



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**February 27, 2018**

**Ordinance 18663**

**Proposed No. 2017-0452.3**

**Sponsors Upthegrove and Kohl-Welles**

1 AN ORDINANCE authorizing the establishment and  
2 implementation of a program to fund city projects to reduce  
3 energy demand; and amending Ordinance 17166, Section 2,  
4 as amended, and K.C.C. 18.50.010.

5 STATEMENT OF FACTS:

6 1. Climate change is one of the paramount challenges of our generation  
7 and will have long-term consequences for the economy, the environment,  
8 and public health and safety in King County. The county is already  
9 experiencing the impacts of a changing climate, including warming  
10 temperatures, acidifying marine waters, rising seas, increasing flooding  
11 risk, decreasing mountain snowpack and less water in the summer.

12 2. King County has a long record of innovation, leadership and  
13 investment in reducing greenhouse gas emissions and preparing for the  
14 impacts of climate change. Consideration of climate change impacts and  
15 opportunities to reduce energy use and greenhouse gas emissions are  
16 deeply embedded throughout the work plans and capital investments of  
17 county departments and lines of business.

18 3. The 2015 King County Strategic Climate Action Plan maps specific  
19 pathways and actions needed to achieve the ambitious countywide goals of

20 reducing greenhouse gas emissions by eighty percent by 2050 against a  
21 2007 baseline with interim goals of twenty-five percent reduction by 2020  
22 and fifty percent reduction by 2030.

23 4. The plan establishes goals, targets, measures and priority actions in five  
24 goal areas: transportation and land use; building and facilities energy;  
25 green building; consumption and materials management; and forestry and  
26 agriculture.

27 5. The plan establishes energy use reduction goals for county operations  
28 of five percent by 2020 and ten percent by 2025 below 2014 levels and  
29 countywide energy use reduction goals of twenty-five percent reduction  
30 below 2012 levels by 2030.

31 6. While King County surpassed its internal efficiency goal for 2015 and  
32 is actively pursuing additional energy reductions by 2020, countywide  
33 energy use in existing buildings declined by six and four-tenth percent  
34 from 2012 to 2015.

35 7. Significant action will be necessary to meet the countywide energy use  
36 reduction target of twenty-five percent by 2020.

37 8. The plan includes a priority action recommending the county work  
38 with stakeholders to develop loans, legislative action and financial tools  
39 that reduce the costs of implementing resource efficiency and renewable  
40 energy projects.

41 9. This priority action also recommends development of a program such  
42 as a county-supported loan program to be available for cities within King

43 County to complete resource efficiency or renewable energy projects in  
44 their facilities. Resource efficiency projects can reduce energy  
45 consumption and provide positive economic benefit from reduced energy  
46 costs.

47 10. Consistent with the plan recommendation, the county developed the  
48 fund to reduce energy demand for cities program, advancing the plan's  
49 policy goals and commitments to reduce greenhouse gas emissions  
50 through the extension of loans to cities for energy efficiency and  
51 renewable energy production projects.

52 11. The program is intended to help overcome common financing barriers  
53 to implementing energy efficiency and renewable energy projects by  
54 providing capital to cities with qualifying projects, to be paid back over  
55 time.

56 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

57 SECTION 1. A program to fund city projects to reduce energy demand is hereby  
58 established and the King County executive is authorized to develop and implement the  
59 program as generally described in Attachment A to this ordinance.

60 SECTION 2. As part of the implementation of the program, the executive is  
61 authorized to execute loan agreements, substantially in the form of Attachment B to this  
62 ordinance, with participating cities.

63 SECTION 3. The executive shall report to the council on the program as part of  
64 the report on the county's major environmental sustainability programs required by  
65 K.C.C. 18.50.010. The report shall include: a list of all projects and loan amounts; the

66 status of the financed projects including any defaults; the annual energy savings or  
67 renewable energy production from each completed project; and the additional costs, if  
68 any, to the county in administering the program.

69 SECTION 4. Ordinance 17166, Section 2, as amended, and K.C.C. 18.50.010 are  
70 each amended to read as follows:

71 The executive shall transmit by June 30 of every other year a report on the  
72 county's major environmental sustainability programs intended to reduce energy use,  
73 climate emissions and resource use and prepare for the impacts of climate change, as  
74 required in subsections A., B. and C. of this section. The executive shall transmit the  
75 report to council, filed in the form of a paper original and an electronic copy with the  
76 clerk of the council, who shall retain the original and provide an electronic copy to all  
77 councilmembers, the council chief of staff and the lead staff for the transportation  
78 economy and environment committee or its successor. The report shall be structured in a  
79 way that links actual performance to established goals and indicators and can inform  
80 policy choices, program priorities and investments in capital projects. The report should  
81 address the following:

82 A. Greenhouse gas emissions reductions, including:

83 1. Progress towards achieving the overarching greenhouse gas emissions  
84 reduction targets for both county government operations and the county as a whole;

85 2. Progress against targets and measures and updates on the implementation of  
86 strategies and priority actions in five goal areas for the strategic climate action plan:  
87 transportation and land use; building and facilities energy; green building; consumption  
88 and materials management, including the environmental purchasing program; and

89 forestry and agriculture; and

90           3. A summary of major expenses associated with the climate impacts research,  
91 community-scale emissions inventories, climate change community engagement, and  
92 climate change and energy efficiency partnerships with businesses and cities;

93           B. An update on implementation of climate preparedness strategies and priority  
94 actions recommended in the current strategic climate action plan, as required in K.C.C.  
95 18.255.010.A.6; ~~((and))~~

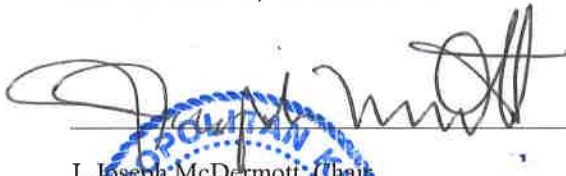
96           C. The green building program, as required in K.C.C. 18.17.020.M.1; and

97 D. The program to fund city projects to reduce energy demand, as required in  
98 section 3 of this ordinance.  
99

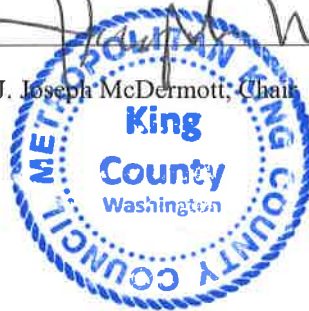
Ordinance 18663 was introduced on 12/4/2017 and passed as amended by the Metropolitan King County Council on 2/26/2018, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,  
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles  
and Ms. Balducci  
No: 0  
Excused: 0

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON



J. Joseph McDermott, Chair



2018 MAR -9 PM 3:27  
CLERK  
KING COUNTY COUNCIL

RECEIVED

ATTEST:



Melani Pedroza, Clerk of the Council

APPROVED this 8 day of MARCH, 2018.



Dow Constantine, County Executive

**Attachments:** A. Fund to Reduce Energy Demand for Cities Program (Revised 2018), B. Loan Agreement for Energy Efficiency-Renewable Energy Project Financing (Revised 2018)



## FUND TO REDUCE ENERGY DEMAND FOR CITIES PROGRAM

### PROGRAM DESCRIPTION

King County established an intra-county program known as the Fund to Reduce Energy Demand Program (FRED Program) in 2014 to overcome a major hurdle for county agencies trying to pursue energy and water conservation projects: securing up-front capital needed to support the initial investment. The FRED Program uses operating savings from reduced energy consumption to pay off internal loans. Projects are required to demonstrate savings, meeting county goals for fiscal responsibility. To date, King County's FRED Program includes 18 completed, or in-development, projects that in total cost approximately \$3.5 million and will result in approximately \$500,000 in annual savings, including a number of lighting retrofits, a solar panel installation, and some plumbing improvements.

Cities within King County's geographic jurisdiction face similar barriers to financing energy and water conservation projects. The County is committed to building on its FRED Program by inviting city partners to participate in a companion program to be entitled the Fund to Reduce Energy Demand for Cities (FRED for Cities) Program. Similar to County agencies, participating cities will be required to demonstrate that the projects will save resources and money. Cities will commit to repay the loan through a loan agreement. Extending the successful FRED Program to city partners will help to advance progress toward the shared, countywide goal of reducing community greenhouse gas emissions by 80 percent by 2050.

### PROGRAM DETAILS

**Eligibility:** Any city within King County may apply for a loan from King County's FRED for Cities Program in support of energy use and cost reduction projects or renewable energy production projects. Cities may request FRED for Cities funding for the marginal or total costs associated with increasing the energy efficiency of facilities or installing renewable energy systems. Marginal or total costs that can be supported through loans from the FRED for Cities Program are limited to the installation of capitalizable equipment.

Cities are responsible for the development and implementation of projects, and must pledge to repay the loan regardless of project performance.

**Loan size and terms:** The current maximum loan size is \$1 million, with terms, limitations, and reporting covenants documented in the loan agreement. Loan term is limited to ten years.

Participating in the FRED for Cities Program will not be based on a competitive process. The County expects to be able to provide funding for all projects that meet the criteria outlined below.

Project Eligibility Criteria: Eligible projects will demonstrate a positive financial impact and will advance carbon emission reduction goals. Threshold criteria include:

- The project results in the reduction of net energy usage or production of renewable energy by the city.
- The incremental investment costs have a positive Net Present Value (NPV).
- The project has a payback period that is less than the life of the proposed asset.
- The city has the capacity to develop and implement the project, either with internal resources, or through contract(s) with qualified service providers, or combination.
- The project does not create other negative environmental, community, financial, or workforce impacts.
- The project has positive or neutral Equity and Social Justice and economic development impacts.

If a city meets the threshold criteria, it will qualify for FRED for Cities Program funding. However, actual award of funding will still be dependent upon the city completing of the application materials, the County's review of the application and information included in the next section selection by the County of the city's project and execution of the FRED for cities loan agreement.

## PROJECT DEVELOPMENT PROCESS

Identification: King County's Energy Manager and Energy Policy and Partnerships Specialist assist cities, if needed, in scoping and identification of potential qualified projects.

Review: After the project scope is developed, and financing amount is identified, the King County FRED for Cities team (Energy Manager, Energy Policy and Partnerships Specialist, Budget Analyst and others) will review the project details, including:

- Project scope: detailed description of project, including equipment replacement, programs, other costs;
- Expected outcomes: project performance per the Resource Lifecycle Cost Analysis (rLCCA) model; and
- Risk and repayment cash flow.

Payment and Performance: The city will be required to provide a progress report on the project and a performance report on utility savings once the project is completed. The city may provide a utility conservation grant report as a performance report.

King County's Department of Natural Resources and Parks (DNRP) will collect installment payments from cities when due. Prior to any FRED to cities Program loans being made, a fund shall be established to which bond moneys shall be appropriated, and future loan installment payments deposited. From this fund, loans will be disbursed. . Additionally, the King County Finance and Business Operations Division will transfer money from that fund to the centralized debt service fund in the month the FRED for cities Program's bond payment is due.



Fees incurred by King County for fund management and program administration will be passed on to the borrower cities to be paid semi-annually. These charges will be actual fees not to exceed .2% of the original loan balance.

#### PROGRAM IMPLEMENTATION THROUGH THE LOAN AGREEMENT

Each city will be required to execute the loan agreement form that has been approved by ordinance.  
The loan agreement form is the mechanism by which the FRED for cities Program will be implemented.

**LOAN AGREEMENT  
FOR ENERGY EFFICIENCY/RENEWABLE ENERGY PROJECT FINANCING  
BY AND BETWEEN  
KING COUNTY AND THE CITY OF \_\_\_\_\_**

This Loan Agreement for Energy Efficiency/Renewable Energy Project Financing (“Agreement”) is made by and between King County (the “County”), a municipal corporation, political subdivision of the State of Washington and home rule charter county, and the city of \_\_\_\_\_ (the “City”), a \_\_\_\_\_ city located within the County, both of which may be referred to hereinafter individually as a “Party” or collectively the “Parties.”

**RECITALS**

The County Council passed Ordinance 18392, adopting the 2015 King County Strategic Climate Action Plan, setting ambitious carbon dioxide emission reduction goals, targeting a 50% reduction in carbon emissions by 2030, and an 80% reduction in carbon emissions by 2050 against a 2007 baseline and developing concrete actions to reduce carbon emissions, including a County-supported loan program that will be available for cities within the County to complete resource efficiency projects in their facilities.

The State legislature has declared that addressing the effects of climate change, pollution and energy loss is of significant importance for the State and the legislature has encouraged local governments to collaborate to reduce greenhouse gas emissions and to mitigate the consequences of climate change.

The County recognizes that climate change, pollution and energy loss is migratory and ambient and that the County and its citizens benefit from County-wide programs that mitigate the adverse effects of climate change, pollution and energy loss, and consistent with State legislature’s stated goals, the County seeks to create the “Energy Efficiency and Renewable Energy Loan Fund” to provide for the receipt and disbursement of [bond proceeds][appropriated funds] to be made available by loan for cities within the County to build or complete Energy Efficiency Projects and Renewable Energy Projects in their facilities.

King County Ordinance \_\_\_\_\_ established a program to fund city projects to reduce energy demand( hereinafter either the Fund to Reduce Energy Demand (“FRED”) for Cities Program or the “Program”), to advance the County’s Strategic Climate Action Plan policy goals and commitments to reduce greenhouse gas emission and achieve other energy savings through the receipt and disbursement of [bond proceeds][appropriated funds] to cities for Energy Efficiency Projects and Renewable Energy Projects.

King County Ordinance \_\_\_\_\_ authorizes the County Executive to enter into loan agreements with cities within the County to make Program Loans for the implementation of city projects that reduce emissions or reduce or conserve energy resource consumption.

City ordinance [Ordinance/Resolution] [ \_\_\_\_\_ ] authorizes the City to enter into a loan agreement with the County and receive a Program Loan from the County, which constitutes debt of the City, for the implementation of projects that reduce emissions or reduce or conserve energy consumption.

All Program Loans are required to be used solely for projects that provide a benefit to the County and its citizens for development and use of clean energy technologies that reduce energy, consumption or produce renewable energy, reduce energy costs, and reduce harmful emissions through installation or replacement of equipment or other capitalizable assets.

After consultation and discussion with the City, the County seeks to make a Program Loan for the Project(s) described in Exhibit A with a budget of \$ \_\_\_\_\_.

## AGREEMENT

The County and the City agree as follows:

### 1. Definitions

Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Financing Agreement (including the recitals and exhibits hereto), have the following meanings, such definitions to be equally applicable to both the singular and plural forms of any of the terms defined:

*Additional Costs* means all costs, expenses, insurance premiums, impositions and other payments, including Administrative Fees and Expenses, but that are [not financed with Bond proceeds and] incurred by the County and in any case, no more than [\_\_\_%] of the Principal Component of the Loan.

*Administrative Fees and Expenses* means all application, commitment, financing or similar fees, charged, or administrative or other expenses incurred, with respect to the funding, administration and maintenance of the Program.

*Agreement* means this agreement between the County and the City, including any amendments hereto made in conformity herewith.

*[Bonds* means limited tax general obligation bonds of the County issued to provide financing for the Program and to pay costs of issuing the Bonds.]

*[Bond Counsel* means a firm of attorneys appointed by the County of recognized national standing in the field of law related to issuance of bonds and other obligations by states and their political subdivisions, and the exclusion of interest thereon from gross income for federal income tax purposes.]

*[Bond Ordinance* means the ordinance enacted by the County authorizing the issuance and sale of the Bonds.]

*Business Days* means any day other than (i) a Saturday, (ii) a Sunday, (iii) a day on which banking institutions located in the state of Washington are authorized or required by law to remain closed, or (iv) a day on which the Executive's Office or the New York Stock Exchange is closed.

*City* means the city of \_\_\_\_\_, a \_\_\_\_\_ city located within the County.

*Code* means the federal Internal Revenue Code of 1986, as amended, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the United States Treasury Department or the Internal Revenue Service.

[*Costs of Issuance* means the administrative expenses, legal, accounting, financial and printing expenses, and all other expenses incurred in connection with the preparation, execution and delivery of the Bonds.]

*County* means King County, a municipal corporation, political subdivision of the State and home rule charter county.

*County Council* means the body as established by Article 2 of the King County Charter.

*County Executive or Executive* means the County Executive of King County as established by Article 3 of the King County Charter.

*County Investment Pool Rate* means the monthly gross distribution yield of the King County Investment Pool.

*Energy Efficiency Project* means the replacement or upgrade of capital equipment in the City's facility or facilities that results in a reduction in energy consumption.

*Event of Default* means and Event of Default as set forth in Section 9.1 of this Agreement.

*FBOD* means the Finance and Business Operations Division of the Department of Executive Services of the County.

*FRED for Cities Application Process* means that process by which the Program reviews and approves each Project, which involves the city submitting (i) a narrative description of the proposed project; (ii) a description of the specific uses of the proposed project; (iii) a life cycle cost assessment; and (iv) a timeline to complete the proposed project.

*Government Obligations* means obligations defined as "government obligations" in chapter 39.53 RCW, as now in existence or hereafter amended.

*Installment Payment* means the installment payments of both the Principal and Interest Components to be made by the City as set forth in this Agreement at Exhibit B.

*Installment Payment Date* means each [December 1] and [June 1], as specified in Exhibit B, on which an Installment Payment is due.

*Interest Component* means that portion of each Installment Payment denominated as and comprising interest as set forth in Exhibit B.

*Loan* is defined in Section 2.1.

*Person* means an individual, corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

*Principal Component* means that portion of each Installment Payment denominated as and comprising principal as set forth in Exhibit B.

*Program* means the County's Fund to Reduce Energy Demand (FRED) for Cities program to assist cities to implement Energy Efficiency Projects and Renewable Energy Projects in publicly-owned facilities of the cities resulting in cost savings and reduced carbon emissions that advance the County's Strategic Climate Action Plan.

*Program Loan* means a loan of Bond proceeds or legally available appropriated funds made pursuant to the Program through the FRED for Cities Application Process.

*Project* means each project listed in Exhibit A, as approved through the FRED for Cities Application Process and which is an Energy Efficiency Project and/or a Renewable Energy Project meeting the criteria of the Program, including: (a) resulting in the reduction of net energy usage by the City or generation of renewable energy by the City; (b) having a positive net present value; (c) having a simple payback period that is less than the life of the proposed asset; and (d) does not violate any labor agreements or other contracts.

*Reimbursable Expenditures* means those costs and expenses of the City eligible for reimbursement as a capital expenditure, including the costs of Project development and equipment installation. The costs of measurement and reporting are not Reimbursable Expenditures.

*Renewable Energy Project* means the installation of capital equipment resulting in the generation of renewable energy that is used directly by the City or integrated into the power grid.

*RCW* means the Revised Code of Washington.

[*Series of Bonds* means a series of Bonds issued pursuant to the Bond Ordinance.]

*State* means the state of Washington.

[*Tax Certificate* means the Tax Certificate executed and delivered by the County regarding compliance with applicable provisions of the Code in connection with any Tax-Exempt Bonds.]

[*Taxable Bonds* means any Series of Bonds determined to be issued on a taxable basis pursuant to the Bond Ordinance.]

[*Tax-Exempt Bonds* means any Series of Bonds determined to be issued on a tax-exempt basis pursuant to the Bond Ordinance.]

## **2. Loan; Disbursement of Loan Proceeds; Loan Payments; Prepayment**

2.1 Loan. The County hereby makes a Program Loan to the City for the Project(s) in

the original principal amount set forth in Exhibit B (the "Loan").

2.2 Disbursement of Loan Proceeds. Exhibit A of this Agreement provides a description of the Project(s) that will be funded by the Loan. On a quarterly basis, and no more frequently, and upon receiving a detailed invoice for Project Reimbursable Expenditures, together with a written request for funding from the City providing that the reimbursement sought is for capital expenditures as required and are consistent with the Project proposed and approved in the FRED for Cities Application Process, the County will transfer sufficient Loan proceeds to the City for such reimbursement up to the amount described at Exhibit B.

2.3 Unexpended Loan Funds. If [(a)] any funds allocated to the Loan remain unexpended upon the completion or termination of the Project [or (b) within twenty-four (24) months following the date of issuance of the Bonds, the City advises the County that the City will not be able to expend all of the funds allocated to the Loan on the Project within thirty-six (36) months following the date of issuance of the Bonds,] then the County will use those funds to prepay the Loan [and pay, redeem or defease Bonds]. Any resulting decrease in debt service will be applied as a credit against the City's Installment Payments.

2.4 Loan Payments. In consideration for receipt of the Loan, the City agrees (a) to pay the County in the following amounts at the following times: (i) on each Installment Payment Date, the City shall make the Installment Payments set forth in Exhibit B, consisting of a Principal Component and/or an Interest Component at an interest rate as set forth in Exhibit B; (ii) all Additional Costs incurred by the County in connection with the Loan to the City; and (b) to complete the Project. The City's obligation to repay the Loan in the Installment Payments on the Installment Payment Dates is absolute and unconditional and, except as specifically provided herein, shall not be subject to diminution by setoff, counterclaim, abatement or otherwise until such time as the principal of the Loan, together with all accrued and unpaid interest thereon, shall have been fully paid or provision for the payment thereof shall have been made in accordance with this Agreement.

2.5 Installment Payments. The City's Installment Payments shall consist of a Principal Component and/or an Interest Component with an interest rate as set forth in Exhibit B to this Agreement. Interest shall accrue and be calculated as determined by the County, which determination shall be binding and conclusive against the City absent manifest error. Each Installment Payment shall be paid to or upon the order of the County by electronic funds transfer (or by other means acceptable to the County) in lawful money of the United States of America at such place as the County shall direct in writing not less than 10 Business Days prior to the Installment Payment Date. Each Installment Payment shall be applied first to the Interest Component, and then to the Principal Component.

2.6 Additional Costs. The City shall pay Additional Costs to or upon the order of the County by electronic funds transfer (or by other means acceptable to the County) in lawful money of the United States of America at such place as the County shall direct in writing upon receipt of the County's invoice therefor no more frequently than [annually][semiannually].

2.7 Payments by City Treasurer. The treasurer of the City shall establish and/or maintain a debt service fund of the City for the purposes of paying the City's Installment Payments

and Additional Costs. The treasurer of the City shall remit each Installment Payment to the County on each Installment Payment Date and any Additional Costs when due hereunder from any legally available funds of the City.

2.8 Optional Prepayment.

(a) The City may, at its option, prepay the [Principal Component of the] Installment Payments then unpaid, in whole or in part on any date, without penalty or premium[, together with any accrued and unpaid interest to the date of prepayment].

(b) The City shall provide the County with not less than 60 days' prior written notice of its intention to prepay any of its Installment Payments, which notice shall specify the date of such prepayment, and the amount of the Installment Payments to be prepaid. The County shall notify the City within 15 Business Days after receipt of such notice from the City as to the amount required to be paid in connection with such prepayment, including any Additional Costs in connection therewith. The determination by the County of the amount to be paid by the City shall be binding and conclusive against such City, absent manifest error.

2.9 Revision of Installment Payments upon Optional Prepayment. Upon receipt by the County of any partial prepayment pursuant to Section 2.8, the County shall, at the option of the City, apply the partial prepayment against the [Principal Component of the] Installment Payments then unpaid either (a) in inverse order of maturity, or (b) by re-amortizing the Principal Component and Interest Component of the Installment Payment due on each Installment Payment Date coming due after the partial prepayment for the remaining term of the Loan and prepare a revised Exhibit B.

2.10 Discharge of City. All obligations of the City under this Agreement shall terminate and be completely discharged and satisfied (except for the right of the County and the obligation of the City to have the money and Government Obligations set aside applied pursuant to Section 2.10(b) to make the remaining Installment Payments) when either:

(a) All Installment Payments and all Additional Costs and other amounts due hereunder have been paid in accordance herewith; or

(b) The City shall have (i) delivered a written notice to the County of its intention to prepay all of the Installment Payments remaining unpaid; (ii) caused to be deposited with the County money and/or Government Obligations in an amount sufficient to provide for the payment or defeasance of all such Installment Payments, together with a written opinion of Bond Counsel acceptable to the County to the effect that such actions are permitted under this Agreement and will not cause interest to be includable in gross income for federal income tax purposes under the Code; and (iii) made provision satisfactory to the County for payment of all Additional Costs for so long as any Installment Payments remain unpaid.

**3. Security and Source(s) of Payment [Use one or more of the following, as applicable:]**

3.1 General Obligation Indebtedness. The City pledges its full faith, credit and resources for the prompt payment of the Installment Payments as the same shall become due.

3.2 Revenue Indebtedness. The City pledges the [net][gross] revenue of its [name of utility or other enterprise] system[, subject only to [describe any prior liens against revenues], for the payment of the Installment Payments as the same shall become due.

#### **4. Representation and Warranties of City**

The City represents and warrants to the County as follows:

4.1 The City is a \_\_\_\_\_, duly organized and validly existing under the Constitution and laws of the State, and located within the County.

4.2 The City is authorized under the laws of the State and its charter or other constituent document, if any, to enter into and perform its obligations under this Agreement.

4.3 Neither the execution and delivery by the City of this Agreement, nor the observance and performance of its terms and conditions, nor the consummation of the transactions contemplated by it, conflicts with or constitutes a breach of or default under any agreement or instrument to which the City is a party or by which the City or its property is bound.

4.4 The City's legislative authority has authorized the City's execution and performance of this Agreement. ..

4.5 The Loan to the City pursuant to this Agreement constitutes valid and binding [general obligation][revenue] indebtedness of the City, enforceable against it in accordance with its terms, except as such enforceability may be affected by bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally, to the application of equitable principles, and to the exercise of judicial discretion in appropriate cases.

4.6 The Project to be financed by the Loan serves a governmental function, and the City expects to make immediate and continuing use of the Project during the term of Agreement.

4.7 The useful life of the Project is equal to or exceeds the term of this Agreement.

4.8 The obligations of the City to make the Installment Payments under this Agreement, together with all other outstanding indebtedness of the City, do not exceed any statutory or constitutional debt limit applicable to the City.

#### **5. Covenants and Agreements of City**



The City covenants and agrees with the County as follows:

5.1 General. The City shall maintain a high standard of care and conduct its operations in an efficient manner and faithfully perform and do all things necessary so that the County may observe and perform all conditions, covenants and requirements of this Agreement [and the Bond Ordinance].

5.2 Budget[; Levy of Taxes]. The City shall take such action as may be necessary to include all the Installment Payments and Additional Costs due hereunder in its annual budget and to make the necessary annual appropriations for all such Installment Payments and Additional Costs.

[Add if Loan will be a general obligation of the City:

The City shall levy taxes in such amounts and at such times as shall be necessary, within and as a part of the tax levy permitted without a vote of the people, to provide sufficient funds, together with all other legally available money, to pay the Installment Payments and Additional Payments due under this Agreement.]

5.3 Notice of Nonpayment. The City shall give written notice to the County prior to any Installment Payment Date if the City knows prior to such date that it will be unable to make all or any portion of the Installment Payment due on such date.

5.4 No Liens, Transfers or Assignments. The City shall not create, incur or assume any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Project [except with the advance approval of the County in writing]. The City shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The City shall not grant, sell, transfer, assign, pledge, convey or otherwise dispose of any of the Project or any interest therein during the term of this Agreement, and any such attempted grant, sale, transfer, assignment, pledge, conveyance or disposal shall be void. The City may not grant, sell, assign, transfer, convey, pledge, hypothecate or grant any security interest in any of its right, title or interest in, to or under this Agreement. Any attempted grant, sale, assignment, conveyance, pledge, hypothecation or security interest shall be void.

5.5 Performance. The City shall pay the Installment Payments and any Additional Costs in conformity with the terms and provisions hereof, and will faithfully observe and perform all the covenants, terms and other obligations contained herein required to be observed and performed by the City. The City will not suffer or permit any default to occur hereunder, or do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted, or any such omission or refraining from doing anything, would or might be grounds for termination of this Agreement. The City will not terminate this Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of the State, or any failure by the County to observe or perform any

covenant, agreement, term, condition or other obligation contained herein required to be observed and performed by it, whether express or implied.

5.6 Further Assurances. The City will preserve and protect the rights of the County hereunder, and will warrant and defend such rights against all claims and demands of all Persons. As may be necessary or proper to carry out or facilitate the City's performance hereunder, the City will promptly execute, make, deliver, file and record any and all further assurances, instruments and agreements, and do or cause to be done such other and further things as may be reasonably requested by the County and for the better assuring and confirming to the County the rights and benefits provided to it hereunder.

5.7 Use and Maintenance of Property.

(a) During the term of this Agreement, the City will use the Project for governmental functions. The City will not permit the Project to be used or operated other than by authorized employees, agents and contractors of the City.

(b) For so long as the loan is outstanding, the City shall be solely responsible for the maintenance and repair, both ordinary and extraordinary, of the Project. The City will (i) keep and maintain the Project in good repair, working order and condition, and protect the same from deterioration other than normal wear and tear; (ii) cause the Project to be used within its normal capacity, in the manner contemplated by the manufacturer's specification, and in compliance with the requirements of applicable laws, ordinances and regulations, the requirements of any warranties applicable thereto; (iii) cause the Project to be used and operated by or under the direction of competent persons only, and obtain all registrations, permits and licenses, if any, required by law for the operation of the Project; and (iv) will pay all costs, claims, damages, fees and charges arising out of its possession, use or maintenance of the Project. The City, at its expense, will furnish all parts, mechanisms and devices required to operate and maintain the Project.

5.8 Financial Statements. The City shall prepare annual financial statements and obtain audits thereof as required by law. Upon the written request of the County, the City shall provide the County with a copy of its most recent audited and unaudited financial statements.

5.9 Risk of Loss; Damage, Destruction and Condemnation. The City assumes all risk of loss of or damage to the Project from any cause whatsoever, and the obligation of the City to pay the Installment Payments or to perform any other obligation under this Agreement shall in no way be released, discharged or otherwise affected for any reason, including without limitation (i) any defect in the condition, quality or fitness for use of, or title to, any portion of the Project, or (ii) any damage to, or abandonment, destruction, requisition, condemnation or taking of any portion of the Project. In the event of damage to any item of the Project, the City will immediately place the same in good repair, working order and condition as required by Section 5.7 hereof. If the City determines that any item of the Project is lost, stolen, destroyed or damaged beyond repair, the City will prepay all of its obligations for Installment Payments and terminate its obligations hereunder in accordance with Section 2.10(b) hereof.

#### 5.10 Reports and Records.

(a) Bi-annually and together with submission of the Installment Payment due on the Installment Payment Date, the City shall submit a report to the County Department of Natural Resources and Parks detailing the status of each Project, confirming the Project is still in use and in conformance with the covenants of this Agreement.

(b) For so long as this Agreement is in effect, the City shall submit an annual certification to FBOD to the effect that the City is not in default of any of its obligations, covenants or undertakings under this Agreement or alternatively, if the City is in default of any of its obligations, covenants or undertakings under this Agreement, explaining the nature thereof and specifying the steps being taken to remedy the same.

(c) The City shall provide the County with a "Project Report," within 90 days of the end of the 12-month period in which all funds were expended. The Project Report shall contain a summary of all Project expenditures, a description of the Project performance, including energy and costs savings.

(d) The County and its designated agents shall have access at any time during normal business hours and as often as necessary to any bank account and City books, records, documents, accounts, files, reports and other property and papers of the City relating to the Project funded by the Program as described in this Agreement for the purpose of making audits, surveys, examinations, excerpts, and transcripts.

[Add if Loan is financed with Tax-Exempt Bonds:

5.11 Tax Exempt Bond Covenants. The City shall not take or refrain from taking any action that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code. The City shall not use or permit the use of the Project or any part thereof by any Person other than a "governmental unit" as that term is defined in Section 141 of the Code, in such manner or to such extent as would result in the loss of the exclusion from gross income for federal income tax purposes of the Interest Component of the Installment Payments under Section 103 of the Code. The City shall not take or refrain from taking any action that would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code, or "private activity bonds" within the meaning of Section 141 of the Code, or "hedge bonds" within the meaning of Section 149 of the Code. To that end, for so long as any Installment Payments remain unpaid, the City, with respect to such proceeds and other amounts, will comply with all requirements under such Sections and all applicable regulations of the United States Department of the Treasury promulgated thereunder. The City will at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the Interest Components of the Installment Payments will not be included in gross income of the Owners of the Bonds for federal income tax purposes under the Code, and will take no action that would result in such interest being so included. The City shall comply with the applicable provisions of the Tax Certificate.]

## 6. Events of Default; Remedies

6.1 Delinquent Installment Payments. Upon the failure of the City to pay any Installment Payment or any Additional Costs at such time and in such amount as required pursuant to this Agreement, the County may, at its sole option and only to the extent of legally available appropriated funds, make such payment on behalf of such City within 5 Business Days after such Installment Payment Date or the due date for the payment of such Additional Costs, as applicable. The City shall reimburse the County for such payments made on its behalf immediately thereafter and in any case not later than 10 Business Days after such Installment Payment Date or the due date for the payment of such Additional Costs, as applicable, together with interest thereon at a rate equal to the County Investment Pool Rate.

6.2 Events of Default. Each of the following shall constitute an "Event of Default" hereunder:

(a) Failure by the City to pay or cause to be paid any Installment Payment or any payment of Additional Costs required to be paid hereunder within 10 Business Days of the respective Installment Payment Date or due date for the payment of such Additional Costs, as applicable;

(b) Failure by the City to reimburse the County for payments made on its behalf with respect to any delinquent Installment Payment or delinquent payment of any Additional Costs required to be paid hereunder within 10 Business Days of the respective Installment Payment Date or due date for the payment of such Additional Costs, as applicable, together with interest thereon at a rate equal to the County Investment Pool Rate;

(c) Failure by the City to observe or perform any covenant, agreement, term or condition on its part to be observed or performed hereunder, other than as set forth in Section 6.2(a) and 6.2(b) above, for a period of 30 days after written notice from the County specifying such failure and requesting that it be remedied; *provided however*, that such period shall be extended for not more than 60 days if such failure cannot be corrected within such period, and the corrective action is commenced by the City within such period and diligently pursued until the failure is corrected;

(d) If any statement, representation, or warranty made by the City in this Agreement or in any writing delivered by the City pursuant hereto or in connection herewith is false, misleading, or erroneous in any material respect; and

(e) If the City shall abandon or vacate the property where the Project is located.

Notwithstanding the foregoing provisions of this Section 6.1, if by reason of *force majeure* the City is unable in whole or in part to carry out the covenants, agreements, terms and conditions on its part contained in this Agreement, the City shall not be deemed in default during the continuance of such inability. The term "*force majeure*" means the following: acts of nature; strikes; lockouts or other industrial disturbances or disputes; acts of public enemies; orders or

restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or of its civil or military authorities; orders or restraints of the State or of any of its departments, agencies or officials or civil or military authorities of the State; wars, rebellions, insurrections; riots; civil disorders; blockade or embargo; landslides; earthquakes; fires; storms; droughts; floods; explosions.

The County may waive any default or Event of Default and its consequences hereunder and annul any notice thereof by written notice to the City to such effect, and thereupon the respective rights of the Parties hereunder shall be as they would have been if such default or Event of Default had not occurred.

6.2 Rights of County Upon Event of Default. Whenever an Event of Default hereunder shall have occurred and be continuing, the County may take whatever action at law or in equity may appear necessary or desirable to collect the Installment Payments then due and thereafter becoming due and/or any Additional Costs then due, or to enforce the observance or performance of any covenant, agreement or obligation of the City under this Agreement and law, including, but not limited to, actions for specific performance, injunction and/or the recovery of damages.

6.3 No Remedy Exclusive; Non-Waiver. No remedy conferred upon or reserved to the County hereunder or under applicable law is intended to or shall be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or remedy accruing upon a default or an Event of Default hereunder shall impair any such right or remedy or shall be construed to be a waiver of such default or Event of Default, but any such right or remedy may be exercised from time to time and as often as may be deemed necessary or expedient. In order to exercise any remedy reserved to the County hereunder, it shall not be necessary to give any notice, other than such notice as may be required hereunder. A waiver by the County of any default or Event of Default hereunder shall not constitute a waiver of any subsequent default or Event of Default hereunder, and shall not affect or impair the rights or remedies of the County in connection with any such subsequent default or Event of Default.

## 7. General Provisions

7.1 Relationship of the Parties. The Parties have entered into this Agreement only for the purpose set forth in Section 2. Neither of the Parties is an employee, agent, partner, or joint venture with the other.

7.2 Binding on Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the City.

7.3 Notices. Any notice, consent, demand, or other communication hereunder shall be in writing and shall be deemed to have been given if delivered in person or deposited in any United States Postal Service mailbox, sent by registered or certified mail, return receipt requested and first-class postage prepaid, addressed to the Party for whom it is intended as follows (as may

be changed by written notice to the other Party pursuant to this provision):

City:

County: [Felix Amerasinghe]  
King Street Center  
201 S. Jackson St.  
Suite 700  
Seattle, WA 98104]

7.4 Interpretation. The section and subsection captions in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

7.5 Severability. Each provision of this Agreement is severable from all other provisions. In the event any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable for any reason, all remaining provisions will remain in full force and effect.

7.6 Amendment. This Agreement may not be amended or modified except by written instrument signed by the Parties and approved by the County Council.

7.7 Non-waiver. No failure or delay on the part of the County in exercising any of its rights and remedies hereunder or otherwise shall constitute a waiver thereof, and no single or partial waiver by the County of any default or other right or remedy which it may have shall operate as a waiver of any other default, right, or remedy or of the same default, right or remedy on a future occasion.

7.8 Entire Agreement. This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior oral and written understandings, agreements, or other undertakings between the Parties.

7.9 Time. Time is of the essence with respect to the performance of all obligations of this Agreement.

7.10 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event that either Party brings a lawsuit related to or arising out of this Agreement, the Superior Court of King County, Washington shall have exclusive jurisdiction and venue. If the Parties agree to arbitrate any dispute arising out of or related to this Agreement, the arbitration proceeding shall take place in Seattle, Washington.

7.11 Third Parties. Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the Parties hereto and their successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause

of action (as a third-party beneficiary or otherwise) on account of any nonperformance hereunder.

7.12 Term. This Agreement shall commence on the date of the last signature by a Party and shall remain in effect until all amounts due hereunder shall have been paid or the payment thereof has been duly provided for pursuant to Section 2.10 hereof.

7.13 Indemnification – General. To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the City shall indemnify, defend, and hold harmless the County, its officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, expenses (including reasonable attorney fees), penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the performance of the City, its contractors, subcontractors, agents, and employees under this agreement. This obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the City or its contractors, and the City, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Workers’ Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event that the County incurs any judgment, award and/or cost including attorney’s fees to enforce the provisions of this subsection, any such judgment, award, fees, expenses and costs shall be recoverable from the City. In the event of litigation between the parties to enforce the rights under this subsection, reasonable attorney fees shall be allowed to the substantially prevailing party.

[Add if Loan is financed with Tax-Exempt Bonds:

7.14 Indemnification. To the extent permitted by law, and except to the extent caused by the sole negligence of the County, the City agrees, at its expense, to pay, and to indemnify and hold the County, its officers, employees or agents harmless of, from and against, any and all claims, damages, demands, losses, liens, liabilities, penalties, fines, taxes, lawsuits and other proceedings and costs and expenses (including attorneys’ fees) of every conceivable kind, character or nature whatsoever, arising directly or indirectly from or out of, or in any way connected with any examination or audit of any Tax-Exempt Bond by the Internal Revenue Service, or any determination by the Internal Revenue Service or a court of competent jurisdiction that the interest on any Tax-Exempt Bond is or should be subject to federal income taxation; provided, however, that the City shall not be liable for any payment made by the County with respect to any settlement of any such examination or audit, or of any other proceeding related thereto, entered into without the consent of the City.

IN WITNESS WHEREOF, authorized representatives of the Parties have signed their names in the spaces below.

KING COUNTY

CITY

18663

\_\_\_\_\_  
King County Executive

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A**  
**PROJECT DESCRIPTION**



18663

16					
17					
18					
19					
20					
Total					