



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

July 16, 2002

Ordinance 14419

Proposed No. 2002-0274.1

Sponsors Irons

1 AN ORDINANCE authorizing the executive to enter into
2 an agreement with the state Public Works Board regarding
3 loan financing of the design of Soos Creek Pump Station D.
4
5

6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

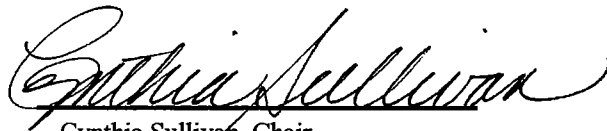
7 SECTION 1. The executive or the executive's designee is hereby authorized to
8 enter into an agreement with the state Public Works Board, substantially in the form of

9 Attachment A to this ordinance, for loan financing of a portion of the cost of Soos Creek
10 Pump Station D project.
11

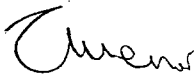
Ordinance 14419 was introduced on 7/8/2002 and passed by the Metropolitan King County Council on 7/15/2002, by the following vote:

Yes: 11 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Phillips, Mr. McKenna, Mr. Constantine, Mr. Pullen, Mr. Gossett, Mr. Irons and Ms. Patterson
No: 0
Excused: 2 - Mr. Pelz and Ms. Hague

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Cynthia Sullivan, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 21 day of July, 2002.



Ron Sims, County Executive

Attachments A. Public Works Trust Fund Pre-Construction Loan Agreement Number PW 02-69
PRE-112 King County

RECEIVED
2002 JUL 23 PM 3:45
KING COUNTY CLERK
KING COUNTY COUNCIL

**PUBLIC WORKS TRUST FUND
PRE-CONSTRUCTION LOAN AGREEMENT**

**NUMBER PW-02-691-PRE-112
KING COUNTY**

PART I: ENTIRE AGREEMENT

This agreement, and incorporated attachments, contains all terms and conditions agreed to by the PUBLIC WORKS BOARD and the LOCAL GOVERNMENT. This contract consists of ten pages and two attachments. An attachment to this agreement, ATTACHMENT I: SCOPE OF WORK, consists of a description of local project activities, certification of the project's useful life, and identification of estimated project costs and fund sources and is, by this reference, incorporated into this agreement as though set forth fully herein. In addition, ATTACHMENT II: ATTORNEY'S CERTIFICATION, is by this reference incorporated into this agreement.

The PUBLIC WORKS BOARD and the LOCAL GOVERNMENT have executed this agreement as of the date and year last written below.

DEPARTMENT OF COMMUNITY,
TRADE AND ECONOMIC
DEVELOPMENT

LOCAL GOVERNMENT

Steve Wells

Name

Director, Local Government Division
Title

Title

Date

Date

APPROVED AS TO FORM ONLY

9th Day of January, 2002

Christine O. Gregoire
Attorney General

Federal Taxpayer Identification Number

By: Signature on File
Assistant Attorney General

Jeanne A. Cushman

PART II: INTRODUCTION

This loan agreement is made and entered into by and between the PUBLIC WORKS BOARD, (or its successor) a department of the state of Washington (referred to as the "BOARD"), and KING COUNTY (referred to as the "LOCAL GOVERNMENT").

Acting under the authority of Chapter 43.155 RCW, the BOARD has selected the LOCAL GOVERNMENT to receive a Public Works Trust Fund loan for an approved public works project.

PART III: PURPOSE

The BOARD and the LOCAL GOVERNMENT have entered into this agreement to undertake a local public works project which furthers the goals and objectives of the Washington State Public Works Trust Fund Program. The project will be undertaken by the LOCAL GOVERNMENT and will include the activities described in ATTACHMENT I: SCOPE OF WORK. The project must be undertaken in accordance with PART IV: TERMS AND CONDITIONS, and all applicable state and local laws and ordinances, which by this reference are incorporated into this agreement as though set forth fully herein.

PART IV: TERMS AND CONDITIONS

The parties to this agreement agree as follows:

4.01 Rate and Term of Loan

The BOARD, using funds appropriated from the Public Works Assistance Account, shall loan the LOCAL GOVERNMENT a sum not to exceed \$1,000,000.00. The interest rate shall be one-half percent (1/2%) per annum on the outstanding principal balance. The term of the loan shall not exceed 5 years, with the final payment due July 1, 2007.

4.02 Local Project Share

The LOCAL GOVERNMENT pledges an amount of locally-generated revenue not less than fifteen percent (15%) of the total eligible portion of the project cost not funded by federal or state grants as identified in ATTACHMENT I: SCOPE OF WORK, to be verified at the time of project close-out. Any change in the percentage of locally-generated funds may require an adjustment in the loan amount or interest rate charged, or both. In such event, the LOCAL GOVERNMENT agrees to execute an amendment to this agreement adjusting the loan amount or interest rate, as appropriate.

Local project share must consist of expenditures eligible under WAC 399-30-030(3) and be related only to project activities described in ATTACHMENT I: SCOPE OF WORK. These expenditures may be made up to twelve (12) months prior to the execution of the loan agreement and verified at the time of project close-out.

PUBLIC WORKS TRUST FUND MONIES MAY NOT BE USED TO REIMBURSE THE LOCAL GOVERNMENT FOR ANY COSTS INCURRED PRIOR TO EXECUTION OF THIS LOAN AGREEMENT.

4.03 Disbursement of Loan Proceeds

The availability of funds in the Public Works Assistance Account is a function of tax collection and loan repayment. If funds are not available at the time the invoice is submitted, or when an agreement is executed, the issuance of warrants will be delayed. Therefore, subject to the availability of funds, warrants shall be issued to the LOCAL GOVERNMENT for payment of allowable expenses incurred by the LOCAL GOVERNMENT while undertaking and administering approved project activities in accordance with ATTACHMENT I: SCOPE OF WORK. In no event shall the total Public Works Trust Fund loan exceed eighty five percent (85%) of the eligible actual project costs. The disbursement of loan proceeds shall be initiated by the LOCAL GOVERNMENT on a Washington State Invoice Voucher form. The loan funds will be disbursed to the LOCAL GOVERNMENT as follows:

Within thirty (30) days of the formal execution of this agreement, a sum not to exceed seventy-five percent (75%) of the approved Public Works Trust Fund loan shall be disbursed to the LOCAL GOVERNMENT.

At the time of project completion, a Close-out Report, (refer to Section 4.18 for Close-out Report), shall be submitted to the BOARD by the LOCAL GOVERNMENT certifying total actual project costs.

The final Public Works Trust Fund loan disbursement shall not bring the total loan in excess of eighty five percent (85%) of the eligible project costs or the total of \$1,000,000.00, whichever is less, nor shall this disbursement occur prior to the completion of all project activities. The Close-out Report shall serve as a contract AMENDMENT for determining the final loan amount, interest rate, and local share.

In the event that the final costs identified in the Close-out Report indicate that the LOCAL GOVERNMENT has received Public Works Trust Fund monies in excess of eighty five percent (85%) of eligible costs, all funds in excess of eighty five percent (85%) shall be repaid to the Department of Community, Trade and Economic Development, or its successor, within thirty (30) days of submission of the Close-out Report.

4.04 Interest Earned on Public Works Trust Fund Monies

All interest earned on Public Works Trust Fund Monies held by the LOCAL GOVERNMENT shall accrue to the benefit of the LOCAL GOVERNMENT and be applied to the eligible costs of the approved project. Benefits shall accrue in one of two ways:

1. Reduce the amount of the Public Works Trust Fund loan.
2. Pay any part of the eligible project costs that are in excess of ATTACHMENT I: SCOPE OF WORK estimates if there is an overrun of project costs.

The LOCAL GOVERNMENT shall establish procedures to ensure that all monies received from the Public Works Trust Fund loan can be readily identified and accounted for at any time during the life of this loan agreement. Such procedures shall consist of the establishment of a separate fund, account, sub-account or any other method meeting generally accepted accounting principles.

4.05 Time of Performance

The LOCAL GOVERNMENT shall begin the activities identified within ATTACHMENT I: SCOPE OF WORK no later than three (3) months after the date of loan agreement execution and reach project completion no later than eighteen (18) months after the date of agreement execution.

Failure to perform within the time frame described in the preceding paragraph may constitute default of this agreement and require the immediate repayment of any loan funds disbursed. In the event of extenuating circumstances, the LOCAL GOVERNMENT may request, in writing, that the BOARD extend the deadline for project completion. The BOARD may, by a two-thirds vote, extend the deadline.

4.06 Repayment

The first loan repayment under this agreement is due July 1, 2003, and subsequent installments are due on July 1 of each year during the term of the loan. The first repayment under this agreement shall consist of interest only at the rate of one-half percent (1/2%) per annum, calculated on a 360-day year of twelve 30-day months, applied to funds received. Interest will begin to accrue from the date the BOARD issues each warrant to the LOCAL GOVERNMENT. Subsequent repayments shall consist of the principal balance due divided by the loan term remaining plus interest on the unpaid balance of the loan. The final payment shall be an amount sufficient to bring the loan balance to zero.

The LOCAL GOVERNMENT has the right to repay the unpaid balance of the loan in full at any time, and the right to repay at a faster rate than is provided in this agreement, provided that any such payment must equal or exceed the amount normally due on an annual basis.

The LOCAL GOVERNMENT will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Department of Community, Trade and Economic Development, or its successor, and sent to:

Department of Community, Trade and Economic Development
Administrative Services Division/Fiscal Unit
906 Columbia Street S.W.
P.O. Box 48300
Olympia, Washington 98504-8300

4.07 Repayment Account

The LOCAL GOVERNMENT shall repay the loan according to the option designated in Section 4.09 Loan Security. The name of the fund, account, or sub-account shall be PWTF-Loan.

4.08 Default in Repayment

Loan repayments shall be made to the Department of Community, Trade and Economic Development, or its successor, in accordance with Section 4.06 of this agreement. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a daily penalty beginning on the thirty-first (31) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be twelve percent (12%) per annum calculated on a 360-day year.

Upon default in the payment of any annual installment, the BOARD may declare the entire remaining balance of the loan, together with interest accrued, immediately due and payable. Failure to exercise its option with respect to any such repayment in default shall not constitute a waiver by the BOARD to exercise such option for any succeeding installment payment which may then be in default. The LOCAL GOVERNMENT shall pay the costs and reasonable legal fees incurred by the BOARD in any action undertaken to enforce its rights under this section.

4.09 Loan Security

The LOCAL GOVERNMENT must select **one** of the following options for securing repayment of the loan. **Please initial the appropriate option.**

1. _____ **General Obligation:** This loan is a general obligation of the LOCAL GOVERNMENT.

OR

2. X **Revenue Obligation:** This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer, or solid waste utility project. LOCAL GOVERNMENTS performing a storm sewer project that have not created a storm sewer utility or a combined sanitary sewer/storm sewer utility may not use this option. Projects providing for a mixture of bridge, road, domestic water, sanitary sewer, and storm sewer activities may not use this option.

This loan is a revenue obligation of the LOCAL GOVERNMENT payable solely from the net revenue of the utility system indicated below. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The BOARD grants the LOCAL GOVERNMENT the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan agreement.

Please choose and initial one of the following utility systems:

- _____ Water
 X Sanitary Sewer (Wastewater)
 _____ Stormwater
 _____ Water/Sanitary Sewer
 _____ Stormwater/Sanitary Sewer
 _____ Solid Waste

OR

3. _____ **Local Improvement District:** Pursuant to RCW 35.51.050, the LOCAL GOVERNMENT pledges to repay this loan from assessments collected from a Local Improvement District, Local Utility District or other similar special assessment district in which the improvements financed by this loan are located. The name of the special assessment district is _____.

Nothing in this section shall absolve the LOCAL GOVERNMENT of its obligation to make loan repayments when due, and to adjust rates, fees, or surcharges, if necessary, to meet its obligations under this agreement.

4.10 Recordkeeping and Access to Records

The BOARD, the BOARD'S agents, and duly authorized officials of the State shall have full access and the right to examine, copy, excerpt, or transcribe any pertinent documents, papers, records, and books of the LOCAL GOVERNMENT and of persons, firms, or organizations with which the LOCAL GOVERNMENT may contract, involving transactions related to this project and this agreement.

The LOCAL GOVERNMENT agrees to retain these records for a period of six years from the date of project completion. If any litigation, claim or audit is started before the expiration of the six year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

4.11 Reports

The LOCAL GOVERNMENT, at such times and on such forms as the BOARD may require, shall furnish the BOARD with such periodic reports as it may request pertaining to the activities undertaken pursuant to this agreement including, but not limited to, quarterly progress reports, the Close-Out Report, and any other matters covered by this agreement. Failure to file periodic reports as requested may result in termination of this agreement as per Section 4.14.

4.12 Indemnification

The LOCAL GOVERNMENT will defend, protect, indemnify, save, and hold harmless the BOARD, and the state of Washington from and against any and all claims, costs, damages, expenses, or liability for any or all injuries to persons or tangible property, arising from the acts or omissions of the LOCAL GOVERNMENT or any of its contractors or subcontractors, or any employees or agents in the performance of this agreement, however caused. In the case of negligence of both the BOARD and the LOCAL GOVERNMENT, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party.

4.13 Amendments, Modifications, and Waivers

Except for an increase in the amount of the loan governed by this agreement, the LOCAL GOVERNMENT may request an amendment of this agreement for the purpose of modifying the SCOPE OF WORK or for extending the time of performance as provided for in Section 4.05. No modification or amendment resulting in an extension of time shall take effect until a request in writing has been received and approved by the Board in accordance with Section 4.05. No amendment or modification shall take effect until approved in writing by both the BOARD and the LOCAL GOVERNMENT and attached hereto. No conditions or provisions of this agreement may be waived unless approved by the BOARD in writing.

4.14 Termination for Cause

If the LOCAL GOVERNMENT fails to comply with the terms of this agreement, or fails to use the loan proceeds only for those activities identified in ATTACHMENT I: SCOPE OF WORK, the BOARD may terminate the agreement in whole or in part at any time. The BOARD shall promptly notify the LOCAL GOVERNMENT in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Upon termination of the loan agreement, the BOARD shall declare the entire remaining balance of the loan, together with any interest accrued, immediately due and payable.

4.15 Termination For Convenience

The BOARD may terminate this agreement in the event that federal or state funds are no longer available to the BOARD, or are not allocated for the purpose of meeting the BOARD'S obligations under this agreement. Termination will be effective when the BOARD sends written notice of termination to the LOCAL GOVERNMENT.

4.16 Governing Law and Venue

This agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this agreement shall be the Superior Court of Thurston County, Washington. The prevailing party is entitled to recover costs in accordance with Washington State Law (Chapter 4.84 RCW).

4.17 Severability

If any provision under this agreement or its application to any person or circumstances is held invalid by any court of rightful jurisdiction, this invalidity does not affect other provisions of the agreement which can be given effect without the invalid provision.

4.18 Project Completion

The BOARD will require and notify the LOCAL GOVERNMENT to initiate a Close-out Report when the activities identified in ATTACHMENT I: SCOPE OF WORK are completed. In the report, the LOCAL GOVERNMENT will provide the following information to the BOARD:

1. A copy of the Close-out Report.
2. A copy of the a resolution accepting the design project as being complete.
3. Certification that all costs associated with the project have been incurred. Costs are incurred when goods and services are received and/or contract work is performed.

4.19 Project Close-out

In accordance with Section 4.03 of this agreement, the LOCAL GOVERNMENT will submit, together with the Close-out Report, a request for a sum not to exceed the final twenty-five percent (25%) of the loan amount.

4.20 Audit

Audits of the LOCAL GOVERNMENT'S project activities may be conducted by the Municipal Division of the State Auditor's Office in accordance with state law and any guidelines the Department of Community, Trade and Economic Development, or its successor, may prescribe. Payment for the audit shall be made by the LOCAL GOVERNMENT.

4.21 Project Signs

If the LOCAL GOVERNMENT displays, during the period covered by this agreement, signs or markers identifying those agencies participating financially in the approved project, the sign or marker must identify the Washington State Public Works Trust Fund as a participant in the project.

4.22 Utilization of Minority and Women's Business Enterprises (MWBE)

In accordance with legislative findings and policies set forth in Chapter 39.19 RCW, the BOARD encourages participation by Minority and Women's Business Enterprise firms certified by OMWBE. Voluntary goals for participation are:

Construction/Public Works	10% MBE	6% WBE
Architect/Engineering	10% MBE	6% WBE
Purchased Goods	8% MBE	4% WBE
Purchased Services	10% MBE	4% WBE
Professional Services	10% MBE	4% WBE

4.23 Nondiscrimination Provision

During the performance of this contract, the LOCAL GOVERNMENT shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the LOCAL GOVERNMENT'S noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the LOCAL GOVERNMENT may be declared ineligible for further contracts with the BOARD. The LOCAL GOVERNMENT shall, however, be given a reasonable time in which to cure this noncompliance.

PART V: SPECIAL ASSURANCES

The LOCAL GOVERNMENT assures compliance with all applicable state and local laws, requirements, and ordinances as they pertain to the design, implementation, and administration of the approved project. Of particular importance are the following:

5.01 RCW 43.155.060

The LOCAL GOVERNMENT shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Public Works Trust Fund program.

5.02 WAC 399-30-030(3)

The LOCAL GOVERNMENT assures compliance with WAC 399-30-030(3) which identifies eligible costs for projects assisted with Public Works Trust Fund loans.

5.03 Nondiscrimination Provision

During the performance of this contract, the LOCAL GOVERNMENT shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the LOCAL GOVERNMENT'S noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the LOCAL GOVERNMENT may be declared ineligible for further contracts with the BOARD. The LOCAL GOVERNMENT shall, however, be given a reasonable time in which to cure this noncompliance.

5.04 Historical and Cultural Artifacts

The LOCAL GOVERNMENT agrees that if historical or cultural artifacts are discovered during construction, the LOCAL GOVERNMENT shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at the Washington State Office of Archeology and Historic Preservation.

The LOCAL GOVERNMENT shall require this provision to be contained in all contracts for work or services related to ATTACHMENT I: SCOPE OF WORK.

5.05 Assignment

Neither this agreement, nor any claims arising under this agreement, shall be transferred or assigned by the LOCAL GOVERNMENT without prior written consent of the BOARD.

**PUBLIC WORKS TRUST FUND
Pre-Construction Program
ATTACHMENT 1: SCOPE OF WORK**

PW-02-691-pre-112

King County

Soos Creek Pump Station ID

1. Provide a clear description of the project to be financed in part by a Public Works Trust Fund loan. (Attach additional sheets if necessary):

Engineering, design and public involvement/information work pertaining to the Soos Creek Pump Station D project. This involves the construction of the Black Diamond Interceptor Parallel, which would complement the existing interceptor and collect flow when capacity is exceeded. Pump Station D would pump this increased flow through Forcemain D (also in the planning stages), after which it would connect to the South 277th Interceptor and be transported to the South Treatment Plant at Renton.

2. The term of this loan will be five years.

Scope of Work

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Estimated Project Costs:

	Total
Engineering	\$ 1,138,000
Environmental Review	\$ _____
Land/R-O-W Acquisition	\$ _____
Other Fees	\$ _____
Contingency (____%)	\$ _____
1. Other (specify)	\$ _____
Public Involvement/Information	\$ 96,350
TOTAL ESTIMATED COSTS	\$ 1,234,350

Anticipated Fund Sources:

A	Federal Grants	\$ _____
	State Grants	\$ _____
B.	Locally Generated Revenue	\$ _____
	Wastewater Construction Fund	\$ 234,350
	Capital Reserves	\$ _____
	Other Fund	\$ _____
	Rates	\$ _____
	Assessments	\$ _____
	(LID, RID, ULID)	\$ _____
	Special Levies	\$ _____
	Federal Loan(s) from: (identify all)	\$ _____
	_____	\$ _____
	_____	\$ _____
	State Loan(s) from: (identify all)	\$ _____
	_____	\$ _____
	_____	\$ _____
	Other: identify sources)	\$ _____
	_____	\$ _____
	_____	\$ _____
	TOTAL LOCAL REVENUE	\$ 234,350
C.	PUBLIC WORKS TRUST FUND LOAN	\$ 1,000,000

Scope of Work

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Calculating Local Percentage: (Note: Please exclude any expansion/growth costs and funding before calculating the local percentage.)

Calculate as follows:

$$\frac{\text{Total Local Revenue}}{\text{PWTF Loan} + \text{Total Local Revenue}} = \text{Local Loan Percentage } \underline{19\%}$$

$$\frac{\$234,350}{\$234,350 + 1,000,000} = 19\%$$

The local contribution must be at least:

Five percent (5%)	for a loan interest rate of	2%
Ten percent (10%)	for a loan interest rate of	1%
Fifteen percent (15%)	for a loan interest rate of	0.5%