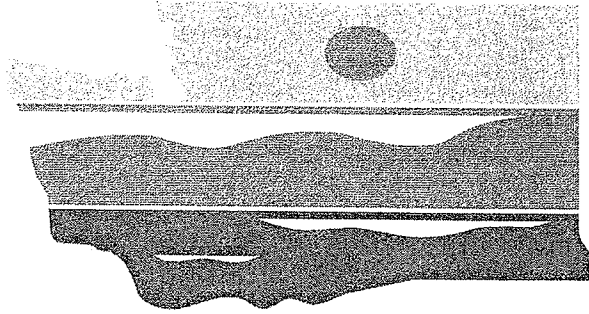


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WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND

LOAN AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

KING COUNTY DEPARTMENT OF NATURAL RESOURCES AND PARKS

WASTEWATER TREATMENT DIVISION

Project Title: King County Wastewater Treatment Plant - Carnation

Loan No.: _____

Loan Amount: \$14,085,238

Interest Rate: 3.1 %

Loan Term: 20 Years

Interim Refinance

Effective: _____, _____

**WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND
 LOAN AGREEMENT
 BETWEEN
 THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
 AND
 KING COUNTY DEPARTMENT OF NATURAL RESOURCES AND PARKS (DNR&P)
 WASTEWATER TREATMENT DIVISION (WTD)**

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**WASHINGTON STATE WATER POLLUTION CONTROL REVOLVING FUND
LOAN AGREEMENT BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
KING COUNTY DNR&P - WTD
FOR
KING COUNTY WASTEWATER TREATMENT PLANT – CARNATION PROJECT**

THIS is a binding loan agreement entered into by and between the state of Washington, Department of Ecology [DEPARTMENT] and King County DNR&P - WTD [RECIPIENT]. The purpose of this loan agreement [AGREEMENT] is to provide funds to the RECIPIENT [LOAN] to carry out the activities described herein [PROJECT].

This AGREEMENT consists of 15 pages and ten 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 DNR&P - WTD
201 South Jackson Street
MS KSC-NR-0501
Seattle, WA 98104-3855

Contact: Maryann Ness
Telephone Number: (206) 684-1030
E-Mail Address: maryann.ness@metrokc.gov
Fax Number: (206) 684-1741

Federal Taxpayer ID Number: 91-6001327

Electronic transfer:
Payable to: King County DNR&P
For the Benefit of: WTD
Bank Name: Key Bank
Bank Address: Second & Marion
Seattle, WA 98104
Bank Account Number: 470011002966

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King County Wastewater Treatment Plant - Carnation Project
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B. DEPARTMENT Information

| | |
|--------------------------------|---|
| Address: | Water Quality Program Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504-7600 |
| Project Manager: Address: | Kenneth D. Ziebart, P.E. Washington State Department of Ecology Northwest Regional Office 3190 160 th Avenue S.E. Bellevue, WA 98008 |
| Telephone Number: | (425) 649-7213 |
| E-Mail Address: | kzie461@ecy.wa.gov |
| Fax Number: | (425) 649-7213 |
| Financial Manager: Address: | Tammie McClure Financial Management Section Water Quality Program Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504-7600 |
| Telephone Number: | (360) 407-6410 |
| E-Mail Address: | tmcc461@ecy.wa.gov |
| Fax Number: | (360) 407-7151 |

C. Changes to Contact Information

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

II. AUTHORITY

A. Authority of RECIPIENT

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

B. Opinion of RECIPIENT's Legal Counsel

The DEPARTMENT has received an opinion of legal counsel to the RECIPIENT in the form and

substance of ATTACHMENT 4.

III. TERM OF AGREEMENT

The effective date of this AGREEMENT will be 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 prior written authorization of the DEPARTMENT will be at the sole expense and risk of the RECIPIENT. Interim Refinance authorization has been approved by the DEPARTMENT for eligible costs incurred as shown in the Revolving Fund LOAN Amount in Section IV.C.

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

IV. THE PROJECT

A. PROJECT Description

King County will build, own, and operate a new wastewater treatment plant to serve the city of Carnation and its urban growth area. The facility will provide advanced wastewater treatment using membrane bioreactor (MBR) technology, conveyance pipeline and discharge facilities. The initial capacity of the treatment plant will be approximately 400,000 gallons of wastewater per day, with a design for expansion to 450,000 gallons per day. The city of Carnation will build, own, and maintain a local sewer collection system to convey wastewater to the new treatment plant.

B. Scope of Work

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

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

C. PROJECT Budget

| Elements/Objects | Total PROJECT Cost | Total Eligible PROJECT Cost | Revolving Fund* LOAN AMOUNT |
|--|--------------------|-----------------------------|-----------------------------|
| <i>Costs Not-Yet Incurred</i> | | | |
| 1. Project Administration and Management | \$53,529 | \$0 | \$0 |
| 2. Construction Management | \$340,000 | \$340,000 | \$340,000 |
| 3. Construction/Start-up | \$7,785,238 | \$7,785,238 | \$7,785,238 |

King County DNR&P - WTD
 King County Wastewater Treatment Plant - Carnation Project
 Loan No: [REDACTED]

| | | | |
|---|---------------------|---------------------|---------------------|
| 4. Engineering Services During Construction | \$300,000 | \$300,000 | \$300,000 |
| 5. Water Reuse | \$3,042,654 | \$0 | \$0 |
| Subtotal (Not-Yet Incurred Costs) | \$11,521,421 | \$8,425,238 | \$8,425,238 |
| <i>Incurred Costs (Estimate)</i> | | | |
| 6. Project Administration and Management | \$128,471 | \$0 | \$0 |
| 7. Construction Management | \$360,000 | \$360,000 | \$360,000 |
| 8. Construction/Start-up | \$5,000,000 | \$5,000,000 | \$5,000,000 |
| 9. Engineering Services During Construction | \$300,000 | \$300,000 | \$300,000 |
| 10. Membrane Equipment Purchase | \$973,432 | \$0 | \$0 |
| Subtotal (Incurred Costs) | \$6,761,903 | \$5,660,000 | \$5,660,000 |
| Total Cost | \$18,283,324 | \$14,085,238 | \$14,085,238 |

*The DEPARTMENT's Fiscal Office will track to the total eligible PROJECT cost in the LOAN Amount total. Item costs in the LOAN Amount column are proportionately reduced to reflect the LOAN Amount available.

D. Sources of Funds for the PROJECT

Revolving Fund LOAN (FY 08) \$14,085,238

| | |
|--------------------------------------|---------------------|
| State Portion of Revolving Fund Loan | \$14,085,238 |
| Local Funds | \$4,198,086 |
| Total | \$18,283,324 |

E. PROJECT Schedule

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

- | | |
|----------------------------------|-------------------|
| 1. PROJECT Start Date: | August 1, 2006 |
| 2. Initiation of Operation Date: | March 31, 2008 |
| 3. PROJECT Completion Date: | December 31, 2008 |
| 4. Post PROJECT Assessment Date | December 31, 2011 |

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

The useful life of the PROJECT is 50 years.

Water Quality Performance Measures to be evaluated at the Post PROJECT Assessment:

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King County Wastewater Treatment Plant - Carnation Project
Loan No. [REDACTED]

Water Quality Goal(s): *(Water Quality Goals are tangible environmental changes for the better, to be achieved or directly addressed by the PROJECT proposed.)*

1. "Severe Public Health Hazard" or "Public Health Emergency" eliminated.

Water Quality PROJECT Outcomes: *(Water Quality PROJECT Outcomes are quantitative results realistically anticipated from the PROJECT that will directly lead to the Water Quality Goals.)*

1. Eliminate the severe public health hazard caused by failing on-site septic systems. The public health threat of surfacing sewage and untreated sewage entering the ground water aquifer from sites distributed city-wide will be eliminated when users of the existing on-site septic systems are required to hook-up to the new collection system being built by the city of Carnation and send their wastewater to be treated at the treatment plant being built by King County.
2. Eliminate a source of groundwater pollution in the critical aquifer recharge area and non-point pollution in the Snoqualmie River. Once the Carnation Wastewater Treatment Facility and the local connections are completed, all buildings in the City will be required to hook-up to the new system. A total of 625 septic systems, the majority of which drain directly into the water table, will be eliminated as a source of pollution to the groundwater in the critical aquifer recharge area and as a source of non-point pollution into the Snoqualmie River.
3. Implement TMDL action included in site-specific identification and meet specified discharge limits and monitoring requirements. A Wastewater Treatment Plant for the city of Carnation has been discussed for a number of years and was included in the 1994 TMDL study. King County will meet or exceed the discharge limits specified and meet all monitoring requirements under the NPDES permit.
4. Eliminate potential contamination to a City drinking water source. The threat of contamination of the auxiliary drinking water well located in the City limits will be eliminated.

V. THE LOAN

A. Source and Availability; LOAN Amounts; LOAN Terms

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

Subject to all of the terms, provisions, and conditions of this AGREEMENT, and subject to the availability of state funds, the DEPARTMENT will loan to the RECIPIENT the sum of fourteen million eighty-five thousand two-hundred thirty eight dollars (\$14,085,238) (the "Estimated LOAN Amount").

When the PROJECT Completion Date or the Initiation of Operation Date has occurred, if appropriate, the DEPARTMENT and the RECIPIENT will execute an amendment to this AGREEMENT which

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details the final LOAN amount (the "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 and all accrued interest to the computation date.

The Estimated LOAN Amount and the Final LOAN Amount (in either case, as applicable, a "LOAN Amount") shall bear interest at the rate of 3.1% per annum, calculated on the basis of a 365-day year. Interest on the Estimated LOAN Amount will accrue from and be calculated based on the date that each payment is mailed to the RECIPIENT. The Final LOAN Amount shall be repaid in equal installments semiannually over a term of twenty (20) years, as provided in ATTACHMENT 8.

B. Requests for Payment

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

1. Procedure. Payment requests shall 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 at least quarterly, but 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 shall submit all forms and supportive documentation to the DEPARTMENT's Financial Manager. Invoice voucher submittals will include a State of Washington Invoice Voucher Form A19-1A, Form B2 (ECY 060-7), Form C2 (ECY 060-9), and Form D (ECY 060-11).
5. Period of Payment. Payments shall only be made for eligible costs of the PROJECT pursuant to the AGREEMENT and performed after the effective date and prior to the expiration date of the AGREEMENT, unless those dates are specifically modified in writing as provided in Section III or pursuant to Section IX.
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 shall 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.

C. Sources of LOAN Repayment

1. Nature of RECIPIENT's Obligation. The obligation of the RECIPIENT to repay the LOAN from the sources identified below and to perform and observe all of the other agreements and obligations on its part contained herein will be absolute and unconditional, and will not be subject to diminution by setoff, counterclaim, or abatement of any kind.
2. Revenue-Secured; Lien Position. This LOAN is a Revenue-Secured Debt of the RECIPIENT's Utility. This LOAN shall constitute a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon such Net Revenue of any Senior Lien Obligations. To secure the repayment of the LOAN from the DEPARTMENT, the RECIPIENT agrees to comply with all of the covenants and agreements herein including, but not limited to, those contained in Section VII of this AGREEMENT.
3. Other Sources of Repayment. The RECIPIENT may repay any portion of the LOAN from any funds legally available to it other than those pledged in Section V-C-2.
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 PROJECT, including making an advance refunding of the LOAN, or obtain grants or loans additional to those listed in Section IV to finance the PROJECT, without the written consent of the DEPARTMENT.

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

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

unless in its sole discretion the DEPARTMENT finds that repayment from those additional sources

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would not be in the public interest.

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

D. Method and Conditions on Repayments

1. Semiannual Payments. Notwithstanding any other provision of this AGREEMENT, the first semiannual payment of principal and interest on this LOAN will be paid no later than the earlier of
 - (i) one year after the PROJECT Completion Date or Initiation of Operation Date or
 - (ii) five years from the first payment by the DEPARTMENT.

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:

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

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 (a "Late Charge"). The Late Charge shall be additional interest at the rate of one percent per month, or fraction thereof, starting on the date the debt becomes past due and continuing until the debt is paid in full. The RECIPIENT hereby agrees to pay such Late Charge. Nothing contained herein affects the DEPARTMENT's default rights in Section VIII-C of this AGREEMENT.
3. Repayment Limitations. Repayment of the LOAN is subject to the following additional

limitations, among others: those on Defeasance, refinancing and advance refunding, and additional financing contained in Section V-C-4; and on termination, default and recovery of payments contained in Section VIII.

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

VI. REPRESENTATIONS AND WARRANTIES

The RECIPIENT represents and warrants to the DEPARTMENT as follows:

A. Existence; Authority.

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

B. Application; Material Information.

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

C. Litigation; Authority.

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

D. Not a General Obligation.

This AGREEMENT and the LOAN to be made do not constitute a general obligation debt of the

King County DNR&P - WTD
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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, 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 will be made of all transactions relating to this AGREEMENT. The RECIPIENT shall keep such records for six years after receipt of final loan disbursement.

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 an efficient manner and at a reasonable cost.

F. 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 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, 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 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 equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the Utility from the portion of the Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.

The proceeds of any transfer under this paragraph shall be used (i) to redeem promptly, or irrevocably set aside for the redemption of, Senior Lien Obligations and to redeem promptly the LOAN, 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. This AGREEMENT may be terminated by the DEPARTMENT for insufficient DEPARTMENT or RECIPIENT funds.
2. For Failure to Commence Work. This AGREEMENT may be terminated by the DEPARTMENT for failure of the RECIPIENT to commence PROJECT work.
3. Past Due Payments. The RECIPIENT will be in default of its obligations under this AGREEMENT when any LOAN repayment becomes 60 days past due.
4. Other Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all of its obligations under this AGREEMENT. The RECIPIENT will be in default of its obligations under this AGREEMENT if, in the opinion of the DEPARTMENT, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this AGREEMENT including, but not limited to, the PROJECT Schedule contained in Section IV-E.

B. Procedures for Termination

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

C. Termination and Default Remedies

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

further payments under this AGREEMENT.

2. Repayment Demand. In response to a termination event, except in the circumstances described in Section VIII-A-1 above, or in response to a default event, the DEPARTMENT may in its sole discretion demand that the RECIPIENT repay the outstanding balance of the LOAN Amount and all accrued interest.
3. Interest after Repayment Demand. From the time that the DEPARTMENT demands repayment of funds under Section VIII-B or Section VIII-C-2, amounts owed by the RECIPIENT to the DEPARTMENT will 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 will incur Late Charges, as provided in Sections V-D-2 and VIII-C-5.
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, will incur Late Charges, as provided in Section V-D-2.
6. Intercept State Funds. In the event of a default event and in accordance with RCW 90.50A.060, "Defaults," any state funds otherwise due to the RECIPIENT may, in the DEPARTMENT's sole discretion, be withheld and applied to the repayment of the LOAN.
7. Property to DEPARTMENT. In the event of a default event and at the option of the DEPARTMENT, any property (equipment and land) acquired under this AGREEMENT may, in the DEPARTMENT's sole discretion, become the DEPARTMENT's property. In that circumstance, the RECIPIENT's liability to repay money shall be reduced by an amount reflecting the fair value of such property.
8. Documents and Materials. If this AGREEMENT is terminated, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT will, at the option of the DEPARTMENT, become DEPARTMENT property. The RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.
9. Collection and Enforcement Actions. In the event of a default event, the state of Washington reserves the right to take any actions it deems necessary to collect the amounts due, or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this AGREEMENT.

10. Fees and Expenses. In any action to enforce the provisions of this AGREEMENT, reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of legal staff) will be awarded to the prevailing party as that term is defined in RCW 4.84.330, "Actions on contract or lease . . .—Waiver prohibited."
11. Damages. Notwithstanding the DEPARTMENT's exercise of any or all of the termination or default remedies provided in Section VIII-C-1 through VIII-C-10 above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the state of Washington because of any breach of this AGREEMENT by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

IX. MODIFICATIONS TO AGREEMENT

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

1. Any change of the RECIPIENT's LOAN AGREEMENT Contact, or the Contact for billing/invoice questions, or of the DEPARTMENT'S Project Manager or Financial Manager as set forth respectively in Sections I-A, V-B-1, and I-B, may be made by either party, as provided in Section I-C; or
2. Insubstantial modifications, such as frequency and number of required submittals, budget allocations not affecting the total LOAN Amount and similar changes requested by the RECIPIENT in writing, may be approved in writing by the Project Manager of the DEPARTMENT.

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

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

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