



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**January 18, 2011**

**Ordinance 17018**

**Proposed No. 2010-0619.1**

**Sponsors Phillips and Lambert**

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

5 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

6 **SECTION 1. Findings:**

7 A. The Washington state Department of Ecology has awarded the King County  
8 department of natural resources and parks a \$19,989,102 State Revolving Fund loan in its  
9 Fiscal Year 2011 cycle.

10 B. This low interest loan will save King County \$26,920,289 in interest  
11 payments, which is \$6,167,884 net present value, as compared to conventional bond  
12 financing.

13 C. This State Revolving Fund loan will help finance construction costs of the  
14 Ballard Siphon project that is part of King County's wastewater capital improvement  
15 program.

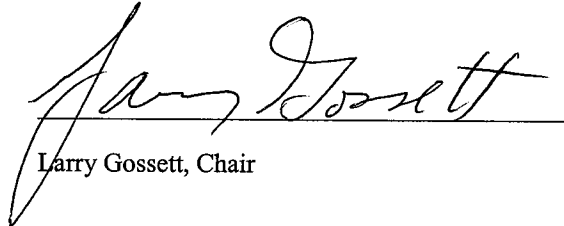
16 **SECTION 2.** The King County executive is hereby authorized to enter into an  
17 agreement with the Washington state Department of Ecology for loan financing of capital  
18 costs associated with the construction of the Ballard Siphon substantially in the form of  
19 Attachment A to this ordinance, including the following terms:

- 20 A. A maximum loan amount of \$19,989,102;
- 21 B. An interest rate of 2.8 percent per annum; and
- 22 C. A term of twenty years.
- 23

Ordinance 17018 was introduced on 12/13/2010 and passed by the Metropolitan King County Council on 1/18/2011, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,  
Ms. Patterson, Ms. Lambert, Mr. Ferguson, Mr. Dunn and Mr.  
McDermott  
No: 0  
Excused: 0

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON



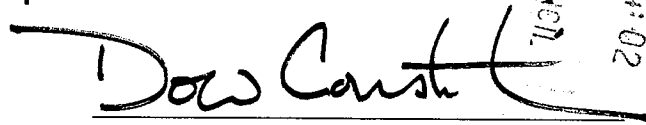
Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

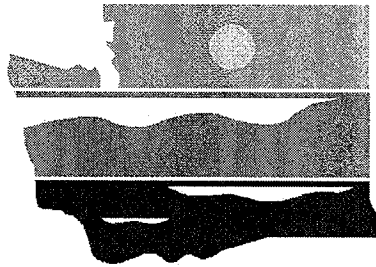
APPROVED this 19<sup>th</sup> day of January, 2011.



Dow Constantine, County Executive

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KING COUNTY COUNCIL CLERK

**Attachments:** A. Centennial Clean Water Program and Washington State Water Pollution Control Revolving Fund Loan Agreement Between the State of Washington Department of Ecology and King County Wastewater Treatment Division



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

**CENTENNIAL CLEAN WATER PROGRAM  
AND  
WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND  
LOAN AGREEMENT  
BETWEEN  
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND  
KING COUNTY WASTEWATER TREATMENT DIVISION**

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**CENTENNIAL CLEAN WATER PROGRAM  
AND  
WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND  
LOAN AGREEMENT  
BETWEEN  
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND  
KING COUNTY WASTEWATER TREATMENT DIVISION  
FOR  
BALLARD SIPHON**

THIS is a binding loan agreement entered into by and between the state of Washington Department of Ecology [DEPARTMENT] and King County Wastewater Treatment Division [RECIPIENT]. The purpose of this loan agreement [AGREEMENT] is to provide funds to the RECIPIENT to carry out the activities for the project [PROJECT] described in this agreement.

This AGREEMENT consists of            pages and            attachments.

Capitalized terms used, but not otherwise defined, in this AGREEMENT are defined in ATTACHMENT 5.

**PART I. GENERAL INFORMATION**

PROJECT Title:	<b>Ballard Siphon Project</b>
PROJECT Period:	Effective Date: <b>September 20, 2010</b> Completion Date: <b>March 31, 2014</b>
LOAN Number(s):	
Standard Interest Loan Amount:	<b>\$19,989,102</b>
Interest Rate:	<b>2.8%</b>
LOAN Term:	<b>20 Years</b>
Forgivable Principal Amount:	<b>\$0.00</b>
Total LOAN Amount:	<b>\$19,989,102</b>
State Fiscal Year:	<b>2011</b>

**RECIPIENT Information**

RECIPIENT Name:	<b>King County Wastewater Treatment Division</b>
Mailing Address:	<b>201 S Jackson Street, MS KSC-NR-0501 Seattle, WA 98104-3855</b>

FEDERAL TAXPAYER ID NUMBER: **91-6001327**

PROJECT Contact: Steve Baruso  
 PROJECT Manager: Ade Franklin

Mailing Address: 201 S Jackson, KSC-NR-0502  
 Seattle, WA 98104-3855

Email Address: steve.baruso@kingcounty.gov  
 Phone Number: **206-684-1022**  
 Fax Number: **206-684-1741**

**Ecology Project Contact Information**

PROJECT Manager: **Kenneth D. Ziebart, P.E.**  
 Email Address: **kzie461@ecy.wa.gov**  
 Phone Number: **(425) 649-7164**  
 Fax Number: **(425) 649-7213**  
 Address

**Address**

<input checked="" type="checkbox"/> <b>Northwest</b> WA State Department of Ecology Northwest Regional Office 3190 160 <sup>th</sup> Ave SE Bellevue, WA 98008-5452 Fax (425) 649-7098	<input type="checkbox"/> <b>Central</b> WA State Department of Ecology Central Regional Office 15 West Yakima Ave, Suite 200 Yakima, WA 98902-3452 Fax (509) 575-2809
<input type="checkbox"/> <b>Southwest</b> WA State Department of Ecology Southwest Regional Office P.O. Box 47775 Olympia, WA 98504-7775 Fax (360) 407-6305	<input type="checkbox"/> <b>Eastern</b> WA State Department of Ecology Eastern Regional Office N. 4601 Monroe Spokane, WA 99205-1295 Fax (509) 329-3570
<input type="checkbox"/> <b>Bellingham</b> WA State Department of Ecology Bellingham Field Office 1440 10th Street, Suite 102 Bellingham, WA 98225 Fax (360) 715-5225	

Financial Manager: **Tammie McClure**  
 Email Address: **tmcc461@ecy.wa.gov**  
 Phone Number: **(360) 407-6410**  
 Fax Number: **(360) 407-7151**  
 Address: **WA State Department of Ecology**

**Water Quality Program, FMS  
P.O. Box 47600  
Olympia, WA 98504-7600**

Funding Source(s) for This AGREEMENT:

Federal Portion of Revolving Fund:  Yes (Catalog of Federal Domestic Assistance Number 66.458)  No

Revolving Fund Amount (federal monies): \$  
(Federal funding for this AGREEMENT is provided for from Capitalization Grants and state match for Clean Water State Revolving Funds; Environmental Protection Agency, Office of Water)

State Portion of Revolving Fund:  Yes  No

Revolving Fund Amount (state monies): \$

Specific Funding Sources:

Loan for Green Project Reserves  Yes  No  
Amount: \$

Forgivable Principal Subsidy for Green Project Reserves  Yes  No  
Amount: \$

Loan for Hardship  Yes  No  
Amount: \$

Forgivable Principal Subsidy  Yes  No  
Amount: \$

Loan for Non-Hardship  Yes  No  
Amount \$19,989,102

State Centennial Loan Funds:  Yes  No \$

**GENERAL LOAN INFORMATION:**

Increased Oversight:  Yes  No

Useful life of the PROJECT: 100 years

**PROJECT TYPE:** *Check all that apply*

Facilities Project:  Yes  No

Activities Project:  Yes  No

Green Project Reserves:  Yes  No

**LOAN SECURITY:** *Check all that apply*

Does this AGREEMENT and the LOAN to be made constitute Revenue Secured Lien Obligation of the RECIPIENT:  Yes  No

Does this AGREEMENT and the LOAN to be made constitute a general obligation debt of the RECIPIENT or the state of Washington:  Yes  No

Does this AGREEMENT and the LOAN to be made constitute a valid general obligation of the RECIPIENT payable from special assessments:  Yes  No

Is this LOAN secured with dedicated revenue through a Tribal Governmental Enterprise:  
 Yes  No

**IMPORTANT DATES:**

Estimated Project Start Date: September 20, 2010

Initiation of Operation (IO):  Yes  No IO Date: March 31, 2014

Project Completion Date: December 31, 2013

Prior Authorization:  Yes  No If yes, Effective Date: September 20, 2010

Interim Refinance:  Yes  No If yes, Effective Date:

Post Project Assessment Date (see Part IV and ATTACHMENT 4):

AGREEMENT Effective Date:

The effective date of this AGREEMENT is the date this AGREEMENT is signed by the DEPARTMENT's Water Quality Program Manager. Any work performed prior to the effective date of this AGREEMENT, without written Prior Authorization or Interim Refinance approval from the DEPARTMENT, will be at the sole expense and risk of the RECIPIENT.

**PART II. PROJECT SUMMARY**

King County will replace its Ballard Siphon by sliplining the existing 1935 built dual wood staves pipeline with High Density Polyethylene (HDPE) pipe and installing an additional 84-inch pipeline in a tunnel approximately 60-feet below the existing bottom of the waterway and roughly parallel to the existing pipes.

**PART III. PROJECT BUDGET**

Elements (Objects & Tasks)	Total PROJECT Cost	Total Eligible PROJECT Cost	LOAN AMOUNT
1. Project administration/management	\$1,750,000	\$1,750,000	\$0
2. Construction Contract	\$31,755,000	\$31,755,000	\$19,989,102



3. Construction Management	\$1,800,000	\$1,800,000	\$0
4. Engineering SDC	\$1,300,000	\$1,300,000	\$0
add more elements as needed	\$	\$	\$ *
Total	\$36,605,000	\$36,605,000	*\$19,989,102

\*The DEPARTMENT'S Fiscal Office will track to the total eligible LOAN amount. However, the RECIPIENT cannot deviate among elements without DEPARTMENT approval.

Other Funding Sources:  Yes (if Yes, list sources and amounts)  No

Federal

State

Local Funds

**PART IV. GOALS, OUTCOMES, AND POST PROJECT ASSESSMENT**

(see Important Dates in Part I and Post Project Assessment in Attachment 4)

A. Financial Assistance Water Quality Project Goals: One or more of the selected following goals apply to this project:

Severe Public Health Hazard or Public Health Emergency eliminated.

Designated beneficial uses will be restored or protected, 303(d)-Listed water bodies restored to water quality standards, and healthy waters prevented from being degraded.

Regulatory compliance with a consent decree, compliance orders, TMDL or waste load allocation achieved.

B. Water Quality Project Outcomes: The following are quantitative results anticipated from the project.

1. Increased capacity of the siphon from 60 mgd to 125 mgd.

2. Reduction in CSO events and its volumes at the Ballard Regulator Station.

3. Reduction in CSO events and its volumes at the 11<sup>th</sup> Ave Regulator Station.

C. Environmental Mitigation:  Yes  No If Yes, list the environmental mitigation measures:

█

**PART V. SCOPE OF WORK**

**Task 1 - Project Administration/Management**

- A. The RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of payment vouchers, fiscal forms, and progress reports; compliance with applicable procurement, contracting, and interlocal agreement requirements; attainment of all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.
- B. The RECIPIENT agrees to track Recovery Funds separately from Base Revolving Funds where applicable.
- C. The RECIPIENT will manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; the DEPARTMENT; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT will carry out this project in accordance with any completion dates outlined in this agreement.

Required Performance:

1. Effective administration and management of this project.
2. Timely submittal of all required performance items, progress reports, and financial vouchers.

**Task 2 - Ballard Siphon Construction Contract**

- A. The RECIPIENT will supplement the Ballard Siphon with a separate pipe and line the existing pipes with new pipes. The separate pipe will be placed in a tunnel deep under the bed of Salmon Bay. The two lining pipes will be inserted into the existing wood-stave pipes. Structures associated with the three pipes will also be constructed. The pipes, structures and their construction are discussed in more detail below.
- B. The RECIPIENT will install a new separate pipe. The separate pipe will be about 7 feet in diameter. It will be placed within an approximately 7 to 12-foot diameter tunnel. The tunnel will be about 2000 feet long. It will be constructed between two vertical shafts that will be sunk on land: one at the north end of the tunnel, next to the Ballard Regulator, and one at the south end at a location south of West Commodore Way. The north shaft will be about 30 feet in diameter and 140 feet deep. The south shaft will be about 70 feet in diameter and 100 feet deep. These depths will place the tunnel well below the bed of Salmon Bay. Consequently no in-water construction will take place.
- C. The RECIPIENT will insert new linings into the existing siphons. The two new lining pipes will each be about 30 inches in diameter and will line the full length of both existing pipes. The method by which they will be inserted into the existing pipes is known as "sliplining." To conduct the sliplining, a pit will be excavated down to the existing pipes next to the Ballard Regulator. Then a segment of the pipes will be removed and sliplining equipment will be placed in the pit. Pulling rods will then be run through the existing pipes to the location of the existing structure on the south end of the siphon. Equipment on the south end will then use the rods to pull the new pipe through the existing pipe. The equipment in the pit will fuse pipe segments together one after the other as the pipe is pulled. The existing pipes will be sliplined

one at a time.

- D. The RECIPIENT will construct new access and flow regulation structures. An addition to the Ballard Regulator will be constructed that will house new flow pipes. On the south side, new manholes and a regulating structure will be constructed underground at the shaft site to control flows into the North Interceptor.

Required Performance:

### **Task 3 - Construction Management Services**

- A. The County released a Request for Proposals (RFP) for the construction management services consultant work for the Ballard Siphon project. The County reviewed received proposals for this project and judged each proposal based on pre-established criteria outlined in the RFP process. The consultant team, Jacobs Engineering, was awarded the contract based upon the highest scores received and successful negotiations on scope of work and budget. Notice to Proceed will be issued December 2009.
1. Under this contract, construction management (CM) services includes the following:
    - Project control services
    - Resident Engineering
    - Construction inspection
    - Other related service required to support King County WTD construction management team.

Major scope of work tasks include the following:

- Consultant shall manage the work under this contract to include CM activities as described in this scope of work, including consultant staff and subconsultants, and shall keep the County advised on all aspects of work performed under this contract.
- Consultant shall review construction contract documents, pre-selected equipment supply contracts, King County Wastewater Treatment Division's (WTD's) Construction Management Procedures Manual (August 2006 version), and other documents provided by the County. Prepare a Plan for the work based on this review that is acceptable to the County.
- Consultant shall critically review the contractor's schedule and sub schedules using Primavera (P3) scheduling software. King County will provide one copy for CDM use for this project.
- Consultant shall provide project control engineering services on-site.
- Consultant shall develop procedures, manuals, systems, and related documentation to support information management and document control services that will be performed during construction. The document management system shall follow King County standards.
- Consultant shall perform construction management administration for the construction contract, in accordance with the procedures, workflows and documentation requirements developed in the CM Manual, inspection plans, and related documents.
- Consultant shall implement, manage and maintain a Change Order Management System. Requests for Change Order and Requests for Change Proposal will be logged and tracked, in compliance with the applicable contract terms and conditions and with the Construction Management Manual.

- The Consultant shall provide day to day resident engineering and field inspection staff for this construction contract is being performed by King County staff under the direction of the project representative. Consultant shall provide back-up to include civil, mechanical and/or electrical resident engineering and field inspection services on-site on a as needed basis. Other specialty resident engineering and inspection services including electrical, civil/structural, geotechnical such as instrumentation and control systems shall be available and provided as requested by the County.
  - The Consultant may be requested by King County to perform additional support for the completion of the project.
2. A County project representative will lead the Ballard Siphon Construction Management team that includes King County and consultant staff. This person will have the authority and responsibility for administering the construction management services contract.
  3. The consultant project manager will submit all invoice requests and supportive documentation as required to the King County construction manager of this project on the dates negotiated for review and payment by the WTD construction manager.

Required Performance:

#### **Task 4 - Engineering Services During Construction**

1. The County released a Request for Proposals (RFP) for design consultant work for the Ballard Siphon project. The County reviewed received proposals for this project and judged each proposal based on pre-established criteria outlined in the RFP process. The consultant team, Tetra Tech, was awarded the original contract based upon the highest scores received and successful negotiations on scope of work and budget. Notice to Proceed date for the original contract was 1/11/2007. Tetra Tech has completed preparation of the final 100 percent treatment plant design documents. Documents were distributed for review in April, 2009. WTD continued negotiations with Tetra Tech to provide engineering services during construction (SDC) for the site development construction work to begin in 2010. On 7/29/2009, Amendment No. 10 was executed to include SDC for the Ballard Siphon project.

Amendment No. 10 includes scope of work for engineering SDC that includes the following:

- Project Management – Plan, monitor, administer and manage the services described in the contract amendment.
- Field Services – Provide field SDC to the County during construction and provide sufficient field review to allow Engineer of Record to sign Certificate of Construction as required by Ecology and State law.
- Onsite SDC Staffing – Key Consultant team staff will be on-site at the treatment plant continuously for set periods of time. These staff will coordinate Consultant’s field and office activities with office-based discipline and facility leads, review submittals, respond to RFI’s, answer questions, coordinate SDC activities with facility and discipline leads, participate in construction meetings, assist with change order preparation, and serve as a general resource to assist the County with construction issues.

- Office Services - The Consultant will respond to County, construction manager and general contractor questions and deal with day-to-day construction related issues while in the Consultant's engineering offices. Services shall include submittal reviews, technical interpretation of the contract drawings and specifications as identified in RFI's, review of substitution requests and value engineering change proposals, and change order related services, as well as telephone consultation and other requested services.
  - Start-up Planning - The Ballard Siphon will be tested and commissioned by the County and the construction contractor. The Consultant will provide engineering services during the testing and commissioning phase to the County. Testing and commissioning shall be directed at complex areas of the pipeline where input from the Consultant team will be most beneficial.
2. Leon Maday is the County's project engineer that will lead the Ballard Siphon's engineering team that includes King County and consultant staff. He will have the authority and responsibility for administering the SDC contract.
  3. Doug Genzlinger, the consultant project manager, will submit all invoice requests and supportive documentation as required to the King County project manager of this project on the dates negotiated for review and payment by the WTD project manager.

Required Performance:

**add more tasks as needed**

## **PART V(a). SPECIAL TERMS AND CONDITIONS**

### **PART VI. LOAN INTEREST RATE AND TERMS**

This section may need to be customized to fit the particular circumstances pertaining to each Recovery Fund Loan – interest bearing and/or subsidy).

#### **Source and Availability; LOAN Amounts; LOAN Terms**

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

Subject to all of the terms, provisions, and conditions of this AGREEMENT, and subject to the availability of funds, the DEPARTMENT will loan to the RECIPIENT the sum of spell-out dollar amount (\$enter numeric amount). Of this amount spell-out dollar amount (\$enter numeric amount) is Forgivable Principal and therefore is forgiven and will not be required to be repaid. The remaining spell-out dollar amount (\$enter numeric amount) (Estimated LOAN Amount) is in the form of LOAN.

When the PROJECT Completion Date has occurred, the DEPARTMENT and the RECIPIENT will execute an amendment to this AGREEMENT which details the final LOAN amount (Final LOAN Amount), and the DEPARTMENT will prepare a final LOAN repayment schedule, in the form of

ATTACHMENT 8. The Final LOAN Amount will be the combined total of actual disbursements made on the Recovery Act Loan 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”) will bear interest at the rate of 2.8 percent per annum, calculated on the basis of a 365 day year. Interest on the Estimated Loan Amount will accrue from and be compounded monthly based on the date that each payment is mailed to the RECIPIENT. The Final LOAN Amount will be repaid in equal installments semiannually over a term of 20 years, as provided in ATTACHMENT 8.

## **PART VII. ALL AGREEMENTS CONTAINED HEREIN**

The RECIPIENT will ensure this project is completed according to the details of this agreement. The RECIPIENT may elect to use its own forces or it may contract for professional services necessary to perform and complete project-related work, if approved by the DEPARTMENT.

The following contain the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein:

- This AGREEMENT
- ATTACHMENT 1: Opinion of RECIPIENT’s Legal Counsel
- ATTACHMENT 2: Authorizing Ordinance or Resolution
- ATTACHMENT 3: Preaward Compliance Review Report for All Applicants Requesting Federal Assistance
- ATTACHMENT 4: General Project Management Requirements
- ATTACHMENT 5: Agreement Definitions
- ATTACHMENT 6: Loan General Terms and Conditions (Pertaining to Grant and Loan Agreements) of the Department of Ecology
- ATTACHMENT 7: Water Quality Program - Financial Management Post Project Assessment Survey
- ATTACHMENT 8: Estimated Loan Repayment Schedule
- The effective edition, at the signing of this agreement, of the DEPARTMENT's “Administrative Requirements for Ecology Grants and Loans”
- The associated funding guidelines that correspond to the Fiscal Year in which the project is funded
- The applicable statutes and regulations
- 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
  - 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
- The following is applicable for facilities projects:
  - 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
  - Plans and Specifications Approval Letter (where applicable) and any amendments
  - State Environmental Review Process (SERP) Environmental Information Document

No changes, additions, or deletions to this AGREEMENT will be authorized without a formal written amendment, EXCEPT that in response to a request from the RECIPIENT, the DEPARTMENT may redistribute the loan budget. The DEPARTMENT or the RECIPIENT may change their respective staff contacts without the concurrence of either party.

By signing this agreement, the RECIPIENT acknowledges that opportunity to thoroughly review the terms of this agreement, the attachments, all incorporated or referenced documents, as well as all applicable statutes, rules, or guidelines mentioned in this agreement was given.

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 - WTD

\_\_\_\_\_  
KELLY SUSEWIND, P.E., P.G.      DATE  
WATER QUALITY PROGRAM MANAGER

\_\_\_\_\_  
PAM ELARDO      DATE  
INTERIM DIVISION DIRECTOR

APPROVED AS TO FORM ONLY  
ASSISTANT ATTORNEY GENERAL

(October 29, 2009)

## ATTACHMENT 1: OPINION OF RECIPIENT'S LEGAL COUNSEL

I am an attorney at law admitted to practice in the state of Washington and the duly appointed attorney of KING COUNTY [the RECIPIENT], and I have examined any and all documents and records pertinent to the AGREEMENT.

Based on the foregoing, it is my opinion that:

- A. The RECIPIENT is a duly organized and legally existing municipal corporation or political subdivision under the laws of the state of Washington or a federally recognized Indian tribe;
- B. The RECIPIENT has the power and authority to execute and deliver and to perform its obligations under the AGREEMENT;
- C. The AGREEMENT has been duly authorized and executed by RECIPIENT's authorized representatives and, to my best knowledge and after reasonable investigation, all other necessary actions have been taken to make the AGREEMENT valid, binding, and enforceable against the RECIPIENT in accordance with its terms, except as such enforcement is affected by bankruptcy, insolvency, moratorium, or other laws affecting creditors' rights and principles of equity if equitable remedies are sought;
- D. To my best knowledge and after reasonable investigation, the AGREEMENT does not violate any other agreement, statute, court order, or law to which the RECIPIENT is a party or by which it or its properties are bound;
- E. There is currently no litigation seeking to enjoin the commencement or completion of the PROJECT or to enjoin the RECIPIENT from entering into the AGREEMENT or from accepting or repaying the LOAN. The RECIPIENT is not a party to litigation which will materially affect its ability to repay such loan on the terms contained in the AGREEMENT; and
- F. The AGREEMENT constitutes a valid general obligation of the RECIPIENT payable from annual *ad valorem* taxes to be levied within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.
- G. The AGREEMENT constitutes a valid general obligation of the RECIPIENT payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.
- H. The AGREEMENT constitutes a valid obligation of the RECIPIENT payable from the Net Revenues of the Utility.
- I. The AGREEMENT constitutes a valid obligation of the RECIPIENT payable from the Net Revenues of the Utility and ULID Assessments in the ULID.

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

---

RECIPIENT's Legal Counsel

Date



**ATTACHMENT 2: AUTHORIZING ORDINANCE OR RESOLUTION**

**ATTACHMENT 3: PREAWARD COMPLIANCE REVIEW REPORT FOR ALL APPLICANTS  
REQUESTING FEDERAL ASSISTANCE**

Form available electronically at: <http://www.epa.gov/ogd/forms/forms.htm>  
(Super crosscutter: required for all loans, except Centennial)

<b>Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance</b> Note: Read instructions on page two of this attachment.		
I. Applicant/Recipient (Name, Address, State, Zip Code).		DUNS No.
II. Is the applicant currently receiving EPA assistance?		
III. List all civil rights lawsuits and administrative complaints pending against the applicant/recipient that allege discrimination based on race, color, national origin, sex, age, or disability. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)		
IV. List all civil rights lawsuits and administrative complaints decided against the applicant/recipient within the last year that allege discrimination based on race, color, national origin, sex, age, or disability and enclose a copy of all decisions. Please describe all corrective action taken. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)		
V. List all civil rights compliance reviews of the applicant/recipient conducted by any agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.80(c)(3))		
VI. Is the applicant requesting EPA assistance for new construction? If no, proceed to VII; if yes, answer (a) and/or (b) below. _ a. If the grant is for new construction, will all new facilities or alterations to existing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities? If yes, proceed to VII; if no, proceed to VI(b). b. If the grant is for new construction and the new facilities or alterations to existing facilities will not be readily accessible to and usable by persons with disabilities, explain how a regulatory exception (40 C.F.R. § 7.70) applies.		
VII.* Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities? (40 C.F.R. § 5.140 and § 7.95) _ a. Do the methods of notice accommodate those with impaired vision or hearing? b. Is the notice posted in a prominent place in the applicant's offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications? c. Does the notice identify a designated civil rights coordinator?		
VIII.* Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or handicap of the population it serves? (40 C.F.R. § 7.85(a))		
IX.* Does the applicant/recipient have a policy/procedure for providing access to services for persons with limited English proficiency? (40 C.F.R. Part 7, E.O. 13166)		
X.* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it designated an employee to coordinate its compliance with 40 C.F.R. Parts 5 and 7? Provide the name, title, position, mailing address, e-mail address, fax number, and telephone number of the designated coordinator.		
XI* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it adopted grievance procedures that assure the prompt and fair resolution of complaints that allege a violation of 40 C.F.R. Parts 5 and 7? Provide a legal citation or Internet address for, or a copy of, the procedures.		
<b>For the Applicant/Recipient</b> _ I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law. I assure that I will fully comply with all applicable civil rights statutes and EPA regulations.		
A. Signature of Authorized Official _____	B. Title of Authorized Official _____	C. Date _____
<b>For the U.S. Environmental Protection Agency</b> _ I have reviewed the information provided by the applicant/recipient and hereby certify that the applicant/recipient has submitted all preaward compliance information required by 40 C.F.R. Parts 5 and 7; that based on the information submitted, this application satisfies the preaward provisions of 40 C.F.R. Parts 5 and 7; and that the applicant has given assurance that it will fully comply with all applicable civil rights statutes and EPA regulations.		
A. Signature of Authorized EPA Official _ See ** note on reverse side.	B. Title of Authorized EPA Official _____	C. Date _____

### General

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

Title VI of the Civil Rights Acts of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Act goes on to explain that the statute shall not be construed to authorize action with respect to any employment practice of any employer, employment agency, or labor organization (except where the primary objective of the Federal financial assistance is to provide employment).

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

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

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

Title IX of the Education Amendments of 1972 provides that no person in the United States on the basis of sex shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Employment discrimination on the basis of sex is prohibited in all such education programs or activities. Note: an education program or activity is not limited to only those conducted by a formal institution.

40 C.F.R. Part 5 implements Title IX of the Education Amendments of 1972.

40 C.F.R. Part 7 implements Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of The Rehabilitation Act of 1973.

The Executive Order 13166 (E.O. 13166) entitled; "Improving Access to Services for Persons with Limited English Proficiency" requires Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

### Items

"Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Recipient" means any entity, other than applicant, which will actually receive EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Civil rights lawsuits and administrative complaints" means any lawsuit or administrative complaint alleging discrimination on the basis of race, color, national origin, sex, age, or disability pending or decided against the applicant and/or entity which actually benefits from the grant, but excluding employment complaints not covered by 40 C.F.R. Parts 5 and 7. For example, if a city is the named applicant but the grant will actually benefit the Department of Sewage, civil rights lawsuits involving both the city and the Department of Sewage should be listed.

"Civil rights compliance review" means any review assessing the applicant's and/or recipient's compliance with laws prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability.

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

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

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

\* Questions VII – XI are for informational use only and will not affect an applicant's grant status. However, applicants should answer all questions on this form. (40 C.F.R. Parts 5 and 7).

\*\* Note: Signature appears in the Approval Section of the EPA Comprehensive Administrative Review For Grants/Cooperative Agreements & Continuation/Supplemental Awards form.

Approval indicates, in the reviewer's opinion, questions I – VI of Form 4700-4 comply with the preaward administrative requirements for EPA assistance.

### "Burden Disclosure Statement"

EPA estimates public reporting burden for the preparation of this form to average 30 minutes per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to:

U.S. EPA, Attn: Collection Strategies Division (MC 2822T), Office of Information Collection, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

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

**ATTACHMENT 4: GENERAL PROJECT MANAGEMENT REQUIREMENTS**  
FOR THE WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND  
AND CENTENNIAL CLEAN WATER PROGRAM PROJECTS  
(UNLESS MODIFIED BY A SPECIAL TERM AND CONDITION IN PART V.)

**ACCOUNTING STANDARDS**

The RECIPIENT will maintain accurate records and accounts for the PROJECT (“PROJECT Records”) in accordance with Chapter 43.09.200 RCW “Local Government Accounting - Uniform System of Accounting.”

These PROJECT Records will be separate and distinct from the RECIPIENT's other records and accounts (General Accounts). Eligible costs will be audited every other year, or annually if more than \$500,000 of federal funds are received in any given year, by an independent, certified accountant 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, will be furnished to the DEPARTMENT within 30 days after receipt of the final audit report.

**ACTIVITIES PROJECTS: TECHNICAL ASSISTANCE**

Technical assistance for agriculture activities provided under the terms of this LOAN will be consistent with the current U.S. Natural Resource Conservation Service (“NRCS”) Field Office Technical Guide for Washington State. However, technical assistance, proposed practices, or PROJECT designs that do not meet these standards may be accepted if approved in writing by the NRCS and the DEPARTMENT.

**ACTIVITIES PROJECTS: BEST MANAGEMENT PRACTICES**

Best Management Practices (BMPs) intended primarily for production, operation, or maintenance are not eligible. BMPs must be pre approved by the DEPARTMENT.

**AUTHORITY**

**Authority of RECIPIENT**

This AGREEMENT is authorized by the Constitution and laws of the state of Washington, including the RECIPIENT's authority, and by the RECIPIENT pursuant to the ordinance or resolution attached as ATTACHMENT 2.

**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 1.

**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 will submit a copy of each interlocal agreement necessary for the PROJECT to the DEPARTMENT.

The RECIPIENT certifies by signing this AGREEMENT that all applicable requirements have been

satisfied in the procurement of professional services and that eligible and ineligible costs are separated and identifiable. The RECIPIENT will submit a copy of the final negotiated agreement to the DEPARTMENT for eligibility determination.

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

### **CERTIFICATION REGARDING SUSPENSION, DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (FOR FEDERALLY FUNDED PROJECTS)**

Federal Executive Order 12549 provides that Executive departments and agencies will participate in a government-wide system for monitoring suspended, debarred, and excluded parties. These departments and agencies have further passed this requirement onto their recipients and have provided pertinent regulations in the Code of Federal Regulations. The RECIPIENT, by signing this agreement, certifies that it is not suspended, debarred, or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. 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 web site for checking suspended, debarred, or excluded parties is [www.epls.gov](http://www.epls.gov).

### **COMMENCEMENT OF WORK**

The DEPARTMENT reserves the right to terminate this AGREEMENT if work does not commence on the project within 4 months after the DEPARTMENT's deadline for signing this LOAN AGREEMENT.

### **COVENANTS AND AGREEMENTS**

#### **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.

#### **Accounts and Records**

The RECIPIENT will keep proper and separate accounts and records in which complete and separate entries will be made of all transactions relating to this AGREEMENT. The RECIPIENT will keep such records for six years after receipt of final loan disbursement.

#### **Alteration and Eligibility of PROJECT**

During the term of this AGREEMENT, the RECIPIENT (i) will not materially alter the design or structural character of the PROJECT without the prior written approval of the DEPARTMENT and (ii) will take no action which would adversely affect the eligibility of the PROJECT as defined by applicable funding program rules and state statutes, or which would cause a violation of any covenant, condition, or provision herein.

#### **Collection of ULID Assessments (if used to secure the repayment of this LOAN)**

All ULID Assessments in the ULID will be paid into the Loan Fund and used to pay the principal of and interest on the LOAN. The ULID Assessments in the ULID may be deposited into the Reserve

Account to satisfy a Reserve Requirement if a Reserve Requirement is applicable.

**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.

**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.

**Levy and Collection of Taxes (if used to secure the repayment of this loan)**

For so long as the LOAN is outstanding, the RECIPIENT irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors on all of the taxable property within the boundaries of the RECIPIENT in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the principal of and interest on the LOAN, and the full faith, credit and resources of the RECIPIENT are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

**Maintenance and Operation of a Funded Utility**

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

**Pledge of Net Revenue and ULID Assessments in the ULID (if used to secure the repayment of this LOAN)**

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

**Reserve Requirement**

For loans that are Revenue-Secured Debt with terms greater than five 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 years of the repayment period of the LOAN. This amount will 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 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, have been paid in full.

**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 one of the following applies:

1. The facilities or property transferred are not material to the operation of the Utility; or 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.
2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three percent of the total assets of the Utility.
3. The RECIPIENT receives from the transferee 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 will be used (i) to redeem promptly, or irrevocably set aside for the redemption of, Senior Lien Obligations and to redeem promptly the LOAN, or (ii) to provide for part of the cost of additions to and betterments and extensions of the Utility.

**DISADVANTAGED BUSINESS ENTERPRISE**

General Compliance, 40 CFR, Part 33. The RECIPIENT agrees to comply with the requirements of the Environmental Protection Agency’s Program for Utilization of Small, Minority, and Women’s Business Enterprises (MBE/WBE) 40CFR, Part 33 in procurement under this AGREEMENT.

Non-discrimination Provision. The RECIPIENT will comply with all federal and state nondiscrimination laws, including, but not limited to Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington’s Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the RECIPIENT’s noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this AGREEMENT may be rescinded, canceled, or terminated in whole or in part, and the RECIPIENT may be declared ineligible for further funding from the DEPARTMENT. The RECIPIENT will, however, be given a reasonable time in which to cure this noncompliance.

Fair Share Objective/Goals, 40 CFR, Part 33, Subpart D. If the dollar amount of this AGREEMENT or the total dollar amount of all of the RECIPIENT’s financial assistance agreements in the current federal fiscal year from the Revolving Fund is over \$250,000, the RECIPIENT accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **Office of Minority Women Business Enterprises** as follows:

Construction	10.00% MBE	6.00% WBE
Supplies	8.00% MBE	4.00% WBE
Services	10.00% MBE	4.00% WBE
Equipment	8.00% MBE	8.00% WBE

By signing this AGREEMENT the RECIPIENT is accepting the fair share objectives/goals stated

above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **Office of Minority Women Business Enterprises**.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C. The RECIPIENT agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under this AGREEMENT.. Records documenting compliance with the following six good faith efforts will be retained:

- 1) Ensuring Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources. *Qualified Women and Minority business enterprises may be found on the Internet at [www.omwbe.wa.gov](http://www.omwbe.wa.gov) or by contacting the Washington State Office of Minority and Women's Enterprises at 360-704-1181.*
- 2) Making information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- 3) Considering in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- 4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- 5) Using services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6) If the prime contractor awards subcontracts, requiring the subcontractors to take the six good faith efforts in paragraphs A through E above.

MBE/WBE Reporting, 40 CFR, Part 33, Sections 33.302, 33.502 and 33.503. The RECIPIENT agrees to provide forms: EPA Form 6100-2 DBE Subcontractor Participation Form and EPA Form 6100-3 DBE Subcontractor Performance Form to all its subcontractors, and EPA Form 6100-4 DBE Subcontractor Utilization Form to all its prime contractors. These forms may be obtained from the EPA Office of Small Business Program's website on the internet at [www.epa.gov/osbp](http://www.epa.gov/osbp).

EPA Form 6100-2 – The RECIPIENT must document that this form was received by the subcontractor. The completed form should be submitted to the EPA DBE Coordinator.

EPA Form 6100-3 – This form is completed by the subcontractor(s), submitted with bid, and kept with the contract.

EPA Form 6100-4 – This form is completed by the prime contractor, submitted with bid, and kept with the contract.



The RECIPIENT also agrees to submit the DEPARTMENT's MBE/WBE participation report - Form D with each payment request.

Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract administration provisions of 40 CFR, Section 33.302. The RECIPIENT also agrees to ensure that recipients of identified loans also comply with provisions of 40CFR, Section 33.302.

The RECIPIENT will include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services pertaining to this AGREEMENT.

“The Contractor will not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract or other legally available remedies.”

Bidder List, 40 CFR, Section 33.501(b) and (c). The RECIPIENT agrees to create and maintain a bidders list (see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions..

### **FACILITIES PROJECTS: DELIVERABLES (IF APPLICABLE)**

Planning documents developed by the RECIPIENT must meet the requirements of Chapter 173-240 WAC, “Submission of Plans and Reports for Construction of Wastewater Facilities” and incorporate SERP review.

Plans and Specifications. Plans and specifications developed by the RECIPIENT must be reviewed and approved by Water Quality Program staff of the DEPARTMENT and be consistent with:

1. Requirements stated in Chapter 173-240 WAC, “Submission of Plans and Reports for Construction of Wastewater Facilities,” as related to plans and specifications.
2. 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).
3. The approved facilities plan.
4. Other reports approved by the DEPARTMENT which pertain to the facilities design.

RECIPIENT Approval. The plans, specifications, construction contract documents, and addenda must be approved by the RECIPIENT prior to submittal for DEPARTMENT review.

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

Construction Cost Estimate. A current, updated construction cost estimate will be submitted along with each plan/specification submittal. The project manager may request a spreadsheet in electronic file format.

Form of Plans. All construction plans submitted to the DEPARTMENT for review and approval will be reduced to no larger than 11-1/2" x 17" legible size. They may, at the RECIPIENT's option, be bound with the specifications or related construction contract documents or bound as a separate document. All reduced drawings must be completely legible. The project manager may request plans be submitted in electronic format and specifications be submitted in a searchable PDF or Microsoft

Word electronic file.

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

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.

Plan of Operation. The plan of operation must be updated, as appropriate, throughout the PROJECT.

Construction Quality Assurance Plan. A detailed construction quality assurance plan will be submitted at least 30 days prior to the commencement of construction. This plan must describe how adequate and competent construction inspection will be provided for the PROJECT.

Construction Schedule. A construction schedule will be submitted to the DEPARTMENT within 30 days of the start of construction. The construction schedule will be revised and updated whenever major changes occur and resubmitted to the DEPARTMENT. When changes in the construction schedule affect previous cash flow estimates, revised cash flow projections must also be submitted to the DEPARTMENT. The project manager may request this schedule in an electronic file format.

Change Orders. Change orders that are a significant deviation from the approved plans/specifications must be submitted in writing 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 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.

The DEPARTMENT may approve, through formal amendment to this AGREEMENT, funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s).

Adjusted Construction Budget. The construction budget, as reflected in the LOAN, will be adjusted once actual construction bids are received. If the low responsive responsible construct bid(s) exceed the engineer's estimate of construction costs, the DEPARTMENT may approve, through formal amendment to this AGREEMENT, funding increases for up to ten percent of the engineer's original estimate.

"As-Built" Drawings. Upon completion of construction, the RECIPIENT will provide the DEPARTMENT's Project Manager with a set of "as-built" plans (i.e., record construction drawings which reflect changes, modifications, or other significant revisions made to the project during construction) in AutoCAD electronic format, and in reduced (11"x17") paper copy format.

Declaration of Construction Completion. Along with the set of "as-built" plans, the RECIPIENT will provide a certification statement signed by a professional engineer, indicating that the PROJECT was completed in accordance with the plans and specifications and major change orders approved by the DEPARTMENT.

Operations and Maintenance Manual. An Operations and Maintenance Manual ("O&M Manual") will be prepared in conformance with WAC 173-240-080, "Operation and Maintenance Manual," and the DEPARTMENT's GUIDELINES. The O&M Manual will be updated as necessary following plant start-up to reflect actual operating experience. The project manager may request the O&M Manual be submitted in either paper format, PDF format, or Microsoft Word electronic file format.

## **GROWTH MANAGEMENT PLANNING**

The RECIPIENT certifies by signing this AGREEMENT for a Water Pollution Control Facilities project that it is in compliance with the requirements of Chapter 36.70A RCW, "Growth Management—Planning by Selected Counties and Cities." If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT will notify the DEPARTMENT in writing of this change within 30 days.

## **INCREASED OVERSIGHT**

The RECIPIENT will submit all backup documentation with each payment request submittal. In addition, the DEPARTMENT's Project Manager will establish a schedule for additional site visits to provide technical assistance to the RECIPIENT and verify progress or payment information.

## **LOAN REPAYMENT**

### Sources of LOAN Repayment

1. Nature of RECIPIENT's Obligation. The obligation of the RECIPIENT to repay the LOAN from the sources identified below and to perform and observe all of the other agreements and obligations on its part contained herein will be absolute and unconditional, and will not be subject to diminution by setoff, counterclaim, or abatement of any kind. To secure the repayment of the LOAN from the DEPARTMENT, the RECIPIENT agrees to comply with all of the covenants, agreements, and attachments contained herein.
2. For General Obligation. This LOAN is a General Obligation Debt of the RECIPIENT.
3. For General Obligation Payable from Special Assessments. This LOAN is a General Obligation Debt of the RECIPIENT payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.
4. For Revenue-Secured; Lien Position. This LOAN is a Revenue-Secured Debt of the RECIPIENT's Utility. This LOAN will 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.

In addition, if this loan is also secured by Utility Local Improvement Districts (ULID) Assessments, this LOAN will constitute a lien upon ULID Assessments in the ULID prior and superior to any other charges whatsoever.

5. Other Sources of Repayment. The RECIPIENT may repay any portion of the LOAN from any funds legally available to it.
6. Defeasance of the LOAN; Refinancing or Additional Financing of the PROJECT. So long as the DEPARTMENT will hold this LOAN, the RECIPIENT will not be entitled to, and will not effect, an economic Defeasance of the LOAN. The RECIPIENT also will not refinance the PROJECT, including making an advance refunding of the LOAN, or obtain additional grants or loans 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 will be required to use the proceeds thereof immediately upon their receipt, together with other available RECIPIENT funds, to repay both of the following:

- (i) the LOAN Amount with interest
- (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 will incur Late Charges and will be treated as a LOAN Default.

### **Method and Conditions on Repayments**

1. Semiannual Payments. Notwithstanding any other provision of this AGREEMENT, the first semiannual payment of principal and interest on this LOAN will be paid no later than one year after the PROJECT Completion Date or Initiation of Operation Date

Equal payments will be due every six months thereafter.

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

Payments will be mailed to:

Department of Ecology  
Cashiering Unit  
P.O. Box 47611  
Olympia WA 98504-7611

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

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

2. Late Charges. If any amount of the Final LOAN Amount or any other amount owed to the DEPARTMENT pursuant to this AGREEMENT remains unpaid after it becomes due and payable, the DEPARTMENT may assess a Late Charge. The Late Charge will be one percent per month on the past due amount starting on the date the debt becomes past due and until it is paid in full.
3. Repayment Limitations. Repayment of the LOAN is subject to the following additional limitations, among others: those on Defeasance, refinancing and advance refunding, termination, and default and recovery of payments.
4. Prepayment of LOAN. So long as the DEPARTMENT will 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 will first contact the DEPARTMENT's Revenue/Receivable Manager of the Fiscal Office.

## **LOCAL LOAN FUND PROJECTS**

Local Loan Fund. The RECIPIENT will use the funds received from the DEPARTMENT under this AGREEMENT to establish and administer a loan fund.

Local Loan Fund Servicing. The RECIPIENT will be responsible for loan servicing and collecting and tracking payments, but may contract for such services through a lending institution. The RECIPIENT will officially approve or deny the loan request and will establish the interest rate and the repayment period.

Schedule. A schedule for PROJECT completion, including milestone dates for loan marketing activities, numbers of loan applications and closures, disbursements, application deadlines, etc., will be submitted by the RECIPIENT with each quarterly progress report.

## **MODIFICATIONS TO AGREEMENT**

No subsequent amendments to this AGREEMENT will 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:

Insubstantial modifications may be approved in writing by the Department's Project Manager without a formal amendment. Insubstantial changes include:

- LOAN AGREEMENT Contact
- Contact for billing/invoice questions
- The DEPARTMENT'S Project Manager or Financial Manager
- Frequency and number of required submittals
- Budget allocations not affecting the total LOAN Amount
- Similar changes requested by the RECIPIENT

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

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

## **PAYMENT REQUEST SUBMITTALS**

### **Equipment Purchase**

Equipment must be pre approved by the DEPARTMENT's project manager.

### **Requests for Payment**

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

1. Procedure. Payment requests will be submitted by the RECIPIENT to the Financial Manager of the DEPARTMENT.
2. Cost Reimbursable Basis: Payments to the RECIPIENT will be made on a "reimbursable basis" no more often than once per month unless allowed by the DEPARTMENT's

Financial Manager. The DEPARTMENT's Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.

3. Documentation: Each request for payment will be submitted by the RECIPIENT, along with documentation of the expenses per the DEPARTMENT's ADMINISTRATIVE REQUIREMENTS.
4. Required Forms: The RECIPIENT will submit all forms and supportive documentation to the DEPARTMENT's Financial Manager. Invoice voucher submittals will include:
  - State of Washington Invoice Voucher Form A19-1A
  - Form B2 (ECY 060-7)
  - Form C2 (ECY 060-9)
  - Form D (ECY 060-11)
5. Period of Payment. Payments will 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 this AGREEMENT.
6. Ineligible Costs. Payments will be made only for eligible PROJECT costs incurred and will not exceed the Estimated LOAN Amount. If any audit identifies LOAN funds which were used to support ineligible costs, such funds may be immediately due and payable to the DEPARTMENT notwithstanding any provision to the contrary herein.
7. Overhead Costs. No payment for overhead costs in excess of 25 percent of salaries and benefits of the RECIPIENT will be allowed.
8. Certification. Each payment request will constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this AGREEMENT remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the PROJECT or to repay the principal of or interest on the LOAN, have occurred since the date of this AGREEMENT. Any changes in the RECIPIENT's financial condition will be disclosed in writing to the DEPARTMENT by the RECIPIENT in its request for payment.

## **POST PROJECT ASSESSMENT SURVEY**

The RECIPIENT agrees to submit a brief survey regarding the key project results or water quality project outcomes and the status of eventual environmental results or goals from the project.

The RECIPIENT will e-mail the survey, as an attachment, to the DEPARTMENT's Project Manager and the DEPARTMENT's Water Quality Program Performance Measures Lead.

The DEPARTMENT may conduct site interviews and inspections, and may otherwise evaluate the Project.

## **PREVAILING WAGE**

### **Prevailing Wage (Davis-Bacon Act):**

The RECIPIENT agrees to comply with the Davis-Bacon Act wage requirements. This applies to projects funded directly by or assisted in whole or in part with assistance from the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by

the Secretary of Labor. The RECIPIENT is also subject to the Washington State prevailing wage law, 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.

## **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 will follow State procurement laws.

## **PROGRESS REPORTS**

The RECIPIENT will submit progress reports to the DEPARTMENT at least quarterly or such other schedule as set forth herein. The RECIPIENT will submit a copy of each progress report to both the Financial Manager and the Project Manager of the DEPARTMENT. Quarterly reports will cover the periods:

January 1 through March 31

April 1 through June 30

July 1 through September 30

October 1 through December 31

Quarterly reports are due 15 days following the end of the quarter being reported. Payment requests will not be processed without a current Progress Report.

At a minimum, all Progress Reports must contain a comparison of actual accomplishments to the objectives established for the period, the reasons for delay if established objectives were not met, analysis and explanation of any cost overruns, and any additional pertinent information specified in this agreement. Even if no progress has occurred a progress report must still be submitted.

The RECIPIENT will 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 will be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation.

## **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.

### **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 or the formation of the ULID and the levy and collection of ULID Assessments therein pledged to pay the principal of and interest on the LOAN (for revenue secured lien obligations); or
- (iii) the levy and collection of the taxes pledged to pay the principal of and interest on the LOAN (for general obligation-secured loans and general obligation payable from special-assessment-secured loans); 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 an Excess Indebtedness**

For LOANS secured with a general obligation pledge or a general obligation pledge on special assessments: The RECIPIENT agrees that this AGREEMENT and the LOAN to be made do not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations.

### **E. Due Regard**

For LOANS secured with a Revenue Obligation: 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.

## **SEWER-USER FEE ORDINANCES AND USER-CHARGE SYSTEM**

### Sewer-Use Ordinance or Resolution

If not already in existence, the RECIPIENT will adopt and will enforce a sewer-use ordinance or resolution. The sewer use ordinance must include provisions to: 1) prohibit the introduction of toxic or hazardous wastes into the RECIPIENT's sewer system; 2) prohibit inflow of stormwater; 3) require that new sewers and connections be properly designed and constructed; and 4) require all existing and future residents to connect to the sewer system. Such ordinance or resolution will be submitted to the DEPARTMENT upon request by the DEPARTMENT.

### User-Charge System

The RECIPIENT certifies that it has the legal authority to establish and implement a wastewater treatment user-charge system and will adopt a system of wastewater treatment user-charges to assure that each recipient of the water pollution control facility will pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the PROJECT.

In addition, the RECIPIENT will regularly evaluate the user-charge system, at least annually, to ensure the system provides adequate revenues necessary to operate and maintain the water pollution control facility, to establish a reserve to pay for replacement, and to repay the LOAN.



4. Identify current conditions via the quantifiable measures below (as applicable):

Follow up from funding Application information:

- a) The number of system wide users: \_\_\_\_\_
- b) System Design Capacity (in MGD): \_\_\_\_\_
- c) Effluent Permit Violations over the last 12 months: \_\_\_\_\_
- d) Maximum Monthly Flow over the last 12 months (in MGD): \_\_\_\_\_
- e) Effluent Discharge of BOD (in lbs/day): \_\_\_\_\_
- f) Effluent Discharge of TSS (in lbs/day): \_\_\_\_\_
- g) Effluent Discharge of Ammonia (in lbs/day): \_\_\_\_\_
- h) Effluent Discharge of Total Nitrogen (in lbs/day): \_\_\_\_\_
- i) Effluent Discharge of Phosphorus (in lbs/day): \_\_\_\_\_
- j) Effluent Discharge of Fecal Coliform (in CFU/100 ml): \_\_\_\_\_

Dedicated post project information:

- a) Septic systems eliminated by the project (# of systems): \_\_\_\_\_
- b) Acres of shellfish beds opened by the project (acres): \_\_\_\_\_
- c) CSO discharge reduction (Annual volume reduction): \_\_\_\_\_
- d) I/I reduction (GPD eliminated): \_\_\_\_\_
- e) Did the project address more stringent permit limits (Yes/No): \_\_\_\_\_
- f) Did the Project address a public health emergency (Yes/No): \_\_\_\_\_
- g) Project produced reclaimed water: (Gallons reused annually): \_\_\_\_\_

5. Provide documentation (including electronic attachments or links to digital color pictures) reflecting continued maintenance and effectiveness of the Project at the time of this survey:

(Revised 6/09)

**ATTACHMENT 8: ESTIMATED LOAN REPAYMENT SCHEDULE**