

Date: April 12, 2021

Amount: \$250,000.00

RURAL ECONOMIC DEVELOPMENT LOAN AND SECURITY AGREEMENT

THIS RURAL ECONOMIC DEVELOPMENT LOAN AND SECURITY AGREEMENT (“Agreement”) dated as of the date first written above between the City of Hermiston, an Oregon municipal corporation (“Borrower”) and Umatilla Electric Cooperative, an Oregon cooperative corporation (“Cooperative”) sets forth the terms and understandings between Borrower and Cooperative regarding a loan (the “Loan”) that Cooperative is making to Borrower pursuant to 7 C.F.R. Part 1703, Subpart B -- Rural Economic Development Loan and Grant Program (the “Regulations”).

Cooperative has filed an application, rural development plan, scope of work and other supporting documents (collectively, the “Application Materials”) with the United States Government, pursuant to 7 C.F.R. § 1703.22 and § 1703.34 requesting a grant to establish a revolving loan fund to provide local financing for projects that foster economic development in rural areas. (A portion of the Application Materials is attached as Exhibit A).

The Government has agreed to make the grant to Cooperative to initially finance those projects more particularly described in the Letter of Conditions (the “Letter of Conditions”) between Rural Development and Cooperative dated January 25, 2021. (The Letter of Conditions is attached as Exhibit B).

Cooperative wishes to make a loan to Borrower for the purposes described in the Application Materials.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS HEREIN CONTAINED, COOPERATIVE AND BORROWER AGREE AS FOLLOWS:

1. **Loan Terms.**

A. Cooperative shall lend Two Hundred and Fifty Thousand Dollars (\$250,000.00) to Borrower, and the proceeds of the Loan shall be used solely to finance the Funland Playground Rebuild project in Hermiston, Oregon (the “Approved Purpose”), as set forth in the Cooperative’s Application materials. The proceeds of the Loan shall not be used to finance any costs or retire any indebtedness for the Approved Purpose incurred prior to the Government’s receipt on September 3, 2020 of the Application Materials.

B. Cooperative shall advance the proceeds of the Loan to the Borrower following the loan closing upon submission of a request for reimbursement, which will be supported with appropriate documentation that project costs have been incurred and any other evidence or documentation Cooperative or the Government (through Rural Development hereafter “RD”) considers necessary.

C. The Borrower shall repay the Loan in accordance with its promissory note in the form attached hereto as Exhibit C (the “Note”) to be executed by the Borrower and made payable to Cooperative. The Borrower shall begin to repay the Loan on the date set forth in the Note and shall continue paying without interruption until all indebtedness associated with the Loan has been repaid in full on or before the tenth (10th) anniversary of the date of the first advance of funds under the Note.

D. The Loan will not bear interest although indebtedness not paid when due will be subjected to late charges and other charges provided in the note described below.

E. If the Borrower fails to satisfy all conditions, requirements and terms prerequisite to the advance of the proceeds of the Loan from Cooperative to the Borrower as set forth in this Agreement before the first anniversary of the date of this Agreement, or such later date as Cooperative at its discretion may approve in writing in furtherance of the purposes of the Act, the Loan commitment shall be considered rescinded.

F. Borrower shall pay upon demand all expenses incurred by Cooperative in connection with the preparation of the Loan documents and the making of the Loan including, without limitation, expenses of Cooperative’s legal counsel.

G. Borrower shall pay upon demand all out-of-pocket expenses incurred by Cooperative in connection with servicing the Loan made to Borrower including the cost of required fidelity bond coverage. Such charges over the life of the Loan shall not exceed an amount equal to the sum of one (1%) percent per year of the outstanding principal on the first day of each year on the Borrower’s Loan.

H. If a suit, action or other proceeding of any nature whatsoever (including any proceeding under the Bankruptcy laws of the United States) is instituted in connection with any controversy arising out of this Loan Agreement or the Note, or to interpret or enforce their terms and provisions, the prevailing party shall be entitled to recovery of attorneys’, paralegals’, accountants’, and other experts’ fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

2. **Affirmative Covenants.**

A. Borrower shall execute and deliver the Note to Cooperative in order to evidence its obligation to repay the Loan by the terms of this Loan Agreement, the Letter of Conditions and the Note. Borrower shall pay all indebtedness evidenced by the Note in the manner and at the times described therein.

B. Borrower shall promptly use the proceeds of the Loan only in the manner and exclusively for the purposes set forth in the Application Materials as previously approved by RD and in accordance with the Letter of Conditions between Rural Development and Cooperative, and this Agreement and the Regulations (as they may be amended from time to time). No changes may be made in the foregoing without the prior written approval of Cooperative and RD. Until disbursed by the Borrower for authorized Loan purposes, the Borrower shall deposit the Loan Proceeds in a separate bank account which is fully insured by the Federal Deposit Insurance Corporation.

C. Borrower shall return to Cooperative as a prepayment on the Note all proceeds of the Loan, including any interest earned on the proceeds of the Loan, which have not been expended by Borrower for authorized Loan purposes before the second anniversary of the date of the advance of the proceeds of the Loan from Cooperative to Borrower, or such later date as Cooperative at its discretion may approve in writing.

D. Borrower shall make all payments on the Note by using a reasonable method of payment specified by Cooperative.

E. Borrower agrees to provide to Cooperative (a) an itemized list with attached invoices, receipts, bills of sale, and other evidence that shows the expenditures made on the Project for the Approved Purpose using the proceeds of the Loan and (b) a signed certification from an authorized official of Borrower to the effect "I certify that the proceeds of the Rural Economic Development Loan from Cooperative were expended on the approved purposes shown on this list and the attached invoices, receipts, bills of sale, and other evidence represent the items shown on this list." Such invoices, receipts, bills of sale, and other evidence must at least total the amount of funds that have been provided to Borrower using the proceeds of the Loan. The certified list must be provided upon completion of the Project, or by the first anniversary of the date of the advance of funds to Borrower, whichever occurs first. If all funds have not been expended by the first anniversary, Borrower must provide to Cooperative a certified list of current expenditures and a statement of its intended expenditure schedule. Upon completion of the Project, Borrower must provide to Cooperative a final certified list of the expenditures, including the attachments.

F. Borrower shall permit Cooperative officials and officials of Rural Development to inspect and copy its records about the Project during regular business hours. Representatives of Cooperative and Rural Development may inspect the Project itself during regular business hours.

G. Borrower shall comply with the Regulations, as they may be amended from time to time, including, without limitation, any federal regulations or federal statutes which the Regulations identify as being applicable to activities contemplated by the Application Materials or this Agreement.

H. So long as the Borrower remains obligated to Cooperative under the terms of any financial assistance previously or subsequently extended under the Act, Borrower shall fully perform all obligations to Cooperative which Borrower has undertaken concerning such assistance.

I. The Borrower shall complete the certification form, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions, attached hereto as Exhibit D. In addition, Borrower shall ensure that the certification form is

completed by all applicable parties in conjunction with any lower-tier transactions involving the Project.

3. **Security Agreement.**

A. As security for the payment of the indebtedness evidenced by the Note (and any renewals or extensions thereof), Borrower hereby grants Cooperative a security interest in collateral consisting of the following equipment, together with proceeds thereof (the “Collateral”):

All furniture, fixtures and equipment now or hereafter owned by Borrower; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all issues and profits thereon and proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of such property.

B. Borrower agrees to keep the Collateral in good repair and running condition, reasonable wear and tear excepted, and to replace at its own expense any worn, broken or defective parts.

C. Borrower agrees to keep the Collateral insured against loss by fire or theft for an amount not less than its market value by means of a policy of insurance that names the Cooperative as an additional insured. A certificate evidencing such insurance shall be provided to the Cooperative. The policy shall contain a provision prohibiting cancellation or modification unless Cooperative is given at least thirty days’ prior written notice.

D. Borrower agrees that the Collateral shall remain personal property and shall not become part of real property.

E. Borrower hereby authorizes Cooperative to prepare and file financing statements or other documents and to perform all other acts necessary to perfect security interests in the Collateral. Borrower agrees to take such further action as required by Cooperative for the purposes of perfecting and maintaining such security interests.

4. **Negative Covenant.**

Borrower shall not enter into or request Cooperative to approve any agreements which would permit third parties to fund, develop, manage, own, lease or operate the Project in a manner that would violate the Regulations or this Agreement if the Borrower were to undertake such activity in its own name.

5. **Representations and Warranties.**

The Borrower represents and warrants that on and as of the date first set forth above:

A. The Borrower has been duly organized and is validly existing as a municipal corporation in good standing under the laws of the State of Oregon, with the power and authority to perform its obligations under this Agreement, the Note and the Regulations.

B. This Agreement and the Note have been duly authorized, executed and delivered by the Borrower and such documents constitute the legal and binding agreements of the Borrower, enforceable against the Borrower in accordance with their respective terms, subject to (i) applicable laws of general application relating to or affecting creditors' rights generally and (ii) the application of general principles of equity regardless of whether such enforceability is considered in a proceeding in equity or at law.

C. The execution or the delivery by the Borrower of this Agreement and the Note; the consummation of the transactions contemplated herein or therein; and the fulfillment by the Borrower of the terms hereof or thereof, do not conflict with or violate, result in a breach of or constitute a default under any term or provision of the organizational documents of the Borrower or any law or regulation or any order now applicable to the Borrower of any court, regulatory body having jurisdiction over the Borrower, or the terms of any indenture, deed of trust, mortgage, note, note agreement or instrument to which the Borrower or any of its properties is bound. The Borrower has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exist that with the giving of notice or lapse of time or both would constitute such a default.

D. No approval, authorization, consent, order, registration, filing, qualification, license or permit of or with any state or federal court or governmental agency or body having jurisdiction over the Borrower is required by the Borrower for the consummation by the Borrower of the transactions contemplated by this Agreement, or the Note except such as have been obtained.

E. There is no pending or threatened action, suit or proceeding before any court or governmental agency, authority or body or any arbitrator concerning the Borrower, this Agreement, or the Note which, if adversely determined, would have a material adverse effect on the Borrower's ability to perform its obligations under this Agreement, or the Note.

F. All information, reports and other papers and data furnished to Cooperative by the Borrower concerning the application of the Borrower for the Loan were, at the time the same were so furnished, complete and correct in all material respects to the extent necessary to give Cooperative a true and accurate knowledge of the subject matter and no document furnished or other written statement made to Cooperative in connection with the Loan contains any untrue statement of a fact material to the financial condition of the Borrower or the Project or omits to state such a material fact necessary in order to make the statements contained therein not misleading.

G. The Borrower has reviewed the Regulations and understands and accepts the requirements which the Regulations impose upon it.

H. The Borrower does not expect or intend the Project to result primarily in the transfer of any existing employment or business activity from one area to another.

6. **Default.**

A. Upon the occurrence of an event of default as defined in this Agreement, the holder of the Note may declare all or any portion of the indebtedness arising under this Agreement,

including indebtedness evidenced by the Note, to be immediately due and payable and may proceed to enforce its rights under this Agreement and the Note.

B. As used in this Agreement, the term “event of default” shall mean the occurrence of any of the following:

- (1) Any principal installment is not paid within ten (10) days of the date on which it is required to be made, whether by acceleration or not;
- (2) Failure, inability or unwillingness of the Borrower to carry out or comply with, or cause to be carried out or complied with, the specific undertakings described in the Application Materials;
- (3) Any representation or warranty made by the Borrower herein, in the Application Materials, or in any certificate or report furnished by or on behalf of the Borrower about any of the foregoing shall prove to be false, incomplete or incorrect in any material respect;
- (4) Default shall be made in due observance or performance of any of the covenants, conditions or agreements of the Borrower, and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Borrower by the holder of the Note;
- (5) An event of default shall have occurred and be continuing under any mortgage or security agreement of the Borrower which secures any form of financial assistance heretofore or hereafter furnished to the Borrower by Cooperative;
- (6) Commencement of a case in bankruptcy by or against the Borrower;
- (7) Application for appointment of a receiver for, making a general assignment for the benefit of creditors by, or insolvency of the Borrower; or
- (8) Violation of the Regulations in any material respect, by trustees or other officials, employees or agents of the Borrower, and such violation shall continue for a period of thirty (30) days without being rectified to the satisfaction of Cooperative after written notice specifying such default and requiring the same to be rectified has been given by Cooperative to the Borrower.

7. **Miscellaneous.**

A. Every right or remedy herein conferred upon or reserved to the holder of the Note shall be cumulative and shall be in addition to every other right and remedy now or hereafter existing at law or in equity, or by statute or regulation.

B. The invalidity of any one or more phrases, clauses, sentences, paragraphs or provisions of this Agreement shall not affect the remaining portions hereof.

C. This Loan Agreement is entered into between the parties concerning a zero interest loan which Cooperative is making to the Borrower to promote rural economic development and job creation projects. Accordingly, so long as Cooperative shall, under the terms of this Agreement, be the holder of the Note, this Agreement and the Note shall each be governed by and construed in accordance with the laws of the United States and the Regulations.

D. Borrower shall provide sufficient financial, accounting and budget information and other records deemed necessary to facilitate audits in accordance with 7 CFR Part 3015 and 7 CFR Part 3019, and RUS regulations applicable to rural economic development loan reviews.

E. The Cooperative's obligation to disburse loan funds to Borrower is specifically conditioned upon Borrower completing all its obligations specified in the Regulations and in the Letter of Conditions. Included within these obligations are the following:

(1) Delivering to Cooperative an opinion of counsel for the Borrower, in a form of a typical opinion letter given to a lender in the State of Oregon in commercial loan transactions, opining as to the legal ability of the Borrower to incur debt and perform its obligations under this Agreement.

G. Furthermore, the Cooperative shall be under no obligation to disburse loan funds until it has received Grant Funds from USDA Rural Development as provided in the Letter of Conditions.

[Signatures on Following Page]

IN WITNESS WHEREOF, the City of Hermiston, as Borrower, has caused this Loan Agreement to be signed in its name and attested by its duly authorized official's thereunto, and Cooperative, has caused this Loan Agreement to be duly executed in its behalf, all as of the day and year first written above.

City of Hermiston, Oregon

Title:

ATTEST:

Title:

Umatilla Electric Cooperative

Bryan Wolfe, President