



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**June 30, 2003**

**Ordinance 14697**

**Proposed No.** 2003-0221.1

**Sponsors** Phillips

1 AN ORDINANCE authorizing the executive to enter into  
2 four agreements with the Washington state Department of  
3 Ecology for loan financing of four wastewater capital  
4 projects.

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

8

**SECTION 1.** A. The executive or the executive's designee is hereby authorized

9

to enter into four agreements with the Washington state Department of Ecology for loan  
10 financing of capital costs associated with:

11

1. The Henderson/M.L. King combined sewer overflow project;

12

2. The Denny Way/Lake Union combined sewer overflow project—Elliott West

13

pipelines;

14

3. The Southwest interceptor project; and

15

4. Wastewater system security improvements.

16

B. The maximum respective loan amounts shall be:

17

1. \$57,548,363;

18

- 18            2. \$12,549,757;
- 19            3. \$7,929,125; and
- 20            4. \$1,550,000.

21            C. All four agreements shall incorporate an annual interest rate of 1.5 percent and  
 22            a loan term of twenty years and be substantially in the form of Attachment A to this  
 23            ordinance, which is a sample agreement.

24

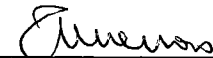
Ordinance 14697 was introduced on 6/2/2003 and passed by the Metropolitan King  
 County Council on 6/30/2003, by the following vote:

Yes: 12 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.  
 Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Hammond, Mr.  
 Gossett, Mr. Irons and Ms. Patterson  
 No: 0  
 Excused: 1 - Ms. Hague

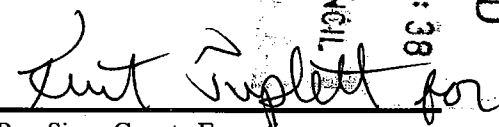
KING COUNTY COUNCIL  
 KING COUNTY, WASHINGTON

  
 Cynthia Sullivan, Chair

ATTEST:

  
 Anne Noris, Clerk of the Council

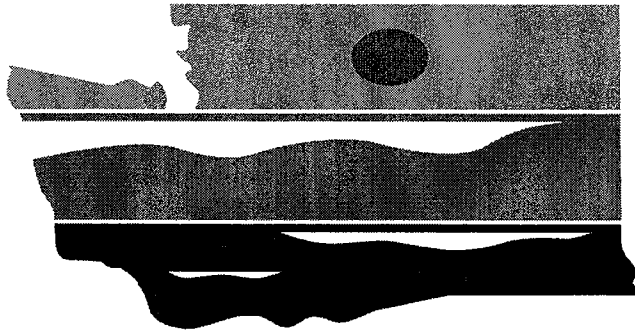
APPROVED this 2 day of July, 2003.

  
 Ron Sims, County Executive

RECEIVED  
 2003 JUL -3 PM 3:38  
 KING COUNTY COUNCIL

**Attachments**      A. Washington State Water Pollution Control Revolving Fund Loan Agreement  
 between the State of Washington Department of Ecology and the King County  
 Department of Natural Resources and Parks

2003 221



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**

**THE KING COUNTY DEPARTMENT OF NATURAL RESOURCES AND PARKS**

Project Title: \_\_\_\_\_

Loan No.: \_\_\_\_\_

Loan Amount: \_\_\_\_\_

Interest Rate: 1.5%

Loan Term: 20 Years

Effective: \_\_\_\_\_

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

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OTHER RESPONSIBILITY MATTERS

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Project Manager:

Address:

Telephone Number:

E-Mail Address:

Fax Number:

Financial Manager:

Address:

Financial Management Section  
Water Quality Program  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Telephone Number:

E-Mail Address:

Fax Number:

### C. Changes to Contact Information

The RECIPIENT may modify its Contact designated above or the Contact for billing/invoice questions shown in Section V-B-1, and the DEPARTMENT may modify its Project Manager or Financial Manager, by letter to that effect mailed to the others at the respective addresses shown in Sections I-A, V-B-1. and I-B

## II. AUTHORITY

### A. Authority of RECIPIENT

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

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

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

## III. TERM OF AGREEMENT

Prior authorization has been granted by the DEPARTMENT for eligible work commencing on \_\_\_\_\_ (the "prior authorization date"). Any work performed prior to the prior

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authorization date will be at the sole expense and risk of the RECIPIENT.

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

#### **IV. THE PROJECT**

##### **A. PROJECT Description**

##### **B. Scope of Work**

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

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



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**C. PROJECT Budget**

Elements/Objects	Total PROJECT Cost	Total Eligible PROJECT Cost	SRF LOAN AMOUNT
1. Project Administration- Salaries	\$	\$	\$
2. Project Administration - Benefits	\$	\$	\$
3. Contracts	\$	\$	\$
4. Services & Materials	\$	\$	\$
5. Indirect Costs	\$	\$	\$
SubTotal	\$0	\$0	\$0
<b>Total</b>	\$	\$	\$

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

#DIV/0!	\$0
Federal Portion of SRF Loan	\$0
State Portion of SRF Loan	\$0
Local Funds	\$0
Other Funds	\$0
<b>Total</b>	<b>\$0</b>

The federal funding for this agreement is provided by:  
Capitalization Grants for State Revolving Funds

As a subrecipient of federal funds, the RECIPIENT must comply with the following federal regulations:

OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations

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OMB circular A-133, Compliance Supplement  
OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments  
OMB Circular A-102, Uniform Administrative Requirements

These federal regulations can be found at: <http://www.whitehouse.gov/omb/circulars/>

**D. PROJECT Schedule**

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

- 1. PROJECT Start Date: \_\_\_\_\_
- 2. Initiation of Operation Date: \_\_\_\_\_
- 3. PROJECT Completion Date: \_\_\_\_\_

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

The useful life of the PROJECT is 50 + years.

**E. Equipment Purchase**

The following equipment shall be eligible for purchase through this PROJECT:

The total eligible cost for all equipment purchased shall not exceed \$0.

**V. THE LOAN**

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

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

Subject to all of the terms, provisions, and conditions of this AGREEMENT, and subject to the availability of federal and state funds, the DEPARTMENT will loan to the RECIPIENT the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (the "Estimated LOAN Amount").

When the PROJECT Completion Date or the Initiation of Operation Date has occurred (if appropriate), the DEPARTMENT and the RECIPIENT will execute an amendment to this AGREEMENT which details the final LOAN amount (the "Final LOAN Amount"), and the DEPARTMENT will prepare a

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final LOAN repayment schedule, substantially in the form of ATTACHMENT 8. The Final LOAN Amount will be the combined total of actual disbursements and all accrued interest to the computation date.

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

The DEPARTMENT will work closely with the RECIPIENT to review and evaluate the RECIPIENT'S financial circumstances for an appropriate interest rate to address financial hardship within applicable federal and state regulations as related to the eligible construction cost of the project defined in this AGREEMENT. The review and evaluation will be based on the final eligible construction costs and receipt of any additional state and/or federal grants and loans for the project.

**B. Requests for Payment**

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

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

RECIPIENT contact for billing/invoice questions:

Contact:  
Telephone Number:  
E-Mail Address:  
Fax Number:

2. Disbursement Address. The DEPARTMENT shall make payments to the RECIPIENT and shall mail those payments as follows:

To: King County  
For the benefit of: Wastewater Treatment Division  
Bank Name:

Loan No. \_\_\_\_\_

Bank Address:

Bank Account No.:

Wire Transfer No.:

3. 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 herein.

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

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

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

### C. Sources of LOAN Repayment

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

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

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

4. Defeasance of the LOAN; Refinancing or Additional Financing of the PROJECT. So long as the DEPARTMENT shall hold this LOAN, the RECIPIENT shall not be entitled to, and shall not effect, an economic Defeasance of the LOAN. The RECIPIENT also shall not refinance the

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PROJECT, including making an advance refunding of the LOAN, or obtain grants or loans additional to those listed in Section IV hereof to finance the PROJECT, without the written consent of the DEPARTMENT.

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

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

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

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

**D. Method and Conditions on Repayments**

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

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

Equal payments shall be due every six months thereafter.

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

Payments shall be mailed to:

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

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

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RECIPIENT's payments shall be made pursuant to the amended AGREEMENT.

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

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

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

## VI. REPRESENTATIONS AND WARRANTIES

The RECIPIENT represents and warrants to the DEPARTMENT as follows:

### A. Existence; Authority.

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

### B. Application; Material Information.

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

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**C. Litigation; Authority.**

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

**D. Not used.**

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**E. Not a General Obligation.**

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

**F. Due Regard.**

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

**VII. COVENANTS AND AGREEMENTS**

**A. Acceptance.**

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

**B. Accounts and Records.**

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

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

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

**D. Pledge of Net Revenue.**

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

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

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

**F. Collection of ULID Assessments.**

Not used.

**G. Reserve Requirement.**

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

**H. Free Service.**

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



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

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

1. The facilities or property transferred are not material to the operation of the Utility, or shall have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the Utility or are no longer necessary, material, or useful to the operation of the Utility; or
2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three (3) percent of the total assets of the Utility; or
3. The RECIPIENT receives from the transferee an amount equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the Utility from the portion of the Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.

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

**J. Insurance.**

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

**VIII. TERMINATION AND DEFAULT; REMEDIES**

**A. Termination and Default Events**

1. For Insufficient DEPARTMENT or RECIPIENT Funds. This AGREEMENT may be terminated by the DEPARTMENT for insufficient DEPARTMENT or RECIPIENT funds.

2. For Failure to Commence Work. This AGREEMENT may be terminated by the DEPARTMENT for failure of the RECIPIENT to commence PROJECT work.

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3. Past Due Payments. The RECIPIENT will be in default of its obligations under this AGREEMENT when any LOAN repayment becomes sixty (60) days past due.

4. Other Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all of its obligations under this AGREEMENT. The RECIPIENT will be in default of its obligations under this AGREEMENT if, in the opinion of the DEPARTMENT, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this AGREEMENT including, but not limited to, the PROJECT Schedule contained in Section IV-D hereof.

**B. Procedures for Termination**

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

**C. Termination and Default Remedies**

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

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

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

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

5. Late Charges. All amounts due to the DEPARTMENT and not paid by the RECIPIENT

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by the Termination Payment Date or after acceleration following a default event, as applicable, shall incur Late Charges as provided in Section V-D-2 hereof.

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

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

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

9. Collection and Enforcement Actions. In the event of a default event, the state of Washington reserves the right to take any actions it deems necessary to collect the amounts due or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this AGREEMENT.

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

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

## IX. MODIFICATIONS TO AGREEMENT

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

1. Any change of the RECIPIENT'S LOAN AGREEMENT Contact, or the Contact for

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billing/invoice questions, or of the DEPARTMENT'S Project Manager or Financial Manager as set forth respectively in Sections I-A, V-B-1, and I-B hereof, may be made by either party as provided in Section I-C; or

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

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

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

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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 shall be of any force or effect unless made in conformity with Section IX hereof.

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 DEPARTMENT OF  
NATURAL RESOURCES & PARKS**

\_\_\_\_\_  
**MEGAN WHITE, P.E.                      DATE**  
**PROGRAM MANAGER**  
**WATER QUALITY PROGRAM**

\_\_\_\_\_  
**DONALD THEILER                      DATE**  
**DIVISION DIRECTOR**  
**WASTEWATER TREATMENT DIV.**

APPROVED AS TO FORM ONLY  
ASSISTANT ATTORNEY GENERAL

(10/2/02)

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**ATTACHMENT 1**

**DOCUMENTS INCORPORATED  
BY ATTACHMENT OR BY REFERENCE**

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

**A. By Attachment:**

- ATTACHMENT 1: DOCUMENTS INCORPORATED BY ATTACHMENT OR BY REFERENCE
- ATTACHMENT 2: AGREEMENT DEFINITIONS
- ATTACHMENT 3: AUTHORIZING ORDINANCE OR RESOLUTION
- ATTACHMENT 4: OPINION OF RECIPIENT'S LEGAL COUNSEL
- ATTACHMENT 5: SCOPE OF WORK
- ATTACHMENT 6: SPECIAL TERMS AND CONDITIONS
- ATTACHMENT 7: LOAN GENERAL TERMS AND CONDITIONS
- ATTACHMENT 8: LOAN REPAYMENT SCHEDULE
- ATTACHMENT 9: CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

**B. By Reference:**

- The DEPARTMENT'S WATER QUALITY FINANCIAL ASSISTANCE PROGRAMS FOR FISCAL YEAR 2003—VOLUME ONE: GUIDELINES, VOLUME TWO: APPENDICES, AND VOLUME THREE: LAWS AND RULES (December 2001) (hereinafter, "GUIDELINES")
- The DEPARTMENT's Administrative Requirements for Ecology Grants and Loans (October 2000) (hereinafter, "ADMINISTRATIVE REQUIREMENTS")
- If and when executed by the RECIPIENT and the DEPARTMENT, each Loan Agreement Amendment
- Declaration of Construction—Form ECY 040-2-28(b)
- RECIPIENT'S legislation (ordinance for cities, towns, and applicable charter counties; resolution for others) adopting the Utility system or plan, or system or plan of additions and betterments to and extensions of the Utility (in the case of cities and towns), or comprehensive plan, or comprehensive plan amendment, relating to the PROJECT
- Facilities Plan Approval Letter (where applicable) and any amendments thereto
- Plans and Specifications Approval Letter (where applicable) and any amendments thereto

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## ATTACHMENT 2

### AGREEMENT DEFINITIONS

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

**“ADMINISTRATIVE REQUIREMENTS”** means the DEPARTMENT's ADMINISTRATIVE REQUIREMENTS FOR ECOLOGY GRANTS AND LOANS (October 2000).

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

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

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

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

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

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

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

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

**“Gross Revenue”** means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) ULID Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any investments in a trust, Defeasance, or escrow fund created to Defease or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other



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earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

**"GUIDELINES"** means the DEPARTMENT'S WATER QUALITY FINANCIAL ASSISTANCE PROGRAMS FOR FISCAL YEAR 2002—VOLUME ONE: GUIDELINES, VOLUME TWO: APPENDICES , AND VOLUME THREE: LAWS AND RULES (December 2000).

**"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.

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

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

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

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

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

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

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

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

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

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

**“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:

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

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

(12/7/01)

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**ATTACHMENT 3**

**AUTHORIZING ORDINANCE OR RESOLUTION**

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**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 \_\_\_\_\_ (the "RECIPIENT"); and I have examined any and all documents and records pertinent to the AGREEMENT.

Based on the foregoing, it is my opinion that:

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

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

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

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

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

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

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

\_\_\_\_\_  
RECIPIENT's Legal Counsel

\_\_\_\_\_  
Date

Loan No. \_\_\_\_\_

**ATTACHMENT 5**

**SCOPE OF WORK**

**A. Certifications**

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

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

**B. Reports; Documents**

1. Progress, Quarterly, and Other Reports; Invoices. The RECIPIENT shall submit progress reports to the DEPARTMENT (i) with each payment request or such other schedule as set forth herein and (ii) quarterly. Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Quarterly reports shall be due within twenty (20) days following the end of the quarter being reported. Payments will be withheld if required progress reports are not submitted.

The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect its 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.

The following additional reports, in at least the minimum indicated numbers, should be provided:

- Design reports and 90 percent plans and specifications – 1 copy
- Final plans and specifications – 3 copies
- Final PROJECT completion reports (of local significance) – 1 copy

The RECIPIENT shall submit all progress/quarterly reports, and all payment requests, to the Financial Manager of the DEPARTMENT.

2. Other Documents; Correspondence. The RECIPIENT shall submit two (2) copies of any

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documents which require DEPARTMENT approval. Once approval is given, one (1) copy will be returned to the RECIPIENT. If the RECIPIENT needs more than one (1) approved copy, the number of submittals should be adjusted accordingly.

Document submittals and all other correspondence should be addressed to the Project Manager.

### **C. Plans and Specifications**

1. Plans and Specifications. The RECIPIENT shall develop plans and specifications for review and approval by Water Quality Program staff of the DEPARTMENT which shall be consistent with:

- a. Requirements stated in Chapter 173-240 WAC, "Submission of Plans and Reports for Construction of Wastewater Facilities," as related to plans and specifications;
- b. Good engineering practices and generally recognized engineering standards, including, but not limited to, the STATE OF WASHINGTON'S CRITERIA FOR SEWAGE WORKS DESIGN (December 1998 or more recent edition);
- c. The approved facilities plan; and
- d. Other reports approved by the DEPARTMENT which pertain to the facilities design.

2. DEPARTMENT Approval. The final plans, specifications, construction contract documents, and addenda, must be approved in writing by the RECIPIENT prior to submittal for DEPARTMENT review. Each Addendum shall be signed and dated by the RECIPIENT prior to submittal for DEPARTMENT approval. Any Addendum containing revisions of engineering content shall be approved by and bear the stamp of a professional engineer.

3. Projected Construction Schedule. An engineer's projected construction schedule shall be prepared and submitted to the DEPARTMENT at 90 percent completion of plans and specifications.

4. Construction Cost Estimate. A current, updated detailed construction cost estimate shall be submitted along with each plan/specification submittal.

5. Form of Plans. All construction plans submitted to the DEPARTMENT for review and/or approval shall be reduced to no larger than 11-1/2" x 17" legible size. All reduced drawings must be completely legible.

6. Plan of Operation. A preliminary plan of operation shall be prepared consistent with the DEPARTMENT's GUIDELINES and submitted to the DEPARTMENT for review and approval with the plans and specifications.

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7. Approval by DEPARTMENT. The RECIPIENT shall not proceed with any construction-related activities until all necessary plans and specifications are approved in writing by the DEPARTMENT.

8. Change Orders. Change orders that are a significant deviation from the approved plans/specifications must be submitted for DEPARTMENT review and approval, prior to execution. All other change orders must be approved by the DEPARTMENT for technical merit and should be submitted within thirty (30) days after execution. Change orders are to be signed by the contractor, the engineer (if appropriate) and the RECIPIENT prior to submittal for DEPARTMENT approval, and shall be approved by and bear the stamp of a professional engineer if there is engineering content in the change order.

9. Adjusted Construction Budget. The construction budget, as reflected in the LOAN, will be adjusted once actual construction bids are received. Based upon the low, responsive, responsible bid(s), the DEPARTMENT may meet the actual bid if it falls within the LOAN budget.

10. Bids and Awards. DEPARTMENT approval of the plans, specifications, and construction documents authorizes the RECIPIENT to solicit bids and award the construction contract (or reject bids) without further DEPARTMENT authorization or approval. However, any additional costs resulting from successful bid protests or other claims due to improper bid solicitation and award procedures will not be considered eligible for LOAN participation.

#### **D. Construction Management**

1. Plan of Operation. The plan of operation must be updated as appropriate before the start of construction and at the 50 percent and 90 percent stage of construction, or more often if necessary. The final plan of operation must be approved by the DEPARTMENT before the construction is completed and before final payment is made.

2. Construction Quality Assurance Plan. A detailed construction quality assurance plan shall be submitted at least thirty (30) days prior to the commencement of construction. This plan must describe the activities which will be undertaken to achieve adequate and competent performance of all construction work.

3. Construction Schedule. A construction schedule shall be submitted to the DEPARTMENT within thirty (30) days of the start of construction. The construction schedule shall be revised and/or updated whenever major changes occur and resubmitted to the DEPARTMENT. In the absence of any major changes, the construction schedule should be resubmitted to the DEPARTMENT at a minimum of every three (3) months. When changes in the construction schedule affect previous cash flow estimates, revised cash flow projections must also be submitted to the DEPARTMENT.

4. Record Drawings. Upon completion of construction, the RECIPIENT shall provide the DEPARTMENT with a set of contract drawings, in addition to the Declaration of Construction, which



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reflect changes, modifications or other revisions made to the PROJECT during construction, signed by a professional engineer, indicating the PROJECT was completed in accordance with the plans and specifications and major change orders approved by the DEPARTMENT and shown on the Record Drawings. Record Drawings submitted to the DEPARTMENT shall be reduced to no larger than 11-1/2" x 17" legible size. An electronic copy in AutoCAD format on CD shall be provided if requested by the Department.

5. Operations and Maintenance Manual. An Operations and Maintenance Manual ("O&M Manual") shall be prepared in conformance with WAC 173-240-080, "Operation and Maintenance Manual," and the DEPARTMENT's GUIDELINES. The O&M Manual shall be submitted to the Project Manager for review and comment at the fifty (50) percent stage of construction. The RECIPIENT shall coordinate the development of the O&M Manual with the DEPARTMENT following the initial submittal to ensure that a completed O&M Manual approved by the DEPARTMENT shall exist at the ninety (90) percent stage of construction. The O&M Manual shall be updated as necessary following plant start-up to reflect actual operating experience.

Loan No. \_\_\_\_\_

**ATTACHMENT 6**

**SPECIAL TERMS AND CONDITIONS**

A. Minority and Women's Business Participation. The RECIPIENT agrees to solicit and recruit, to the maximum extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

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

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

Meeting these goals is voluntary and no contract award or rejection shall 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).

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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.
- B. 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.
- C. Signage. All site-specific projects must have a sign of sufficient size to be seen from nearby roadways, acknowledging state and federal financial assistance, and left in place throughout the life of the project. Department and environmental protection agency logos must be on all signs and documents and will be provided as needed.
- D. Sewer-Use Ordinance or Resolution. If not already in existence, the RECIPIENT shall adopt and shall enforce a sewer-use ordinance or resolution to require that all new sewers and connections are designed and constructed in accordance with applicable state and local standards. Such ordinance or resolution shall be submitted to the DEPARTMENT for review and approval before construction of the PROJECT is 80 percent complete.
- E. User-Charge System. The RECIPIENT certifies that it has the legal authority to establish and implement a sewer-user charge system and shall adopt a system of sewer-user charges to assure that each recipient of waste treatment service will pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the PROJECT. Draft user-charge system must be submitted to the DEPARTMENT before \_\_\_\_\_, and the final user-charge system must be submitted before \_\_\_\_\_.
- F. Certification Regarding Suspension, Debarment, and other Responsibility Matters. Federal Executive Order 12549 provides that Executive departments and agencies shall participate in a government-wide system for suspension and debarment. These departments and agencies have further passed this requirement onto their recipients and have provided pertinent regulations in the Codes of Federal Regulations. The RECIPIENT must complete and sign a certification form as prescribed by the federal agency providing any portion of the funding for this agreement. If the RECIPIENT is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot. The completed and signed certification must be included with this agreement (see ATTACHMENT 9). The DEPARTMENT will not process payments to the RECIPIENT, without the signed certification

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form on file.

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

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

- H. Procurement. The RECIPIENT is responsible for procuring professional, personal, and other services using sound business judgment and good administrative procedures. This includes issuance of invitation of bids, requests for proposals, selection of contractors, award of subagreements and other related procurement matters. The RECIPIENT shall follow State procurement laws.

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

- J. Small Business in Rural Areas ("SBRAs"). If a contract is awarded by the RECIPIENT under this AGREEMENT, the RECIPIENT is also required to utilize the following affirmative steps:

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

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

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

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

L. Environmental Mitigation. The following environmental mitigation measures are to be addressed:

(4/19/02)

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**ATTACHMENT 7**

**LOAN GENERAL TERMS AND CONDITIONS**

**A. RECIPIENT PERFORMANCE**

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

**B. SUBGRANTEE/CONTRACTOR COMPLIANCE**

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

**C. THIRD PARTY BENEFICIARY**

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

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

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

**E. ASSIGNMENTS**

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

**F. COMPLIANCE WITH ALL LAWS**

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the

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DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

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

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

4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

#### G. KICKBACKS

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

#### H. AUDITS AND INSPECTIONS

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

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

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

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

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resolution hereunder.

4. 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 ninety (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 may be withheld if required progress reports are not submitted.

#### J. COMPENSATION

1. Method of Compensation. Payment shall normally be made on a reimbursable 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 shall 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 shall 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 shall 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



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Work..

3. Period of Compensation. Payments shall 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 forty-five(45) days after the expiration date of this agreement and within fifteen (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 (10%) 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., herein.
6. Unauthorized Expenditures. All payments to the RECIPIENT shall be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this loan shall 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 state law for state employees.
8. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

#### 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 thereunder and/or 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, shall 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.

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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 shall 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 shall be contingent upon appropriation of funds by the RECIPIENT's governing body; Provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

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.

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

3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, 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 shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

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

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

b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to 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.

**N. RECYCLED/RECYCLABLE PAPER**

All documents and materials published under this agreement shall be produced on recycled paper

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

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

**O. RECOVERY OF PAYMENTS TO RECIPIENT**

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

**P. PROJECT APPROVAL**

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

**Q. DISPUTES**

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

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

**R. CONFLICT OF INTEREST**

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

**S. INDEMNIFICATION**

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

**T. GOVERNING LAW**

This agreement shall be governed by the laws of the State of Washington.

**U. SEVERABILITY**

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

**V. PRECEDENCE**

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In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions.

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**ATTACHMENT 8**  
**LOAN REPAYMENT SCHEDULE**

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**ATTACHMENT 9**

**CERTIFICATION REGARDING SUSPENSION, DEBARMENT, AND OTHER  
RESPONSIBILITY MATTERS**



Loan No. \_\_\_\_\_

U.S. Environmental Protection Agency  
Washington, D.C. 20460

**Certification Regarding  
Debarment, Suspension and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

\_\_\_\_\_  
Typed Name & Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

I am unable to certify to the above statements. My explanation is attached.

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EPA Form 5700-49 (11-88)

**Instructions**

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for \$25,000 or more.

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or subagreement participant thereunder must complete the attached certification or provide an explanation why they cannot. For further details, see 40 CFR 32.510, Participants' responsibilities, in the regulation.

**Where to Submit**

The prospective EPA grant, loan, or cooperative agreement recipient must return the signed certification or explanation with its application to the appropriate EPA Headquarters or Regional office, as required in the application instructions.

A prospective prime contractor must submit a completed certification or explanation to the individual or organization awarding the contract.

Each prospective subcontractor must submit a completed certification or explanation to the prime contractor for the project.

**How to Obtain Forms:**

EPA includes the certification form, instructions, and a copy of its implementing regulation \* (40 CFR Part 32) in each application kit. Applicants may reproduce these materials as needed and provide them to their prospective prime contractor, who, in turn, may reproduce and provide them to prospective subcontractors.

Additional copies/assistance may be requested from:

Office of Grants and Debarment  
Suspension and Debarment Division  
U.S. Environmental Protection Agency  
401 M. Street, SW.  
Washington, D.C. 20460  
Telephone: (202) 564-5389.

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\* Regulations available upon request

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