



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**July 6, 2000**

**Ordinance 13890**

**Proposed No. 2000-0314.1**

**Sponsors Phillips**

1 AN ORDINANCE authorizing the executive to enter into an  
2 agreement with the state of Washington Department of  
3 Ecology regarding the refinancing of West Point secondary  
4 treatment facilities.

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**BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:**

8

**SECTION 1.** The executive or the executive's designee or designees are hereby

9

authorized to enter into an agreement with the state of Washington Department of

Ordinance 13890

10 Ecology, substantially in the form of Appendix A attached to this ordinance, for the  
11 refinancing of West Point secondary treatment facilities.  
12

Ordinance 13890 was introduced on 5/30/00 and passed by the Metropolitan King County Council on 7/5/00, by the following vote:

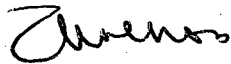
Yes: 12 - Mr. von Reichbauer, Ms. Miller, Mr. Phillips, Mr. Pelz, Mr. McKenna, Ms. Sullivan, Mr. Nickels, Mr. Pullen, Mr. Gossett, Ms. Hague, Mr. Vance and Mr. Irons  
No: 0  
Excused: 1 - Ms. Fimia

KING COUNTY COUNCIL  
KING COUNTY WASHINGTON



Pete von Reichbauer, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this

12 day of July, 2000

  
Ron Sims, County Executive

Attachments

A. King County, Washington Department of Ecology Refinancing Loan Agreement

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WASHINGTON STATE  
DEPARTMENT OF  
E C O L O G Y

**WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND**

**REFINANCING LOAN AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

**AND**

**KING COUNTY DEPARTMENT OF NATURAL RESOURCES  
WASTEWATER TREATMENT DIVISION**

Project Title: West Point Secondary Treatment Facilities Upgrade

Refinance Loan No.: L0000020

Loan Amount: \$13,838,279

Interest Rate: 1.5%

Loan Term: 20 Years

Effective: \_\_\_\_\_, 2000

**WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND  
REFINANCING LOAN AGREEMENT  
BETWEEN  
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND  
KING COUNTY DEPARTMENT OF NATURAL RESOURCES  
WASTEWATER TREATMENT DIVISION**

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**WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND  
REFINANCING LOAN AGREEMENT BETWEEN  
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND  
KING COUNTY DEPARTMENT OF NATURAL RESOURCES  
WASTEWATER TREATMENT DIVISION  
FOR THE  
WEST POINT SECONDARY TREATMENT FACILITIES**

THIS is a binding Refinancing loan agreement, hereinafter the "Loan," entered into by and between the state of Washington, Department of Ecology (the "DEPARTMENT"), and King County Department of Natural Resources, Wastewater Treatment Division (the "RECIPIENT"). The purpose of this loan agreement (the "AGREEMENT") is to provide funds (the "LOAN") to the RECIPIENT to carry out the activities (the "PROJECT") described herein.

This AGREEMENT consists of 13 pages and eight (8) attachments. This AGREEMENT incorporates by attachment and by reference the documents listed in ATTACHMENT 1.

Capitalized terms used, but not otherwise defined, in this AGREEMENT are defined in ATTACHMENT 2.

## I. THE PARTIES

### A. RECIPIENT Information

Name and Address: King County Department of Natural Resources  
Wastewater Treatment Division  
201 South Jackson Street  
Seattle, WA 98104-3855

Contact: Linda Biarum  
Telephone Number: (206) 684-1030  
E-Mail Address: Linda.Biarum@metrokc.gov  
Fax Number: (206) 684-1741

Federal Taxpayer ID Number: 91-6001327

### B. DEPARTMENT Information

Address: Water Quality Program  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Project Manager and  
Financial Manager:

Address:

Shara M. Stelling  
Financial Management Section  
Water Quality Program  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
(360) 407-6570  
stel461@ecy.wa.gov  
(360) 407-6428

Telephone Number:

E-Mail Address:

Fax Number:

Catalog of Federal Domestic Assistance Number: 66-458

### C. Changes to Contact Information

The RECIPIENT may modify its Contact designated above, and the DEPARTMENT may modify its Project and Financial Manager designated above, by letter to that effect mailed to the others at the respective addresses shown in Sections I-A and I-B above.

## II. AUTHORITY

### A. Authority of RECIPIENT

This AGREEMENT is authorized (i) by the Constitution and laws of the state of Washington, including the RECIPIENT's authority thereunder, and (ii) by the RECIPIENT pursuant to the ordinance or resolution attached hereto as ATTACHMENT 3.

### B. Opinion of RECIPIENT's Legal Counsel

The DEPARTMENT has received an opinion of legal counsel to the RECIPIENT in the form and substance of ATTACHMENT 4.

## III. TERM OF AGREEMENT

The effective date of this AGREEMENT shall be the date this AGREEMENT is signed by the DEPARTMENT's Water Quality Program Manager. Any work performed prior to the effective date of this AGREEMENT without prior written authorization of the DEPARTMENT will be at the sole expense and risk of the RECIPIENT. (See SPECIAL TERMS AND CONDITIONS)

This AGREEMENT shall remain in effect until the date of final repayment of the LOAN, unless terminated earlier according to the provisions herein.

## IV. THE PROJECT

**A. PROJECT Description**

The RECIPIENT shall use the SRF loan to refinance costs associated with the project thereby reducing the need to sell bonds for the capital improvement program.

**B. Scope of Work**

The West Point Treatment Facility final eligible project costs for loan participation was \$75,158,627. The total eligible project costs for the upgrade of the West Point Treatment Facility was partially funded by the Centennial Clean Water Fund Extended Payment Grant No. TAX 90-051 and State Revolving Loan No. SRF92-004. This loan provides for additional funds to refinance, previously unfunded, eligible project costs related to five contracts for the Access Roadway and Utility Improvement, Site Prep, Structural Steel Manufacturing and Delivery, Reinforced Concrete Manufacturing and Delivery, and Steel Piping.

The RECIPIENT shall ensure that the PROJECT is completed according to the details of this AGREEMENT including, but not limited to, those contained in ATTACHMENT 5, "SCOPE OF WORK," ATTACHMENT 6, "SPECIAL TERMS AND CONDITIONS," AND ATTACHMENT 7, "LOAN GENERAL TERMS AND CONDITIONS." (See SPECIAL TERMS AND CONDITIONS)

No changes, additions, and/or deletions to the Scope of Work shall be authorized except by a formal written amendment to this AGREEMENT made in accordance with Section IX hereof.

**C. PROJECT Budget**

Elements/Objects	Total PROJECT Cost	Total Eligible PROJECT Cost	SRF LOAN AMOUNT
1. Construction Contracts	\$73,994,977	\$73,994,977	\$13,838,279
2. Design Allowance	\$1,163,650	\$1,163,650	
Totals:	\$75,158,627	\$75,158,627	\$13,838,279

**D. Sources of Funds for the PROJECT**

SRF REFINANCE LOAN (FY 00)	\$ 13,838,279
SRF Construction Loans – FY 90, 91, 92, and 93 (SRF 91-004)	\$ 48,800,000
Centennial (FY 90) – Construction Grant (EPG - TAX 90-051)	<u>\$ 12,520,348</u>
Total	\$ 75,158,627

**E. PROJECT Schedule**

The RECIPIENT agrees to complete the PROJECT in accordance with the following schedule (the "PROJECT Schedule"):

1. PROJECT Start Date: 07/01/89
2. Initiation of Operation Date: 12/06/95



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3. PROJECT Completion Date: 12/31/97

Any changes to the PROJECT Schedule must be effected through a formal amendment to this AGREEMENT as provided in Section IX hereof.

The useful life of the PROJECT is twenty (20) years.

## V. THE LOAN

### A. Source and Availability; LOAN Amounts; LOAN Terms

DEPARTMENT Funding Source: Washington State Water Pollution Control Revolving Fund (SRF)

Subject to all of the terms, provisions, and conditions of this AGREEMENT, and subject to the availability of federal and state funds, the DEPARTMENT will loan to the RECIPIENT the sum of thirteen million eight hundred thirty-eight thousand two hundred seventy-nine dollars (\$13,838,279) (the "Estimated LOAN Amount").

When the PROJECT Completion Date or the Initiation of Operation Date has occurred (if appropriate), the DEPARTMENT and the RECIPIENT will execute an amendment to this AGREEMENT which details the final LOAN amount (the "Final LOAN Amount"), and the DEPARTMENT will prepare a final LOAN repayment schedule, substantially in the form of ATTACHMENT 8. The Final LOAN Amount will be the combined total of actual disbursements and all accrued interest to the computation date.

The Estimated LOAN Amount and the Final LOAN Amount (in either case, as applicable, a "LOAN Amount") shall bear interest at the rate of **1.5% per annum**, calculated on the basis of a 365-day year. Interest on the Estimated LOAN Amount will accrue from and be calculated based on the date that each payment is mailed to the RECIPIENT. The Final LOAN Amount shall be repaid semiannually over a **term of twenty (20) years**, as provided in ATTACHMENT 8.

### B. Requests for Payment – See ATTACHMENT 6 (SPECIAL TERMS AND CONDITIONS)

1. Procedure. Payments to the RECIPIENT shall be made on a reimbursable basis at least quarterly and no more often than once per month. Each request for payment will be submitted by the RECIPIENT, along with documentation of the expenses per the DEPARTMENT's ADMINISTRATIVE REQUIREMENTS, on an A19-1A and applicable supplemental payment request forms provided by the DEPARTMENT. Payment requests shall be submitted by the RECIPIENT to the Financial Manager of the DEPARTMENT. Payments shall be made only for eligible PROJECT costs incurred and shall not exceed the Estimated LOAN Amount.

Instructions for submitting payment requests are found in ADMINISTRATIVE REQUIREMENTS, PART IV. A copy of this document shall be furnished to the RECIPIENT.

2. Period of Payment. Payments shall only be made for eligible costs of the PROJECT

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pursuant to the AGREEMENT and performed after the effective date and prior to the expiration date of the AGREEMENT, unless those dates are specifically modified in writing as provided in Section III or pursuant to Section IX herein.

3. Ineligible Costs. If any audit identifies LOAN funds which were used to support ineligible costs, such funds may be immediately due and payable to the DEPARTMENT notwithstanding any provision to the contrary herein.

4. Overhead Costs. No payment for overhead costs in excess of 25 percent of salaries and benefits of the RECIPIENT shall be allowed.

5. Certification. Each payment request shall constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this AGREEMENT remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the PROJECT or to repay the principal of or interest on the LOAN, have occurred since the date of this AGREEMENT. Any changes in the foregoing shall be specifically disclosed in writing to the DEPARTMENT by the RECIPIENT in its request for payment.

### C. Sources of LOAN Repayment

1. Nature of RECIPIENT'S Obligation. The obligation of the RECIPIENT to repay the LOAN from the sources identified below and to perform and observe all of the other agreements and obligations on its part contained herein shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind.

2. Revenue-Secured; Lien Position. This LOAN is a Revenue-Secured Debt of the RECIPIENT'S Utility. This LOAN shall constitute a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon such Net Revenue of any Senior Lien Obligations. To secure the repayment of the LOAN from the DEPARTMENT, the RECIPIENT agrees to comply with all of the covenants and agreements herein including, but not limited to those, contained in Section VII of this AGREEMENT.

3. Other Sources of Repayment. The RECIPIENT may repay any portion of the LOAN from any funds legally available to it other than those pledged in Section V-C-2 hereof.

4. Defeasance of the LOAN; Refinancing or Additional Financing of the PROJECT. So long as the DEPARTMENT shall hold this LOAN, the RECIPIENT shall not be entitled to, and shall not effect, an economic Defeasance of the LOAN. The RECIPIENT also shall not refinance the PROJECT, including making an advance refunding of the LOAN, or obtain grants or loans additional to those listed in Section IV hereof to finance the PROJECT, without the written consent of the DEPARTMENT.

If the RECIPIENT defeases or advance refunds the LOAN or obtains additional grants or loans for the PROJECT without DEPARTMENT consent, it shall be required to use the proceeds thereof immediately upon their receipt, together with other available RECIPIENT funds, to repay:

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- (i) the LOAN Amount with interest, and
- (ii) any other obligations of the RECIPIENT to the DEPARTMENT under this AGREEMENT,

unless in its sole discretion the DEPARTMENT finds that repayment from those additional sources would not be in the public interest.

Failure to repay the LOAN Amount plus interest within the time specified in the DEPARTMENT's notice to make such repayment shall incur Late Charges under Section V-D-2 and shall be treated as a LOAN Default under Section VIII-A hereof.

**D. Method and Conditions on Repayments – See ATTACHMENT 6 (SPECIAL TERMS AND CONDITIONS)**

1. Semiannual Payments. Notwithstanding any other provision of this AGREEMENT, the first semiannual payment of principal and interest on this LOAN shall be paid not later than the earlier of the following: (ATTACHMENT 6)

- (i) one (1) year after the PROJECT Completion Date or Initiation of Operation Date, or
- (ii) five (5) years from the first payment by the DEPARTMENT.

Equal payments shall be due every six months thereafter.

If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington State agencies, the payment shall be due on the next business day for Washington State agencies.

Payments shall be mailed to:

Cashiering Section  
Washington State Department of Ecology  
P.O. Box 5128  
Lacey, WA 98509-5128

No change to the amount of the semiannual principal and interest payments shall be made without a formal amendment to this AGREEMENT. The RECIPIENT will continue to make semiannual payments based on this AGREEMENT until the amendment is effective, at which time the RECIPIENT's payments shall be made pursuant to the amended AGREEMENT.

2. Late Charges. If any amount of the Final LOAN Amount or any other amount owed to the DEPARTMENT pursuant to this AGREEMENT remains unpaid after it becomes due and payable, the DEPARTMENT may assess a late charge (a "Late Charge"). The Late Charge shall be additional interest at the rate of one percent per month, or fraction thereof, starting on the date the debt becomes past due and continuing until the debt is paid in full. The RECIPIENT hereby agrees to pay such Late Charge. Nothing contained herein affects the DEPARTMENT'S default rights in Section VIII-C of

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this AGREEMENT.

3. Repayment Limitations. Repayment of the LOAN is subject to the following additional limitations, among others: those on Defeasance, refinancing and advance refunding, and additional financing contained in Section V-C-4; and on termination, default and recovery of payments contained in Section VIII hereof.

4. Prepayment of LOAN. So long as the DEPARTMENT shall hold this LOAN, the RECIPIENT may prepay the entire unpaid principal balance of and accrued interest on the LOAN, or any portion of the remaining unpaid principal balance of the LOAN Amount. Any prepayments on the LOAN will be applied first to any accrued interest due, and then to the outstanding principal balance of the LOAN Amount. If the RECIPIENT elects to prepay the entire remaining unpaid balance and accrued interest, the RECIPIENT shall first contact the DEPARTMENT's Cashiering Section.

## VI. REPRESENTATIONS AND WARRANTIES

The RECIPIENT represents and warrants to the DEPARTMENT as follows:

### A. Existence; Authority.

It is a duly formed and legally existing municipal corporation or political subdivision of the state of Washington or a federally recognized Indian tribe. It has full corporate power and authority to execute, deliver, and perform all of its obligations under this AGREEMENT and to undertake the PROJECT identified herein.

### B. Application; Material Information.

All information and materials submitted by the RECIPIENT to the DEPARTMENT in connection with its LOAN application were when made, and are as of the date the RECIPIENT executes this AGREEMENT, true and correct. There is no material adverse information relating to the RECIPIENT, the PROJECT, the LOAN or this AGREEMENT known to the RECIPIENT which has not been disclosed in writing to the DEPARTMENT.

### C. Litigation; Authority.

No litigation is now pending or, to the RECIPIENT'S knowledge, threatened, seeking to restrain or enjoin (i) the execution of this AGREEMENT, or (ii) the fixing or collection of the revenues, rates, and charges pledged to pay the principal of and interest on the LOAN, or (iii) in any manner questioning the proceedings and authority under which the AGREEMENT, the LOAN or the PROJECT are authorized. Neither the corporate existence or boundaries of the RECIPIENT nor the title of its present officers to their respective offices is being contested. No authority or proceeding for the execution of this AGREEMENT has been repealed, revoked, or rescinded.

### D. Not a General Obligation.

This AGREEMENT and the LOAN to be made hereunder do not constitute a general obligation debt of the RECIPIENT or the state of Washington.

**E. Due Regard.**

The RECIPIENT has exercised due regard for Maintenance and Operation Expense and the debt service requirements of the Senior Lien Obligations and any other outstanding obligations pledging the Gross Revenue of the Utility, and it has not obligated itself to set aside and pay into the Loan Fund a greater amount of the Gross Revenue of the Utility than in its judgment will be available over and above such Maintenance and Operation Expense and those debt service requirements.

**VII. COVENANTS AND AGREEMENTS**

**A. Acceptance.**

The RECIPIENT accepts and agrees to comply with all terms, provisions, conditions, and commitments of this AGREEMENT, including all incorporated and referenced documents, and to fulfill all assurances, declarations, representations, and commitments made by the RECIPIENT in its application, accompanying documents and communications filed in support of its request for a LOAN.

**B. Accounts and Records.**

The RECIPIENT will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to this AGREEMENT.

**C. Alteration and Eligibility of PROJECT.**

During the term of this AGREEMENT, the RECIPIENT (i) shall not materially alter the design or structural character of the PROJECT without the prior written approval of the DEPARTMENT and (ii) shall take no action which would adversely affect the eligibility of the PROJECT as a Washington State Water Pollution Control Revolving Fund project under Chapter 173-98 WAC, "Uses and Limitations of the Water Pollution Control Revolving Fund," or which would cause a violation of any covenant, condition, or provision herein.

**D. Pledge of Net Revenue.**

For so long as the LOAN is outstanding, the RECIPIENT irrevocably pledges the Net Revenue of the Utility to pay when due the principal of and interest on the LOAN.

**E. Maintenance and Operation of Utility.**

The RECIPIENT will at all times maintain and keep the Utility in good repair, working order and condition and also will at all times operate the Utility and the business in connection therewith in an efficient manner and at a reasonable cost.

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**F. Coverage Requirement.**

For so long as the LOAN is outstanding, the RECIPIENT shall establish, maintain, and collect such rates and charges for Utility service which will produce Net Revenue which, shall be at least equal to the Coverage Requirement. "Coverage Requirement" means annual Net Revenue which, after the payment of Senior Lien Obligations and together with ULID Assessments (if applicable), is at least equal to 120% of Annual Debt Service on the LOAN and any other obligations on a parity therewith.

**G. Reserve Requirement.**

For loans that are Revenue-Secured Debt with terms greater than five (5) years, the RECIPIENT must accumulate a reserve for the LOAN equivalent to at least the Average Annual Debt Service on the LOAN during the first five (5) years of the repayment period of the LOAN. This amount shall be deposited in a Reserve Account in the LOAN Fund in approximately equal annual payments commencing within one year after the Initiation of Operation or the PROJECT Completion Date, whichever comes first. "Reserve Account" means, for a LOAN that constitutes Revenue-Secured Debt, an account of that name created in the Loan Fund to secure the payment of the principal of and interest on the LOAN. The amount on deposit in the Reserve Account may be applied by the RECIPIENT (i) to make, in part or in full, the final repayment to the DEPARTMENT of the LOAN Amount or, (ii) if not so applied, for any other lawful purpose of the RECIPIENT once the LOAN Amount, plus interest and any other amounts owing to the DEPARTMENT hereunder, have been paid in full.

**H. Free Service.**

The RECIPIENT will not furnish Utility service to any customer free of charge if providing that free service will affect the RECIPIENT'S ability to meet the obligations of this AGREEMENT.

**I. Sale or Disposition of Utility.**

The RECIPIENT will not sell, transfer, or otherwise dispose of any of the works, plant, properties, facilities, or other part of the Utility or any real or personal property comprising a part of the Utility unless:

1. The facilities or property transferred are not material to the operation of the Utility, or shall have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the Utility or are no longer necessary, material, or useful to the operation of the Utility; or

2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three (3) percent of the total assets of the Utility; or

3. The RECIPIENT receives from the transferee an amount equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the Utility

from the portion of the Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.

The proceeds of any transfer under this paragraph shall be used (i) to redeem promptly, or irrevocably set aside for the redemption of, Senior Lien Obligations and to redeem promptly the LOAN, and/or (ii) to provide for part of the cost of additions to and betterments and extensions of the Utility.

#### **J. Insurance.**

The RECIPIENT will at all times carry fire and extended coverage, public liability and property damage, and such other forms of insurance with responsible insurers and with policies payable to the RECIPIENT on such of the buildings, equipment, works, plants, facilities, and properties of the Utility as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, and against such claims for damages as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, or it will self-insure or will participate in an insurance pool or pools with reserves adequate, in the reasonable judgment of the RECIPIENT, to protect it against loss.

### **VIII. TERMINATION AND DEFAULT; REMEDIES**

#### **A. Termination and Default Events**

1. For Insufficient DEPARTMENT or RECIPIENT Funds. This AGREEMENT may be terminated by the DEPARTMENT for insufficient DEPARTMENT or RECIPIENT funds.
2. For Failure to Commence Work. This AGREEMENT may be terminated by the DEPARTMENT for failure of the RECIPIENT to commence PROJECT work.
3. Past Due Payments. The RECIPIENT will be in default of its obligations under this AGREEMENT when any LOAN repayment becomes sixty (60) days past due.
4. Other Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all of its obligations under this AGREEMENT. The RECIPIENT will be in default of its obligations under this AGREEMENT if, in the opinion of the DEPARTMENT, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this AGREEMENT including, but not limited to, the PROJECT Schedule contained in Section IV-D hereof.

#### **B. Procedures for Termination**

If this AGREEMENT is terminated prior to PROJECT completion, the DEPARTMENT shall provide to the RECIPIENT a written notice of termination at least five (5) working days prior to the effective date of termination (the "Termination Date"). The written notice of termination by the DEPARTMENT shall specify the Termination Date and, when applicable, the date by which the RECIPIENT must repay any outstanding balance of the LOAN and all accrued interest (the

“Termination Payment Date”).

**C. Termination and Default Remedies**

1. No Further Payments. On and after the Termination Date or in the event of a default event, the DEPARTMENT may, in its sole discretion, withdraw the LOAN and make no further payments under this AGREEMENT.

2. Repayment Demand. In response to a termination event, except in the circumstances described in Section VIII-A-1 above, or in response to a default event, the DEPARTMENT may in its sole discretion demand that the RECIPIENT repay the outstanding balance of the LOAN Amount and all accrued interest.

3. Interest after Repayment Demand. From the time that the DEPARTMENT demands repayment of funds under Section VIII-B or Section VIII-C-2 hereof, amounts owed by the RECIPIENT to the DEPARTMENT shall accrue additional interest at the rate of one percent per month, or fraction thereof.

4. Accelerate Repayments. In the event of a default event, the DEPARTMENT may in its sole discretion declare the principal of and interest on the LOAN immediately due and payable, subject to the prior lien and charge of any outstanding Senior Lien Obligations upon the Net Revenue. Repayments not made immediately upon such acceleration shall incur Late Charges as provided in Sections V-D-2 and VIII-C-5 hereof.

5. Late Charges. All amounts due to the DEPARTMENT and not paid by the RECIPIENT by the Termination Payment Date or after acceleration following a default event, as applicable, shall incur Late Charges as provided in Section V-D-2 hereof.

6. Intercept State Funds. In the event of a default event and in accordance with RCW 90.50A.060, “Defaults,” any state funds otherwise due to the RECIPIENT may, in the DEPARTMENT’s sole discretion, be withheld and applied to the repayment of the LOAN.

7. Property to DEPARTMENT. In the event of a default event and at the option of the DEPARTMENT, any property (equipment and land) acquired under this AGREEMENT may in the DEPARTMENT’s sole discretion become the DEPARTMENT’s property. In that circumstance, the RECIPIENT’s liability to repay money shall be reduced by an amount reflecting the fair market value of such property.

8. Documents and Materials. If this AGREEMENT is terminated, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared hereunder by the RECIPIENT shall, at the option of the DEPARTMENT, become DEPARTMENT property. The RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

9. Collection and Enforcement Actions. In the event of a default event, the state of



Washington reserves the right to take any actions it deems necessary to collect the amounts due or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this AGREEMENT.

10. Fees and Expenses. In any action to enforce the provisions of this AGREEMENT, reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of legal staff) shall be awarded to the prevailing party as that term is defined in RCW 4.84.330, "Actions on contract or lease . . .—Waiver prohibited."

11. Damages. Notwithstanding the DEPARTMENT's exercise of any or all of the termination or default remedies provided in Section VIII-C-1 through VIII-C-10 above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the state of Washington because of any breach of this AGREEMENT by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

#### IX. MODIFICATIONS TO AGREEMENT

No subsequent amendments to this AGREEMENT shall be of any force or effect unless reduced to a writing and signed by authorized representatives of the RECIPIENT and the DEPARTMENT, and made part hereof, except:

1. Any change of the RECIPIENT'S Contact or of the DEPARTMENT'S Financial Manager as set forth respectively in Sections I-A and I-B hereof, may be made by either party as provided in Section I-C; or

2. Insubstantial modifications, such as frequency and number of required submittals, budget allocations not affecting the total LOAN Amount and similar changes requested by the RECIPIENT in writing, may be approved in writing by the Project Manager of the DEPARTMENT.

No amendment to this AGREEMENT shall be effective until accepted or affirmed in writing by the DEPARTMENT.

In no event shall any oral agreement or oral commitment be effective to amend this AGREEMENT.



ATTACHMENT 1

DOCUMENTS INCORPORATED  
BY ATTACHMENT OR BY REFERENCE

Each of the following documents is incorporated by attachment or by reference and shall have the same force and effect as if contained in the AGREEMENT:

**A. By Attachment:**

- ATTACHMENT 1: DOCUMENTS INCORPORATED BY ATTACHMENT OR BY REFERENCE
- ATTACHMENT 2: AGREEMENT DEFINITIONS
- ATTACHMENT 3: AUTHORIZING ORDINANCE OR RESOLUTION
- ATTACHMENT 4: OPINION OF RECIPIENT'S LEGAL COUNSEL
- ATTACHMENT 5: SCOPE OF WORK
- ATTACHMENT 6: SPECIAL TERMS AND CONDITIONS
- ATTACHMENT 7: LOAN GENERAL TERMS AND CONDITIONS
- ATTACHMENT 8: LOAN REPAYMENT SCHEDULE

**B. By Reference:**

- The DEPARTMENT'S WATER QUALITY PROGRAMS FINANCIAL ASSISTANCE FOR FISCAL YEAR 2000 OR CURRENT ISSUE—VOLUME ONE: GUIDELINES and VOLUME TWO: APPENDICES (December 1998) (hereinafter, "GUIDELINES")
- The DEPARTMENT's Administrative Requirements for Ecology Grants and Loans (July 1995) (hereinafter, "ADMINISTRATIVE REQUIREMENTS")
- If and when executed by the RECIPIENT and the DEPARTMENT, each Loan Agreement Amendment
- Declaration of Construction—Form ECY 040-2-28(b)
- RECIPIENT'S legislation (ordinance for cities, towns, and applicable charter counties; resolution for others) adopting the Utility system or plan, or system or plan of additions and betterments to and extensions of the Utility (in the case of cities and towns), or comprehensive plan, or comprehensive plan amendment, relating to the PROJECT
- Facilities Plan Approval Letter (where applicable) and any amendments thereto
- Plans and Specifications Approval Letter (where applicable) and any amendments thereto

ATTACHMENT 2

AGREEMENT DEFINITIONS

Unless otherwise provided, the following terms shall have the respective meanings for all purposes of this AGREEMENT:

**“ADMINISTRATIVE REQUIREMENTS”** means the DEPARTMENT's ADMINISTRATIVE REQUIREMENTS FOR ECOLOGY GRANTS AND LOANS (July 1995).

**“Annual Debt Service”** for any calendar year means, for any applicable bonds or loans including the LOAN, all interest plus all principal due on such bonds or loans in such year.

**“Average Annual Debt Service”** means, at the time of calculation, the sum of the Annual Debt Service for the remaining years of the LOAN to the last scheduled maturity of the LOAN divided by the number of those years.

**“Centennial Clean Water Fund (Centennial)”** means, a portion of fund 139 of the Water Quality Account administered by the DEPARTMENT.

**“Coverage Requirement”** means annual Net Revenue which, after the payment of Senior Lien Obligations and together with ULID Assessments (if applicable), is at least equal to 120% of Annual Debt Service on the LOAN and any other obligations on a parity therewith.

**“Defease”** or **“Defeasance”** means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

**“DEPARTMENT”** means the state of Washington, Department of Ecology, or any successor agency or department.

**“Estimated LOAN Amount”** means the initial amount of funds loaned to the RECIPIENT.

**“Final LOAN Amount”** means all principal of and interest on the LOAN from the PROJECT Start Date through the PROJECT Completion Date.

**“General Obligation Debt”** means an obligation of the RECIPIENT secured by annual *ad valorem* taxes levied by the RECIPIENT and by the full faith, credit, and resources of the RECIPIENT.

**“Gross Revenue”** means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) ULID Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any

investments in a trust, Defeasance, or escrow fund created to Defeasance or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

**"GUIDELINES"** means the DEPARTMENT'S WATER QUALITY PROGRAMS FINANCIAL ASSISTANCE FOR FISCAL YEAR 2000—VOLUME ONE: GUIDELINES and VOLUME TWO: APPENDICES (December 1998).

**"Initiation of Operation"** is the actual date the Water Pollution Control Facilities financed with proceeds of the LOAN begin to operate for their intended purpose. This date may occur prior to final inspection and will be determined by the DEPARTMENT after consultation with the RECIPIENT. This date may be the same, or earlier, than the PROJECT Completion Date. For those projects where Initiation of Operation is not applicable, use the PROJECT Completion Date.

**"LOAN"** means the Washington State Water Pollution Control Revolving Fund (SRF) Loan or Centennial Clean Water Fund (Centennial) Loan made pursuant to this AGREEMENT.

**"LOAN Amount"** means either an Estimated LOAN Amount or a Final LOAN Amount, as applicable.

**"LOAN Fund"** means the special fund of that name created by ordinance or resolution of the RECIPIENT for the repayment of the principal of and interest on the LOAN.

**"Maintenance and Operation Expense"** means all reasonable expenses incurred by the RECIPIENT in causing the Utility to be operated and maintained in good repair, working order, and condition including payments to other parties for the transmission, treatment, or disposal of sewage, but shall not include any depreciation or RECIPIENT-levied taxes or payments to the RECIPIENT in lieu of taxes.

**"Net Revenue"** means the Gross Revenue less the Maintenance and Operation Expense.

**"Principal and Interest Account"** means, for a LOAN that constitutes Revenue-Secured Debt, the account of that name created in the Loan Fund to be first used to repay the principal of and interest on the LOAN.

**"PROJECT"** means the PROJECT described in this AGREEMENT.

**"PROJECT Completion Date"** is the date specified in the AGREEMENT as that on which the Scope of Work will be fully completed and the date the PROJECT will end. The PROJECT Completion Date may be changed to an earlier or later date by an amendment to the AGREEMENT.

**"PROJECT Schedule"** is that schedule for the PROJECT specified in the AGREEMENT.

**"REFINANCE"** means the Washington State Water Pollution Control Revolving Fund is providing a

loan to the RECIPIENT to refinance a municipal debt obligation(s) for eligible project costs incurred after March 7, 1985.

**“Reserve Account”** means for a LOAN that constitutes Revenue-Secured Debt, the account of that name created in the Loan Fund to secure the payment of the principal of and interest on the LOAN.

**“Revenue-Secured Debt”** means an obligation of the RECIPIENT secured by a pledge of the revenue of a utility and one not a general obligation of the RECIPIENT.

**“Scope of Work”** means the tasks and activities constituting the PROJECT and contained in ATTACHMENT 5, “SCOPE OF WORK,” hereto.

**“Senior Lien Obligations”** means all revenue bonds and other obligations of the RECIPIENT outstanding on the date of execution of this AGREEMENT (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this AGREEMENT having a claim or lien on the Gross Revenue of the Utility prior and superior to the claim or lien of the LOAN, subject only to Maintenance and Operation Expense.

**“State Water Pollution Control Revolving Fund (SRF)”** means the water pollution control revolving fund established by RCW 90.50A.020.

**“Termination Date”** means the effective date of the DEPARTMENT’s termination of the AGREEMENT.

**“Termination Payment Date”** means the date on which the RECIPIENT is required to repay to the DEPARTMENT any outstanding balance of the LOAN and all accrued interest.

**“Total Eligible PROJECT Cost”** means the sum of all costs associated with a water quality project that have been determined to be eligible for DEPARTMENT grant or loan funding.

**“Total PROJECT Cost”** means the sum of all costs associated with a water quality project, including costs that are not eligible for DEPARTMENT grant or loan funding.

**“ULID”** means any utility local improvement district of the RECIPIENT created for the acquisition or construction of additions to and extensions and betterments of the Utility. **“The ULID”** means the utility local improvement district of the RECIPIENT, if any, the improvements to which constitute all or part of the PROJECT.

**“ULID Assessments”** means all assessments levied and collected in any ULID. Such assessments are pledged to be paid into the Loan Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments shall include principal installments thereof and any interest or penalties which may be due thereon.

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“**Utility**” means either the water system, the sewer system (which may include a storm sewer or surface water system) or the combined water and sewer system of the RECIPIENT, the Net Revenue of which are pledged to pay and secure the LOAN.

“**Water Pollution Control Activities**” means actions to achieve the following purposes:

1. To control nonpoint sources of water pollution;
2. To develop and implement a comprehensive conservation and management plan for estuaries; and
3. To maintain, improve, or protect water quality through the use of Water Pollution Control Facilities, management programs, or other means.

“**Water Pollution Control Facilities**” means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater. Wastewater includes, but is not limited to, sanitary sewage, storm water, combined sewer overflows, residential, commercial, industrial, and agricultural wastes which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water Pollution Control Facilities include all equipment, utilities, structures, real property integral to the treatment process, and interests in and improvements on real property necessary for or incidental to such purpose. Water Pollution Control Facilities also include facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(1/27/00)

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**ATTACHMENT 3**

**AUTHORIZING ORDINANCE OR RESOLUTION**



ATTACHMENT 4

OPINION OF RECIPIENT'S LEGAL COUNSEL

I am an attorney at law admitted to practice in the state of Washington and the duly appointed attorney of King County (the "RECIPIENT"); and I have examined any and all documents and records pertinent to the AGREEMENT.

Based on the foregoing, it is my opinion that:

A. The RECIPIENT is a duly organized and legally existing municipal corporation or political subdivision under the laws of the state of Washington or a federally recognized Indian tribe;

B. The RECIPIENT has the power and authority to execute and deliver, and to perform its obligations under, the AGREEMENT;

C. The AGREEMENT has been duly authorized and executed by RECIPIENT's authorized representatives and, to my best knowledge and after reasonable investigation, all other necessary actions have been taken to make the AGREEMENT valid, binding, and enforceable against the RECIPIENT in accordance with its terms, except as such enforcement is affected by bankruptcy, insolvency, moratorium, or other laws affecting creditors' rights and principles of equity if equitable remedies are sought;

D. To my best knowledge and after reasonable investigation, the AGREEMENT does not violate any other agreement, statute, court order, or law to which the RECIPIENT is a party or by which it or its properties is bound; and

E. There is currently no litigation seeking to enjoin the commencement or completion of the PROJECT or to enjoin the RECIPIENT from entering into the AGREEMENT or from accepting or repaying the LOAN. The RECIPIENT is not a party to litigation which will materially affect its ability to repay such loan on the terms contained in the AGREEMENT.

F. The AGREEMENT constitutes a valid obligation of the RECIPIENT payable from the Net Revenues of the Utility.

Capitalized terms used herein shall have the meanings ascribed thereto in the AGREEMENT between the RECIPIENT and the DEPARTMENT.

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RECIPIENT's Legal Counsel

Date

**ATTACHMENT 5**

**SCOPE OF WORK**

**A. Certifications**

The RECIPIENT certifies by signing this AGREEMENT that all negotiated interlocal agreements necessary for the PROJECT are, or will be consistent with the terms of this AGREEMENT and Chapter 39.34 RCW, "Interlocal Cooperation Act." The RECIPIENT shall retain in its files a copy of each interlocal agreement necessary for the PROJECT.

The RECIPIENT certifies by signing this AGREEMENT that the requirements of Chapter 39.80 RCW, "Contracts for Architectural and Engineering Services," have been met in procuring qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final negotiated agreement and submit a copy of the agreement to the DEPARTMENT.

**B. Scope of Work**

The upgrade to the West Point Treatment Facility was constructed in accordance with the approved plans and specifications. The SRF loan will provide partial refinancing for the following contracts:

• **PC 05 Access Roadway & Utility Improvement**

Upgrade to the existing road surface to accommodate the heavy truck traffic during the construction of West Point Treatment Plant. Including, but not limited to, over-pavement, widening and reconstruction of the road, installation of water mains, storm drainage, sanitary sewer and underground duct banks, serving the West Point Plant, and pedestrian improvements, and mitigation measures.

• **ST 01 Site Prep**

Work included demolition of existing structures, construction of temporary facilities, earthwork in preparation for construction of the secondary sedimentation, aeration and solids handling facilities. Construction of portions of the chlorine mixing, solids handling and effluent pumping systems, and construction of the influent piping, emergency bypass system, and the hillside retaining wall.

• **ME 07 Structural Steel**

Manufacturing and delivery of structural steel sections for approximately 3,200 feet of tie-back type retaining wall for the hillside behind the West Point Treatment Plant.

• **ME 08 Reinforced Concrete**

Manufacturing and delivery of approximately 4,500 lineal feet of 72, 84, 108, 120, 132, and 144-inch reinforced concrete or pre-stressed concrete cylinder pipe along with associated pipe plugs and joint gaskets.

- ME 45 Steel Piping

Work included manufacturing and delivery of approximately 800 feet of 108-inch and 20 feet of 120-inch steel pipe for the primary and final effluent transfer system at the West Point Treatment Plant.

(9/22/99)

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ATTACHMENT 6

SPECIAL TERMS AND CONDITIONS

A. Requests for Payment. The DEPARTMENT shall disburse to the RECIPIENT the estimated loan amount within thirty (30) days of the DEPARTMENT'S receipt of the A19-1A payment request forms from the RECIPIENT. The payment request forms will be provided by the DEPARTMENT. Payment reimbursement will be as a lump sum payment.

B. Semiannual Payments. Notwithstanding any other provision of this AGREEMENT, the first semiannual payment of principal and interest on this LOAN will be due on August 1, 2000.

Equal payments shall be due every six months thereafter.

C. Final LOAN Amendment and Repayment Schedule. The DEPARTMENT upon disbursement will prepare the Final LOAN Amendment and Repayment schedule. The Final LOAN Amount will be the combined total of the actual disbursement and all accrued interest to the computation date, calculated from the date that the payment is mailed to the RECIPIENT.

D. Minority and Women's Business Participation. The RECIPIENT agrees by signing this AGREEMENT that it has solicited and recruited, to the maximum extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts.

In the absence of more stringent goals established by the RECIPIENT's jurisdiction, the RECIPIENT agrees by signing this AGREEMENT that it utilized the DEPARTMENT'S goals for minority- and women-owned business participation in all bid packages, request for proposals, and purchase orders. These goals are expressed as a percentage of the total dollars available for the purchase or contract and are as follows:

Minority-owned business participation:	10%
Women-owned business participation:	6%

E. Sewer-Use Ordinance or Resolution. The RECIPIENT certifies that it has adopted and shall enforce a sewer-use ordinance or resolution to require that all new sewers and connections are designed and constructed in accordance with applicable state and local standards.

F. User-Charge System. The RECIPIENT certifies that it has the legal authority to establish and implement a sewer-user charge system and shall adopt a system of sewer-user charges to assure that each RECIPIENT of waste treatment service will pay its proportionate share of the cost of operation and maintenance, including replacement of the sewerage facilities during the design life of the PROJECT.

G. Accounting Standards. The RECIPIENT shall maintain accurate records and accounts for the PROJECT ("PROJECT Records") in accordance with generally accepted government accounting standards including those contained in the STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS promulgated by the U.S. General Accounting Office.

These PROJECT Records shall be separate and distinct from the RECIPIENT's other records and accounts (General Accounts). Eligible costs shall be audited annually by an independent, certified accountant and/or state auditor, which may be part of the annual audit of the General Accounts of the RECIPIENT. If the annual audit includes an auditing of this PROJECT, a copy of such audit, including all written comments, recommendations and findings, shall be furnished to the DEPARTMENT within thirty (30) days after receipt of the final audit report.

H. Prevailing Wage. The RECIPIENT certifies that all contractors and subcontractors on the Project were paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, in compliance with the Davis-Bacon Act (40 U.S.C., sec. 276a through 276a-7) or state requirement, whichever is more stringent.

I. Procurement. The RECIPIENT certifies that it was responsible for procuring professional, personal, and other services using sound business judgment and good administrative procedures. This includes issuance of invitation of bids, requests for proposals, selection of contractors, award of subagreements and other related procurement matters. The RECIPIENT certifies it has followed State procurement laws.

J. Public Awareness. All public awareness notices, signs, or announcements related to the PROJECT financed in whole or in part by LOAN funds should inform the public of the involvement of the federal government.

K. Small Business in Rural Areas ("SBRAs"). If a contract was awarded by the RECIPIENT under this AGREEMENT, the RECIPIENT is also certifies that it utilized the following affirmative steps:

1. Placed SBRAs on solicitation lists;
2. Made sure the SBRAs are solicited whenever there are potential sources;
3. Divided total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs;
4. Established delivery schedules, where requirements of work permitted, which could encourage participation by SBRAs;
5. Used the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and
6. Required the contractor to comply with the affirmative steps outlined above.

The negotiated "Fair Share Percentage" for the SBRAs is one-half of one percent (0.5%).

There is no formal reporting requirement for SBRAs at this time; however, it is highly recommended that the RECIPIENT keep records of SBRA participation.

L. Growth Management Planning. The RECIPIENT certifies by signing this AGREEMENT for a Water Pollution Control Facilities project that it has adopted a comprehensive plan that conforms with the requirements of Chapter 36.70A RCW, "Growth Management—Planning by Selected Counties and Cities," and the RECIPIENT has adopted development regulations in conformance with the requirements of Chapter 36.70A RCW. If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT shall notify the DEPARTMENT in writing of this change within thirty (30) days.

M. Refinancing. It is mutually agreed by the RECIPIENT and the DEPARTMENT that the LOAN is for additional partial refinancing of the West Point Secondary Treatment Facilities upgrade. The project commenced and was completed in accordance with the PROJECT schedule identified in Section IV. "THE PROJECT." The RECIPIENT certifies, by signature of the LOAN, that the applicable conditions and requirements appropriate at the time of construction have been met; and that the appropriate supporting documentation is contained in the RECIPIENT's project files. Eligibility and the additional refinancing is based on the final reconciliation of the Extended Payment Grant (TAX 90-051) completed November 1999. The Refinancing payment will be by lump sum payment upon the LOAN award, and receipt of the A19-1A payment request forms from the RECIPIENT, with repayments of principle and interests commencing August 31, 2000, in accordance with the final repayment schedule.

(1/28/00)

ATTACHMENT 7

LOAN GENERAL TERMS AND CONDITIONS

**A. RECIPIENT PERFORMANCE**

All activities for which loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall not assign or subcontract performance to others unless specifically authorized in writing by the DEPARTMENT.

**B. CONTRACTOR COMPLIANCE**

The RECIPIENT must ensure that all contractors comply with the terms and conditions of this AGREEMENT.

**C. THIRD PARTY BENEFICIARY**

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this AGREEMENT, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

**D. CONTRACTING FOR SERVICES (BIDDING)**

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. The RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

**E. ASSIGNMENTS**

No right or claim of the RECIPIENT arising under this AGREEMENT shall be transferred or assigned by the RECIPIENT.

**F. COMPLIANCE WITH ALL LAWS**

1. Compliance; Approvals and Permits. The RECIPIENT shall comply fully with all applicable federal, state, and local laws, orders, regulations and permits.

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the PROJECT, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all federal and state laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. The RECIPIENT shall report to the DEPARTMENT the percent of loan funds available to women- or minority-owned businesses.

3. Wages and Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the state of Washington which affect wages and job safety.

4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall reserve the right to immediately terminate this AGREEMENT for cause as provided in Section VIII hereof.

#### G. KICKBACKS

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in the PROJECT to give up any part of the compensation to which he/she is otherwise entitled or receive any fee, commission or gift in return for award of a subcontract hereunder.

#### H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete project and financial records relating to this AGREEMENT. Such records shall clearly indicate total receipts and expenditures by fund source and task or object. All loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this AGREEMENT shall be maintained by the RECIPIENT.

2. All loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the state of Washington for a period of at least three (3) years after the final loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. All work performed under this AGREEMENT and any equipment purchased shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this AGREEMENT and for at least three (3) years following final loan repayment or dispute resolution hereunder.

4. The RECIPIENT shall meet the provisions contained in OMB Circular A-133 (AUDITS OF STATES, LOCAL GOVERNMENTS AND OTHER NONPROFIT ORGANIZATIONS) or OMB Circular A-110



(UNIFORM REQUIREMENTS FOR GRANTS TO UNIVERSITIES, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS) if the RECIPIENT receives federal funds in excess of \$300,000. The RECIPIENT must forward to the DEPARTMENT a copy of the State Auditor's audit, or other independent audit report, along with the RECIPIENT's response and the final corrective action plan as approved by the State Auditor's Office, within ninety (90) days of the date of the audit report.

### I. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provisions of this AGREEMENT is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this AGREEMENT unless stated as such in writing by an authorized representative of the DEPARTMENT.

### J. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize others to use the same for federal, state or local government purposes.

Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions developed by the RECIPIENT as provided in 35 U.S.C. §§ 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.

3. Tangible Property Rights. The DEPARTMENT's ADMINISTRATIVE REQUIREMENTS, PART IV, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state or federal statutes, regulations or policies to the contrary or upon specific instructions with respect thereto in ATTACHMENT 5, "SCOPE OF WORK."

4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the PROJECT, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

5. Acquisition Projects. The following provisions shall apply if the PROJECT covered by this AGREEMENT includes funds for the acquisition of land or facilities:

a. Prior to payment of funds provided for in this AGREEMENT, the RECIPIENT shall establish that the cost of land or facilities is fair and reasonable.

b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to payment of funds provided by this AGREEMENT. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorneys' opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this AGREEMENT.

6. Conversions. Regardless of the expiration date of this AGREEMENT as provided in Section III hereof, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed pursuant to this AGREEMENT to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT.

#### **K. RECYCLED/RECYCLABLE PAPER**

All documents and materials published under this AGREEMENT shall be produced on recycled paper containing the highest level of post-consumer and recycled content that is available. At a minimum, paper with 10 percent post-consumer content and 50 percent recycled content shall be used. Whenever possible, all materials shall be published on paper that is unbleached or has not been treated with chlorine gas and/or hypochlorite.

As appropriate, all materials shall be published on both sides of the paper and shall minimize the use of glossy or colored paper and other items which reduce the recyclability of the document.

#### **L. PROJECT APPROVAL**

The extent and character of all work and services to be performed under this AGREEMENT by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Manager or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Manager or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

#### **M. DISPUTES**

Except as otherwise provided in this AGREEMENT, any dispute concerning a question of fact arising under this AGREEMENT which is not disposed of in writing shall be decided by the Project Manager or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Manager or other designated official shall be final and conclusive unless, within thirty (30) days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of its appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of any dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this AGREEMENT and in accordance with the decision rendered.

**N. CONFLICT OF INTEREST**

No officer, member, agent, or employee of either party to this AGREEMENT who exercises any function or responsibility in the review, approval or carrying out of this AGREEMENT shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this AGREEMENT or the proceeds thereof.

**O. INDEMNIFICATION**

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultants' fees, or other costs related to the PROJECT described herein, except as provided in ATTACHMENT 5, "SCOPE OF WORK."

2. To the extent that the Constitution and laws of the state of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this AGREEMENT.

**P. GOVERNING LAW**

This AGREEMENT shall be governed by the laws of the state of Washington.

**Q. SEVERABILITY**

If any provision of this AGREEMENT or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this AGREEMENT which can be given effect without the invalid provision, and to this end the provisions of this AGREEMENT are declared to be severable.

**R. TIME OF THE ESSENCE**

Time shall be of the essence of this AGREEMENT.

**S. TABLE OF CONTENTS; HEADINGS**

The Table of Contents and headings of this AGREEMENT are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this AGREEMENT.

**T. COUNTERPARTS**

This AGREEMENT may be executed in counterparts and each such counterpart shall for all purposes be deemed to be an original. All such counterparts shall together constitute but one and the same instrument.

**U. ENTIRE AGREEMENT**

This AGREEMENT, including the attached and referenced documents incorporated pursuant to ATTACHMENT 1 hereto, contains the entire understanding between the RECIPIENT and the DEPARTMENT, and there are no other understandings or representations other than those set forth or incorporated herein.

**V. PRECEDENCE**

In the event of inconsistency in this AGREEMENT, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) ATTACHMENT 5, "SCOPE OF WORK;" (c) ATTACHMENT 6, "SPECIAL TERMS AND CONDITIONS;" (d) any terms incorporated herein by reference, including the ADMINISTRATIVE REQUIREMENTS; and (e) this ATTACHMENT 7, "LOAN GENERAL TERMS AND CONDITIONS."

**VI. OVERHEAD COSTS**

Overhead costs (Section V. B. 4. The LOAN) associated with this project, this LOAN and or any associated grants and loans are not applicable and are ineligible for grant/loan participation.

(9/23/98)

04/13/00

KING COUNTY

**ATTACHMENT 9**  
**LOAN REPAYMENT SCHEDULE**  
**L0000020**

**13890**

Loan Amount: \$ 13,838,279.00  
 Term of Loan: 40  
 Amortization Method: Normal, 365 D/Y

Loan Date: 06-01-2000  
 Annual Interest Rate: 1.500 %  
 Interest Compounded: Semi-Annual

PMT Due Date	Payment Amount	Interest	Principal	Balance
1 08-31-00	400,228.04	51,751.37	348,476.67	13,489,802.33
2000 totals	400,228.04	51,751.37	348,476.67	
2 02-28-01	400,228.04	101,173.52	299,054.52	13,190,747.81
3 08-31-01	400,228.04	98,930.61	301,297.43	12,889,450.38
2001 totals	800,456.08	200,104.13	600,351.95	
4 02-28-02	400,228.04	96,670.88	303,557.16	12,585,893.22
5 08-31-02	400,228.04	94,394.20	305,833.84	12,280,059.38
2002 totals	800,456.08	191,065.08	609,391.00	
6 02-28-03	400,228.04	92,100.45	308,127.59	11,971,931.79
7 08-31-03	400,228.04	89,789.49	310,438.55	11,661,493.24
2003 totals	800,456.08	181,889.94	618,566.14	
8 02-29-04	400,228.04	87,461.20	312,766.84	11,348,726.40
9 08-31-04	400,228.04	85,115.45	315,112.59	11,033,613.81
2004 totals	800,456.08	172,576.65	627,879.43	
10 02-28-05	400,228.04	82,752.10	317,475.94	10,716,137.87
11 08-31-05	400,228.04	80,371.03	319,857.01	10,396,280.86
2005 totals	800,456.08	163,123.13	637,332.95	
12 02-28-06	400,228.04	77,972.11	322,255.93	10,074,024.93
13 08-31-06	400,228.04	75,555.19	324,672.85	9,749,352.08
2006 totals	800,456.08	153,527.30	646,928.78	
14 02-28-07	400,228.04	73,120.14	327,107.90	9,422,244.18
15 08-31-07	400,228.04	70,666.83	329,561.21	9,092,682.97
2007 totals	800,456.08	143,786.97	656,669.11	
16 02-29-08	400,228.04	68,195.12	332,032.92	8,760,650.05
17 08-31-08	400,228.04	65,704.88	334,523.16	8,426,126.89
2008 totals	800,456.08	133,900.00	666,556.08	

THIS IS AN ESTIMATED LOAN REPAYMENT SCHEDULE  
 KING COUNTY

04/13/00

## LOAN REPAYMENT SCHEDULE

L0000020

13890

PMT Due Date	Payment Amount	Interest	Principal	Balance
18 02-28-09	400,228.04	63,195.95	337,032.09	8,089,094.80
19 08-31-09	400,228.04	60,668.21	339,559.83	7,749,534.97
2009 totals	800,456.08	123,864.16	676,591.92	
20 02-28-10	400,228.04	58,121.51	342,106.53	7,407,428.44
21 08-31-10	400,228.04	55,555.71	344,672.33	7,062,756.11
2010 totals	800,456.08	113,677.22	686,778.86	
22 02-28-11	400,228.04	52,970.67	347,257.37	6,715,498.74
23 08-31-11	400,228.04	50,366.24	349,861.80	6,365,636.94
2011 totals	800,456.08	103,336.91	697,119.17	
24 02-29-12	400,228.04	47,742.28	352,485.76	6,013,151.18
25 08-31-12	400,228.04	45,098.63	355,129.41	5,658,021.77
2012 totals	800,456.08	92,840.91	707,615.17	
26 02-28-13	400,228.04	42,435.16	357,792.88	5,300,228.89
27 08-31-13	400,228.04	39,751.72	360,476.32	4,939,752.57
2013 totals	800,456.08	82,186.88	718,269.20	
28 02-28-14	400,228.04	37,048.14	363,179.90	4,576,572.67
29 08-31-14	400,228.04	34,324.30	365,903.74	4,210,668.93
2014 totals	800,456.08	71,372.44	729,083.64	
30 02-28-15	400,228.04	31,580.02	368,648.02	3,842,020.91
31 08-31-15	400,228.04	28,815.16	371,412.88	3,470,608.03
2015 totals	800,456.08	60,395.18	740,060.90	
32 02-29-16	400,228.04	26,029.56	374,198.48	3,096,409.55
33 08-31-16	400,228.04	23,223.07	377,004.97	2,719,404.58
2016 totals	800,456.08	49,252.63	751,203.45	
34 02-28-17	400,228.04	20,395.53	379,832.51	2,339,572.07
35 08-31-17	400,228.04	17,546.79	382,681.25	1,956,890.82
2017 totals	800,456.08	37,942.32	762,513.76	
36 02-28-18	400,228.04	14,676.68	385,551.36	1,571,339.46
37 08-31-18	400,228.04	11,785.05	388,442.99	1,182,896.47
2018 totals	800,456.08	26,461.73	773,994.35	
38 02-28-19	400,228.04	8,871.72	391,356.32	791,540.15
39 08-31-19	400,228.04	5,936.55	394,291.49	397,248.66

THIS IS AN ESTIMATED LOAN REPAYMENT SCHEDULE.  
 KING COUNTY

04/13/00

LOAN REPAYMENT SCHEDULE

L0000020

13890

PMT Due Date	Payment Amount	Interest	Principal	Balance
2019 totals	800,456.08	14,808.27	785,647.81	
40 02-29-20	400,228.02	2,979.36	397,248.66	0.00
2020 totals	400,228.02	2,979.36	397,248.66	
Grand totals	\$ 16,009,121.58	\$ 2,170,842.58	\$ 13,838,279.00	

THIS IS AN ESTIMATED LOAN REPAYMENT SCHEDULE  
KING COUNTY