

LOAN AGREEMENT

THIS LOAN AGREEMENT (“Loan Agreement”) is made this _____ day of _____ 2023, by and between **Business Impact NW**, an Oregon non-profit corporation (“Borrower”) and **City of Tigard**, an Oregon municipal corporation (“City”).

RECITALS

- A. On January 17, 2023, the City of Tigard received responses to a Request for Proposal (“RFP”) from entities engaged in small business lending with the intent of establishing a Small Business Loan Fund to be administered by appropriate community entities for the purpose of providing capital to businesses in the City, with a focus on supporting socially and economically disadvantaged entrepreneurs.
- B. Borrower submitted a proposal in response to the RFP to develop a qualifying Small Business Loan Fund within guidelines required by City.
- C. City has selected Borrower’s proposal and intends to provide a Loan to Borrower, as set forth in this Loan Agreement and related documents, in the amount of Four Hundred Thousand Dollars (\$400,000.00).

AGREEMENT

NOW THEREFORE, the parties agree as follows:

1. DEFINITIONS.

Capitalized terms not otherwise defined in the body of this instrument shall be defined within this section.

“**Fiscal Year**” means the period beginning on the first day of July of each year and ending on the last day of June.

“**Financing Statement**” means the UCC Financing Statement between Borrower, as the debtor, in favor of City of Tigard, as the secured party and filed with the Oregon Secretary of State.

“**Loan Documents**” means this Loan Agreement, the Note, the Scope of Work, the UCC Financing Statement, and any other agreement executed by Borrower in connection with this Loan Agreement.

“**Note**” means the promissory note executed by Borrower in favor of City and evidencing the loan set forth in this Loan Agreement, as the same may be amended, restated, or replaced from time to time.

“**Maturity Date**” means that date set forth as the Maturity Date in the Note.

“**Program**” means administration of a revolving loan fund as defined by the Loan Agreement, Scope of Work, and Promissory Note.

2. LOAN GENERALLY

2.1 Loan. On the terms and conditions of this Loan Agreement, City agrees to make a loan to Borrower in the maximum principal amount of \$400,000.00 (the "Loan"). The Loan is evidenced by and repayable with interest in accordance with this Loan Agreement and the Note. The Loan is repayable in accordance with the terms of the Note and this Loan Agreement. All payments and prepayments of principal and interest on the Loan and all other amounts payable hereunder by Borrower to City will be made to:

City of Tigard
Attn: Finance Department
13125 SW Hall Blvd
Tigard, OR 97223

or at such other address as City may specify in writing.

2.2 Interest. Interest will accrue on the outstanding balance of the Loan as provided in the Note. Amounts past due, whether by late payment, maturity, acceleration, or otherwise, will bear interest at the Default Rate set forth in the Note.

2.3 Initial Disbursement. Provided that all the obligations of Borrower under the Loan Documents are satisfied, City will disburse \$400,000.00 of the Loan to Borrower upon closing and execution of the Loan Documents (the "Initial Disbursement"), into a loan fund of Borrower acceptable to City of Tigard ("Loan Account").

3. CONDITIONS PRECEDENT TO DISBURSEMENT.

Prior to disbursement of City Loan funds:

3.1 Each of Borrower's representations and warranties contained in the Loan Documents must be true and correct in all material respects as if made on and as of the date of such disbursement;

3.3 No Event of Default may have occurred and be continuing under this Loan Agreement, including without limitation, a failure to perform any covenant set forth in Section 4 or any other Loan Document, and no event may have occurred that, with the giving of notice or passage of time or both, would constitute an Event of Default;

3.4 Borrower must not be in default with any other loan with a third party and no event may have occurred that, with the giving of notice or passage of time or both, would constitute a default;

3.5 At all times during the term of the Loan, Borrower must maintain a loan loss reserve fund, acceptable and subject to review upon request by City; and

3.6 City funds disbursed under this Loan Agreement are to be used solely for the purpose of making sub-recipient loans as part of the Program. Borrower may not use any portion of the Loan proceeds for operating expenses, provided, however, that Borrower may use the proceeds of any interest Borrower earns on sub-recipient loan receipts for Borrower operating expenses, but only

to the extent that such proceeds exceed the amount necessary to pay Borrower's obligation on the amount of the Loan attributable to the sub-recipient loan from which such interest proceeds derive.

4. COVENANTS OF BORROWER

Borrower covenants as follows with respect to the Program, unless City has waived compliance in writing:

4.1 City and its agents and representatives have the right at any reasonable time and upon reasonable notice to inspect any or Borrower's documents or work related to the Program.

4.3 All funds disbursed hereunder will be used by Borrower solely for the purpose of making sub-recipient loans as part of the Program.

4.4 Borrower agrees to provide City, upon City's request, a report that shows how City funds have been deployed.

5. BORROWER'S REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to City as follows:

5.1 **Status; Business.** Borrower is a non-profit corporation duly organized and validly existing under the laws of the State of Oregon and has the power and authority to enter into the Loan Documents.

5.2 **No Violations or Default.** Borrower is not in default under or in violation of any indenture or agreement to which it is a party or by which it is bound, or any order, regulation, ruling, or requirement of a court or other public body or authority. No creditor has given Borrower notice or threatened to give it any notice of default under any material agreement.

5.3 **Litigation.** No action, suit, investigation, or proceeding is pending against Borrower or with respect to the Program before any court or administrative agency, (a) the outcome of which, by itself or taken together with other such litigation, might have a material adverse effect on the business, assets, operations, or financial condition of Borrower, or (b) which purports to affect the legality, enforceability, or validity of any Loan Document

5.4 **Tax Returns and Taxes.** All federal, state, and other tax returns of Borrower required by law to be filed have been filed. All other taxes applicable to Borrower, including real property taxes (to the extent not abated in accordance with applicable law), are current.

5.5 **Compliance With Laws.** Borrower is in material compliance with all federal, state, and local laws, rules, regulations, ordinances, and orders applicable to it or the Program, and the operation thereof.

5.6 **Financial Statements.** All financial statements delivered by Borrower to City will, as of the date thereof, be true, correct, and complete, fairly present the financial condition of Borrower, the Loan Account, and the Program at the dates thereof; and be prepared in accordance with generally accepted accounting principles and practices in the United States, consistently applied. Since the

date of the most recent financial statements delivered to City, there has been no material adverse change in the financial condition of Borrower or Program.

6. AFFIRMATIVE COVENANTS

At all times during the term of this Loan Agreement and until all amounts and obligations owing hereunder and under any other Loan Document have been paid and performed, Borrower covenants and agrees as follows:

6.1 Licenses; Maintenance of Business. Borrower will remain a non-profit corporation validly existing under the laws of Oregon.

6.2 Performance of Obligations. Borrower will pay the principal of and interest on the Loan in accordance with the terms of the Note and this Loan Agreement and will pay when due all other amounts payable by Borrower hereunder or under any Loan Document.

6.3 Compliance with Laws and Use Restrictions. To the extent that Borrower is able, Borrower will comply with all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to Borrower.

6.4 Other Obligations. To the extent that Borrower is able, Borrower will pay and discharge before the same becomes delinquent, all indebtedness, taxes, and other obligations for which it is liable or to which its income or property is subject and all claims for labor and materials or supplies which, if unpaid, might become by law a lien. If Borrower fails to discharge any such claim or lien, City may, in its sole discretion and without waiving the default, pay the same, which payment will, at City's option, be added to the amount outstanding under the Note.

6.5 Indemnity. Borrower will indemnify and hold City, its officers, employees, elected officials, agents, and insurers harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees and title costs and expenses) which any of them may suffer or incur in connection with (a) the inaccuracy of any of the representations and warranties made herein, or (b) any transaction contemplated by this Loan Agreement or any other Loan Document.

6.6 Financial Information. No later than 90 days following the end of each Fiscal Year, Borrower will provide City annual audited financial statements, which must meet the requirements of Section 5.7 above.

6.7 Additional Payments; Additional Acts. From time to time, Borrower will execute and deliver all such instruments, provide such additional information, and perform all such other acts as City may request to carry out the transactions contemplated by the Loan Documents.

6.8 Financial Condition of Borrower. Borrower must remain compliant with the following financial covenants:

- Financial Health: 2-Year Net Income Ratio (Net Revenues / Net Expenses) > 1
- Leverage: Senior Debt to Equity Ratio < 4
- Portfolio Performance: 2 Year Loss Rate Ratio [Total Charge offs / Average Loan Portfolio] < 10%

7. EVENTS OF DEFAULT

Any of the following may be an event of default (“Event of Default”) under this Loan Agreement:

7.1 Failure to Pay Obligations Under Note When Due. Borrower fails to pay any sum due under the Note within thirty (30) days after the date it is due, or fails to pay any other amount required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, taxes, assessments, insurance and any other payment necessary to prevent filing or imposition of any liens), within thirty (30) days after written notice of nonpayment from City specifying the default.

7.2 Failure to Comply with Covenants. Borrower fails to perform or abide by any other covenant in this Loan Agreement or in the Loan Documents and such failure, to the extent curable, is not cured within thirty (30) days after written notice from City specifying the default or, if such breach cannot with due diligence be cured within such period, if Borrower fails within such thirty (30) day period to commence cure of the failure and thereafter diligently prosecute to completion such cure (which cure in any event must occur within sixty (60) days after the default notice).

7.3 Failure to Obtain City’s Consent to Transaction. Borrower engages in a sale, transfer or assignment, or uses Loan proceeds, in violation of the terms of the Note, or the Loan Documents, or changes the use of the Property without City’s prior written consent.

7.4 Failure to Comply. Borrower fails to perform any of its obligations under the Note, this Loan Agreement, or any of the Loan Documents and fails to cure the default within the applicable cure period, if any, set forth therein.

7.5 Failure to Pay General Debts When Due.

(a) Borrower or any guarantor of the Loan (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself for of all or a substantial part of its property, (ii) admits in writing its inability to pay, or generally is not paying its debts as they become due, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary action under the United States Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (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) fails to controvert in a timely or appropriate manner, or acquiesces or consents in writing to, any petition filed against it, in an involuntary action under the United States Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing.

(b) A proceeding or case is commenced against Borrower, without its consent, in any court of competent jurisdiction seeking the liquidation, reorganization, dissolution, windup, or composition or readjustment of the debts of Borrower, (ii) a receiver, trustee, custodian, liquidator, or the like is appointed for Borrower or for all or a substantial part of its assets, or (iii) relief is granted to Borrower under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or (iv) an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for any period of 60 days, or an order for relief against Borrower is entered in an involuntary case under the United States Bankruptcy Code.

7.6 Failure to Disclose Material Facts. Borrower fails to disclose any fact material to the making of any loan to Borrower, or upon discovery by City of any misrepresentation by, or on behalf of, or for the benefit of Borrower.

7.7 Default Under Other Loans. Borrower defaults under any other loan and fails to cure such default within any applicable cure period set forth in the loan documents relating to such loan. If Borrower cures a default under any other loan, that cure constitutes a cure under the Note, or the Loan Documents, provided Borrower is not in default of any other provision of the Note, or the Loan Documents.

8. RIGHTS AND REMEDIES ON DEFAULT

Upon the occurrence of an Event of Default and at any time thereafter City may, at its option, exercise any one or more of the following rights and remedies:

8.1 Acceleration. City may declare the entire remaining unpaid balance of principal and unpaid accrued interest and other charges payable by Borrower pursuant to the Note or any other Loan Document, to be immediately due and payable in full.

8.2 Other Remedies. Upon the occurrence of any Event of Default, City, in addition to all remedies conferred by law and by the terms of the Loan Documents or any other documents serving as security for Borrower's indebtedness, may accelerate maturity of the Note, and demand payment of the principal sums due thereunder with interest, advances and costs, and in default of said payment or any part thereof, may exercise the power of sale, if given and available, and pursue any or all of its other rights and remedies under the Loan Documents.

8.3 Action on Note. The Note and other Loan Documents are separate and distinct instruments separately or collectively enforceable in accordance with their terms.

8.4 Rights and Remedies. City has any other right or remedy provided in the Note, the Loan Documents, or any other instrument delivered by Borrower in connection therewith, or available at law, in equity, or otherwise in such order and manner as it may select.

8.5 Interest on Default. Upon the occurrence of any Event of Default, interest under the Note will accrue interest on the unpaid principal balance from the date of the Event of Default, or if the Event of Default is a payment default, from the date the first unpaid payment was due, at a rate (the "Default Rate") equal to the lesser of four (4) percentage points above the then-current rate stated in the Note, as applicable, or the maximum interest which may be collected from the holder of the Note under applicable law. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest will bear interest from the Maturity Date at the Default Rate.

8.6 Rights and Remedies Cumulative. All rights and remedies described in this Section 8 are cumulative and in addition to any other remedy City may have by agreement, at law, or in equity. Partial exercise of any right or remedy may not limit or restrict City's subsequent exercise of such

right or remedy nor restrict City's contemporaneous or subsequent exercise of any other right or remedy.

8.7 No Waiver. No failure or delay of City in exercising any right hereunder may operate as a waiver of that right or any other right.

8.8 Payment of Costs of Collection. In case of a default, or in case litigation is commenced to enforce or construe any term of the Note, or any other Loan Document, the losing party will pay to the prevailing party such amounts as may be sufficient to cover the cost and expense of collection or enforcement, including, without limitation, reasonable attorney fees and costs prior to and at any arbitration proceeding or at trial, on appeal, or in any bankruptcy proceeding

9. MISCELLANEOUS

9.1 Indemnity. Borrower will indemnify and hold City, its officers, employees, elected officials, agents, and insurers harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees and title costs and expenses) which any of them may suffer or incur in connection with this Loan Agreement or any other Loan Document including, without limitation, any claim based on the inaccuracy of any of the representations and warranties made herein.

9.2 Insurance. Borrower will carry commercial general liability insurance, subject to City's review and approval, showing City of Tigard as an Additional Insured. Borrower must maintain such insurance for the life of the Loan and provide City with insurance certificates naming the City of Tigard as Additional Insured for amounts not less than Lender's Loan.

9.3 Ownership/Change in Control. Borrower may not sell or transfer any beneficial interest in Borrower without the written approval of City, such approval may not unreasonably be withheld.

9.4 Counterparts. This Loan Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed by the parties will constitute a full and original instrument.

9.5 Survival. All agreements, representations, and warranties will survive the execution and delivery of this Loan Agreement, any investigation at any time made by City or on its behalf, the making of the Loan, and the delivery of the Note.

9.6 Notice. Any notice required or permitted under this Loan Agreement must be in writing and deemed effective: (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for "next day" delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by facsimile (answer back or receipt confirmed), addressed to the parties as follows:

If to Borrower:

Business Impact NW
Attn: Joe Sky-Tucker, President
12720 Gateway Dr S #207
Tukwila, WA 98168

If to City of Tigard:

City of Tigard
Attn: Lloyd Purdy, Economic Development Manager
13215 SW Hall Blvd
Tigard, OR 97223

With a copy to:

City of Tigard
City Attorney
13215 SW Hall Blvd
Tigard, OR 97223

9.7 Successors and Assigns. This Loan Agreement is binding upon and will inure to the benefit of the parties and their respective permitted successors and assigns.

9.8 Governing Law. This Loan Agreement and the other Loan Documents will be governed by and construed under Oregon law.

9.9 Assignment. Borrower may not assign this Loan Agreement without the prior written consent of City.

9.10 Modification; Prior Loan Agreements; Headings. This Loan Agreement may not be modified or amended except by an instrument in writing signed by Borrower and City. This Loan Agreement, taken together with the other Loan Documents, reflects and sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. The headings in this Loan Agreement are for the purpose of reference only and may not limit or otherwise affect any of the terms hereof.

9.11 Validity; Severability. If any provision of this Loan Agreement is held to be invalid, such event may not affect the validity of the remainder of this Loan Agreement, which will be construed so as to carry out the intent of the parties to the extent possible without the invalid provision.

9.12 Exhibits. Any exhibits attached to this Loan Agreement and referred to herein are incorporated in this Loan Agreement as if they were fully set forth in the text hereof.

9.13 Time of Essence. Time is of the essence of this Loan Agreement and each of the Loan Documents.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their duly authorized representatives as of the date first above written.

[Signature Page to Follow]

Business Impact NW

By: _____

Name: Joe Sky-Tucker

Title: President

Date: _____

City of Tigard

By: _____

Name: Steve Rymer

Title: City Manager

Date: _____

Exhibit A

Scope of Work

Summary

Work under this Loan Agreement includes the administration of a business-focused lender-managed loan fund, fund creation, administration, loan origination, and annual reporting for a loan fund created to serve businesses in Tigard leveraging \$400,000 in City funding. Business Impact NW will use the funds for small business loans in the Tigard city limits.

The City of Tigard business loan fund will include a \$400,000 capital investment in the form of a Promissory Note.

- 5-year term with an option exercised by the City to renew for 5 additional years.
- 0.5% annual interest paid annually to the City of Tigard.
- A 10% Loan administration fee for Business Impact NW collected at the end of the term.
- Balloon payment to the City of Tigard of \$360,000 at the end of term or optional second term (Promissory note amount less a 10% loan administration fee).
- An option after one year to renegotiate the use of any funds not yet disbursed.

By investing \$400,000 with Business Impact NW for 10 years, Business Impact Northwest's lending department can distribute approximately \$1.2 million in loans to Tigard businesses. The City's initial \$400,000 will be able to revolve about 3 times over a 10-year period.

Business Impact Northwest Obligations

1. Participate, on an as needed basis, in relevant outreach and loan origination activities.
2. Receive loan referrals from the City and other referral partners.
3. Confirm with economic development manager that prospective clients operate in the City.
4. Conduct initial meetings with referred clients to assess if their loans are a good fit, answer questions, or direct them to technical assistance resources as needed.
5. Accept loan applications and provide technical assistance as appropriate.
6. Underwrite loan applications.
7. Negotiate and close loans that are approved.
8. Service loans.
9. Provide or refer technical assistance as needed.
10. Meet reporting requirements set forth in this scope of work.

Business Impact Northwest Reporting Requirements

The following reports are required from Business Impact Northwest over the term of the promissory note:

- **Closing Report** (Quarterly on the calendar year) – Summary of loans closed, business details, amounts, loan purpose (use of funds), source of capital (e.g. from third parties) and business demographics.
- **Portfolio Report** (Annually on the anniversary of this Loan Agreement) – Status of each loan made to Tigard businesses.
- **Business Success Outcomes** (Annually on the anniversary of this Loan Agreement) – impact including revenue growth, employment growth, and qualitative update on businesses supported with loans.
- **Business Impact NW Annual Audited Financial Statements** (Annually)

Exhibit B

Promissory Note

BORROWER: Seattle Economic Development Fund
dba Business Impact Northwest

DATE OF AGREEMENT: June 15, 2023

MATURITY DATE: June 15, 2028 (or June 15, 2033 with extension)

LENDER: City of Tigard

PRINCIPAL AMOUNT: \$ 400,000.00

This Loan Agreement is between Seattle Economic Development Fund dba Business Impact Northwest (“Borrower”) and City of Tigard (“Lender”).

Draw Window. Borrower must submit a draw request from the City for funds within 90 days of signing the Loan Agreement. Interest accrual begins when funds are deposited.

Promise to Pay. Borrower promises to pay to Lender, in lawful money of the United States of America, the principal amount set forth above, or so much as may be outstanding, with interest until paid in full.

Interest Rate. The principal balance shall bear interest at one half percent (0.5%) per annum, until fully paid. Lender may waive this rate and require the Borrower to pass that savings on to commercial loan recipients.

Term. The term of this Loan Agreement will begin on the date of this Loan Agreement and end on the Maturity Date set forth above. The Lender may extend to a second five-year term by mutual agreement of the parties, in writing, at least 60 days prior to the Maturity Date.

After 12 months of operation, Lender and Borrower may revise this Promissory Note to redefine how funds not yet committed to business loans may be used.

Payments. Borrower will make interest only payments each year and one (1) balloon payment of the outstanding principal minus 10%, accrued interest and any fees on the Maturity Date of this Loan Agreement.

Borrower will make periodic payments due on the anniversary date of this Loan Agreement. In the event any periodic payment is not paid within thirty (30) days of the due date, Borrower will pay a late fee in the amount of one hundred dollars (\$100) per day.

Borrower will pay Lender at Lender’s principal office or at such other place as Lender may designate in writing. Unless otherwise agreed or required by applicable law, payments will be

applied first to fees, then to interest, then to principal, and any remaining amount to any unpaid collection costs and late charges.

USE OF FUNDS Lending capital may only be used to make commercial loans to Tigard businesses and subject to the following requirements:

- No more than \$100,000 may be allocated to any one business.
- Loan term must be 5 years or less.
- Loans should primarily be used for the purposes of growing revenues or attracting businesses to Tigard. Refinancing of other loans is not encouraged and will be limited to instances where refinancing will free up sufficient cashflow to service a broader growth capital loan.

Business Impact NW

City of Tigard

By: _____

By: _____

Name: Joe Sky-Tucker

Name: Steve Rymer

Title: President

Title: City Manager

Date: _____

Date: _____