

May 16²⁵, 1988

INTRODUCED BY: RON SIMS

PROPOSED NO: 88-404

MOTION NO. 7200

A MOTION authorizing the King County executive to enter into a loan agreement with the State of Washington Department of Community Development, which will provide funds in the amount of \$496,495 to the King County surface water management division for the construction of a regional storm water detention facility on Des Moines Creek.

BE IT MOVED by the Council of King County:

A. The King County Executive is hereby authorized to execute the loan agreement with the State Department of Community Development in accordance with Public Works Trust Fund Loan Agreement PW-5-88-962-22, providing funds in the amount of \$496,495 to King County surface water management division, attached as Exhibit A, for the construction of a regional storm water detention facility on Des Moines Creek.

PASSED this 31st day of May, 1988.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Gary Grant
Chair

ATTEST:

Dorothy M. Owens
Clerk of the Council

Exhibit A

7200

PUBLIC WORKS TRUST FUND

LOAN AGREEMENT

Number PW-5-88-962-22

ORIGINAL

PART I: ENTIRE AGREEMENT

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

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

DEPARTMENT OF COMMUNITY DEVELOPMENT

LOCAL GOVERNMENT

Name

Name


Assistant Director for Administration
Title

Title

Date

Date

Approved as to Form by Attorney General



John J. Ryan
Assistant Attorney General

3/11/88

Date

PART II: INTRODUCTION

This loan agreement is made and entered into by and between the DEPARTMENT OF COMMUNITY DEVELOPMENT, a department of the state of Washington (referred to as the "DEPARTMENT") on behalf of the PUBLIC WORKS BOARD (referred to as the "BOARD"), and King County (referred to as the "LOCAL GOVERNMENT").

The DEPARTMENT has received an appropriation from the Washington State Legislature under the authority of Chapter 43.155 RCW to provide financial assistance to selected units of local government for the repair, replacement, reconstruction, rehabilitation, or improvement of streets and roads, bridges, water systems, or storm and sanitary sewage systems. Acting under the authority of Chapter 43.155 RCW, the BOARD has selected the LOCAL GOVERNMENT to receive a Public Works Trust Fund loan for an approved public works project.

PART III: PURPOSE

The DEPARTMENT and the LOCAL GOVERNMENT have entered into this agreement to undertake a local public works project which furthers the goals and objectives of the Washington State Public Works Trust Fund Program. The project will be undertaken by the LOCAL GOVERNMENT and will include the activities described in ATTACHMENT I: SCOPE OF WORK, as well as in the Public Works Trust Fund Application submitted to the BOARD and postmarked on or before August 1, 1987, by the LOCAL GOVERNMENT and upon which this agreement is based. The assisted project must be undertaken in accordance with PART IV: TERMS AND CONDITIONS, and all applicable state and local laws and ordinances, which by this reference are incorporated into this agreement as though set forth fully herein.

PART IV: TERMS AND CONDITIONS

The parties to this agreement agree as follows:

4.01 Rate and Term of Loan

The DEPARTMENT, using funds appropriated from the Public Works Assistance Account, shall loan the LOCAL GOVERNMENT a sum not to exceed \$496,495. The interest rate shall be one percent (1%) per annum on the outstanding principal balance. The term of the loan shall not exceed three years, with the final payment due July 1, 1991.

4.02 Local Project Share

The LOCAL GOVERNMENT pledges an amount of locally-generated revenue not less than thirty percent (30%) of the total eligible portion of the project cost not funded by Federal or State grants in aid as identified in ATTACHMENT I: SCOPE OF WORK, to be verified at the time of project close-out. Any change in the percentage of locally-generated funds may require an adjustment in the

loan amount or interest rate charged, or both. In such event, the LOCAL GOVERNMENT agrees to execute an amendment to this agreement adjusting the loan amount or interest rate, as appropriate.

Local project share must consist of expenditures eligible under WAC 399-30-030(3) and be related only to project activities described in ATTACHMENT I: SCOPE OF WORK. These expenditures may be made up to twelve months prior to the execution of the loan agreement and verified at the time of project close-out. PUBLIC WORKS TRUST FUND MONIES MAY NOT BE USED TO REIMBURSE THE LOCAL GOVERNMENT FOR ANY COSTS INCURRED PRIOR TO EXECUTION OF THIS LOAN AGREEMENT.

4.03 Disbursement of Loan Proceeds

The DEPARTMENT shall issue warrants to the LOCAL GOVERNMENT for payment of allowable expenses incurred by the LOCAL GOVERNMENT while undertaking and administering approved project activities in accordance with ATTACHMENT I: SCOPE OF WORK. In no event shall the total Public Works Trust Fund loan exceed seventy percent (70%) of the eligible actual project costs. The loan funds will be disbursed to the LOCAL GOVERNMENT as follows:

Within thirty (30) days of the formal execution of this agreement, a sum not to exceed fifteen percent (15%) of the approved Public Works Trust Fund loan shall be disbursed by the DEPARTMENT to the LOCAL GOVERNMENT.

Within thirty (30) days of the execution of a Notice to Proceed which follows the formal award of a construction contract, a sum not to exceed sixty percent (60%) of the approved Public Works Trust Fund loan shall be disbursed by the DEPARTMENT to the LOCAL GOVERNMENT, except in the case of engineering services contracts. If the approved project described in ATTACHMENT I: SCOPE OF WORK is solely for the completion of engineering studies, a sum not to exceed sixty percent (60%) of the approved Public Works Trust Fund loan shall be disbursed by the DEPARTMENT to the LOCAL GOVERNMENT within thirty (30) days of the execution of a Notice to Proceed following the formal award of a contract for engineering services.

At the time of project completion, a Close-out Report shall be submitted to the DEPARTMENT by the LOCAL GOVERNMENT, certifying total actual project costs. The final Public Works Trust Fund loan disbursement shall not bring the total loan in excess of seventy percent (70%) of the eligible project costs or the total of \$496,495, whichever is less, nor shall this disbursement occur prior to the completion of all project activities EXCEPT THAT if a hardship would exist without the infusion of the final loan monies, the BOARD may authorize the disbursement of a portion of the remaining loan funds prior to actual project completion. In the event that the final costs identified in the Close-out Report indicate that the LOCAL GOVERNMENT has received Public Works Trust Fund monies in excess of seventy percent (70%) of eligible costs, all funds in excess of seventy percent (70%) shall be repaid to the DEPARTMENT within thirty (30) days of submission of the Close-out Report. The disbursement of loan proceeds shall be initiated by the LOCAL GOVERNMENT on a Washington State Invoice Voucher form provided by the DEPARTMENT.

4.04 Interest Earned on Public Works Trust Fund Monies

All interest earned on funds disbursed by the DEPARTMENT and held by the LOCAL GOVERNMENT shall accrue to the benefit of the LOCAL GOVERNMENT and be applied to the eligible costs of the approved project. Benefits shall accrue in one of two ways:

1. Reduce the amount of the Public Works Trust Fund loan.
2. Pay part of the eligible project costs that are in excess of ATTACHMENT I: SCOPE OF WORK estimates. (Overrun of project costs.)

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

4.05 Time of Performance

Activities to be performed under this agreement may commence at local expense up to twelve (12) months prior to the time of agreement execution. PUBLIC WORKS TRUST FUND MONIES MAY NOT BE USED TO REIMBURSE THE LOCAL GOVERNMENT FOR ANY COSTS INCURRED PRIOR TO EXECUTION OF THIS LOAN AGREEMENT. Expenditures eligible under WAC 399-30-030(3) may constitute the required local contribution to the project even though performed within 12 months prior to the date of execution of this agreement. The LOCAL GOVERNMENT shall begin the activities identified within ATTACHMENT I: SCOPE OF WORK no later than three (3) months after the date of loan agreement execution and reach project completion no later than twenty-four (24) months after the date of agreement execution.

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

This loan agreement shall be in place during the entire term of the loan regardless of the time of actual project completion.

4.06 Repayment

The LOCAL GOVERNMENT shall repay the loan solely from utility revenues, general obligation revenues, or a combination thereof and identified as required by Section 4.04. The name of the fund, account or sub-account shall be _____.

The first loan repayment under this agreement is due July 1, 1989 and subsequent installments are due on July 1 of each year during the term of the loan.

The first repayment under this agreement shall consist of interest only at the rate of one percent (1%) per annum, calculated on a 360-day year of twelve 30-day months, applied to funds received from the DEPARTMENT. Interest will begin to accrue from the date the DEPARTMENT issues each warrant to the LOCAL GOVERNMENT. Subsequent repayments shall consist of 1/2 of the principal plus interest on the unpaid balance of the loan. The final payment shall be an amount to bring the loan balance to zero.

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

The LOCAL GOVERNMENT will repay the loan in accordance with the preceding conditions through the use of a check, money order or equivalent means made payable to the DEPARTMENT and sent to:

Department of Community Development
Administrative Services Division/Fiscal Unit
Ninth and Columbia Building
Mail Stop GH-51
Olympia, Washington 98504-4151

4.07 Default in Repayment

Loan repayments shall be made to the DEPARTMENT in accordance with Section 4.06 of this agreement. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a penalty of twelve percent (12%) interest per annum calculated on a 360-day year.

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

4.08 Recordkeeping and Access to Records

The LOCAL GOVERNMENT agrees to keep such records as the DEPARTMENT may require. Such records will include information pertinent to work undertaken as part of the project, including demonstration of compliance with the terms and provisions of this agreement and all applicable state and local laws and ordinances. The LOCAL GOVERNMENT agrees to retain these records for a period of three years from the date of project completion.

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

4.09 Reports

The LOCAL GOVERNMENT, at such times and in such forms as the DEPARTMENT or the BOARD may require, shall furnish the DEPARTMENT with such periodic reports as it may request pertaining to the activities undertaken pursuant to this agreement, including the Close-out Report, and any other matters covered by this agreement. Failure to file periodic reports as requested may result in termination of this agreement as per Section 4.13.

4.10 Indemnification

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

4.11 Amendments, Modifications, and Waivers

Except for an increase in the amount of the loan governed by this agreement or for an extension of the time of performance under Section 4.05, the LOCAL GOVERNMENT or the DEPARTMENT may request an amendment or modification of this agreement. However, such amendment or modification shall not take effect until approved in writing by both the DEPARTMENT and the LOCAL GOVERNMENT and attached hereto.

No conditions or provisions of this agreement can be waived unless approved by the DEPARTMENT in writing.

4.12 Disputes

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement that is not disposed of by this agreement shall be decided by a panel consisting of a representative of the DEPARTMENT, a representative of the LOCAL GOVERNMENT, and a representative of the BOARD. The panel shall reduce its decision to writing and furnish a copy to all parties to the agreement. The decision of the panel shall be final and conclusive.

This clause does not preclude the consideration of questions of law in connection with decisions provided for in the preceding paragraph provided that nothing in this agreement shall be construed as making final the decisions of any administrative official, representative, or board on a question of law.

4.13 Termination for Cause

If the LOCAL GOVERNMENT fails to comply with the terms of this agreement, or fails to use the loan proceeds only for those activities identified in

ATTACHMENT I: SCOPE OF WORK, the DEPARTMENT may terminate the agreement in whole or in part at any time. The DEPARTMENT shall promptly notify the LOCAL GOVERNMENT in writing of its determination to terminate, the reason for such termination, and the effective date of the termination.

Upon termination of the loan agreement, the DEPARTMENT shall declare the entire remaining balance of the loan, together with any interest accrued, immediately due and payable.

4.14 Governing Law and Venue

This agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this agreement shall be the Superior Court of Thurston County, Washington.

4.15 Severability

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

4.16 Project Completion

The DEPARTMENT will require and notify the LOCAL GOVERNMENT to initiate a Close-out Report when the activities identified in ATTACHMENT 1: SCOPE OF WORK are completed. The LOCAL GOVERNMENT will provide the following information to the DEPARTMENT:

1. A description of the actual work performed, in addition to a certified statement of the actual dollar amounts spent, from all fund sources, in completing the project as described.
2. Certification that all costs associated with the project have been incurred. Costs are incurred when goods and services are received and/or contract work is performed.
3. Copies of the approved closure reports from the Department of Revenue and the Department of Labor and Industries, certifying that all sales taxes have been paid and appropriate prevailing wages have been paid.

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

4.17 Audit

Audits of the LOCAL GOVERNMENT'S project activities may be conducted by the Municipal Division of the State Auditor's Office in accordance with state law and any guidelines the DEPARTMENT may prescribe. Payment for the audit shall be made by the LOCAL GOVERNMENT.

4.18 Project Signs

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

PART V: SPECIAL ASSURANCES

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

5.01 RCW 43.155.060

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

5.02 WAC 399-30-030(3)

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

Public Works Trust Fund

7200

ATTACHMENT 1: SCOPE OF WORK

PW-88-90022

RECEIVED
FEB 0 1988

King County
(Jurisdiction)

Tyee Golf Course Regional Detention Pond Project
(Project Title)

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

The proposed pond is located on the east tributary of Des moines Creek and within the Tyee Valley Golf Course. The proposed pond has a storage capacity of 24 acre-feet or 1,045,000 cubic feet and will reduce peak flows from the pond to approximately 50 percent for both the high and low frequency storms. Although this reach of the stream currently contains limited fish habitat, the proposed pond is designed to provide fish passage. Also, in case of a fuel spill the pond has the capacity to detain normal stream flows up to 48 hours that could prevent major environmental destruction downstream.

The control structure for the proposed pond consists of a large vault with a timber baffle wall and a 24" x 42" slide gate. The slide gate is controlled by an electric actuator unit that adjusts the gate opening based on ponding levels to achieve optimal flow attenuation. The maximum depth of the pond for a 100 year-24 hour frequency storm will vary from 3 feet at the upstream end to 14 feet at the outlet. However, most of the time the pond will not (see attached

- 2. The term for this loan will be based on an engineer's certification of the expected useful life of the improvements, as stated below, or 20 years, whichever is less. If the local government prefers the term of its loan to be less than either 20 years or the useful life of the improvements, the preferred loan term should be indicated:
three (3) years.

- 3. I, Larry R. Gibbons, licensed engineer, certify that the average expected useful life for the improvements described above is 50 years.

Signed *Larry R. Gibbons*
Date 1/29/88
Telephone 206-344-4036

(Project Description continued)

impound water. A 3-foot deep and 6-foot wide normal flow channel will be maintained through the pond for fisheries and aesthetic reasons. This channel will be grass-lined and have streambed gravel on the channel bottom and riparian vegetation planted along the channel. Also, the owner of the golf course is proposing to landscape the proposed pond so that it is aesthetically compatible with the existing golf course landscaping.

4. Estimated Project Timetable:
 (based on the possible execution of a Loan Agreement by
 April 1, 1988)

Completion of Engineering	<u>May, 1988</u>	(date)
Awarding Construction Contract	<u>June, 1988</u>	(date)
Completion of Construction	<u>December, 1988</u>	(date)

5. Estimated Project Costs:

Preliminary Engineering Report	\$	<u>33,200</u>
Design Engineering		<u>26,400</u>
Land or Right-of-Way Acquisition		<u>46,300</u>
Sales or Use Taxes		<u> </u>
Other Fees		<u> </u>
Inspection/Construction Engineering		<u>78,700</u>
Start-up Costs		<u> </u>
Financing Costs		<u> </u>
Contingency		<u>66,200</u>
Construction		<u>477,400</u>
TOTAL ESTIMATED PROJECT COSTS	\$	<u>728,200</u>

6. Anticipated Fund Sources:

Public Works Trust Fund Loan \$ 496,495

NOTE: The loan cannot exceed the amount identified above.
 Local Participation, not less than (10%) from:

General Funds	<u> </u>
Capital Reserves	<u> </u>
Other Fund	<u> </u>
Rates	<u>231,705</u>
Assessments (LID, RID, ULID)	<u> </u>
Special Levies	<u> </u>
Federal Funds from	<u> </u>
<u> </u>	<u> </u>
Other State Funds from	<u> </u>
<u> </u>	<u> </u>
Other (identify source)	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
TOTAL FUNDS	\$ <u>728,200</u>

Public Works Trust Fund

ATTACHMENT II: ATTORNEY'S CERTIFICATION

I, _____, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of _____ (the LOCAL GOVERNMENT);

I have reviewed Loan Agreement FW-5-88-962-22 to be executed between the LOCAL GOVERNMENT and the Department of Community Development (the DEPARTMENT); and

I have also examined any and all documents and records which are pertinent to the loan agreement, including the application requesting this financial assistance.

Based on the foregoing, it is my opinion that:

1. The LOCAL GOVERNMENT is a public body, properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state, and local funds, to contract with the State of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.
2. The LOCAL GOVERNMENT is empowered to accept the Public Works Trust Fund financial assistance and to provide for repayment of the loan as set forth in the loan agreement.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the LOCAL GOVERNMENT from repaying the Public Works Trust Fund loan extended by the DEPARTMENT with respect to such project. The LOCAL GOVERNMENT is not a party to litigation which will materially affect its ability to repay such loan on the terms contained in the loan agreement.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the LOCAL GOVERNMENT.

Signature of Attorney

Date

Name

Address

In compliance with Washington Administrative Code (WAC) 399-30-060(4), the loan agreements must be signed by you and returned to the Department of Community Development within 90 calendar days of the date of this letter.

If your project involves utility work, you are encouraged to review your applicable comprehensive plan to assure compliance. Under Washington law, some utilities may not engage in construction unless such work is in compliance with the system's comprehensive plan. Consultation with your in-house legal advisor or your bond counsel also may be warranted. If you would like to specify the parity of this loan in your jurisdiction's total utility debt issuance, the Department will allow the following AMENDMENT on Page 8 of 8 of the loan agreement, following 5.02:

4.06 AMENDMENT ADDING THE FOLLOWING:

The LOCAL GOVERNMENT shall be obligated to make all such repayments only from the gross revenue of the (name of the) Utility after the payment of maintenance and operation expenses of that Utility and the principal of and interest on any outstanding revenue bonds and bonds issued in the future on a parity therewith which constitute a lien or charge on that gross revenue.

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

AMENDMENT AGREED TO BY:

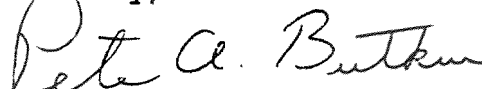
DEPARTMENT

LOCAL GOVERNMENT

Any wording other than that supplied above will require legal consultation and must take into account the necessity to execute the loan agreement as per WAC 399-30-060(4).

The staff of the Public Works Division looks forward to working with you over the course of your successful public works project. If you have any questions about the loan agreement, please call the Division at (206) 586-0490 or SCAN 321-0490.

Sincerely,



Pete A. Butkus
Manager

Enclosures

cc Larry Gibbons