



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

December 10, 2007

Ordinance 15981

Proposed No. 2007-0601.1

Sponsors Phillips

1 AN ORDINANCE authorizing the King County executive
2 to enter into an agreement with the Washington state
3 Department of Ecology for loan financing for construction
4 costs of the Carnation wastewater treatment facility.

5

6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 SECTION 1. Findings:

8 A. The Washington state Department of Ecology has awarded to the King County
9 department of natural resources and parks a \$14,085,238 State Revolving Fund loan in
10 its FY 2008 cycle.

11 B. This low interest loan will save King County \$14,125,717 in interest payments
12 over forty years, which is a \$2,694,251 net present value, as compared to conventional
13 bond financing.

14 C. This State Revolving Fund loan will help finance construction costs of the
15 Carnation wastewater treatment facility that is part of King County's wastewater capital
16 improvement program.

17 SECTION 2. A. The executive or the executive's designee is hereby authorized
18 to enter into an agreement with the Washington state Department of Ecology for loan
19 financing of capital costs associated with the construction of the Carnation wastewater
20 treatment facility.

21 B. The maximum loan amount shall be \$14,085,238.

22 C. The loan agreement shall incorporate an annual interest rate of 3.1 percent and

23 a loan term of twenty years and be substantially in the form of Attachment A to this
24 ordinance, which is a sample agreement.

25

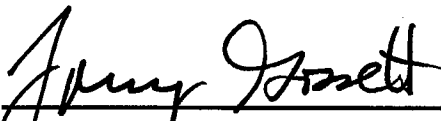
Ordinance 15981 was introduced on 11/13/2007 and passed by the Metropolitan King County Council on 12/10/2007, by the following vote:

Yes: 8 - Mr. Gossett, Ms. Patterson, Ms. Lambert, Mr. von Reichbauer, Mr. Dunn, Mr. Ferguson, Mr. Phillips and Mr. Constantine


No: 0

Excused: 1 - Ms. Hague

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Gossett, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 20 day of December, 2007.

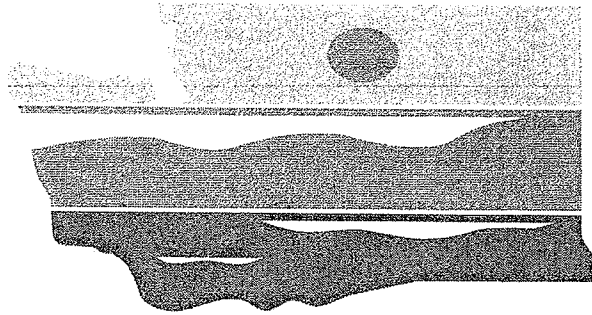

Ron Sims, County Executive

Attachments

A. Washington State Water Pollution Control Revolving Fund Loan Agreement Between the State of Washington Department of Ecology and King County Department of Natural Resources and Parks Wastewater Treatment Division

RECEIVED
2007 DEC 20 PM 3:09
CLERK
KING COUNTY COUNCIL

15981



WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND

LOAN AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

KING COUNTY DEPARTMENT OF NATURAL RESOURCES AND PARKS

WASTEWATER TREATMENT DIVISION

Project Title: King County Wastewater Treatment Plant - Carnation

Loan No.: _____

Loan Amount: \$14,085,238

Interest Rate: 3.1 %

Loan Term: 20 Years

Interim Refinance

Effective: _____, _____

**WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND
 LOAN AGREEMENT
 BETWEEN
 THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
 AND
 KING COUNTY DEPARTMENT OF NATURAL RESOURCES AND PARKS (DNR&P)
 WASTEWATER TREATMENT DIVISION (WTD)**

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**WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND
LOAN AGREEMENT BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
KING COUNTY DNR&P - WTD
FOR
KING COUNTY WASTEWATER TREATMENT PLANT – CARNATION PROJECT**

THIS is a binding loan agreement entered into by and between the state of Washington, Department of Ecology [DEPARTMENT] and King County DNR&P - WTD [RECIPIENT]. The purpose of this loan agreement [AGREEMENT] is to provide funds to the RECIPIENT [LOAN] to carry out the activities described herein [PROJECT].

This AGREEMENT consists of 15 pages and ten 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 DNR&P - WTD
201 South Jackson Street
MS KSC-NR-0501
Seattle, WA 98104-3855

Contact: Maryann Ness
Telephone Number: (206) 684-1030
E-Mail Address: maryann.ness@metrokc.gov
Fax Number: (206) 684-1741

Federal Taxpayer ID Number: 91-6001327

Electronic transfer:
Payable to: King County DNR&P
For the Benefit of: WTD
Bank Name: Key Bank
Bank Address: Second & Marion
Seattle, WA 98104
Bank Account Number: 470011002966

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Water Quality Goal(s): *(Water Quality Goals are tangible environmental changes for the better, to be achieved or directly addressed by the PROJECT proposed.)*

1. "Severe Public Health Hazard" or "Public Health Emergency" eliminated.

Water Quality PROJECT Outcomes: *(Water Quality PROJECT Outcomes are quantitative results realistically anticipated from the PROJECT that will directly lead to the Water Quality Goals.)*

1. Eliminate the severe public health hazard caused by failing on-site septic systems. The public health threat of surfacing sewage and untreated sewage entering the ground water aquifer from sites distributed city-wide will be eliminated when users of the existing on-site septic systems are required to hook-up to the new collection system being built by the city of Carnation and send their wastewater to be treated at the treatment plant being built by King County.
2. Eliminate a source of groundwater pollution in the critical aquifer recharge area and non-point pollution in the Snoqualmie River. Once the Carnation Wastewater Treatment Facility and the local connections are completed, all buildings in the City will be required to hook-up to the new system. A total of 625 septic systems, the majority of which drain directly into the water table, will be eliminated as a source of pollution to the groundwater in the critical aquifer recharge area and as a source of non-point pollution into the Snoqualmie River.
3. Implement TMDL action included in site-specific identification and meet specified discharge limits and monitoring requirements. A Wastewater Treatment Plant for the city of Carnation has been discussed for a number of years and was included in the 1994 TMDL study. King County will meet or exceed the discharge limits specified and meet all monitoring requirements under the NPDES permit.
4. Eliminate potential contamination to a City drinking water source. The threat of contamination of the auxiliary drinking water well located in the City limits will be eliminated.

V. THE LOAN

A. Source and Availability; LOAN Amounts; LOAN Terms

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

Subject to all of the terms, provisions, and conditions of this AGREEMENT, and subject to the availability of state funds, the DEPARTMENT will loan to the RECIPIENT the sum of fourteen million eighty-five thousand two-hundred thirty eight dollars (\$14,085,238) (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

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details the final LOAN amount (the "Final LOAN Amount"), and the DEPARTMENT will prepare a final LOAN repayment schedule, 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 3.1% 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 in equal installments semiannually over a term of twenty (20) years, as provided in ATTACHMENT 8.

B. Requests for Payment

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

1. Procedure. Payment requests shall be submitted by the RECIPIENT to the Financial Manager of the DEPARTMENT.
2. Cost Reimbursable Basis: Payments to the RECIPIENT will be made on a reimbursable basis at least quarterly, but no more often than once per month unless allowed by the DEPARTMENT's Financial Manager. The DEPARTMENT's Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.
3. Documentation: Each request for payment will be submitted by the RECIPIENT, along with documentation of the expenses per the DEPARTMENT's ADMINISTRATIVE REQUIREMENTS.
4. Required Forms: The RECIPIENT shall submit all forms and supportive documentation to the DEPARTMENT's Financial Manager. Invoice voucher submittals will include a State of Washington Invoice Voucher Form A19-1A, Form B2 (ECY 060-7), Form C2 (ECY 060-9), and Form D (ECY 060-11).
5. Period of Payment. Payments shall only be made for eligible costs of the PROJECT 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.
6. Ineligible Costs. Payments will be made only for eligible PROJECT costs incurred and will not exceed the Estimated LOAN Amount. 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.
7. Overhead Costs. No payment for overhead costs in excess of 25 percent of salaries and

benefits of the RECIPIENT shall be allowed.

8. Certification. Each payment request will 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 RECIPIENT's financial condition will be 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 will be absolute and unconditional, and will 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.
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 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

- (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

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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.

D. Method and Conditions on Repayments

1. Semiannual Payments. Notwithstanding any other provision of this AGREEMENT, the first semiannual payment of principal and interest on this LOAN will be paid no later than the earlier of
 - (i) one year after the PROJECT Completion Date or Initiation of Operation Date or
 - (ii) five years from the first payment by the DEPARTMENT.

Equal payments will 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 will be due on the next business day for Washington State agencies.

Payments will be mailed to:

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

In lieu of mailing payments, electronic fund transfers can be arranged by working with the DEPARTMENT's Financial Manager.

No change to the amount of the semiannual principal and interest payments will 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 will 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 this AGREEMENT.
3. Repayment Limitations. Repayment of the LOAN is subject to the following additional

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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 will be made of all transactions relating to this AGREEMENT. The RECIPIENT shall keep such records for six years after receipt of final loan disbursement.

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 an efficient manner and at a reasonable cost.

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, amounts owed by the RECIPIENT to the DEPARTMENT will 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 will incur Late Charges, as provided in Sections V-D-2 and VIII-C-5.
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, will incur Late Charges, as provided in Section V-D-2.
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 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 by the RECIPIENT will, 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.

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X. ALL AGREEMENTS CONTAINED HEREIN

This AGREEMENT, including the incorporated documents, contains the entire understanding between the parties, and there are no other understandings or representations other than those set forth or incorporated by reference herein. No subsequent substantive amendments to this AGREEMENT will be of any force or effect unless made in conformity with Section IX.

IN WITNESS WHEREOF, the DEPARTMENT and the RECIPIENT have executed this AGREEMENT as of the dates set forth below, to be effective as provided above.

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

KING COUNTY DNR&P - WTD

DAVID C. PEELER DATE
WATER QUALITY PROGRAM MANAGER

CHRISTIE TRUE DATE
DIVISION DIRECTOR

APPROVED AS TO FORM ONLY
ASSISTANT ATTORNEY GENERAL

(Revised 07/19/07)

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“**GUIDELINES**” means the DEPARTMENT’s FY 2008 Funding Guidelines Volume One, Publication No. 06-10-062, and FY 2008 Funding Guidelines Volume Two—Statutes and Regulations, Publication No. 06-10-063.

“**Initiation of Operation**” is the actual date the Water Pollution Control Facilities financed with proceeds of the LOAN begin to operate for its 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.

“**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.

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

“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, and 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 and any interest or penalties which may be due.

“Utility” means the sewer system or the combined water and sewer system of the RECIPIENT, the Net Revenue of which is 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.

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 DNR&P - WTD [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 are bound;
- 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; and
- 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.

RECIPIENT's Legal Counsel

Date

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No contract award or rejection will be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and the RECIPIENT and all prospective bidders or persons submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this AGREEMENT :

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

By signing this AGREEMENT, the RECIPIENT certifies that the above steps were, or will be, followed. Any contractor engaged by the RECIPIENT under this AGREEMENT shall be required to follow the above five affirmative steps in the award of any subcontract(s).

The RECIPIENT shall report to the DEPARTMENT at the time of submitting each invoice, on forms provided by the DEPARTMENT, payments made to qualified firms. The report will address:

1. Name and state OMWBE certification number of any qualified firm receiving funds under the voucher, including any sub-and/or sub-subcontractors.
2. The total dollar amount paid to qualified firms under this invoice.

D. Prevailing Wage

The RECIPIENT shall require all contractors and subcontractors on the PROJECT to pay wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, in compliance with state prevailing wage rate requirements, Chapter 39.12 RCW Prevailing Wages on Public Works. To obtain the state prevailing wage rates, contact the Washington State Department of Labor and Industries.

E. Signage

All site-specific projects must have a sign of sufficient size, to be seen from nearby roadways, acknowledging state financial assistance and left in place throughout the life of the project. The DEPARTMENT's logo must be on all signs and documents and will be provided as needed.

F. Sewer-Use Ordinance or Resolution

years following loan termination or dispute resolution.

4. The RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations) or OMB Circular A-110 (Uniform Administrative Requirements for Grants & Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations) if the RECIPIENT receives federal funds in excess of \$300,000. The RECIPIENT must forward a copy of the state auditor's audit along with the RECIPIENT response and the final corrective action plan, as approved by the SAO, to the DEPARTMENT within 90 days of the date of the audit report.

I. PERFORMANCE REPORTING

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Scope of Work. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments will be withheld if required progress reports are not submitted.

J. COMPENSATION

1. Method of Compensation. Payment will normally be made on a reimbursable basis as specified in the loan AGREEMENT and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT, along with documentation of the expenses. Payments will be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and certified as satisfactory by the Financial Manager.

The payment request form and supportive documents must itemize all allowable costs by major elements, as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans," part IV, published by the DEPARTMENT. A copy of this document will be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.

Payment requests will be submitted to the DEPARTMENT and directed to the Financial Manager assigned to administer this AGREEMENT .

2. Budget Deviation. Deviations in budget amounts are not allowed without written amendment(s) to this AGREEMENT. Payment requests will be disallowed when the RECIPIENT's request for reimbursement exceeds the State maximum share amount for that element, as described in the Scope of Work.

3. Period of Compensation. Payments will only be made for action of the RECIPIENT pursuant to the loan AGREEMENT and performed after the effective date and prior to the expiration date of this AGREEMENT, unless those dates are specifically modified in writing as provided herein.
4. Final Request(s) for Payment. The RECIPIENT must submit final requests for compensation within 45 days after the expiration date of this AGREEMENT and within 15 days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.
5. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent of each reimbursement payment as security for the RECIPIENT's performance and a financial bond. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this AGREEMENT and, as appropriate, upon completion of an audit as specified under section J.6..
6. Unauthorized Expenditures. All payments to the RECIPIENT will be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this loan will be refunded to the DEPARTMENT by the RECIPIENT.
7. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under Washington state law for state employees.

K. TERMINATION

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this AGREEMENT. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this AGREEMENT, the DEPARTMENT may refuse to pay any further funds and terminate this AGREEMENT by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this AGREEMENT, at the option of the DEPARTMENT, will become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the 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 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.

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this AGREEMENT crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds will be good cause to terminate this AGREEMENT, as provided in paragraph K.1 above.

When this AGREEMENT crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein will be contingent upon appropriation of funds by the RECIPIENT's governing body; provided, however, that nothing contained herein will preclude the DEPARTMENT from demanding repayment of all funds paid to the RECIPIENT in accordance with Section O.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this AGREEMENT, or by any date mutually agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this AGREEMENT.

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision 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 the authorized representative of the DEPARTMENT.

M. 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 material(s) 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 that 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 will be given to the DEPARTMENT.
3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans," Part V, will 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 statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the 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 will 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 will apply if the project covered by this AGREEMENT includes funds for the acquisition of land or facilities:
 - a. Prior to disbursement of funds provided for in this AGREEMENT, the RECIPIENT shall establish that the cost of land and facilities is fair and reasonable.
 - b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this AGREEMENT. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's 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 contract termination date shown on the cover sheet, 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. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this AGREEMENT bear to the total acquisition, purchase, or construction costs of such property.

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10. Describe the *Most Critical* Specific "Project Result(s)" or "Outcome(s)" actually achieved by the Project:

11. Provide documentation (including digital color pictures) that evidence the continued maintenance and effectiveness of the Project at the time of this survey:

12. Check the Eventual Environmental Result(s) or Goal(s) substantively addressed or achieved by the Project:

- Designated beneficial uses restored or protected
- Regulatory compliance achieved
- Severe Public Health Hazard or Public Health Emergency eliminated

13. Describe the status of the Eventual Environmental Result(s) or Goal(s) at the time of this assessment:

14. Describe subsequent work and ongoing efforts needed to achieve the Eventual Environmental Result(s) or Goal(s) by you and others in the area:


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ATTACHMENT 10

**PREAWARD COMPLIANCE REVIEW REPORT FOR ALL APPLICANTS
REQUESTING FEDERAL ASSISTANCE**

King County DNR&P - WTD
 King County Wastewater Treatment Plant - Carnation Project
 Loan No. _____

	Washington, DC 20460 Preaward Compliance Review Report for All Applicants Requesting Federal Financial Assistance		FORM Approved OMB No. 2030-0020 Expires 12-31-05
	Note: Read instructions before completing form		
I. A. Applicant (Name, City, State)	B. Recipient (Name, City, State)	C. EPA Project No. CS-530001-07-0	
II. Brief description of proposed project, program or activity.			
III. Are any civil rights lawsuits or complaints pending against applicant and/or recipient? If yes, list those complaints and the disposition of each complaint.		<input type="checkbox"/> Yes No <input type="checkbox"/>	
IV. Have any civil rights compliance reviews of the applicant and/or recipient been conducted by any Federal agency during the two years prior to this application for activities which would receive EPA assistance? If yes, list those compliance reviews and status of each review.		<input type="checkbox"/> Yes No <input type="checkbox"/>	
V. Is any other Federal financial assistance being applied for or is any other Federal financial assistance being applied to any portion of this project, program or activity? If yes, list the other Federal Agency(s), describe the associated work and the dollar amount of assistance.		<input type="checkbox"/> Yes No <input type="checkbox"/>	
VI. If entire community under the applicant's jurisdiction is not served under the existing facilities/services, or will not be served under the proposed plan, give reasons why.			
VII. Population Characteristics		Number of People	
1. A. Population of Entire Service Area			
B. Minority Population of Entire Service Area			
2. A. Population Currently Being Served			
B. Minority Population Currently Being Served			
3. A. Population to be Served by Project, Program or Activity			
B. Minority Population to be Served by Project, Program or Activity			
4. A. Population to Remain Without Service			
B. Minority Population to Remain Without Service			
VII. Will all new facilities or alterations to existing facilities financed by these funds be designed and constructed to be readily accessible to and usable by handicapped persons? If no, explain how a regulatory exception (40 CFR 7.70) applies.		Yes No	
IX. Give the schedule for future projects, programs or activities (or of future plans), by which services will be provided to all beneficiaries within applicant's jurisdiction. If there is no schedule, explain why.			
X. I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law.			
A. Signature of Authorized Official		B. Title of Authorized Official	C. Date
A. For the U.S. Environmental Protection Agency			
<input type="checkbox"/> Approved	<input type="checkbox"/> Disapproved	Authorized EPA Official	Date

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EPA Form 4700-4 (Rev. 1/90) Previous editions are obsolete
Instructions for EPA FORM 4700-4 (Rev. 1/90)

C. Items

B. General

Recipients of Federal financial assistance from the U.S. Environmental Protection Agency must comply with the following statutes.

Title VI of the Civil Rights Acts of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Act goes on to explain that the title shall not be construed to authorize action with respect to any employment practice of any employer, employment agency, or labor organization (except where the primary objective of the Federal financial assistance is to provide employment).

Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act provides that no person in the United States shall on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Federal Water Pollution Control Act, as amended. Employment discrimination on the basis of sex is prohibited in all such programs or activities.

Section 504 of The Rehabilitation Act of 1973 provides that no otherwise qualified handicapped individual shall solely by reason of handicap be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Employment discrimination on the basis of handicap is prohibited in all such programs or activities.

The Age Discrimination Act of 1975 provides that no person on the basis of age shall be excluded from participation under any program or activity receiving Federal financial assistance. Employment discrimination is not covered. Age discrimination in employment is prohibited by the Age Discrimination in Employment Act administered by the Equal Employment Opportunity Commission.

Title IX of the Education Amendments of 1972 provides that no person on the basis of sex shall be

IA. "Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance.

IB. "Recipient" means any entity, other than applicant, which will actually receive EPA assistance.

IC. Self-explanatory.

II. Self-explanatory.

III. "Civil rights lawsuits" means any lawsuit or complaint alleging discrimination on the basis of race, color, national origin, sex, age, or handicap pending against the applicant and/or entity, which actually benefits from the grant. For example, if a city is the named applicant but the grant will actually benefit the Department of Sewage, civil rights lawsuits involving both the city and the Department of Sewage should be listed.

IV. "Civil rights compliance review" means any review assessing the applicant and/or recipient's compliance with laws prohibiting discrimination on the basis of race, color, national origin, sex, age, or handicap. If any part of the review covered the entity, which will actually benefit from the grant, it should be listed.

V. Self-explanatory.

VI. The word "community" refers to the area under the applicant and/or recipient's jurisdiction. The "community" might be a university or laboratory campus, or a community within a large city. If there is significant disparity between minority and nonminority populations to receive service, not otherwise satisfactorily explained, the Regional office may require a map, which indicates the minority and nonminority population served by this project, program or activity.

VII. This information is required so that reviewers may determine if a disparity in the proposed provision of services will exist in the event the application is approved for funding. Give population of recipient's jurisdiction, broken out by categories as specified.

In the event the applicant cannot provide the requested information because the funds will be distributed over a wide demographic area, which is yet to be determined, an explanation may be provided on a separate sheet. For example, a State applying for a capitalization grant under the State Revolving Fund program may not know which cities and counties will apply for, and receive, SRF loans.

VIII. Self-explanatory.

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excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Employment discrimination on the basis of sex is prohibited in all such education programs or activities. Note: an education program or activity is not limited to only those conducted by a formal institution.

The information on this form is required to enable the U.S. Environmental Protection Agency to determine whether applicants and prospective recipients are developing projects, programs and activities on a nondiscriminatory basis as required by the above statutes.

Submit this form with the original and required copies of applications, requests for extensions, requests for increase of funds, etc. Updates of information are all that are required after the initial application submission.

If any item is not relevant to the project for which assistance is requested, write "NA" for "Not Applicable."

In the event applicant is uncertain about how to answer certain questions, EPA program officials should be contacted for clarification.

IX. "Jurisdiction" means the geographical area over which applicant has the authority to provide service.

X. Self-explanatory.

D. "Burden Disclosure Statement"

EPA estimates public reporting burden for the preparation of this form to average 30 minutes per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.