay any principal due and payable under the Loan.

d. Fourth, to pay any other amounts due and payable under this Contract or any of the other Financing Documents.

e. Fifth, to the extent permitted by Section 4, as a prepayment of principal on the Loan, applied in the reverse order of principal maturity.

6. **Sources of Repayment of Borrower's Obligations.** Borrower shall apply funds derived from the sources of repayment described in Exhibit D to the punctual payment of the principal of and interest on the Loan and to satisfy all other payment obligations of Borrower under this Contract and the other Financing Documents; provided, however, that nothing in this Contract shall be deemed to prevent Borrower from paying any amounts payable by Borrower under this Contract or any other Financing Document from any other legally available source.

7. [Reserved]

8. **Representations and Warranties.** In addition to all other representations and warranties of Borrower set forth in this Contract or any other Financing Document, Borrower represents and warrants to Department as follows:

a. **Organization and Authority.**

(1) Borrower is a Municipality duly and validly organized and in existence under the laws of the State of Oregon.

(2) Borrower has full legal right, power, and authority and all necessary licenses and permits required (a) if the Project involves construction or acquisition of real property, improvements or equipment, to own, operate and maintain the Project, other than licenses and permits relating to the Project that Borrower expects to receive in the ordinary course of business, (b) to carry on its activities relating thereto, (c) to execute and deliver this Contract and the other Financing Documents required to be executed and delivered by it, (d) to incur and perform its obligations under this Contract and the other Financing Documents, (e) to undertake and complete the Project, and (f) to carry out and consummate all transactions contemplated by this Contract and the other Financing Documents.

(3) Borrower is authorized under Oregon law to undertake the Project and to receive financing for the Project from Department under the terms and conditions of this Contract and the other Financing Documents.

(4) The Project, this Contract and all other Financing Documents, Borrower's execution and delivery hereof and thereof and the transactions contemplated hereby and thereby have been duly authorized by Borrower's governing body, and members or voters if necessary, and this Contract and all other Financing Documents have been executed and delivered on behalf of Borrower by an Authorized Officer of Borrower.

(5) Assuming that Department has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered this Contract and the other Financing Documents required hereunder to be executed by Department, this Contract and the other Financing Documents executed and delivered by Borrower constitute the legal, valid and binding obligations of the Borrower enforceable in accordance with their terms, subject to the laws of bankruptcy and other similar laws affecting the enforcement of creditors' rights generally.

b. **Full Disclosure.** There is no fact that Borrower has not disclosed to Department in writing in Borrower's Application or otherwise that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of Borrower or the Project, or the ability of Borrower to observe, perform and discharge all of its duties, covenants, agreements and obligations under this Contract and the other Financing Documents. Borrower's Application and Borrower's representations and warranties in this Contract or any of the other Financing Documents do not contain any untrue statement of a material fact or omissions that could reasonably be perceived as misleading.

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

d. **Compliance with Existing Agreements, Etc.** Borrower's authorization and performance of all obligations and covenants under this Contract and the other Financing Documents will not (i) result in any breach of any existing ordinance, order or resolution, trust agreement, indenture, mortgage, deed of trust, contract or other instrument to which Borrower is a party or by which the Project or any of its property or assets may be bound, or (ii) result in the creation or imposition of any lien, charge or encumbrance upon any property or asset of Borrower, except as previously disclosed to Department, (iii) result in any violation of the provisions of the charter or other document pursuant to which Borrower was created or established, or (iv) violate any laws, ordinances, orders, resolutions, governmental rules, regulations or court orders that apply to Borrower, the Project, or its properties or operations.

e. **No Defaults.** No event has occurred and no condition exists that, upon authorization, execution and delivery of this Contract or any of the other Financing Documents or receipt of the Department Financing proceeds and with notice or lapse of time or both would constitute an Event of Default hereunder. Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it, the Project, or its property may be bound, which violation would materially adversely affect the activities, prospects or condition (financial or otherwise) of Borrower or the Project or the ability of Borrower to observe, perform and discharge its duties, covenants, agreements and obligations under this Contract and the other Financing Documents.

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

g. **Compliance with Law.** Borrower is in compliance with Oregon Public Contracting Code, ORS Chapters 279A, 279B, and 279C, as applicable. Borrower is also in compliance with all other 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 Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of Borrower or the Project.

**h. The Project.**

(i) Borrower will have adequate funds to complete the Project.

(ii) Borrower will have adequate funds to repay the Loan, and the Loan does not have a final maturity date after the end of the useful life of the Project.



i. [Reserved]

j. **Continuing Representations.** The representations and warranties of the Borrower contained herein shall be true on the effective date of this Contract and at all times thereafter until the later of actual completion of the Project, final repayment of the Loan, or final performance, observance and discharge of all duties, covenants, agreements and obligations of Borrower under this Contract and the other Financing Documents.

9. **Certain Covenants of Borrower.** Borrower shall comply with the following covenants:

a. **Use of Financing Proceeds.** Borrower may use the Department Financing proceeds solely in accordance with the Project budget (Exhibit C) solely to cover Eligible Costs necessarily incurred by Borrower in completing the Project and subject to any other restrictions imposed by other provisions of this Contract, the other Financing Documents or by applicable law. Borrower may not transfer Department Financing proceeds among line items in the Project budget without the prior execution of an amendment to this Contract, in accordance with Section 28, modifying the Project budget to reflect the transfer. Borrower may not use any of the Department Financing proceeds to cover Eligible Costs that are incurred prior to November 14, 2006. Borrower may not use any of the Department Financing proceeds to cover Eligible Costs that are paid by other financing for the Project from the State of Oregon or by financing for the Project provided by a third party. Borrower shall promptly repay to Department any Department Financing proceeds disbursed to Borrower hereunder that are used in any manner other than as permitted by this Contract and the other Financing Documents or that remain unutilized upon actual completion of the Project. All payments under this Section 9(a) shall be applied to Borrower's obligations in accordance with Section 5.

b. **Provision of Moneys for Completion of the Project.** Borrower agrees to complete the Project in accordance with the requirements of this Contract no later than September 1, 2010. Borrower further covenants and agrees to provide from its own fiscal resources or other sources all moneys, in excess of the total amount of Department Financing proceeds it receives pursuant to this Contract, required to complete the Project.

c. [Reserved]

d. **Disposition of Project.** So long as the Loan is outstanding and unless worn out, obsolete, or in the reasonable business judgment of Borrower, no longer useful in the operation of any facilities constructed, improved or acquired as part of the Project, Borrower shall not sell, lease, exchange, abandon, transfer or otherwise dispose of all or substantially all or any substantial portion of or interest in any facilities constructed, improved or acquired as part of the Project, unless Department consents thereto in advance in writing. Department may not unreasonably withhold, condition or delay its consent to any such transaction.

e. [Reserved]

f. **Notice of Material Adverse Change.** So long as the Loan is outstanding, Borrower shall promptly notify Department of any material adverse change in the activities, prospects or condition (financial or otherwise) of Borrower or the Project or in the ability of Borrower to make all Loan Payments and otherwise observe and perform its duties, covenants, obligations and agreements under this Contract and the other Financing Documents.

**g. Financial Statements and Reports.** So long as the Loan is outstanding, Borrower, if so requested by Department and at Borrower's expense, shall deliver to Department in form and detail satisfactory to Department:

(i) Unaudited statements of revenues, expenditures, cash flows, and changes in retained earnings for the period, all in comparative form and all in reasonable detail and certified by the chief financial officer of Borrower.

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

**h. [Reserved]**

**i. Access for Disabled Persons.** If 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, Borrower shall comply with the Americans with Disabilities Act and ORS 447.210 to 447.280.

**j. Further Assurances.** Borrower shall, at the request of Department, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents 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 Contract and the other Financing Documents.

#### **10. Records Maintenance, Access and Confidentiality.**

**a. Access to Records and Facilities.** The Department, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of Borrower that are directly related to this Contract, the other Financing Documents, the Project, or the Department Financing proceeds provided hereunder, for the purpose of making audits and examinations. In addition, the Department, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives may make and retain excerpts, copies and transcriptions of the foregoing books, documents, papers and records. Borrower shall permit authorized representatives of Department, the Secretary of State's Office of the State of Oregon, and the federal government to perform site reviews and inspections of the Project after reasonable prior written notice to Borrower.

**b. Retention of Records.** Borrower shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the other Financing Documents, the Project or the Department Financing proceeds, for a minimum of three (3) years, or such longer period as may be required by other provisions of this Contract or applicable law, following the later of the actual completion of the Project, final repayment of the Loan, or final completion and satisfaction of all reporting requirements of Borrower under this Contract and the other Financing Documents. If there are unresolved issues at the end of the three-year period, Borrower shall retain the books, documents, papers and records until the issues are resolved.

**c. Expenditure Records.** Borrower shall document the use of all Department Financing proceeds disbursed by Department under this Contract and the expenditure or utilization of all resources used in the Project. Unless applicable federal law requires Borrower to utilize a different accounting system, Borrower shall create and maintain all expenditure records in accordance with generally accepted accounting principles consistently applied and in sufficient detail to permit Department to verify how the Department Financing proceeds were expended and how the other resources were expended or utilized.

**11. [Reserved]**

**12. [Reserved]**

**13. Economic Benefit Data.** The Department may request that the Borrower submit specific requested data on the economic development benefits of the Project, from the date hereof until six (6) years after the Project Completion Date. Upon such request by the Department, Borrower shall, at the Borrower's expense, prepare and file the requested data within the time specified in the request. Data shall document specific requested information such as any new direct permanent or retained jobs resulting from the Project and other information to evaluate the success and economic impact of the Project.

**14. Event of Default.** Each of the following constitutes an Event of Default under this Contract:

a. Borrower fails to make any Loan Payment or any mandatory Loan Prepayment when due.

b. Borrower fails to perform, observe or discharge any of its duties, covenants, agreements or obligations set forth in this Contract (other than as described in any other subsection of this Section 14) and such failure is not cured within fifteen (15) business days following written notice, specifying such failure and requesting that it be remedied, is given to Borrower by Department. Any event described in subsections a, c, d, e, f or g hereof shall be referred to as an "Automatic Default." If an Automatic Default occurs, Borrower shall be in default hereunder, without any requirement for any notice or opportunity to cure. If any default other than an Automatic Default is curable and if Borrower has not been given a notice of a breach of the same provision of any of the Financing Documents within the preceding twelve (12) months, the Department shall send Borrower written notice describing such default. Borrower may cure such default within fifteen (15) business days after the date on which such notice is mailed to Borrower; however, if such cure requires more than fifteen (15) business days, Borrower shall not be in default if Borrower immediately initiates steps which the Department deems in its sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical but in any event no later than 120 days from the delivery of the written notice referred to above.

c. Any representation, warranty or statement made by or on behalf of Borrower herein, in any other Financing Document, or in any agreement, instrument, certificate, document or report furnished in compliance with or with reference to this Contract, any other Financing Document or the Loan or in connection with or with reference to the Lottery Bonds, including but not limited to any representation, warranty or statement with respect to current or historical information relied upon by Department to monitor progress on the Project, the use of Department Financing proceeds, is false or misleading in any material respect;

d. Borrower fails to complete the Project or fails to complete the Project by the Project Completion Deadline;

e. Borrower (i) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated as bankrupt or insolvent, (v) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing;

f. A proceeding or case is commenced, without the application or consent of Borrower, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Borrower, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Borrower or of all or any substantial part of its assets, or (iii) similar relief in respect to Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, or an order for relief against Borrower is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect); and

g. An event of default occurs under any other Financing Document or any financing document for any other loan made by any third party or parties to Borrower in connection with the Project.

**15. Notice of Event of Default.** Borrower shall give Department prompt telephonic notice of the occurrence of any Event of Default described in Section 14(e) and (f) and of the occurrence of any other event or condition that constitutes an Event of Default under Section 14 at such time as any senior administrative or financial officer of Borrower becomes aware of the existence thereof. Any telephonic notice pursuant to this section shall be confirmed in writing as soon as practicable by Borrower.

**16. Remedies upon Event of Default.** Upon the occurrence of an Event of Default, Department may pursue any remedies available under this Contract or any other Financing Document and may take whatever other action at law or in equity that may appear to Department to be necessary or desirable to collect the amounts then due and thereafter to become due under this Contract or any Financing Document or to enforce the performance and observance of any duty, covenant, obligation or agreement of Borrower under this Contract or any Financing Document, including but not limited to the following remedies and actions:

a. Declaring all Loan Payments and all other amounts to be paid by Borrower under this Contract or any other Financing Document to be immediately due and payable, and upon notice to Borrower the same shall become immediately due and payable without further notice or demand.

b. Terminating all further disbursements of Department Financing proceeds.

c. Declaring Borrower ineligible to receive future awards from the Department.

d. Applying amounts otherwise due to Borrower from the State of Oregon to payment of the amounts due under this Contract or any other Financing Documents, as provided by Oregon law.

e. Foreclosing liens or security interests or otherwise realizing upon any Collateral securing Borrower's performance, observance and discharge of its duties, covenants, agreements and obligations under this Contract or any other Financing Document.

**17. Termination of Department Financing.** Department may, by and effective upon written notice to Borrower and under the following circumstances, terminate Department's obligation under this Contract and the other Financing Documents to provide the Department Financing to Borrower:

a. Upon an Event of Default.

b. If Department or the Fund fails to receive sufficient funding, appropriations and other expenditure authorizations to allow Department, in the reasonable exercise of its administrative discretion, to continue providing the Department Financing under this Contract and the other Financing Documents.

c. If there are insufficient moneys in the Special Public Works Fund or any other account or fund to be used to provide the Department Financing, as determined by Department in the reasonable exercise of its administrative discretion.

Upon exercise of its termination right under this Section 17, Department shall have no further obligation to provide Department Financing to Borrower under this Contract or the other Financing Documents. Termination of the Department Financing under this Section 17 shall not affect Borrower's obligations under this Contract and the other Financing Documents; provided, however, that upon termination of the Department Financing under this Section 17, Borrower shall no longer be obligated to complete the Project.

**18. Notice.** Except as otherwise expressly provided in this Contract, any notices to be given hereunder or under any other Financing Document shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Borrower or Department at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the party receiving the communication, or on the next Business Day, if transmission was outside normal business hours of the party receiving the communication. To be effective against Department, any notice transmitted by facsimile must be confirmed by telephone notice to Department's Community Development Division, Operations Manager at (503) 986-0138. Any notice given by personal delivery shall be effective when actually delivered.

Notices to Department:

Oregon Economic and Community Development Department  
Community Development Division, Operations Manager  
RE: Project Number L08001  
775 Summer Street N.E., Suite 200  
Salem, Oregon 97301-1280  
Facsimile Number: (503) 581-5115

Notices to Borrower:

City Manager  
City of Albany  
333 Broadalbin Street / PO Box 490  
Albany, OR 97321  
Facsimile Number: (541) 917-7511

**19. Severability.** The parties agree that if any term or provision 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 provisions 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 provision held to be invalid.

**20. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

**21. Governing Law, Consent to Jurisdiction.** This Contract and all other Financing Documents shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Department (and any other agency or department of the State of Oregon) and Borrower that arises from or relates to this Contract or the other Financing Documents shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon, other than Claims which must be brought and conducted in another Circuit Court of 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 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. BORROWER, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**22. Compliance with Law.** Borrower shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract, the other Financing Documents, or to the Project. Without limiting the generality of the foregoing, Borrower expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract, the other Financing Documents, or the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations and (b) ORS 659A.145, 659A.400, 659A.403, and 659A.406 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Project. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract, the other Financing Documents or the Project and required by law to be so incorporated. Borrower shall, to the maximum extent economically feasible in implementation of the Project, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg)). All employers, including Borrower, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.

**23. Minority, Women & Emerging Small Business.** ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses..." The Oregon Economic and Community Development Department encourages Borrower, in any contracting activities, to follow good faith efforts in ORS 200.045, available at <http://www.leg.state.or.us/ors/200.html>. Additional resources are provided by the Governor's Advocate for Minority, Women & Emerging Small Business at <http://egov.oregon.gov/Gov/MWESB/index.shtml>. Also, the Office of Minority, Women, and Emerging Small Business at the Department of Consumer and Business Services maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <http://imd10.cbs.state.or.us/ex/dir/omwesb/>.

**24. Assignment of Contract, Successors in Interest.**

a. Borrower shall not assign or transfer any interest in this Contract or in any other Financing Document without the prior written approval of Department. Any such assignment or transfer, if approved, is subject to such conditions and provisions as the Department may deem necessary. No approval by the Department of any assignment or transfer shall be deemed to create any obligation of the Department in addition to those set forth in the Contract or the other Financing Documents nor will Department's approval of an assignment or transfer relieve Borrower of any of its duties or obligations under this Contract or any of the other Financing Documents.

b. The provisions of this Contract and the other Financing Documents shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

25. **No Third Party Beneficiaries.** Department and Borrower are the only parties to this Contract and are the only parties entitled to enforce its terms. The parties agree that Borrower's performance under this Contract is solely for the benefit of Department. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

26. **Integration.** This Contract, including all Exhibits (which are by this reference incorporated herein), and the other Financing Documents constitute the entire agreement between the parties on the subject matter hereof. All Exhibits are incorporated in this Contract by this reference. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.

27. **No Remedy Exclusive, Waiver.** No remedy herein conferred upon or reserved to the Department is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract or any of the Financing 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. No single or partial exercise of any right, power or privilege under this Contract or any of the Financing Documents shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. To entitle the Department to exercise any remedy reserved to it in this Contract or any other Financing Document, it shall not be necessary to give any notice, other than such notice as is specifically and expressly required by this Contract or such Financing Document.

28. **Amendment.** No modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties and, when required, the Oregon Department of Justice. No waiver or consent shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

29. **Headings.** The headings and captions to sections of this Contract have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Contract.

30. **No Construction against Drafter.** The terms of this Contract shall not be construed against either party as the drafter hereof.

31. **Time is of the Essence.** Borrower agrees that time is of the essence under this Contract and the other Financing Documents.

32. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that Borrower is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

33. **Insurance.** So long as the Loan is outstanding, Borrower shall maintain fire and hazard insurance, liability insurance, and such other insurance against loss or damage to the Project or the Collateral of the kinds customarily insured against by persons or entities similarly situated, with an insurer acceptable to Department, in such amounts and by such methods as shall be adequate. Each insurance policy must contain a provision that there shall be no cancellation, material change, or refusal to renew such insurance policies without 30 days prior written notice to the Department. As evidence of the insurance coverages required by this Contract, and prior to the execution of this Contract, Borrower shall furnish certificate(s) of insurance to Department at the address set forth above. The liability insurance coverage

required by this section must name the State of Oregon, Economic and Community Development Department, including its officers and employees, as additional insureds but only with respect to acts or omissions of the Borrower, its officers, employees or agents or contractors under this Contract or with respect to the Project. Each policy shall contain a severability of interest clause. If Borrower is a Municipality, in lieu of obtaining insurance from a third party carrier, Borrower may, with the prior written approval of Department, satisfy the insurance requirements of this section through a program of self-insurance whose terms and conditions are acceptable to Department.

**34. Contract to Survive Lottery Bonds.** Borrower acknowledges that its duties, covenants, agreements, and obligations under this Contract and the other Financing Documents 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.

**35. Disclaimer of Warranties.** Borrower acknowledges and agrees that Department makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Projector any portions thereof or any other warranty or representation with respect thereto.

**36. Indemnity.** To the extent authorized by law, Borrower shall (subject to ORS chapter 180) defend, save, hold harmless, and indemnify the State of Oregon and Department and their officers, employees and agents from and against all claims, suits, actions, proceedings, losses, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of, arising out of, or relating to any act or omission (or alleged act or omission) by Borrower or its officers, employees, contractors, or agents under this Contract or any other Financing Document or with respect to the Project; provided, however, that the provisions of this section 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 other laws of the State of Oregon or under the laws of the United States.

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

**38. Unconditional Obligations.** The provisions of this Contract shall constitute a contract between Department and Borrower and shall be enforced by Department. The obligation of Borrower to perform, observe and discharge its duties, covenants, agreements and obligations contained herein and in the Financing Documents shall be absolute and unconditional, and shall not be subject to any of the following:

a. Any offset, counterclaim, recoupment, defense or other right that Borrower may have against Department or any contractor or anyone else for any reason whatsoever;

b. Abatement through damage, destruction or non-availability of the Project or System, including through eviction or constructive eviction or taking by eminent domain;

c. Any failure of Department to perform, observe or discharge any covenant, agreement, or obligation whether expressed or implied, or any duty, liability, or obligation arising out of or connected with the Project; or

d. Any other event, act of God, or circumstance whatsoever, whether or not similar to any of the foregoing.



**39. Limitation of Liability.** In no event shall Department or its agents be liable or responsible for any direct, indirect, incidental, special or consequential damages in connection with or arising out of this Contract, any other Financing Document or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided in connection therewith.

**40. Limitation of Borrower Remedies.** In the event of any failure by Department to perform, observe or discharge any of its covenants, agreements or obligation under this Contract, Borrower's remedy 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 Department hereunder as may be necessary or appropriate.

The parties hereto have executed this Contract as of the dates set forth below their respective signatures. Borrower, by signature of its Authorized Officer, 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



CITY OF ALBANY

By: \_\_\_\_\_  
Laird Bryan, Operations Manager  
Community Development Division

By: \_\_\_\_\_  
The Honorable Dan Bedore  
Mayor of Albany

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Lynn T. Nagasako, Sr. AAG (as per email dated 03/27/2008)  
Lynn T. Nagasako, Sr. Assistant Attorney General

Date: March 27, 2008

**EXHIBIT A**  
**GENERAL DEFINITIONS**

Capitalized words and phrases not otherwise defined in this Contract shall have the meanings assigned to them in this Exhibit, unless the context clearly requires otherwise:

**Actual Project Costs** means all expenses incurred by Borrower to complete the Project.

**Application** means Borrower's application to the Department for financing for the Project signed by an Authorized Officer of Borrower on August 24, 2006, as supplemented from time to time, which is on file with the Department.

**Area** means the Oak Creek Urban Renewal Area.

The term "**Assessment Revenues**" has the meaning ascribed thereto by Section IV.A. of Exhibit D.

**Authorized Officer** means, in the case of Borrower, a person authorized pursuant to a resolution, order or ordinance of Borrower's governing body to act as an authorized officer of Borrower to perform any act or execute any document relating to this Contract or a Financing Document on behalf of Borrower.

**Bond Indenture** means the Restated Indenture of Trust dated as of January 1, 2002, between the State of Oregon acting by and through the State Treasurer of the State of Oregon ("Issuer"), the Department and the Trustee under the Bond Indenture, pursuant to which the State Bonds are issued, and all amendments and supplement thereto adopted in accordance with the provisions thereof.

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

**Code** means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated pursuant thereto.

**Contract** means this Financing Contract, including any exhibits, schedules or attachments hereto, as it may be supplemented, modified or amended from time to time.

**Costs of the Project** means those eligible costs that are (a) reasonable, necessary and directly related to the Project, including any financing costs properly allocable to the Project, and preliminary costs such as engineering and architectural reports, studies, surveys, permits, soil tests, designs, plans, working drawings and specifications that are necessary for the construction of the Project.

**Counsel** means an attorney at law (who may be, without limitation, of counsel to, or an employee of, Department or Borrower) duly admitted to practice law in Oregon, or firm of attorneys at law.

**Default** means an event, which, with notice or lapse of time or both, would become an Event of Default.

**Department Financing** means the Grant and the Loan collectively.

**Development Agreement** means that certain development agreement between SVC, Borrower, Department, ODOT, Linn County, and Albany Millersburg Economic Development Corporation ("AMEDC"), dated as of October 26, 2006, as amended.

**Eligible Costs** means those Project costs that, in accordance with this Contract, applicable state and federal law, administrative rule or regulation, and applicable policy, are permitted uses of moneys comprising Department Financing.

**Financing Documents** means this Contract and all agreements, instruments, documents and certificates, including but not limited to all promissory notes, executed and delivered pursuant hereto or in connection herewith.

**First Payment Date** means the December 1 following the earlier of (1) the Project Completion Date, (2) the first (1st<sup>st</sup>) anniversary of the first Loan disbursement.

The term "**Grant**" has the meaning ascribed thereto by Section 2.a.

**Guaranty Fee** means the fee described in Section 2.04 of the Development Agreement that SVC agrees to pay to Borrower, subject to the terms and conditions of the Development Agreement.

The term "**Incremental Property Tax Revenues**" has the meaning assigned that term in Section II.A. of Exhibit D.

**Intergovernmental Agreement** or **IGA** means that certain intergovernmental agreement between Borrower and the URA, pursuant to which the URA, among other things, pledges the Incremental Property Tax Revenues from the Oak Creek Urban Renewal Area to repay the Loan.

The term "**LIDs**" has the meaning ascribed thereto by Section IV.A. of Exhibit D.

The term "**Loan**" has the meaning ascribed thereto by Section 2.a.

**Loan Closing Date** means the date on which all Financing Documents have been fully executed, and all conditions precedent to disbursement are met.

**Loan Payment** means a payment required to be made by Borrower pursuant to this Contract, or any other Financing Document.

**Loan Prepayment** means any payment by Borrower that is applied to the unpaid principal of the Loan and is in excess of the amount then required to be paid as a Loan Payment.

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

**Maturity Date** means the December 1 occurring after the nineteenth (19<sup>th</sup>) anniversary of the first Loan disbursement date, on which date the outstanding balance of the Loan must be paid in full.

**Municipality** means an entity described in ORS 285B.410(7).

**Non-Department Funds** means those funds needed to cover the Estimated Project Cost that are from sources other than the Department.

**Note** means that certain promissory note (substantially in the form of Exhibit F) executed by Borrower in favor of Department and evidencing the Loan.

**ODOT** means the State of Oregon acting by and through the Department of Transportation.

**Payment Date** means each December 1 on which a Loan Payment is due.

**Project** means the project described in Exhibit B.

**Project Completion Date** means the date the Project is deemed substantially complete by the Department.

**SVC** means SVC Manufacturing, Inc.

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

**True Interest Cost** means the annual discount rate that, when used to discount all debt service payments on the Loan to the date of the Loan, using a compounding interval equal to the interest payment periods for the Loan, results in the aggregate present value of such debt service payments being equal to the original Loan amount.

**URA** means Oak Creek Urban Renewal Agency.

**EXHIBIT B**  
**PROJECT DESCRIPTION**

Borrower will construct the municipally-owned infrastructure necessary to serve the Ellingson Road Industrial Site. The Project will include the extension of 53rd Avenue, between Highway 99E and Lochner Road; water, sewer and storm system improvements; industrial site access road and infrastructure; Oak Creek lift station upgrade; right-of-way acquisition; and engineering.

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

Exhibit C  
Page 1 of 2

Project Number: L08001 and 05-07-451

Project Name: Municipally-Owned Infrastructure for SVC Manufacturing, Inc.

Recipient: City of Albany

Funding Pgm(s): Special Public Works Fund  
Strategic Reserve Fund

(A)	Department Funds				Other/Matching Funds			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
Water System Improvements	\$1,463,000			\$1,463,000				
Sewer System Improvements	800,000			800,000				
Street Improvements	7,765,000			7,765,000				
Storm System Improvements	200,000			200,000				
Other Municipal Infrastructure	2,500,000			2,500,000				
Engineering	1,118,000			1,118,000				
Contingency	854,000			854,000	376,000		376,000	
Traffic Mitigation (conditional grant)	225,000			225,000				
<b>Total</b>	<b>\$14,925,000</b>			<b>\$14,925,000</b>	<b>\$376,000</b>		<b>\$376,000</b>	

Total Project Budget		
Funding Sources	Approved Budget	Expenditures To Date
Special Public Works Fund	\$14,425,000	
Strategic Reserve Fund	\$500,000	
Other/Matching Funds	376,000	
<b>Total Project Costs</b>	<b>\$15,301,000</b>	

Non-Department Funds (Other/Matching) Sources Used for all Expenditures		
Funding Sources	Approved Budget	Expenditures To Date
City of Albany	\$376,000	
<b>Total Non-Dept. Funds</b>	<b>\$376,000</b>	

Non-Department Funds (Other/Matching) IN-KIND		
Source of In-Kind Contribution	Goods/Services Donated	Value of Contribution To Date
<b>In-Kind Contributions To Date</b>		

Oregon Economic & Community Development Department  
Project Budget

**Project Number:** L08001 and 05-07-451  
**Project Name:** Municipally-Owned Infrastructure for SVC Manufacturing, Inc.

Project Goals (report for every cash request)		
Proposed Work Plan	Estimated Completion Date	Results Achieved
1 Hire Consultant	Dec 15, 2006	
2 Complete Design Work on 53rd Street	Jan 15, 2008	
3 Complete Water / Sewer Design	Jul 30, 2007	
4 Bid 53rd Street	Jan 18, 2009	
5 Bid Water / Sewer	Aug 15, 2008	
6 Award 53rd Street Contract	Mar 12, 2009	
7 Award Water / Sewer Contracts	Sep 8, 2008	
8 Start 53rd Construction	Mar 20, 2009	
9 Start Water/Sewer Construction	Sep 15, 2008	
10 Complete 53rd Street Construction	Sep 1, 2010	
11 Complete Water / Sewer Construction	Apr 1, 2009	
12 Project Completed	Sep 30, 2010	
13		
14		
15		
16		
17		
18		
19		
20		

**EXHIBIT D**  
**SPECIAL CONDITIONS OF AWARD**

**I. FULL FAITH AND CREDIT OBLIGATION**

The Borrower hereby pledges its full faith and credit and taxing power within the limitations of Article XI, Sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under the Loan Agreement and the Note. The Borrower hereby pledges its full faith and credit and taxing power within the limitations of Article XI of the Oregon Constitution to pay the amounts due under the Loan Agreement and the Note. The Loan Agreement and the Note shall be payable from all legally available funds of the Borrower.

**II. SECURITY - INCREMENTAL PROPERTY TAX REVENUES OF OAK CREEK URBAN RENEWAL AGENCY**

- A. The Loan shall be repaid from the ad valorem tax revenues from property within the Area which are attributable to the increase in assessed value of property within the Area as described in Section 1c, Article IX of the Oregon Constitution and ORS Chapter 457 (the "Incremental Property Tax Revenues") and all earnings thereon while the Incremental Property Tax Revenues are held in the Incremental Property Tax Revenues Fund for the Area. The Incremental Property Tax Revenues have been pledged to the Borrower by the URA as described in the IGA between the Borrower and the URA. The Borrower hereby grants to the Department a security interest in and irrevocably pledges the Incremental Property Tax Revenues of the URA to pay all of the obligations owed by the Borrower to the Department under the Loan Agreement, and this security interest shall be senior and superior to any other security interest or lien on the Incremental Property Tax Revenues of the URA.
- B. The Borrower shall not incur any obligations payable from or secured by a lien on and pledge of the Incremental Property Tax Revenues that is superior to or on a parity with the Loan without Department's written consent.
- C. Notwithstanding the requirement of paragraph II.B above, loans previously made and loans made in the future by Department to the Borrower that are secured by the Incremental Property Tax Revenues shall have a lien on such Incremental Property Tax Revenues on a parity with the Loan; provided however that nothing in this paragraph II.B shall affect the priority of the Department's lien as against the lien of any third party(ies).
- D. The Incremental Property Tax Revenues pledged pursuant to paragraph II.A above and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, except as provided in paragraphs II.B and II.C above, to the fullest extent permitted by ORS 287A.310. The Borrower hereby represents and warrants that the pledge of Incremental Property Tax Revenues hereby made by the Borrower complies with, and shall be valid and binding from the date hereof as described in ORS 287A.310.
- E. The Borrower hereby represents and warrants that:
  - (a) under the terms of the IGA the URA has pledged the Incremental Property Tax Revenues to the Borrower for payment of the Loan Payments and other obligations of this Financing Contract and the IGA is a valid and binding obligation of the URA and the Borrower, enforceable in accordance with its terms;



(b) the URA has covenanted in the IGA that: (1) it will not incur any obligations payable from or secured by a lien on or pledge of the Incremental Property Tax Revenues that is superior to or on a parity with the IGA without the written consent of the Borrower and the Department; (2) it will not remove any property from the Area if such removal will cause the anticipated Incremental Property Tax Revenues to be inadequate to pay the annual debt service on the Loan and any parity obligations; and (3) it shall not amend the IGA without the prior written consent of Department, which consent shall not be unreasonably withheld or delayed.

(c) the URA represented and warranted in the IGA that the Loan is within the maximum amount of indebtedness that may be incurred under the Oak Creek Urban Renewal Plan.

- F. Borrower agrees that it shall not amend the IGA without the prior written consent of Department, which consent shall not be unreasonably withheld or delayed.
- G. Borrower's obligations pursuant to the terms of this Section II (Security - Incremental Property Tax Revenues of Oak Creek Urban Renewal Agency) are expressly conditioned upon the Borrower's lawful adoption of the Oak Creek Urban Renewal Area and accompanying Plan. Should Borrower's actions to adopt the Oak Creek Urban Renewal Area and Plan be invalidated or overturned by a final, non-appealable decision in any court of competent jurisdiction, or should Borrower choose, in the exercise of political discretion, not to create the Oak Creek Urban Renewal Area and Plan, Borrower's obligations pursuant to this Agreement shall remain a full faith and credit obligation of the Borrower pursuant to Section I hereof.

### **III. PROJECT FEE AND GUARANTY FEE**

- A. The principal of and interest on the Loan shall be payable from the Guaranty Fee and the Project Fee (both as defined in the Development Agreement; the Project Fee and Guaranty Fee collectively the "Fees") paid by SVC or the owner of the Bottle Manufacturing Plant (as defined in the Development Agreement) to Borrower or URA. The Borrower hereby grants to the Department a security interest in and irrevocably pledges the Fees to pay all of the obligations owed by the Borrower to the Department under the Contract. Further, the Borrower shall cause URA to grant to the Department a security interest in and irrevocably pledge of the Fees (or the portion of the Fees that are payable to the URA to pay all of the obligations owed by the Borrower to the Department under the Contract.
- B. The Fees pledged pursuant to Section III.A above and hereafter received by the Borrower or URA shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent permitted by ORS 287A.310. The Borrower hereby represents and warrants that the pledge of the Fees hereby made by the Borrower complies with, and shall be valid and binding from the date of this Contract pursuant to, ORS 287A.310. The Borrower shall cause any pledge of the Fees made by the URA to comply with, and be valid and binding from the date of this Contract pursuant to, ORS 287A.310.

### **IV. ASSESSMENT REVENUES OF LOCAL IMPROVEMENT DISTRICTS**

- A. The Loan shall be payable from the revenues ("Assessment Revenues") generated from assessments levied against benefited properties located within the following Local Improvement Districts ("LIDs"): (i) Oak Creek; (ii) 53<sup>rd</sup> Avenue Roadway and Bridge Improvements; (iii) Ellingson Road Water Line Improvements; and (iv) Ellingson Road Sewer Improvements. The Borrower will provide the State with a breakdown of assessments per parcel based solely upon Costs of the Project (which shall not include the cost of establishing or administration of the LIDs). The Borrower hereby grants to the State a security interest in and irrevocably pledges the Assessment Revenues of the LIDs to pay all of the obligations owed by the Borrower to the State

under the Contract. As described in ORS 287A.310, the pledge of the Assessment Revenues of the LIDs hereby made by the Borrower shall be valid and binding from the later of the establishment of the LIDs or the date of this Contract.

- B. The Borrower will make up any deficiencies in the Assessment Revenue of the LIDs from any and all other pledged revenues.
- C. The Borrower must show that all benefited properties are participating.
- D. The Borrower shall not incur any obligations payable from or secured by a lien on and pledge of the Assessment Revenues that is superior to or on a parity with the Loan without State's written consent.
- E. Notwithstanding the requirement of paragraph IV.D. above, loans previously made and loans made in the future by State to the Borrower that are secured by the Assessment Revenues shall have a lien on such Assessment Revenues on a parity with the Loan; provided however that nothing in this paragraph IV.E. shall affect the priority of the Department's lien as against the lien of any third party(ies).
- F. The Assessment Revenues pledged pursuant to paragraph IV.A. above and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, except as provided in paragraphs IV.D. and IV.E. above, to the fullest extent permitted by ORS 287A.310. The Borrower hereby represents and warrants that the pledge of Assessment Revenues hereby made by the Borrower complies with, and shall be valid and binding from the date hereof as described in ORS 287A.310.

**EXHIBIT F  
PROMISSORY NOTE**

XXXXXXXXXXXXXXXX, XXXX

Albany, Oregon

FOR VALUE RECEIVED, City of Albany, 333 Broadalbin Street / PO Box 490, Albany, OR 97321 (hereinafter "Borrower"), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH ITS ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT, at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280 (hereinafter "Department"), the principal sum of Fourteen Million Two Hundred Thousand Dollars (\$14,200,000) or so much thereof as is disbursed pursuant to the Contract (as defined below), plus accrued interest on the outstanding principal balance at the applicable rate set forth Section 4.a. of the Contract. The initial interest rate is four and 91/100 percent (4.91%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12) thirty-day (30) months. All outstanding principal and accrued unpaid interest on this Note are due and payable in full on the Maturity Date (as defined in the Contract).

This Note is subject to the terms and conditions of, and secured in accordance with the terms of, that certain contract dated as of XXXXXXXXXXXXXXXX, XXXX, between the Department and the Borrower (as amended from time to time the "Contract"). Capitalized terms not otherwise defined in this Note shall have the meanings assigned to them by the Contract.

The interest on and principal of this Note is payable in accordance with the terms set forth in Section 4.b. of the Contract. This Note is subject to mandatory prepayment, and is payable prior to its maturity, as provided for in Sections 4.d. and 4.e. of the Contract. Each payment made by the Borrower hereunder shall be applied as provided in Section 5 of the Contract.

This Note is given to avoid the execution by Borrower of an individual note for each disbursement of Loan proceeds by Department to Borrower in accordance with Section 3 of the Contract. In consideration thereof, Borrower authorizes Department to record in Department's files the date and amount of each such disbursement, the date and amount of each payment and prepayment by Borrower hereunder and the amount of interest accrued and paid. Borrower further agrees that absent manifest error, such notations shall be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations shall not affect the obligations of Borrower hereunder or under any of the Loan Documents.

If any Event of Default occurs, the outstanding balance of the Note, including principal, interest and other charges, if any, shall, at the option of the Department, become immediately due and payable in accordance with Section 16 of the Contract. Failure or delay of the holder of this Note to exercise any option available to the Department under the terms of this Note or the Contract shall not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default and shall not constitute a waiver of any subsequent breach of the same or of any other provision of this Note or the Contract.

All parties to this Note hereby waive presentment, dishonor, notice of dishonor, and protest. All parties hereto hereby consent to, and the holder hereof is hereby expressly authorized to make, without notice, any and all renewals, extensions, modifications or waivers of the time for or the terms of payment of any sum of sums due hereunder, or under any documents or instruments relating to or securing this Note, or of the performance of any covenants, conditions or agreements hereof or thereof, or the taking or release of collateral securing this Note. No liability of any party of this Note shall be discharged by any action consented to above taken by any holder of this Note.

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

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

**CITY OF ALBANY  
(BORROWER)**

By: XXXXXXXXXXXXXXXXXXXXXXXXXX

Title: XXXXXXXXXXXXXXXXXXXXXXXXXX

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

**EXHIBIT G-1  
FORM OF LEGAL OPINION (BORROWER)**

[Municipality's Counsel letterhead]

[date]

City of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Oregon Economic and Community Development Department  
775 Summer Street NE, Ste. 200  
Salem, OR 97301-1280

Re: Financing Contract Related to an Oregon Economic and Community Development Department  
Loan and Grant to the City of \_\_\_\_\_

Ladies & Gentlemen:

This opinion is given with regard to that certain financing contract ("Contract") dated as of \_\_\_\_\_, between the Borrower (as defined below) and the State of Oregon acting by and through the Economic and Community Development Department. Capitalized terms not otherwise defined in this letter have the meanings assigned to them in the Contract.

It is the opinion of XXXXXXXXXXXXXXXXXXXXXXXXXX, counsel for the City of Albany ("Borrower"), that:

- (a) Borrower is a municipal corporation duly organized and validly existing under the laws of Oregon;
- (b) Borrower has the requisite power and authority to execute, deliver, and perform this Contract and the other Financing Documents. This Contract (including but not limited to those provisions regarding the application of the Assessment Revenues of the LIDs to repay the Loan, and the pledge of the Assessment Revenues of the LIDs to secure repayment of the Loan) and the other Financing Documents have been duly and validly authorized by Borrower and this Contract and the other Financing Documents have been executed and delivered by an Authorized Officer of Borrower and constitute the legal, valid, and binding obligations of Borrower. Subject to bankruptcy and other laws of general application affecting the rights and remedies of creditors, this Contract and the other Financing Documents are enforceable according to their terms, except that no opinion need be given as to the availability of equitable remedies other than foreclosure of the liens created by the Contract and the other Financing Documents in accordance with Oregon law.
- (c) Borrower is not in violation or default of any material agreement to which it is a party or by which it is bound. Borrower's execution, delivery, performance, and compliance with the terms of this Contract and the other Financing Documents do not violate any provision of any applicable law, rule, or regulation binding on Borrower, or of any judgment, writ, decree, or order known to such counsel to be binding on Borrower, or order of any court, regulatory commission, board, or other administrative agency or Borrower's organic documents and do not conflict with or constitute a default under the provisions of any agreement or instrument to which Borrower is a party or by which it is bound.

(d) All consents, approvals, orders, or authorizations of, and all qualifications, registrations, designations, declarations, or filings with any federal or state governmental authority on the part of Borrower required for the consummation of the transactions contemplated by this Contract and the other Financing Documents have been obtained and are effective as of the date hereof, other than licenses and permits relating to the Project that Borrower expects to receive during the Project and such counsel is not aware of any proceedings, or threat thereof, which question the validity thereof.

(e) There is no action, suit, proceeding, or investigation pending or threatened against Borrower, which would, if adversely determined, have a material adverse effect on the financial condition or business of Borrower or on the ability of Borrower to perform its obligations under this Contract or the other Financing Documents.

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

Signature

Date

Printed Name

XXXXXXXXXXXXXXXXXXXX

Company

XXXXXXXXXXXXXXXXXXXX

Address

XXXXXXXXXXXXXXXXXXXX

City, State, Zip

XXXXXXXXXXXXXXXXXXXX

**EXHIBIT G-2  
FORM OF LEGAL OPINION (URA)**

[URA Counsel letterhead]

[date]

Urban Renewal Agency of the City of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Oregon Economic and Community Development Department  
775 Summer Street NE, Ste. 200  
Salem, OR 97301-1280

Re: Intergovernmental Agreement Related to Repayment of, and Providing a Pledge of Incremental Property Tax Revenues for, an Oregon Economic and Community Development Department Loan with the City of \_\_\_\_\_

Ladies & Gentlemen:

The purpose of this letter is to provide an opinion regarding the above-captioned Intergovernmental Agreement with the City of \_\_\_\_\_ ("City"), approved by the Urban Renewal Agency of the City of \_\_\_\_\_ ("Agency") at a meeting held on \_\_\_\_\_, \_\_\_\_\_, and signed by the Agency and the City on \_\_\_\_\_, \_\_\_\_\_ ("Intergovernmental Agreement").

In acting as counsel to the Agency in this matter, I have examined the constitution and laws of the state of Oregon and the documentation from the formation of the Agency by the City in \_\_\_\_\_ of \_\_\_\_\_. I have also examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

- A. Proceedings of the governing body of the Agency relating to the approval of the Intergovernmental Agreement and related documents, and the execution, issuance and delivery thereof on behalf of the Agency; and
- B. All outstanding instruments relating to bonds, notes and other indebtedness of or relating to the Agency.

Based on the foregoing, I am of the opinion that:

- 1. The Agency is a duly formed and operating Oregon urban renewal agency as described in ORS 457.035.
- 2. The Agency has full legal right and authority to execute and deliver the Intergovernmental Agreement and related documents and to observe and perform its duties, covenants, obligations, and agreements thereunder, subject, however, to the effect of, restrictions and limitations imposed by or resulting from bankruptcy, insolvency, moratorium, reorganization, debt adjustment, or other similar laws affecting creditors' rights generally, heretofore or hereafter enacted. The Agency's legal right and authority is also subject to the provisions of ORS Chapter 457 on maximum indebtedness.

3. The motion of the Agency approving the Intergovernmental Agreement and authorizing its execution, issuance, and delivery on behalf of the Agency has been duly and lawfully adopted and authorized in accordance with Oregon law, and the motion was adopted at a meeting or meetings which were duly called with not less than forty-eight (48) hours prior public notice and held in accordance with applicable Oregon law, and at which quorums were present and acting throughout.
4. The Intergovernmental Agreement has been duly authorized, executed, and delivered by the authorized officers of the Agency and constituted the legal, valid, and binding obligation of the Agency enforceable in accordance with its respective terms; subject, however, to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and other similar laws affecting creditor's rights or remedies generally in the application of equitable principals.
5. To the best of my knowledge, after such investigation as I have deemed appropriate, the authorization, execution and delivery of the Intergovernmental Agreement by the Agency, the observation and performance by the Agency of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Agency or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, resolution, trust agreement, indenture, mortgage, deed or trust or other agreement to which the Agency is a party or by which it, or its property or assets is bound.
6. To the best of my knowledge, after such investigation as I have deemed appropriate, all approvals, consents, or authorizations of, or registration of or filings with, any governmental or public agency, authority or person required to date on the part of the Agency in connection with authorization, execution, delivery and performance of the Intergovernmental Agreement has been obtained or made.
7. To the best of my knowledge, after such investigation as I have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either state or federal) questioning the creation, organization or existence of the Agency or the validity, legality or enforceability of the Intergovernmental Agreement.

This opinion is rendered on the basis of the laws of the state of Oregon, as enacted and construed on the date hereof. I express no opinion as to any matter not set forth in the numbered paragraphs herein.

Sincerely,