



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**July 30, 2002**

**Ordinance 14434**

**Proposed No.** 2002-0296.1

**Sponsors** Phillips

1 AN ORDINANCE authorizing the executive to enter into  
2 an agreement with the Washington state Department of  
3 Ecology regarding a loan for refinancing design and  
4 program consultant costs for the Denny Way/Lake Union  
5 CSO project.

6  
7

8 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

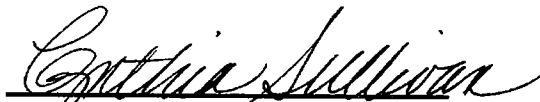
9 SECTION 1. The executive or the executive's designee is hereby authorized to  
10 enter into an agreement with the Washington state Department of Ecology, substantially

11 in the form of Attachment A to this ordinance, for a loan refinancing a portion of the  
12 design and program consultant costs for the Denny Way/Lake Union CSO project.  
13

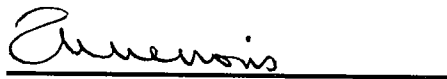
Ordinance 14434 was introduced on 7/8/2002 and passed by the Metropolitan King  
County Council on 7/29/2002, by the following vote:

Yes: 10 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.  
Phillips, Mr. Pelz, Mr. Constantine, Mr. Pullen, Mr. Gossett and Ms.  
Patterson  
No: 0  
Excused: 3 - Mr. McKenna, Ms. Hague and Mr. Irons

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

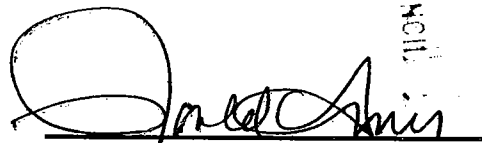
  
Cynthia Sullivan, Chair

ATTEST:



Anne Noris, Clerk of the Council

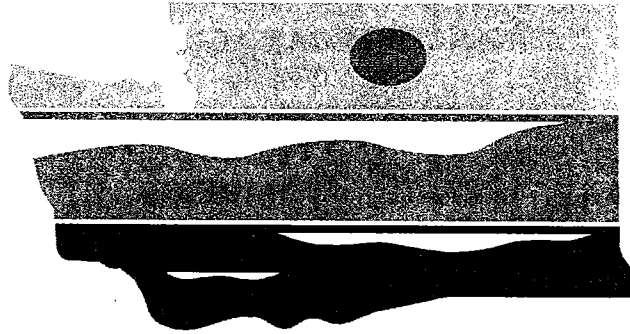
APPROVED this 9 day of August, 2002.



Ron Sims, County Executive

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KING COUNTY COUNCIL

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



WASHINGTON STATE  
DEPARTMENT OF  
E C O L O G Y

**WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND**

**REFINANCING LOAN AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

**AND THE**

**KING COUNTY WASTEWATER TREATMENT DIVISION**

PROJECT Title: Denny Way/Lake Union CSO Project

Refinancing LOAN No.: \_\_\_\_\_

Estimated LOAN Amount: \$14,207,000

Interest Rate: \_\_\_\_\_

LOAN Term: 20 Years

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

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

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KING COUNTY WASTEWATER TREATMENT DIVISION  
Denny Way/Lake Union CSO – Design & Project Consultant  
Refinancing Loan No. \_\_\_\_\_

**WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND  
REFINANCING LOAN AGREEMENT BETWEEN  
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND THE  
KING COUNTY WASTEWATER TREATMENT DIVISION  
FOR  
DENNY WAY/LAKE UNION CSO – DESIGN AND PROGRAM CONSULTANT**

THIS is a binding refinancing loan agreement entered into by and between the state of Washington, Department of Ecology (the "DEPARTMENT"), and **King County Wastewater Treatment Division** (the "RECIPIENT"). The purpose of this refinancing loan agreement (the "AGREEMENT") is to provide funds to the RECIPIENT (the "LOAN") to refinance certain obligations previously incurred and currently outstanding by the RECIPIENT in carrying out the activities described herein (the "PROJECT").

This AGREEMENT consists of \_\_\_ pages and nine (9) attachments. This AGREEMENT incorporates by attachment and by reference the documents listed in ATTACHMENT 1.

Capitalized terms used, but not otherwise defined, in this AGREEMENT are defined in ATTACHMENT 2.

## I. THE PARTIES

### A. RECIPIENT Information

Name and Address: King County Wastewater Treatment Division  
201 South Jackson Street, MS- KSC-NR-0501  
Seattle, WA 98104-3855

Contact: Linda Biarum  
Telephone Number: (206) 684-1030  
[E-Mail Address: linda.biarum@metrokc.gov  
Fax Number: (206) 684-1741

Federal Taxpayer ID Number: 91-6001327

RECIPIENT Disbursement Contact. The RECIPIENT's contact for billing and invoice questions shall be:

Contact: Steve Baruso  
Telephone Number: (206) 684-1022  
[E-Mail Address: steve.baruso@metrokc.gov  
Fax Number: (206) 684-1741  
Address: 201 South Jackson Street, MS- KSC-NR-0501  
Seattle, WA 98104-3855

KING COUNTY WASTEWATER TREATMENT DIVISION  
Denny Way/Lake Union CSO – Design & Project Consultant  
Refinancing Loan No. \_\_\_\_\_

The DEPARTMENT shall disburse funds to the RECIPIENT and shall make an electronic transfer of the payment as follows:

To:	King County
For the benefit of:	Wastewater Treatment Division
Bank Name:	Key Bank of Washington
Bank Address:	2 <sup>nd</sup> and Marion Branch, 815 – 2 <sup>nd</sup> Ave. Seattle, WA 98104
Bank Account No.:	470011002966
Wire Transfer No.:	125000574 470011002966

**B. DEPARTMENT Information**

Address: Water Quality Program  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Financial Manager: \_\_\_\_\_  
Address: Financial Management Section  
Water Quality Program  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
Telephone Number: (360) 407-\_\_\_\_\_  
E-Mail Address: \_\_\_\_\_  
Fax Number: (360) \_\_\_\_-\_\_\_\_\_

Catalog of Federal Domestic Assistance Number: 66-458

**C. Changes to Contact Information**

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

**II. AUTHORITY**

**A. Authority of DEPARTMENT**

The DEPARTMENT is authorized to enter into this AGREEMENT under the authority granted by, among others, (i) 33 U.S.C. §§ 1381-1387 (“State Water Pollution Control Revolving Funds”), (ii) Chapter 90.50A RCW (“Water Pollution Control Facilities—Federal Capitalization Grants”), and



(iii) Chapter 173-98 WAC (“Uses and Limitations of the Water Pollution Control Revolving Fund”).

**B. Authority of RECIPIENT**

The RECIPIENT is authorized to enter into this AGREEMENT under the authority granted by (i) the Constitution and laws of the state of Washington, including the RECIPIENT’s authority thereunder, and (ii) the RECIPIENT pursuant to the ordinance or resolution attached hereto as ATTACHMENT 3.

**III. TERM OF AGREEMENT**

The effective date of this AGREEMENT shall be the date this AGREEMENT is signed by the DEPARTMENT’s Water Quality Program Manager.

This AGREEMENT shall remain in effect until the Final LOAN Repayment Date (hereinafter defined), unless terminated earlier according to the provisions hereof.

**IV. THE PROJECT**

**A. PROJECT Description**

The PROJECT consisted of design and project consultant costs for the Denny Way/Lake Union CSO Control facilities.

The Denny Way/Lake Union CSO Control Project is a joint effort of King County and the City of Seattle to control combined sewer overflows to Lake Union and Elliott Bay, including the Denny Way CSO, which is the largest CSO in the King County system. The project will control Lake Union and Denny Way CSOs by 1) storing CSO flows during moderate storms and transferring them to the West Point Treatment Plant after the storms subside; and 2) providing at-site treatment at the Elliott West site, with discharge of treated flows through a new outfall during heavy rain conditions.

**B. Scope of Work**

The RECIPIENT certifies that the PROJECT was one for construction of water pollution control facilities as those terms are defined in RCW 90.50A.010(4) and WAC 173-98-020(53) and used in accordance with RCW 90.50A.030(3)(a) and WAC 173-98-120(2). The PROJECT commenced and was completed in accordance with the PROJECT Schedule identified in Section IV-C hereof (“PROJECT Schedule”). The RECIPIENT certifies by execution of this AGREEMENT that the conditions and requirements applicable to the PROJECT at the time of construction were met, and that the appropriate supporting documentation is contained in the RECIPIENT’s PROJECT files. The RECIPIENT further certifies that the PROJECT was completed according to the details of and in compliance with this AGREEMENT including, but not limited to, those contained in Section IV-A

hereof (“PROJECT Description”), ATTACHMENT 4, “REFINANCING LOAN SPECIAL TERMS AND CONDITIONS,” and ATTACHMENT 5, “REFINANCING LOAN GENERAL TERMS AND CONDITIONS.”

**C. PROJECT Schedule**

The RECIPIENT certifies that it has completed the PROJECT in accordance with the following schedule (the “PROJECT Schedule”):

- 1. PROJECT Start Date: April 1997
- 2. Initiation of Operation Date: N/A
- 3. PROJECT Completion Date: April 2001

The RECIPIENT further certifies that PROJECT construction began after March 7, 1985.

**D. Sources of Initial PROJECT Funding; Total Eligible PROJECT Cost**

The following table shows (i) all sources of the initial funding of the PROJECT, (ii) the total PROJECT cost amount paid from each initial source of funding, (iii) the Total PROJECT Cost and (iv) the Total Eligible PROJECT Cost (in each case as such term is defined in ATTACHMENT 2, “AGREEMENT DEFINITONS”) paid from each such funding source during the construction of the PROJECT:

All Sources of Initial PROJECT Funding	Amount of Initial Funding from Source	Total PROJECT Cost Paid from Source	Total Eligible PROJECT Cost Paid from Source
1. City of Seattle Cost Share	\$2,910,000	\$2,910,000	\$2,910,000
2. Variable Debt	14,207,000	14,207,000	14,207,000
3.			
4.			
5.			
Totals	\$17,117,000	\$17,117,000	\$17,117,000

**V. THE REFINANCING LOAN**

**A. Source and Availability; LOAN Amount**

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 fourteen million two hundred seven thousand dollars (\$14,207,000) (the “Estimated LOAN Amount”).

Following the DEPARTMENT’s disbursement of the LOAN Amount for the benefit of the

RECIPIENT, the DEPARTMENT and the RECIPIENT will execute an amendment to this AGREEMENT (a “LOAN Amendment”) which details the final LOAN amount, and the DEPARTMENT will prepare a final LOAN repayment schedule substantially in the form of ATTACHMENT 6. The final LOAN amount (the “Final LOAN Amount”) shall be the combined total of (i) the principal amount of the LOAN disbursement made by the DEPARTMENT pursuant to this AGREEMENT and (ii) accrued interest on the disbursements from its date of disbursement by the DEPARTMENT to the Initial LOAN Repayment Date (hereinafter defined) or the effective date of the final LOAN Amendment, as the case may be.

**B. Purpose of LOAN; Allocation of LOAN Proceeds**

The purpose of the LOAN is to provide funds to refinance, by paying, retiring and extinguishing, a currently outstanding principal amount of initial PROJECT funding issued to pay some or all of Total Eligible PROJECT Cost. The RECIPIENT and the DEPARTMENT acknowledge that the Final LOAN Amount may not be sufficient to pay and retire in full any or all Prior Debt.

The sources of all initial PROJECT funding, the date each such funding was incurred, the amount of Total Eligible PROJECT Cost paid from each such source, and the principal amount of each initial PROJECT funding currently outstanding are shown in the following table.

All Sources of Initial PROJECT Funding	Date Initial Debt Was Incurred	Total Eligible PROJECT Cost Paid from Initial Funding Source	Principal Amount of Initial Funding Currently Outstanding	Maximum LOAN Proceeds To Be Applied To Refinance Funding From Initial Source
1. Variable Debt	1996	\$14,207,000	\$14,207,000	\$14,207,000
2. City of Seattle Cost Share	1997	2,910,000	2,910,000	0
3.				
4.				
5.				
<b>Totals</b>		<b>\$17,117,000</b>	<b>\$17,117,000</b>	<b>\$14,207,000</b>

For purposes of this AGREEMENT, the term “Prior Debt” means an outstanding principal amount of PROJECT financing (i) issued to pay, or allocable to payment of, Eligible PROJECT Cost and (ii) eligible to be refinanced with the proceeds of this LOAN. With respect to any specific source of initial PROJECT financing (shown in column 1 of the above table), the principal amount shown under “Maximum LOAN Proceeds To Be Applied To Refinance Funding from Initial Source” (in column 5 of the above table) establishes the maximum principal amount of that Prior Debt that may be refinanced with the proceeds of the LOAN. Also for purposes of this AGREEMENT, the terms “Prior Lender” or “Prior Lenders” means, as the case may be, the current holder or holders of eligible Prior Debt.

The RECIPIENT certifies that all Prior Debt to be refinanced with the proceeds of the LOAN was incurred after March 7, 1985.

Contemporaneously with its submittal of a disbursement request pursuant to Section V-E-1 hereof, the RECIPIENT shall recalculate the principal amount of Prior Debt then outstanding and shall provide that information in writing to the DEPARTMENT, together with such other evidence regarding the outstanding principal amount of the Prior Debt as the DEPARTMENT shall then request. Upon its receipt the DEPARTMENT shall recalculate, in the same manner as was done for the calculations in the preceding table, the maximum LOAN proceeds to be made available to refinance that Prior Debt (the "Maximum Disbursement Amount"). The DEPARTMENT shall not disburse LOAN proceeds to the RECIPIENT in excess, in the aggregate, of the then-recalculated Maximum Disbursement Amount. The Maximum Disbursement Amount to be made available by the DEPARTMENT to pay, retire and extinguish principal amounts of Prior Debt, together with interest accrued on the LOAN disbursement from the date of the disbursement to the Initial LOAN Repayment Date, is hereinafter referred to as the "Maximum LOAN Amount." In no event shall the Final LOAN Amount exceed the lesser of (i) the Maximum LOAN Amount or (ii) federal and state funds available to the DEPARTMENT for the purpose of making the LOAN.

**C. Uses of LOAN Proceeds; Evidence of Uses**

LOAN proceeds shall be used solely to pay, retire and extinguish outstanding principal amounts of Prior Debt. The DEPARTMENT shall make LOAN disbursement only to the RECIPIENT.

No proceeds of the LOAN shall be used to:

1. Refinance initial funding for water pollution control facilities for which planning or design or construction began on or before March 7, 1985;
2. Refinance initial funding for water pollution control facilities for which the Prior Debt was incurred on or before March 7, 1985;
3. Pay or retire outstanding PROJECT funding provided to the RECIPIENT from funding programs administered by the DEPARTMENT;
4. Pay or retire initial funding (or allocable portions thereof) incurred to pay non-eligible PROJECT costs including, but not limited to, those non-eligible project costs enumerated in WAC 173-98-050(6);
5. Pay or retire initial funding (or allocable portions thereof) incurred to pay non-eligible PROJECT component costs including, but not limited to, those non-eligible project component costs enumerated in WAC 173-98-050(7); or
6. Refinance any Prior Debt for which the terms do not allow its current payment and retirement. In addition, but without limitation, LOAN proceeds shall not be applied to pay or to refinance:
  - (i) bond costs for initial or refinancing debt issuance, including the Prior Debt;
  - (ii) interest on bonds, interim financing and associated costs to finance the PROJECT including the Prior Debt and this LOAN;
  - (iii) any legal expenses except those associated with (a) the development of local ordinances or resolutions for water quality protection and improvement or (b) the use of a bond counsel in developing the AGREEMENT for this LOAN, all in accordance with WAC 173-98-050(7);

- (iv) call or redemption premiums due and payable upon the payment and retirement of Prior Debt; or
- (v) accrued or accruing interest due and payable upon the payment and retirement of Prior Debt.

The RECIPIENT shall be solely responsible for paying, from sources other than proceeds of the LOAN, any or all of the above costs necessary to effect the payment, retirement and extinguishment of the Prior Debt.

The RECIPIENT acknowledges that the DEPARTMENT will disburse LOAN proceeds only to the RECIPIENT and solely to pay, retire and extinguish outstanding eligible principal amounts of Prior Debt. The RECIPIENT shall coordinate the necessary payment, if any, of its funds to a Prior Lender so that the aggregate amount received by a Prior Lender will be sufficient to pay, retire and extinguish the Prior Debt in a principal amount equal to the amount of the LOAN disbursement. The RECIPIENT and the DEPARTMENT shall (a) coordinate the payment, retirement and extinguishment of the Prior Debt in the manner described herein and in Section V-E-2 hereof and (b) cooperate in the securing of written evidence from the Prior Lender, satisfactory to both the RECIPIENT and the DEPARTMENT, that LOAN proceeds and RECIPIENT funds, if any, have been applied to pay, retire and extinguish that Prior Debt.

#### **D. LOAN Terms**

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 each LOAN disbursement will accrue from the date that LOAN disbursement is made by the DEPARTMENT to the Initial LOAN Repayment Date (defined below) and, as provided in Section V-A of this AGREEMENT, will be included in the Final LOAN Amount. The Final LOAN Amount shall be repaid semiannually over a term of 20 years, as provided in ATTACHMENT 6.

The first repayment of the LOAN by the RECIPIENT shall be made no later than six (6) months after the date the RECIPIENT signs this AGREEMENT, (the “Initial LOAN Repayment Date”) as provided in ATTACHMENT 6.

Thereafter, the RECIPIENT shall make equal semiannual payments to the DEPARTMENT, as provided in ATTACHMENT 6 or, if applicable, in the revised repayment schedule attached to any LOAN Amendment, so that the Final LOAN Amount is repaid to the DEPARTMENT, together with interest accrued and due on that Final LOAN Amount, by no later than the Final LOAN Repayment Date.

#### **E. Requests for Disbursement; LOAN Disbursement; Final LOAN Amount**

1. Disbursement Request Procedure. The RECIPIENT shall submit, to the Financial Manager of the DEPARTMENT, an A19-1A payment request form. The RECIPIENT’s disbursement request shall also be accompanied by:

- (i) the RECIPIENT's recalculation of only the eligible principal amount of Prior Debt then outstanding, as required by Section V-B hereof, so that the DEPARTMENT may recalculate the Maximum Disbursement Amount; and
- (ii) any other required forms provided or required by the DEPARTMENT.

The RECIPIENT shall submit only one request for disbursement to the DEPARTMENT under this AGREEMENT. Such request to be for no more than the Maximum Disbursement Amount. The disbursement request must be made no later than six months following the RECIPIENT's signing of this AGREEMENT.

Instructions for submitting disbursement or payment requests are found in ADMINISTRATIVE REQUIREMENTS, PART IV. The DEPARTMENT shall furnish to the RECIPIENT both (i) A19-1A payment request forms and (ii) a copy of the ADMINISTRATIVE REQUIREMENTS.

2. LOAN Disbursement. The DEPARTMENT shall make a LOAN disbursement (a) only to the RECIPIENT, as provided in Section V-C hereof. LOAN disbursement shall be made solely to pay, retire and extinguish eligible principal amounts of Prior Debt incurred for the PROJECT, all as provided in Sections V-B and V-C of this AGREEMENT. The DEPARTMENT shall disburse to the RECIPIENT no more, in the aggregate, than the Maximum Disbursement Amount. The DEPARTMENT shall make the disbursement to the RECIPIENT within thirty (30) days of the DEPARTMENT's receipt from the RECIPIENT of the corresponding A19-1A payment request form and other forms. The LOAN disbursement for any Prior Debt will be made as a single lump sum payment.

3. Time Limitation for Disbursement. If no LOAN disbursement has been made pursuant to this AGREEMENT by the Initial LOAN Repayment Date (determined pursuant to Section V-D hereof), this AGREEMENT shall terminate and shall have no force or effect. LOAN disbursement under this AGREEMENT shall be made by no later than the Initial LOAN Repayment Date.

4. Final LOAN Amount; LOAN Amendment. Following the final LOAN disbursement pursuant to this AGREEMENT, the DEPARTMENT will prepare a LOAN Amendment that sets forth the Final LOAN Amount and a revised and final repayment schedule substantially in the form of ATTACHMENT 6. The Final LOAN Amount will be the combined total of the actual disbursement made for the benefit of the RECIPIENT, together with all accrued interest calculated on the disbursement from the date the disbursement was made by the DEPARTMENT to the Initial LOAN Repayment Date.

5. Ineligible Costs. If any audit identifies LOAN funds that were used to refinance costs that were not Eligible PROJECT Costs, such funds may be immediately due and payable to the DEPARTMENT upon its demand notwithstanding any provision to the contrary herein.

6. Overhead Costs. No payment for overhead costs associated with the PROJECT is eligible for refinancing with the proceeds of this LOAN if such overhead costs are in excess of 25 percent of

salaries and benefits of the RECIPIENT.

7. Certification. A 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 to repay the principal of or interest on the LOAN, have occurred since the date of this AGREEMENT. The RECIPIENT shall specifically disclose any changes in the foregoing to the DEPARTMENT in writing and in its request for payment.

#### **F. 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 Sections V and 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-F-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 LOAN, 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 prior written consent of the DEPARTMENT.

If the RECIPIENT Defeases or advance refunds the LOAN or obtains additional grants or loans for the PROJECT without prior 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 accrued to date, 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 the RECIPIENT incur Late Charges under Section V-G-2 hereof and shall be treated as a Default Event under Section VIII-A hereof.

**G. Method of 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 made by the RECIPIENT not later than six (6) months after the date the RECIPIENT signs this AGREEMENT. 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 LOAN Amendment to this AGREEMENT. The RECIPIENT shall continue to make semiannual payments based on ATTACHMENT 6 to this AGREEMENT until a subsequent LOAN Amendment is effective, at which time the RECIPIENT's payments shall be made pursuant to that LOAN Amendment.

2. Late Charges. If any 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 obligation becomes past due and continuing until the obligation is paid in full. The RECIPIENT hereby agrees to pay such Late Charge. Nothing contained herein shall affect the DEPARTMENT'S default rights under 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 on additional financing, contained in Section V-F-4 hereof; and those 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, to undertake the PROJECT, to refinance the Prior Debt and to accept the LOAN 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 Prior Debt, the LOAN or this AGREEMENT known to the RECIPIENT that 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 pledged to pay the principal of and interest on the LOAN, or (iii) in any manner questioning the proceedings and authority under which the PROJECT, the Prior Debt, the LOAN or this AGREEMENT were or 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 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.

### E. Due Regard

The RECIPIENT has exercised due regard for Maintenance and Operation Expense and the debt service requirements of the Senior Lien Obligations and any other outstanding obligations pledging the Gross Revenue of the Utility, including the Prior Debt, 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**

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. 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 on the Initial LOAN Repayment Date. "Reserve Account" means, for a LOAN that constitutes Revenue-Secured Debt with a term greater than five (5) years, 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.

#### **G. 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.

#### **H. 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 Section VII-H 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.

#### **I. 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. The DEPARTMENT may terminate this AGREEMENT for insufficient DEPARTMENT or RECIPIENT funds.

2. For Failure to Request LOAN Disbursement. The DEPARTMENT may terminate this AGREEMENT for failure of the RECIPIENT to request a LOAN disbursement within the first six (6) months following the RECIPIENT'S signing of this AGREEMENT.

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 use of LOAN proceeds as required by Section V-C hereof.

5. For Sale of Facilities to Private Enterprise. Pursuant to WAC 173-98-120(1), this AGREEMENT shall terminate immediately upon the sale to private enterprise of the facilities constituting the PROJECT.

### B. Procedures for Termination

If this AGREEMENT is terminated pursuant to Section VIII-A-1 or Section VIII-A-2 hereof (a "Termination Event"), 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 (i) the Termination Date and, (ii) when applicable, the date by which the RECIPIENT must repay any outstanding balance on the LOAN and all accrued interest thereon (the "Termination Payment Date"). No written notice of termination shall be required if this AGREEMENT is terminated pursuant to Section VIII-A-5 hereof: A termination pursuant to Section VIII-A-5 hereof requires the termination of the AGREEMENT and repayment of the LOAN Amount with accrued interest immediately upon the sale of the facilities constituting the PROJECT to private enterprise.

### C. Termination and Default Remedies

1. No Further Payments. On and after the Termination Date or in the event of a default event

enumerated in Sections VIII-A-3 or VIII-A-4 above (a “Default Event”), the DEPARTMENT may, in its sole discretion, withdraw the LOAN and make no further disbursement under this AGREEMENT.

2. Repayment Demand. In response to a Termination Event, except in the circumstances described in Section VIII-A-1 or described in Section VIII-A-5 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 interest accrued thereon.

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-G-2 and VIII-C-5 hereof.

5. Late Charges. All amounts due to the DEPARTMENT and not paid by the RECIPIENT by the Termination Payment Date or after acceleration following a Default Event, as applicable, shall incur Late Charges as provided in Section V-G-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. At the option of the DEPARTMENT in the event of a Default Event, 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 market value of such property.

8. 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.

9. 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.”

10. Damages. Notwithstanding the DEPARTMENT’s exercise of any or all of the termination

or default remedies provided in Sections VIII-C-1 through VIII-C-9 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 payment 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 amendment 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 that any changes to the RECIPIENT's Contact shown in Section I-A, to the RECIPIENT's Contact for billing and invoice questions as shown in Section I-A or to the DEPARTMENT's Financial Manager as shown in Section I-B may be made as set forth in Section I-C hereof.

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.

**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  
WASTEWATER TREATMENT DIV.**

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

\_\_\_\_\_  
**Donald Theiler      DATE**  
**Manger, Wastewater Treatment Div.**

(2/28/02)

**ATTACHMENT 1**

**DOCUMENTS INCORPORATED  
BY ATTACHMENT OR BY REFERENCE**

Each of the following documents is incorporated by attachment or by reference into this AGREEMENT 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: REFINANCING LOAN SPECIAL TERMS AND CONDITIONS
- ATTACHMENT 5: REFINANCING LOAN GENERAL TERMS AND CONDITIONS
- ATTACHMENT 6: REFINANCING LOAN REPAYMENT SCHEDULE
- ATTACHMENT 7: ORDINANCE OR RESOLUTION OF THE RECIPIENT AUTHORIZING PRIOR DEBT AND THE INITIAL AMORTIZATION SCHEDULE
- ATTACHMENT 8: AGREEMENT EVIDENCING BORROWING AND THE INITIAL AMORTIZATION SCHEDULE
- ATTACHMENT 9: OFFICIAL RECORD OF REPAYMENT HISTORY TO DATE

**B. By Reference:**

- The DEPARTMENT's WATER QUALITY FINANCIAL ASSISTANCE PROGRAMS FOR FISCAL YEAR 2002—VOLUME ONE: GUIDELINES and VOLUME TWO: APPENDICES (December 2000) (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 Amendment
- Declaration of Construction—Form ECY 040-2-28(b) (where applicable)
- 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  
(11/28/01)

## 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.

**“Default Event”** means an event described in either Section VIII-A-3 or Section VIII-A-4 of this AGREEMENT.

**“Defeasance”** or **“Defeasance”** means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay 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.

**“Eligible PROJECT Costs”** means, for purposes of this AGREEMENT, costs associated with a water pollution control facilities project that have been determined to be eligible for refinancing by the DEPARTMENT from the State Water Pollution Control Revolving Fund.

**“Estimated LOAN Amount”** means the principal amount of funds estimated in Section V-A hereof to be loaned to the RECIPIENT pursuant to this AGREEMENT.

**“Final LOAN Amount”** means the combined total of (i) the principal amount of the LOAN disbursement made by the DEPARTMENT pursuant to this AGREEMENT and (ii) accrued interest on the disbursement from its date of disbursement by the DEPARTMENT to the Initial LOAN Repayment Date or the effective date of the final LOAN Amendment, as the case may be. In no event shall the Final LOAN Amount exceed the lesser of (i) the Maximum LOAN Amount or (ii) federal and state funds available to the DEPARTMENT for the purpose of making the LOAN.



**“Final LOAN Repayment Date”** means the end of the repayment term of the LOAN as provided in Section V-D of this AGREEMENT. The Final LOAN Repayment Date shall not be later than the earlier of twenty (20) years after the Initial LOAN Repayment Date.

**“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 Defeasance or refund Utility obligations or (B) in an obligation redemption fund or account other than the LOAN Fund until commingled with other 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 and VOLUME TWO: APPENDICES (December 2000).

**“Initial LOAN Repayment Date”** means a date not later than six months after the date the RECIPIENT signs the AGREEMENT, as provided in ATTACHMENT 6.

**“Initial PROJECT Funding”** means, for a refinancing LOAN, a source or sources of initial PROJECT funding outstanding to be refinanced with the proceeds of the LOAN. Prior Debt to be refinanced cannot, for any particular source of initial PROJECT funding, exceed the lesser of (i) the Total Eligible PROJECT Cost paid from that source or (ii) the principal amount of that initial PROJECT funding currently outstanding.

**“Initiation of Operation”** is the actual date the Water Pollution Control Facilities financed with proceeds of the LOAN began to operate for their intended purpose. This date may be the same as, or earlier than, the PROJECT Completion Date. For those projects where Initiation of Operation is not applicable, use the PROJECT Completion Date.

**“Initiation of Operation Date”** is that date set forth in Section IV-C of this AGREEMENT as the date on which Initiation of Operation of the PROJECT occurred.

**“Late Charges”** means a charge or charges imposed on the RECIPIENT pursuant to Section V-G-2, Section VIII-C-4 and/or Section VIII-C-5 of this AGREEMENT.

**“LOAN”** means the Washington State Water Pollution Control Revolving Fund (SRF) refinancing loan made pursuant to this AGREEMENT.

**“LOAN Amendment”** means an amendment to this AGREEMENT to be executed by the RECIPIENT and the DEPARTMENT. The final LOAN Amendment shall be executed following the DEPARTMENT's final disbursement to the RECIPIENT of the LOAN Amount, and shall

detail the Final LOAN Amount and shall be accompanied by a final LOAN repayment schedule, prepared by the DEPARTMENT, substantially in the form of ATTACHMENT 6.

**“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.

**“Maximum Disbursement Amount”** means the maximum amount of LOAN proceeds that will be disbursed by the DEPARTMENT to the RECIPIENT for the purpose of paying, retiring and extinguishing principal amounts of outstanding Prior Debt. The Maximum Disbursement Amount shall be calculated by the DEPARTMENT at the times and in the manner provided in Section V-B of this AGREEMENT.

**“Maximum LOAN Amount”** means, at the time of its calculation pursuant to Section V-B of the AGREEMENT, the sum of (i) the Maximum Disbursement Amount and (ii) interest accrued on LOAN disbursement from the date of the disbursement to the Initial LOAN Repayment Date.

**“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.

**“Prior Debt”** means, for a refinancing LOAN, a source or sources of initial outstanding PROJECT funding to be refinanced with the proceeds of the LOAN. Prior Debt to be refinanced cannot, for any particular source of initial PROJECT funding, exceed the lesser of (i) the Total Eligible PROJECT Cost paid from that source or (ii) the principal amount of that initial PROJECT funding currently outstanding.

**“Prior Lender”** or **“Prior Lenders”** mean the holder or holders, as the case may be, of eligible Prior Debt issued or undertaken by the RECIPIENT to provide initial PROJECT funding.

**“PROJECT”** means the PROJECT described in Section IV-A of this AGREEMENT.

**“PROJECT Completion Date”** is the date specified in Section IV-C of this AGREEMENT as the date on which the Scope of Work was or will be fully completed and construction of the PROJECT ended or will end, as the case may be.

**“PROJECT Schedule”** is that schedule for the PROJECT specified in Section IV-C of this AGREEMENT.

**“PROJECT Start Date”** is that date identified as such in Section IV-C of this AGREEMENT.

**“Reserve Account”** means, for a LOAN that constitutes Revenue-Secured Debt, the account of that name created in the LOAN Fund to secure the payment of the principal of and interest on the LOAN.

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

**“Scope of Work”** means the tasks and activities constituting the PROJECT and described briefly in Sections IV-A through IV-C of this AGREEMENT.

**“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, established pursuant to Section VIII-B of this AGREEMENT, of the DEPARTMENT’s termination of this AGREEMENT.

**“Termination Event”** means an event enumerated in Section VIII-A-1 or Section VIII-A-2 of this AGREEMENT.

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

**“Total Eligible PROJECT Cost”** means the sum of all Eligible PROJECT Costs associated with a Water Pollution Control Facilities project that have been determined to be eligible for refinancing by the DEPARTMENT from the State Water Pollution Control Revolving Fund.

**“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.

**“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 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.

(2/28/02)

KING COUNTY WASTEWATER TREATMENT DIVISION  
Denny Way/Lake Union CSO – Design & Project Consultant  
Refinancing Loan No. \_\_\_\_\_

**ATTACHMENT 3**

**AUTHORIZING ORDINANCE OR RESOLUTION**

*Authorizing ordinance for this agreement to be attached..*

**ATTACHMENT 4**

**REFINANCING LOAN SPECIAL TERMS AND CONDITIONS**

**A. Interlocal Agreements**

The RECIPIENT certifies by signing this AGREEMENT that all negotiated interlocal agreements necessary for the PROJECT were, are and will be consistent with the terms of this AGREEMENT and Chapter 39.34 RCW, “Interlocal Cooperation Act.” The RECIPIENT shall retain in its files a copy of each interlocal agreement necessary for the PROJECT.

**B. Contracts for Architectural and Engineering Services**

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 for the PROJECT. 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.

**C. Minority and Women's Business Participation**

The RECIPIENT certifies by signing this AGREEMENT that it has, in planning, designing, and constructing the PROJECT, solicited and recruited certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts to the maximum extent possible.

**D. Sewer-Use Ordinance or Resolution**

The RECIPIENT certifies that it has adopted and shall enforce a sewer-use ordinance or resolution requiring that all new sewers and connections are designed and constructed in accordance with applicable state and local standards.

**E. User-Charge System**

The RECIPIENT certifies that it has the legal authority to establish and implement a sewer-user charge system. The RECIPIENT further certifies that it has adopted, and will amend as necessary, 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 necessary components during the design life of the PROJECT.

**F. 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 by the 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 the PROJECT, a copy of the final audit report, including all written comments, recommendations and findings, shall be furnished by the RECIPIENT to the DEPARTMENT within ninety (90) days after its receipt by the RECIPIENT.

**G. Prevailing Wage**

The RECIPIENT certifies that all contractors and subcontractors on the PROJECT were paid 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.

**H. Procurement**

The RECIPIENT certifies that it was responsible for procuring professional, personal, and other services for the PROJECT using sound business judgment and good administrative procedures. This procurement included issuance of invitations to bid, requests for proposals, selection of contractors, award of subcontracts and other related procurement matters. The RECIPIENT certifies that it has followed state procurement laws in constructing and/or undertaking the PROJECT.

**I. Small Business in Rural Areas ("SBRAs")**

If the RECIPIENT awarded a contract under this AGREEMENT, the RECIPIENT also certifies that it utilized the following affirmative steps:

1. Placed SBRAs on solicitation lists;
2. Made sure the SBRAs were solicited whenever they were potential sources;
3. Divided total requirements, when economically feasible, into small tasks or quantities in order to permit maximum participation by SBRAs;
4. Established delivery schedules, where requirements of work permitted, which could encourage participation by SBRAs;
5. Used the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and
6. Required 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.

**J. 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 shall notify the DEPARTMENT in writing of this change within thirty (30) days.

(11/28/01)



## ATTACHMENT 5

### REFINANCING LOAN GENERAL TERMS AND CONDITIONS

#### **A. Assignments**

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

#### **B. Audits and Inspections**

1. Records Maintenance. 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 LOAN and PROJECT records shall be kept in a common file to facilitate audits and inspections. The RECIPIENT shall maintain engineering documentation and field inspection reports of all PROJECT construction work accomplished under this AGREEMENT.

2. Audit and Inspection. 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 (3) years after the Final LOAN Repayment Date or any dispute resolution hereunder, whichever is later. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. Availability of Work. All work performed under this AGREEMENT 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 (3) years following the Final LOAN Repayment Date, LOAN termination or dispute resolution hereunder, whichever is later.

4. Other Requirements. The RECIPIENT shall meet the provisions in OMB Circular A-133 (AUDITS OF STATES, LOCAL GOVERNMENTS & NON PROFIT ORGANIZATIONS) or OMB Circular A-110 (UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS & AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS) if the RECIPIENT receives federal funds in excess of \$300,000. The RECIPIENT must forward a copy of any state auditor's audit, if any, along with the RECIPIENT's response and the final corrective action plan as approved by the State Auditor's Office, to the DEPARTMENT within ninety (90) days of the date of the audit report.

#### **C. Waiver**

Waiver by the DEPARTMENT of any RECIPIENT default under this AGREEMENT shall not be a waiver of any subsequent default. Waiver by the DEPARTMENT of a breach of any provision of this

AGREEMENT shall not be a waiver of any subsequent breach and shall 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.

**D. 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 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 developed by the RECIPIENT as provided in 35 U.S.C. §§ 200-212.

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

**E. Recycled/Recyclable Paper**

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

**F. 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 Financial Manager or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Financial Manager or other designated official shall be final and conclusive unless, within forty-five (45) days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with an appeal of any proceeding under this section, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of its appeal. The decision of the Director of the

DEPARTMENT 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 of the DEPARTMENT shall not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of the dispute pursuant to the terms of this Section F, the RECIPIENT shall proceed diligently with the performance of this AGREEMENT and in accordance with the decision previously rendered by the Director of the DEPARTMENT.

**G. 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 LOAN proceeds thereof.

**H. Indemnification**

The DEPARTMENT shall in no way be held responsible for payment of salaries, consultants' fees and other overhead costs related to this AGREEMENT. To the extent that the Constitution and laws of the State of Washington permit, the RECIPIENT shall indemnify and hold the DEPARTMENT harmless from and against any liability for any or all injuries to persons or property arising out of this AGREEMENT except for such damage, claim or liability resulting from the negligent act or omission of the DEPARTMENT.

**I. Governing Law**

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

**J. 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.

**K. Time of the Essence**

Time shall be of the essence of this AGREEMENT.

**L. Table of Contents; Headings**

The Table of Contents and headings of this AGREEMENT are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this AGREEMENT.

**M. Counterparts**

This AGREEMENT may be executed in counterparts and each such counterpart shall for all purposes be deemed to be an original. All such counterparts shall together constitute but one and the same instrument.

**N. Entire Agreement**

This AGREEMENT, including the attached and referenced documents incorporated pursuant to ATTACHMENT 1 hereof, contains the entire understanding between the RECIPIENT and the DEPARTMENT, and there are no other understandings or representations other than those set forth or incorporated herein.

**O. Precedence**

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) ATTACHMENT 4, "REFINANCING LOAN SPECIAL TERMS AND CONDITIONS," (c) any terms incorporated herein by reference including the ADMINISTRATIVE REQUIREMENTS; and (d) this ATTACHMENT 5, "REFINANCING LOAN GENERAL TERMS AND CONDITIONS."

(5/16/01)

**ATTACHMENT 6**

**REFINANCING LOAN REPAYMENT SCHEDULE**

<b>Annual Payment Streams</b>	
<b>Period</b>	<b>Loan</b>
2002	\$ 0
2003	\$ 827,497
2004	\$ 827,497
2005	\$ 827,497
2006	\$ 827,497
2007	\$ 827,497
2008	\$ 827,497
2009	\$ 827,497
2010	\$ 827,497
2011	\$ 827,497
2012	\$ 827,497
2013	\$ 827,497
2014	\$ 827,497
2015	\$ 827,497
2016	\$ 827,497
2017	\$ 827,497
2018	\$ 827,497
2019	\$ 827,497
2020	\$ 827,497
2021	\$ 827,497
2022	\$ 827,497
<b>Total</b>	<b>\$16,549,940</b>

KING COUNTY WASTEWATER TREATMENT DIVISION  
\_Denny Way/Lake Union CSO – Design & Project Consultant  
Refinancing Loan No. \_\_\_\_\_

**ATTACHMENT 7**

**ORDINANCE OR RESOLUTION OF THE RECIPIENT AUTHORIZING PRIOR DEBT  
AND THE INITIAL AMORTIZATION SCHEDULE**

*King County Ordinance 12057 adopted September 14, 1995 as amended July 17, 2001, to be attached.  
Commercial paper (variable short-term debt) does not have an amortization schedule.*

KING COUNTY WASTEWATER TREATMENT DIVISION  
\_Denny Way/Lake Union CSO – Design & Project Consultant  
Refinancing Loan No. \_\_\_\_\_

**ATTACHMENT 8**

**AGREEMENT EVIDENCING BORROWING  
AND THE INITIAL AMORTIZATION SCHEDULE**

*Statements of certification of sale of commercial paper on behalf of King County to be attached.  
Commercial paper (variable short-term debt) does not have an amortization schedule.*

KING COUNTY WASTEWATER TREATMENT DIVISION  
\_Denny Way/Lake Union CSO – Design & Project Consultant  
Refinancing Loan No. \_\_\_\_\_

**ATTACHMENT 9**

**OFFICIAL RECORD OF REPAYMENT HISTORY TO DATE**

*Official Record of Payment History to be attached.*