


**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: 10/13/14**

<b>AGENDA ITEM:</b> Public Works Board Loan Contracts Amendment	
<b>PREPARED BY:</b> Tonya Miranda <b>DEPARTMENT:</b> Public Works	<b>DIRECTOR APPROVAL:</b> 
<b>ATTACHMENTS:</b> Amendment No. B to Loan Number PW-01-691-PRE-114 (2 copies) Public Works Trust Fund Pre-Construction Loan Agreement, No. PW-01-691-PRE-114 Amendment No. A to Loan Number PW-02-691-033 (2 copies) Public Works Trust Fund Construction Loan Agreement, No. PW-02-691-033 Amendment No. A to Loan Number PW-04-691-045 (2 copies) Public Works Trust Fund Construction Loan Agreement, No. PW-04-691-045	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
<b>SUMMARY:</b>	

In order to align the billing and budget projections with the state's biennial budget cycle, the State of Washington Department of Commerce has sent amendments for three City of Marysville Public Works Trust Fund loan agreements to change the annual repayment date of the loans from July 1 to June 1. These amendments would also change the contract end dates from July 1 to June 1 of each contract's expiration year.

For 2015, the billing cycle would be July 1, 2014 through May 31, 2015 and include 11 months of principle and interest. For 2016 and thereafter, the billing cycle would be from June 1 through May 31 and include 12 months of principle and interest.

<b>RECOMMENDED ACTION:</b> Staff recommends that Council authorize the Mayor to sign and execute the amendments to the Public Works Trust Fund loan agreements to change the repayment dates from July 1 to June 1.
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STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

[www.commerce.wa.gov](http://www.commerce.wa.gov)

September 15, 2014

Contracts Administrator  
Marysville, City of  
1049 State Ave  
Marysville, WA 98270

RE: Public Works Trust Fund  
Loan Repayment Date Amendment to Loan Agreement/Contract PW-04-691-045

Dear Sir or Madam,

Enclosed are two copies of the amendment for your Public Works Loan Agreement modifying the annual repayment date from July 1 to June 1. This action is being taken at the direction of the legislature and the Office of Financial Management to better align the billing and budget projections with the state's biennial budget cycle. **Your new repayment date will now be June 1.**

- For 2015, your billing cycle is July 1, 2014 through May 31, 2015 and includes **11 months** of principle and interest.
- For 2016 and thereafter, your billing cycle is from June 1 through May 31 and includes 12 months of principle and interest.

All other instructions regarding your loan repayments are the same and billings will be mailed out thirty days earlier as well to meet this new repayment date.

**Please sign and return both copies of the amendment to our office no later than November 14, 2014.**

Department of Commerce  
Attn: Contracts Administration Unit  
P. O. Box 42525  
Olympia, WA 98504-2525

If you have any questions, concerns or need additional information, please do not hesitate to call me at (360) 725-3022 or email me at [mark.barkley@commerce.wa.gov](mailto:mark.barkley@commerce.wa.gov).

Sincerely,

*Mark K. Barkley*

**Mark K. Barkley**  
Managing Director  
Contracts Administration Unit

# AMENDMENT FACE SHEET

**Loan Number: PW-04-691-045**  
**Amendment Number: A**  
**Washington State Department of Commerce**  
**PUBLIC WORKS BOARD**  
**Loan Contract**

<b>1. Contractor</b> Marysville, City of 1049 State Ave Marysville, WA 98270		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative (only if updated)</b> N/A		<b>4. Public Works Board Representative (only if updated)</b> N/A	
<b>5. Original Contract Amount</b> \$10,000,000.00	<b>6. Amendment Amount</b> N/A	<b>7. New Contract Amount</b> N/A	
<b>8. Amendment Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>		<b>9. Amendment Start Date</b> October 15 <sup>th</sup> , 2014	<b>10. Contract End Date</b> June 1, 2024
<b>11. Federal Funds (as applicable):</b> N/A		<b>Federal Agency:</b> N/A	<b>CFDA Number:</b> N/A
<b>12. Amendment Purpose:</b> The purpose of this amendment is to formally alter the day and month in which loan payments are due from July 1 to June 1.  The Board, defined as the Washington State Public Works Board, and Borrower/Contractor acknowledge and accept the terms of this Agreement/Contract As Amended and attachments and have executed this Contract on the date below to start as of the date shown above. The rights and obligations of both parties to this Agreement/Contract As Amended are governed by this Agreement/Contract Amendment and the following other documents incorporated by reference: Amendment Terms and Conditions including all attachments. A copy of this Agreement/Contract Amendment shall be attached to and made a part of the original Agreement/Contract between the Board and the Borrower/Contractor. Any reference in the original Contract to "Agreement" or "Contract" shall mean the "Agreement As Amended" or "Contract As Amended," respectively.			
<b>FOR THE BORROWER/CONTRACTOR</b>  _____ Signature  _____ Print Name  _____ Title  _____ Date		<b>FOR PUBLIC WORKS BOARD</b>  _____ Stan Finkelstein, Public Works Board Chair  _____ Date  <b>APPROVED AS TO FORM ONLY</b>  This 15 <sup>th</sup> Day of July, 2013 _____ Bob Ferguson Attorney General  _____ Signature on File Kathryn Wyatt Assistant Attorney General	

# AMENDMENT TERMS AND CONDITIONS

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## Washington State Department of Commerce PUBLIC WORKS BOARD Loan Contract

Contractor/Borrower: Marysville, City of  
Contract Number: PW-04-691-045  
Amendment Number: A

The Public Works Board (or its successors), a department of the State of Washington, (hereafter referred to as the "Board") and the Contractor, listed on the Face Sheet, agree to amend the above listed contract by revising all clauses contained therein that reference (in whole or in part) the annual Loan Repayment month and Loan End Date month.

The Loan Repayment and Loan End Date months shall be revised to read "June 1" instead of "July 1" as the month and day in which all loan repayments are to be made. The final payment shall be on or before June 1, 2024, of an amount sufficient to bring the loan balance to zero.

# AMENDMENT FACE SHEET

**Loan Number: PW-04-691-045**  
**Amendment Number: A**  
**Washington State Department of Commerce**  
**PUBLIC WORKS BOARD**  
**Loan Contract**

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<b>3. Contractor Representative (only if updated)</b> N/A		<b>4. Public Works Board Representative (only if updated)</b> N/A	
<b>5. Original Contract Amount</b> \$10,000,000.00	<b>6. Amendment Amount</b> N/A	<b>7. New Contract Amount</b> N/A	
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<b>12. Amendment Purpose:</b> The purpose of this amendment is to formally alter the day and month in which loan payments are due from July 1 to June 1.  The Board, defined as the Washington State Public Works Board, and Borrower/Contractor acknowledge and accept the terms of this Agreement/Contract As Amended and attachments and have executed this Contract on the date below to start as of the date shown above. The rights and obligations of both parties to this Agreement/Contract As Amended are governed by this Agreement/Contract Amendment and the following other documents incorporated by reference: Amendment Terms and Conditions including all attachments. A copy of this Agreement/Contract Amendment shall be attached to and made a part of the original Agreement/Contract between the Board and the Borrower/Contractor. Any reference in the original Contract to "Agreement" or "Contract" shall mean the "Agreement As Amended" or "Contract As Amended," respectively.			
<b>FOR THE BORROWER/CONTRACTOR</b>  _____ Signature  _____ Print Name  _____ Title  _____ Date		<b>FOR PUBLIC WORKS BOARD</b>  _____ Stan Finkelstein, Public Works Board Chair  _____ Date  <b>APPROVED AS TO FORM ONLY</b>  This 15 <sup>th</sup> Day of July, 2013 _____ Bob Ferguson Attorney General  _____ Signature on File Kathryn Wyatt Assistant Attorney General	

# AMENDMENT TERMS AND CONDITIONS

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**Washington State Department of Commerce  
PUBLIC WORKS BOARD  
Loan Contract**

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Contract Number: PW-04-691-045  
Amendment Number: A

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The Loan Repayment and Loan End Date months shall be revised to read "June 1" instead of "July 1" as the month and day in which all loan repayments are to be made. The final payment shall be on or before June 1, 2024, of an amount sufficient to bring the loan balance to zero.

**PUBLIC WORKS TRUST FUND  
CONSTRUCTION LOAN AGREEMENT**

**NUMBER PW-02-691-033  
CITY OF MARYSVILLE**

**PART I: ENTIRE AGREEMENT**

This agreement, and incorporated attachments, contains all terms and conditions agreed to by the PUBLIC WORKS BOARD and the LOCAL GOVERNMENT and no other statements or representations written or oral, shall be deemed a part thereof. This contract consists of ten pages and two attachments. An attachment to this agreement, ATTACHMENT I: SCOPE OF WORK, consists of a description of local project activities, certification of the project's useful life, and identification of estimated project costs and fund sources and is, by this reference, incorporated into this agreement as though set forth fully herein. In addition, ATTACHMENT II: ATTORNEY'S CERTIFICATION, is by this reference incorporated into this agreement.

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

DEPARTMENT OF COMMUNITY,  
TRADE AND ECONOMIC  
DEVELOPMENT

LOCAL GOVERNMENT

\_\_\_\_\_  
Steve Wells

\_\_\_\_\_  
Name

\_\_\_\_\_  
Director, Local Government Division  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM ONLY  
This 9th Day of January, 2002

\_\_\_\_\_  
Christine O. Gregoire  
Attorney General

\_\_\_\_\_  
Federal Taxpayer Identification Number

By: Signature on File

\_\_\_\_\_  
Jeanne A. Cushman  
Assistant Attorney General

**HERE  
SIGN**

**PART II: INTRODUCTION**

This loan agreement is made and entered into by and between the PUBLIC WORKS BOARD, or its successor, (referred to as the "BOARD"), a department of the state of Washington, and CITY OF MARYSVILLE (referred to as the "LOCAL GOVERNMENT").

Acting under the authority of Chapter 43.155 RCW, the BOARD has selected the LOCAL GOVERNMENT to receive a Public Works Trust Fund loan for an approved public works project.

**PART III: PURPOSE**

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

**PART IV: TERMS AND CONDITIONS**

The parties to this agreement agree as follows:

**4.01 Rate and Term of Loan**

The BOARD, using funds appropriated from the Public Works Assistance Account, shall loan the LOCAL GOVERNMENT a sum not to exceed \$10,000,000.00. The interest rate shall be one-half percent (1/2%) per annum on the outstanding principal balance. The term of the loan shall not exceed 20 years, with the final payment due July 1, 2022.

**4.02 Local Project Share**

The LOCAL GOVERNMENT pledges an amount of locally-generated revenue not less than fifteen percent (15%) of the total eligible portion of the project cost not funded by federal or state grants as identified in ATTACHMENT I: SCOPE OF WORK, to be verified at the time of project close-out. Any change in the percentage of locally-generated funds may require an adjustment in the loan amount or interest rate charged, or both. In such event, the LOCAL GOVERNMENT agrees to execute an amendment to this agreement adjusting the loan amount or interest rate, as appropriate.

Local project share must consist of expenditures eligible under WAC 399-30-030(3) and be related only to project activities described in ATTACHMENT I: SCOPE OF WORK. These expenditures may be made up to twelve (12) months prior to the execution of the loan agreement and verified at the time of project close-out.

PUBLIC WORKS TRUST FUND MONIES MAY NOT BE USED TO REIMBURSE THE LOCAL GOVERNMENT FOR ANY COSTS INCURRED PRIOR TO EXECUTION OF THIS LOAN AGREEMENT.



#### 4.03 Disbursement of Loan Proceeds

The availability of funds in the Public Works Assistance Account is a function of tax collection and loan repayment. If funds are not available at the time the invoice is submitted, or when the agreement is executed, the issuance of warrants will be delayed. Therefore, subject to the availability of funds, warrants shall be issued to the LOCAL GOVERNMENT for payment of allowable expenses incurred by the LOCAL GOVERNMENT while undertaking and administering approved project activities in accordance with ATTACHMENT I: SCOPE OF WORK. In no event shall the total Public Works Trust Fund loan exceed eighty five percent (85%) of the eligible actual project costs. The disbursement of loan proceeds shall be initiated by the LOCAL GOVERNMENT on a Washington State Invoice Voucher form. The loan funds will be disbursed to the LOCAL GOVERNMENT as follows:

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

Within thirty (30) days of the execution of a Notice to Proceed which follows the formal award of a construction contract, a sum not to exceed eighty percent (80%) of the approved Public Works Trust Fund loan shall be disbursed to the LOCAL GOVERNMENT, except in the case of engineering services contracts. If the approved project described in ATTACHMENT I: SCOPE OF WORK is solely for the completion of engineering studies, a sum not to exceed eighty percent (80%) of the approved Public Works Trust Fund loan shall be disbursed to the LOCAL GOVERNMENT within thirty (30) days of the execution of a Notice to Proceed following the formal award of a contract for engineering services.

At the time of project completion, a Close-out Report, (refer to Section 4.19 for Close-out Report), shall be submitted to the BOARD by the LOCAL GOVERNMENT certifying total actual project costs.

The final Public Works Trust Fund loan disbursement shall not bring the total loan in excess of eighty five percent (85%) of the eligible project costs or the total of \$10,000,000.00 whichever is less. The Close-out Report shall serve as a contract AMENDMENT for determining the final loan amount, interest rate, and local share.

In the event that the final costs identified in the Close-out Report indicate that the LOCAL GOVERNMENT has received Public Works Trust Fund monies in excess of eighty five percent (85%) of eligible costs, all funds in excess of eighty five percent (85%) shall be repaid to the Department of Community, Trade and Economic Development, or its successor, within thirty (30) days of submission of the Close-out Report.

#### 4.04 Interest Earned on Public Works Trust Fund Monies

All interest earned on Public Works Trust Fund Monies held by the LOCAL GOVERNMENT shall accrue to the benefit of the LOCAL GOVERNMENT and be applied to the eligible costs of the approved project. Benefits shall accrue in one of two ways:

1. Reduce the amount of the Public Works Trust Fund loan.
2. Pay any part of eligible project costs that are in excess of ATTACHMENT I: SCOPE OF WORK estimates, if there is an overrun of project costs.

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

#### 4.05 Time of Performance

The LOCAL GOVERNMENT shall begin the activities identified within ATTACHMENT I: SCOPE OF WORK no later than three months after loan agreement execution, and reach project completion no later than forty-eight (48) months after the date of agreement execution.

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

The term of this agreement shall be for the entire term of the loan, irrespective of actual project completion, unless terminated sooner as provided herein.

#### 4.06 Repayment

The first loan repayment under this agreement is due July 1, 2003, and subsequent installments are due on July 1 of each year during the term of the loan. The first repayment under this agreement shall consist of interest only at the rate of one-half percent (1/2%) per annum, calculated on a 360-day year of twelve 30-day months, applied to funds received. Interest will begin to accrue from the date each warrant is issued to the LOCAL GOVERNMENT. Subsequent repayments shall consist of the principal balance due divided by the loan term remaining plus interest on the unpaid balance of the loan. The final payment shall be an amount sufficient to bring the loan balance to zero.

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

The LOCAL GOVERNMENT will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Department of Community, Trade and Economic Development, or its successor, and sent to:

Department of Community, Trade and Economic Development  
Administrative Services Division/Fiscal Unit  
906 Columbia Street S.W.  
P.O. Box 48300  
Olympia, Washington 98504-8300

#### 4.07 Repayment Account

The LOCAL GOVERNMENT shall repay the loan according to the option designated in Section 4.09 Loan Security. The name of the fund, account, or sub-account shall be Fund 402 Utility Construction.

#### 4.08 Default in Repayment

Loan repayments shall be made on the loan in accordance with Section 4.06 of this agreement. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a daily penalty beginning on the thirty-first (31) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be twelve percent (12%) per annum calculated on a 360-day year.

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

The same penalty terms shall apply to delinquent repayment of funds paid in excess of eligible costs as provided for in Section 4.03.

4.09 Loan Security

The LOCAL GOVERNMENT must select **one** of the following options for securing repayment of the loan. **Please initial the appropriate option.**

1. \_\_\_\_\_ **General Obligation:** This loan is a general obligation of the LOCAL GOVERNMENT.

OR

2. /// **Revenue Obligation:** This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer or solid waste utility project. LOCAL GOVERNMENTS performing a storm sewer project that have not created a storm sewer utility or a combined sanitary sewer/storm sewer utility may not use this option. Projects providing for a mixture of bridge, road, domestic water, sanitary sewer, and storm sewer activities may not use this option.

This loan is a revenue obligation of the LOCAL GOVERNMENT payable solely from the net revenue of the utility system indicated below. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The BOARD grants the LOCAL GOVERNMENT the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan agreement.

**Please choose and initial one of the following utility systems:**

- \_\_\_\_\_ Water
- \_\_\_\_\_ Sanitary Sewer (Wastewater)
- \_\_\_\_\_ Stormwater
- /// Water/Sanitary Sewer
- \_\_\_\_\_ Stormwater/Sanitary Sewer
- \_\_\_\_\_ Solid Waste

OR

3. \_\_\_\_\_ **Local Improvement District:** Pursuant to RCW 35.51.050, the LOCAL GOVERNMENT pledges to repay this loan from assessments collected from a Local Improvement District, Local Utility District or other similar special assessment district in which the improvements financed by this loan are located. The name of the special assessment district is \_\_\_\_\_

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

#### 4.10 Recordkeeping and Access to Records

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

The LOCAL GOVERNMENT agrees to retain all records pertaining to this project and this agreement for a period of six years from the date of project close-out. If any litigation, claim or audit is started before the expiration of the six year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

#### 4.11 Reports

The LOCAL GOVERNMENT, at such times and on such forms as the BOARD may require, shall furnish the BOARD with such periodic reports as it may request pertaining to the activities undertaken pursuant to this agreement including, but not limited to, quarterly progress reports, the Close-Out Report, and any other matters covered by this agreement. Failure to file periodic reports as requested may result in termination of this agreement as per Section 4.14.

#### 4.12 Indemnification

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

#### 4.13 Amendments, Modifications, and Waivers

Except for an increase in the amount of the loan governed by this agreement, the LOCAL GOVERNMENT may request an amendment to this agreement for the purpose of modifying the SCOPE OF WORK or for extending the time of performance as provided for in Section 4.05. No modification or amendment resulting in an extension of time shall take effect until a request in writing has been received and approved by the BOARD in accordance with Section 4.05. No amendment or modification shall take effect until approved in writing by both the BOARD and the LOCAL GOVERNMENT and attached hereto. No conditions or provisions of this agreement may be waived unless approved by the BOARD in writing.

#### 4.14 Termination for Cause

If the LOCAL GOVERNMENT fails to comply with the terms of this agreement, or fails to use the loan proceeds only for those activities identified in ATTACHMENT I: SCOPE OF WORK, the BOARD may terminate the agreement in whole or in part at any time. The BOARD shall promptly notify the LOCAL GOVERNMENT in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Upon termination of the loan agreement, the BOARD may declare the entire remaining balance of the loan, together with any interest accrued, immediately due and payable.

#### 4.15 Termination For Convenience

The BOARD may terminate this agreement in the event that federal or state funds are no longer available to the BOARD, or are not allocated for the purpose of meeting the BOARD'S obligations under this agreement. Termination will be effective when the BOARD sends written notice of termination to the LOCAL GOVERNMENT.

#### 4.16 Governing Law and Venue

This agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this agreement shall be the Superior Court of Thurston County, Washington. The prevailing party is entitled to recover costs in accordance with Washington State Law (Chapter 4.84 RCW).

#### 4.17 Severability

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

#### 4.18 Project Completion

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

1. A certified statement of the actual dollar amounts spent, from all fund sources, in completing the project as described.
2. A certified statement that the project, as described in the Loan Agreement's Scope of Work, is complete and has been designed/constructed to required standards.
3. Certification that all costs associated with the project have been incurred. Costs are incurred when goods and services are received and/or contract work is performed.

4.19 Project Close-Out

In accordance with Section 4.03 of this agreement, the LOCAL GOVERNMENT will submit, together with the Close-out Report, a request for a sum not to exceed the final five percent (5%) of the loan amount. This disbursement shall not occur prior to the completion of all project activities. The LOCAL GOVERNMENT shall be responsible to ensure that their contractor(s) are in compliance with the Department of Revenue and the Department of Labor & Industries requirements.

4.20 Audit

Audits of the LOCAL GOVERNMENT'S project activities may be conducted by the Municipal Division of the State Auditor's Office in accordance with state law and any guidelines the Department of Community, Trade and Economic Development, or its successor, may prescribe. Payment for the audit shall be made by the LOCAL GOVERNMENT.

4.21 Project Signs

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

4.22 Utilization of Minority and Women's Business Enterprises (MWBE)

In accordance with legislative findings and policies set forth in Chapter 39.19 RCW, the BOARD encourages participation by Minority and Women's Business Enterprise firms certified by OMWBE. Voluntary goals for participation are:

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

4.23 Nondiscrimination Provision

During the performance of this contract, the LOCAL GOVERNMENT shall comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the LOCAL GOVERNMENT'S noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the LOCAL GOVERNMENT may be declared ineligible for further contracts with the BOARD. The LOCAL GOVERNMENT shall, however, be given a reasonable time in which to cure this noncompliance.

#### 4.24 Historical and Cultural Artifacts

The LOCAL GOVERNMENT agrees that if historical or cultural artifacts are discovered during construction, the LOCAL GOVERNMENT shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at the Washington State Office of Archeology and Historic Preservation.

The LOCAL GOVERNMENT shall require this provision to be contained in all contracts for work or services related to ATTACHMENT ONE: SCOPE OF WORK.

#### **PART V: SPECIAL ASSURANCES**

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

##### 5.01 RCW 43.155.060

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

##### 5.02 WAC 399-30-030(3)

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

##### 5.03 Assignment

Neither this agreement nor any claims arising under this agreement, shall be transferred or assigned by the LOCAL GOVERNMENT without prior written consent of the BOARD.



**PUBLIC WORKS TRUST FUND**

**ATTACHMENT 1: SCOPE OF WORK**

PW-02-691-033

MARYSVILLE

WASTEWATER TREATMENT PLANT UPGRADE

1. Provide a clear description of the project to be financed in part by a Public Works Trust Fund loan. (Attach additional sheets if necessary)

Construction upgrades to the wastewater treatment plant will consist of the following tasks:

- Upgrade of the existing headworks by adding an additional pumping capacity, mechanical and manual screens along with the addition of a new Parshall flume.
- Increased filtration capacity with the construction of additional filters. These filters will be located downstream of the lagoons to remove particulate CBOD and TSS.
- Modification to the existing lagoons and aeration system will be constructed. The construction will consist of the addition High Speed Surface Aerators with associated hardware. With this addition of the new aerators the partitioning of the mixed cells will be upgraded from a curtain system to precast concrete. A walkway and handrail system will be installed above the concrete partitions to provide access to the mixed cells and DO probes.
- The effluent pump station will be upgraded with new pumps and appurtenances to meet the 20 year projected flow.

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

3. I, Robin Nelson, P.E., licensed engineer, certify that the average expected useful life for the improvements described above is 20 years.

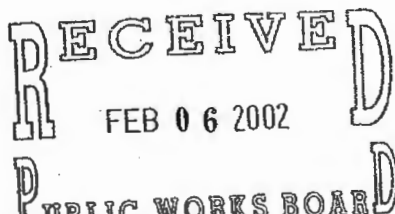
Signed: [Signature]

Date: 2/4/02

Telephone: 360-651-5100



EXPIRES: 11/14/03



**Scope of Work**

Page Two

Pw-02-691-033

Estimated Project Costs:

	Total Costs
Engineering	\$ _____
Environmental Review	\$ _____
Land/R-O-W Acquisition	\$ _____
Public Involvement/Information	\$ _____
Other Fees	\$ _____
Construction	\$ <u>\$9,764,705</u>
Construction Inspection	\$ <u>\$1,000,000</u>
Contingency ( <u>10%</u> )	\$ <u>\$1,076,471</u>
1. Other (Specify)	\$ _____
2. Other (Specify)	\$ _____
<b>TOTAL ESTIMATED COSTS</b>	<b>\$ <u>\$11,841,176</u></b>

Anticipated Fund Sources:

A. Federal Grants	\$ _____
State Grants	\$ _____
B. Locally Generated Revenue	
General Funds	\$ _____
Capital Reserves	\$ <u>1,841,175</u>
Other Fund	\$ _____
Rates	\$ _____
Assessments (LID, RID, ULID)	\$ _____
Special Levies	\$ _____
Federal Loan(s) from: (identify all)	\$ _____
_____	\$ _____
_____	\$ _____
State Loan(s) from: (identify all)	\$ _____
_____	\$ _____
_____	\$ _____
Other: (identify sources)	\$ _____
_____	\$ _____
_____	\$ _____
<b>TOTAL LOCAL REVENUE</b>	<b>\$ <u>\$1,841,175</u></b>
C. PUBLIC WORKS TRUST FUND LOAN	<b>\$ <u>10,000,000</u></b>

**Scope of Work**

Page 3

(Enter Loan Number)

Calculating Local Percentage:

Notes: 1. Grant funds can not be counted as local match.

Calculate as follows:

$$\frac{\text{Total Local Revenue}}{\text{PWTF Loan} + \text{Total Local Revenue}} = \text{Local Percentage } \underline{15.5\%}$$

The local contribution must be at least:

Five percent (5%)	for a loan interest rate of	2%
Ten percent (10%)	for a loan interest rate of	1%
Fifteen percent (15%)	for a loan interest rate of	.5%

Public Works Trust Fund

ATTACHMENT II: ATTORNEY'S CERTIFICATION

I, Grant K. Weed, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the City of Marysville, Washington

(the LOCAL GOVERNMENT); and

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

Based on the foregoing, it is my opinion that:

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

Grant K. Weed  
Signature of Attorney

2-21-01  
Date

Grant K. Weed  
Name

21 Avenue A, Snohomish, WA 98290-2962  
Address

**AMENDMENT NUMBER 1  
PUBLIC WORKS TRUST FUND LOAN AGREEMENT NUMBER  
PW-01-691-PRE-114**

**BETWEEN  
THE DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT  
AND  
THE CITY OF MARYSVILLE**

The purpose of this amendment is to extend the term of Public Works Trust Fund Loan Agreement Number PW-01-691-PRE-114 from five years to twenty years. This amendment is being entered into based on Pre-Construction program policy adopted by the Public Works Board at its February 3, 1998 meeting.

The Washington State Department of Community, Trade and Economic Development (hereinafter referred to as the DEPARTMENT) and the City of Marysville (hereinafter referred to as the LOCAL GOVERNMENT) agree to amend Public Works Trust Fund Loan Agreement Number PW-01-691-PRE-114 as described below.

Section 4.01 Rate and Term is amended to read as follows:

The DEPARTMENT, using funds appropriated from the Public Works Assistance Account, shall loan the LOCAL GOVERNMENT a sum not to exceed \$1,000,000.00. The interest rate shall be one-half percent (1/2%) per annum on the outstanding principal balance. The term of the loan shall not exceed twenty years, with the final payment due July 1, 2021.

A copy of this amendment, consisting of one (1) page shall be attached to and incorporated into the original agreement between the DEPARTMENT and the LOCAL GOVERNMENT. Any reference in such agreement to the "agreement" shall mean "agreement as amended." All other items and conditions of the original loan agreement or prior amendments shall remain in full force and effect.

IN WITNESS THEREOF, the DEPARTMENT and the LOCAL GOVERNMENT have executed this amendment as of the date and year last written below.

DEPARTMENT OF COMMUNITY, TRADE  
AND ECONOMIC DEVELOPMENT

Steve Wells  
Steve Wells

Director, Local Government Division  
Title

7-15-02  
Date

APPROVED AS TO FORM ONLY

10<sup>th</sup> Day of May, 2000  
Christine O. Gregoire  
Attorney General

By: Signature on File  
Assistant Attorney General

Jeanne A. Cushman  
(Print Name)

LOCAL GOVERNMENT

David Waser  
Name

Mayor  
Title

July 8, 2002  
Date

*Approved as to Form Only  
David K. Waser, City Attorney*

PWTF NUMBER PW-01-691-PRE-114

CONTRACTOR TYPE LOCAL GOVT

B = For profit Business  
F = Federal Government  
I = Individual  
L = Local Gov  
O = Other  
S = State Agency

AMENDMENT CODE  
\_\_\_\_\_

CONTRACT TYPE: 5

1 = Grant\*  
2 = Service - Client  
3 = Personal Service - non client  
4 = Interagency Agreement  
5 = Loan  
6 = Capital Budget/Construction  
7 = Reimbursabl  
8 = Othe

CONTRACTOR INFORMATION

Name: CITY OF MARYSVILLE

Address: 80 COLUMBIA AVE MARYSVILLE WA 98270

Telephone Number: 360-651-5100

TIN or SSN: 91-6001459

START DATE: October 30, 2001

TERMINATION DATE: July 1, 2006

ANSWER THE FOLLOWING ON ALL PERSONAL SERVICES CONTRACTS (OBJECT C ONLY)

Incorporated? Yes [ ] No [ ]

Selection Method: Competitive [ ] Sole Source [ ] UBI# \_\_\_\_\_

Prior State Employee? Yes [ ] No [ ]

Requires OFM/LBC Filing? Yes [ ] No [ ]

NAME OF PROGRAM: PWTF PRE CONSTRUCTION

DESCRIPTION OF CONTRACT/AMENDMENT: WASTEWATER TREATMENT PLANT UPGRADE

CONTRACT EXPENDITURE CODING

CONTRACT AMOUNT	FUND	APPROP	PI	PROJECT	SUB-OBJECT	AMENDMENT INCREASE/DECREASE
STATE GF PROVISO						
DEDICATED \$1,000,000.00	058	e14	69100	9p01	NR	
FEDERAL						
OTHER						
TOTAL \$1,000,000.00						

COUNTIES BENEFITTING:

AMOUNT:

11/2/2001

SNOHOMISH County

\$1,000,000.00

PWB CONTRACT MANAGER'S NAME/TELEPHONE NUMBER:

Susan Butz, 725-5004

**PUBLIC WORKS TRUST FUND  
PRE-CONSTRUCTION LOAN AGREEMENT**

**NUMBER PW-01-691-PRE-114  
MARYSVILLE**

**PART I: ENTIRE AGREEMENT**

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

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

DEPARTMENT OF COMMUNITY,  
TRADE AND ECONOMIC  
DEVELOPMENT

*Steve Wells*  
Steve Wells

Director, Local Government Division  
Title

10/30/01  
Date

APPROVED AS TO FORM ONLY  
27<sup>th</sup> Day of April, 2000  
Christine O. Gregoire  
Attorney General

By: Signature on File  
Assistant Attorney General

Jeanne A. Cushman  
(Print Name)

LOCAL GOVERNMENT

*David Weiss*  
Name

Mayor  
Title

October 22, 2001  
Date

91-600459  
Federal Taxpayer Identification Number

**RECEIVED**  
OCT 29 2001  
**PUBLIC WORKS BOARD**

## **PART II: INTRODUCTION**

This loan agreement is made and entered into by and between the PUBLIC WORKS BOARD, (or its successor) a department of the state of Washington (referred to as the "BOARD"), and MARYSVILLE (referred to as the "LOCAL GOVERNMENT").

Acting under the authority of Chapter 43.155 RCW, the BOARD has selected the LOCAL GOVERNMENT to receive a Public Works Trust Fund loan for an approved public works project.

## **PART III: PURPOSE**

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

## **PART IV: TERMS AND CONDITIONS**

The parties to this agreement agree as follows:

### **4.01 Rate and Term of Loan**

The BOARD, using funds appropriated from the Public Works Assistance Account, shall loan the LOCAL GOVERNMENT a sum not to exceed \$1,000,000.00. The interest rate shall be one-half percent (1/2%) per annum on the outstanding principal balance. The term of the loan shall not exceed 5 years, with the final payment due July 1, 2006.

### **4.02 Local Project Share**

The LOCAL GOVERNMENT pledges an amount of locally-generated revenue not less than fifteen percent (15%) of the total eligible portion of the project cost not funded by federal or state grants as identified in ATTACHMENT I: SCOPE OF WORK, to be verified at the time of project close-out. Any change in the percentage of locally-generated funds may require an adjustment in the loan amount or interest rate charged, or both. In such event, the LOCAL GOVERNMENT agrees to execute an amendment to this agreement adjusting the loan amount or interest rate, as appropriate.



Local project share must consist of expenditures eligible under WAC 399-30-030(3) and be related only to project activities described in ATTACHMENT I: SCOPE OF WORK. These expenditures may be made up to twelve (12) months prior to the execution of the loan agreement and verified at the time of project close-out.

PUBLIC WORKS TRUST FUND MONIES MAY NOT BE USED TO REIMBURSE THE LOCAL GOVERNMENT FOR ANY COSTS INCURRED PRIOR TO EXECUTION OF THIS LOAN AGREEMENT.

#### 4.03 Disbursement of Loan Proceeds

Warrants shall be issued to the LOCAL GOVERNMENT for payment of allowable expenses incurred by the LOCAL GOVERNMENT while undertaking and administering approved project activities in accordance with ATTACHMENT I: SCOPE OF WORK. In no event shall the total Public Works Trust Fund loan exceed eighty five percent (85%) of the eligible actual project costs. The disbursement of loan proceeds shall be initiated by the LOCAL GOVERNMENT on a Washington State Invoice Voucher form. The loan funds will be disbursed to the LOCAL GOVERNMENT as follows:

Within thirty (30) days of the formal execution of this agreement, a sum not to exceed seventy-five percent (75%) of the approved Public Works Trust Fund loan shall be disbursed to the LOCAL GOVERNMENT.

At the time of project completion, a Close-out Report, (refer to Section 4.18 for Close-out Report), shall be submitted to the BOARD by the LOCAL GOVERNMENT certifying total actual project costs.

The final Public Works Trust Fund loan disbursement shall not bring the total loan in excess of eighty five percent (85%) of the eligible project costs or the total of \$1,000,000.00, whichever is less, nor shall this disbursement occur prior to the completion of all project activities. The Close-out Report shall serve as a contract AMENDMENT for determining the final loan amount, interest rate, and local share.

In the event that the final costs identified in the Close-out Report indicate that the LOCAL GOVERNMENT has received Public Works Trust Fund monies in excess of eighty five percent (85%) of eligible costs, all funds in excess of eighty five percent (85%) shall be repaid to the Department of Community, Trade and Economic Development, or its successor, within thirty (30) days of submission of the Close-out Report.

#### 4.04 Interest Earned on Public Works Trust Fund Monies

All interest earned on Public Works Trust Fund Monies held by the LOCAL GOVERNMENT shall accrue to the benefit of the LOCAL GOVERNMENT and be applied to the eligible costs of the approved project. Benefits shall accrue in one of two ways:

1. Reduce the amount of the Public Works Trust Fund loan.
2. Pay any part of the eligible project costs that are in excess of ATTACHMENT I: SCOPE OF WORK estimates if there is an overrun of project costs.

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

#### 4.05 Time of Performance

The LOCAL GOVERNMENT shall begin the activities identified within ATTACHMENT I: SCOPE OF WORK no later than three (3) months after the date of loan agreement execution and reach project completion no later than eighteen (18) months after the date of agreement execution.

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

#### 4.06 Repayment

The first loan repayment under this agreement is due July 1, 2002, and subsequent installments are due on July 1 of each year during the term of the loan. The first repayment under this agreement shall consist of interest only at the rate of one-half percent (1/2%) per annum, calculated on a 360-day year of twelve 30-day months, applied to funds received. Interest will begin to accrue from the date the BOARD issues each warrant to the LOCAL GOVERNMENT. Subsequent repayments shall consist of the principal balance due divided by the loan term remaining plus interest on the unpaid balance of the loan. The final payment shall be an amount sufficient to bring the loan balance to zero.

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

The LOCAL GOVERNMENT will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Department of Community, Trade and Economic Development, or its successor, and sent to:

Department of Community, Trade and Economic Development  
Administrative Services Division/Fiscal Unit  
906 Columbia Street S.W.  
P.O. Box 48300  
Olympia, Washington 98504-8300

#### 4.07 Repayment Account

The LOCAL GOVERNMENT shall repay the loan solely from utility revenues, general obligation revenues, or a combination thereof. The name of the fund, account, or sub-account shall be Fund 450 Water/Sewer Debt Service.

#### 4.08 Default in Repayment

Loan repayments shall be made to the Department of Community, Trade and Economic Development, or its successor, in accordance with Section 4.06 of this agreement. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a daily penalty beginning on the thirty-first (31) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be twelve percent (12%) per annum calculated on a 360-day year.

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

4.09 Loan Security

The LOCAL GOVERNMENT must select **one** of the following options for securing repayment of the loan. **Please initial the appropriate option.**

1. \_\_\_\_\_ **General Obligation:** This loan is a general obligation of the LOCAL GOVERNMENT.

**OR**

2.     *llw*     **Revenue Obligation:** This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer, or solid waste utility project. LOCAL GOVERNMENTS performing a storm sewer project that have not created a storm sewer utility or a combined sanitary sewer/storm sewer utility may not use this option. Projects providing for a mixture of bridge, road, domestic water, sanitary sewer, and storm sewer activities may not use this option.

This loan is a revenue obligation of the LOCAL GOVERNMENT payable solely from the net revenue of the utility system indicated below. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The BOARD grants the LOCAL GOVERNMENT the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan agreement.

**Please choose and initial one of the following utility systems:**

- \_\_\_\_\_ Water
- llw*     Sanitary Sewer (Wastewater)
- \_\_\_\_\_ Stormwater
- \_\_\_\_\_ Water/Sanitary Sewer
- \_\_\_\_\_ Stormwater/Sanitary Sewer
- \_\_\_\_\_ Solid Waste

**OR**

3. \_\_\_\_\_ **Local Improvement District:** Pursuant to RCW 35.51.050, the LOCAL GOVERNMENT pledges to repay this loan from assessments collected from a Local Improvement District, Local Utility District or other similar special assessment district in which the improvements financed by this loan are located. The name of the special assessment district is \_\_\_\_\_.

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

#### 4.10 Recordkeeping and Access to Records

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

The LOCAL GOVERNMENT agrees to retain these records for a period of six years from the date of project completion.

#### 4.11 Reports

The LOCAL GOVERNMENT, at such times and on such forms as the BOARD may require, shall furnish the BOARD with such periodic reports as it may request pertaining to the activities undertaken pursuant to this agreement including, but not limited to, quarterly progress reports, the Close-Out Report, and any other matters covered by this agreement. Failure to file periodic reports as requested may result in termination of this agreement as per Section 4.14.

#### 4.12 Indemnification

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

#### 4.13 Amendments, Modifications, and Waivers

Except for an increase in the amount of the loan governed by this agreement, the LOCAL GOVERNMENT may request an amendment of this agreement for the purpose of modifying the SCOPE OF WORK or for extending the time of performance as provided for in Section 4.05. No modification or amendment resulting in an extension of time shall take effect until a request in writing has been received and approved by the Board in accordance with Section 4.05. No amendment or modification shall take effect until approved in writing by both the BOARD and the LOCAL GOVERNMENT and attached hereto. No conditions or provisions of this agreement may be waived unless approved by the BOARD in writing.

#### 4.14 Termination for Cause

If the LOCAL GOVERNMENT fails to comply with the terms of this agreement, or fails to use the loan proceeds only for those activities identified in ATTACHMENT I: SCOPE OF WORK, the BOARD may terminate the agreement in whole or in part at any time. The BOARD shall promptly notify the LOCAL GOVERNMENT in writing of its determination to terminate, the reason for such

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

#### 4.15 Termination For Convenience

The BOARD may terminate this agreement in the event that federal or state funds are no longer available to the BOARD, or are not allocated for the purpose of meeting the BOARD'S obligations under this agreement. Termination will be effective when the BOARD sends written notice of termination to the LOCAL GOVERNMENT.

#### 4.16 Governing Law and Venue

This agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this agreement shall be the Superior Court of Thurston County, Washington. The prevailing party is entitled to recover costs in accordance with Washington State Law (Chapter 4.84 RCW).

#### 4.17 Severability

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

#### 4.18 Project Completion

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

1. A copy of the Close-out Report.
2. A copy of the a resolution accepting the design project as being complete.
3. Certification that all costs associated with the project have been incurred. Costs are incurred when goods and services are received and/or contract work is performed.

#### 4.19 Project Close-out

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

4.20 Audit

Audits of the LOCAL GOVERNMENT'S project activities may be conducted by the Municipal Division of the State Auditor's Office in accordance with state law and any guidelines the Department of Community, Trade and Economic Development, or its successor, may prescribe. Payment for the audit shall be made by the LOCAL GOVERNMENT.

4.21 Project Signs

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

4.22 Utilization of Minority and Women's Business Enterprises (MWBE)

In accordance with legislative findings and policies set forth in Chapter 39.19 RCW, the BOARD encourages participation by Minority and Women's Business Enterprise firms certified by OMWBE. Voluntary goals for participation are:

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

4.23 Nondiscrimination Provision

During the performance of this contract, the LOCAL GOVERNMENT shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the LOCAL GOVERNMENT'S noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the LOCAL GOVERNMENT may be declared ineligible for further contracts with the BOARD. The LOCAL GOVERNMENT shall, however, be given a reasonable time in which to cure this noncompliance.

**PART V: SPECIAL ASSURANCES**

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

5.01 RCW 43.155.060

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

5.02 WAC 399-30-030(3)

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

5.03 Nondiscrimination Provision

During the performance of this contract, the LOCAL GOVERNMENT shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the LOCAL GOVERNMENT'S noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the LOCAL GOVERNMENT may be declared ineligible for further contracts with the BOARD. The LOCAL GOVERNMENT shall, however, be given a reasonable time in which to cure this noncompliance.

5.04 Historical and Cultural Artifacts

The LOCAL GOVERNMENT agrees that if historical or cultural artifacts are discovered during construction, the LOCAL GOVERNMENT shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at the Washington State Office of Archeology and Historic Preservation.

The LOCAL GOVERNMENT shall require this provision to be contained in all contracts for work or services related to ATTACHMENT I: SCOPE OF WORK.

5.05 Assignment

Neither this agreement, nor any claims arising under this agreement, shall be transferred or assigned by the LOCAL GOVERNMENT without prior written consent of the BOARD.



**PUBLIC WORKS TRUST FUND  
Pre-Construction Program  
ATTACHMENT 1: SCOPE OF WORK**

**PW-01-691-PRE-114**

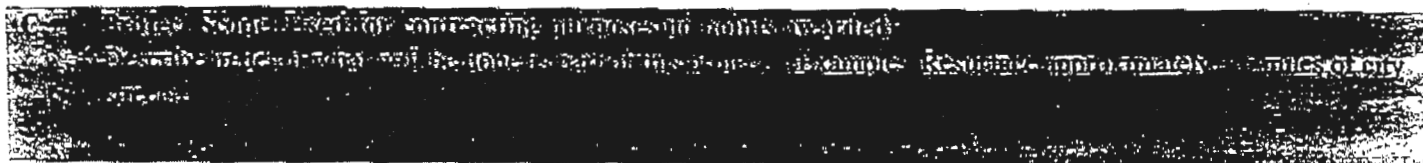
**City of Marysville**

**Wastewater Treatment Plant Upgrade**

1. Provide a clear description of the project to be financed in part by a Public Works Trust Fund loan.

SEE ATTACHED

2. The term of this loan will be five years.



The project consists of three main elements: Preliminary Design; Final Design and Permitting for the upgrade of the existing Marysville wastewater treatment facility. In this biennium, the City is applying for funding for the proposed treatment upgrades designed to accommodate for unallocated (Tulalip) flows and City growth to 2020, as well as compliance with interim NPDES limits.

Preliminary design activities will finalize the unit treatment processes and general configuration of the facilities to be constructed. Recommendations in the Final 2001 Wastewater Capital Facilities Plan will be the basis for guiding this phase of the work. The scope of the preliminary design will include;

- An evaluation and recommendations of alternative configurations for a new treatment facility headworks;
- Finalizing process design criteria, including confirmation and updating, if necessary, of the projected flow and pollutant loading on the existing wastewater treatment facility
- Analyze electrical and generator improvements and develop a conceptual plan for the process instrumentation and control and electrical systems
- Improvements and expansion of the aerated lagoons, including aeration system
- Evaluate equipment procurement strategies for facilitating the purchase and installation of additional effluent filtration equipment
- Pilot studies of effluent filters and UV disinfection system.
- Effluent pump station modifications
- Improvements to the existing disinfection facilities
- A comprehensive geotechnical investigation to assure that appropriate foundation systems are designed for structural components and ancillary components of the treatment facility,
- Develop an as-built topographic survey in the vicinity of the facilities included in the upgrade.
- Obtain necessary local construction permits which apply to the plant upgrade
- Preliminary layout of treatment facility processes and ancillary facilities, including plant operations center and new maintenance facility.
- An updated project cost estimate will be prepared as part of the preliminary design

The scope of the final design includes the preparation of construction drawings and specifications for the upgraded wastewater treatment facility, which will become the contract drawings during the bidding process. A detailed construction cost estimate will be developed prior to bidding the project based on the final design drawings and specification. The final design includes process design criteria, hydraulic profile, process flow diagram; civil, structural, mechanical, instrumentation and control, architectural, and electrical drawings and specifications for the following:

- wastewater treatment facility headworks,
- aerated lagoon systems,
- effluent filtration capacity,
- additional disinfection facilities,
- site improvements including upgrades to plant electrical and control systems.
- additions to the plant operations center,
- and a new plant maintenance facility and associated facilities.

The plant upgrade may be bid in several packages to minimize overall project costs.

The scope of the permitting phase of the project includes providing assistance to the City in preparation of applications for a Shorelines Substantial Development permit, local building permit, notice construction application with Puget Sound Air Quality Control Authority, variance to Sensitive Areas Ordinance, and a modification of the City's NPDES

Estimated Project Costs:

	Total
Engineering	\$ 922,978
Environmental Review	\$ 52,265
Land/R-O-W Acquisition	\$ _____
Other Fees	\$ _____
Contingency (20%)	\$ 200,000
1. Other (specify)	\$ _____
Public Involvement/Information	\$ 24,757
<b>TOTAL ESTIMATED COSTS</b>	<b>\$ 1,200,000</b>

Anticipated Fund Sources:

A. Federal Grants	\$ _____
State Grants	\$ _____
 B. Locally Generated Revenue	 \$ _____
General Funds	\$ _____
Capital	\$ 200,000
Other Fund	\$ _____
Rates	\$ _____
Assessments	\$ _____
(LID, RID, ULID)	\$ _____
Special Levies	\$ _____
Federal Loan(s) from: (identify all)	\$ _____
_____	\$ _____
_____	\$ _____
State Loan(s) from: (identify all)	\$ _____
_____	\$ _____
_____	\$ _____
Other: identify sources)	\$ _____
_____	\$ _____
_____	\$ _____
<b>TOTAL LOCAL REVENUE</b>	<b>\$ _____</b>
 C. PUBLIC WORKS TRUST FUND LOAN	 \$ 1,000,000

**Scope of Work**

Page 3

PW-01-691-PRE-114

Calculating Local Percentage: (Note: Please exclude any expansion/growth costs and funding before calculating the local percentage.)

Calculate as follows:

$$\frac{\text{Total Local Revenue}}{\text{PWTF Loan} + \text{Total Local Revenue}} = \text{Local Loan Percentage}$$

$$\frac{\$200,000}{\$1,000,000 + \$200,000} = 17\%$$

The local contribution must be at least:

Five percent (5%)	for a loan interest rate of	2%
Ten percent (10%)	for a loan interest rate of	1%
Fifteen percent (15%)	for a loan interest rate of	0.5%

Public Works Trust Fund

ATTACHMENT II: ATTORNEY'S CERTIFICATION

I, Grant K. Weed, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the City of Marysville

(the LOCAL GOVERNMENT); and

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

Based on the foregoing, it is my opinion that:

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

Grant K. Weed  
Signature of Attorney

10-16-01  
Date

Grant K. Weed  
Name

21 Ave. A Snohomish WA 98290  
Address

**PUBLIC WORKS TRUST FUND  
CONSTRUCTION LOAN AGREEMENT**

**NUMBER PW-04-691-045  
CITY OF MARYSVILLE**

**PART I: ENTIRE AGREEMENT**

This agreement, and incorporated attachments, contains all terms and conditions agreed to by the PUBLIC WORKS BOARD and the LOCAL GOVERNMENT and no other statements or representations written or oral, shall be deemed a part thereof. This contract consists of ten pages and two attachments. An attachment to this agreement, ATTACHMENT I: SCOPE OF WORK, consists of a description of local project activities, certification of the project's useful life, and identification of estimated project costs and fund sources and is, by this reference, incorporated into this agreement as though set forth fully herein. In addition, ATTACHMENT II: ATTORNEY'S CERTIFICATION, is by this reference incorporated into this agreement.

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

PUBLIC WORKS BOARD

\_\_\_\_\_  
John LaRocque, Executive Director  
Public Works Board

\_\_\_\_\_  
Date

APPROVED AS TO FORM ONLY  
This 17<sup>th</sup> Day of March, 2003  
Christine O. Gregoire  
Attorney General

By: Signature on File  
\_\_\_\_\_  
Jeanne A. Cushman  
Assistant Attorney General

*City of Marysville*  
LOCAL GOVERNMENT

*Dennis L. Kendall*  
\_\_\_\_\_  
Signature

*Dennis L. Kendall*  
\_\_\_\_\_  
Print Name

*Mayor*  
\_\_\_\_\_  
Title

*May 11, 2004*  
\_\_\_\_\_  
Date

*91-6001459*  
\_\_\_\_\_  
Federal Taxpayer Identification Number

## **PART II: INTRODUCTION**

This loan agreement is made and entered into by and between the PUBLIC WORKS BOARD, or its successor, (referred to as the "BOARD"), a department of the state of Washington, and CITY OF MARYSVILLE (referred to as the "LOCAL GOVERNMENT").

Acting under the authority of Chapter 43.155 RCW, the BOARD has selected the LOCAL GOVERNMENT to receive a Public Works Trust Fund loan for an approved public works project.

## **PART III: PURPOSE**

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

## **PART IV: TERMS AND CONDITIONS**

The parties to this agreement agree as follows:

### **4.01 Rate and Term of Loan**

The BOARD, using funds appropriated from the Public Works Assistance Account, shall loan the LOCAL GOVERNMENT a sum not to exceed \$10,000,000.00. The interest rate shall be one-half percent (1/2%) per annum on the outstanding principal balance. The term of the loan shall not exceed 20 years, with the final payment due July 1, 2024.

### **4.02 Local Project Share**

The LOCAL GOVERNMENT pledges an amount of locally-generated revenue not less than fifteen percent (15%) of the total eligible portion of the project cost not funded by federal or state grants as identified in ATTACHMENT I: SCOPE OF WORK, to be verified at the time of project close-out. Any change in the percentage of locally-generated funds may require an adjustment in the loan amount or interest rate charged, or both. In such event, the LOCAL GOVERNMENT agrees to execute an amendment to this agreement adjusting the loan amount or interest rate, as appropriate.

Local project share must consist of expenditures eligible under WAC 399-30-030(3) and be related only to project activities described in ATTACHMENT I: SCOPE OF WORK. These expenditures may be made up to twelve (12) months prior to the execution of the loan agreement and verified at the time of project close-out.

**PUBLIC WORKS TRUST FUND MONIES MAY NOT BE USED TO REIMBURSE THE LOCAL GOVERNMENT FOR ANY COSTS INCURRED PRIOR TO EXECUTION OF THIS LOAN AGREEMENT.**

#### 4.03 Disbursement of Loan Proceeds

The availability of funds in the Public Works Assistance Account is a function of tax collection and loan repayment. If funds are not available at the time the invoice is submitted, or when the agreement is executed, the issuance of warrants will be delayed. Therefore, subject to the availability of funds, warrants shall be issued to the LOCAL GOVERNMENT for payment of allowable expenses incurred by the LOCAL GOVERNMENT while undertaking and administering approved project activities in accordance with ATTACHMENT I: SCOPE OF WORK. In no event shall the total Public Works Trust Fund loan exceed eighty five percent (85%) of the eligible actual project costs. The disbursement of loan proceeds shall be initiated by the LOCAL GOVERNMENT on a Washington State Invoice Voucher form. The loan funds will be disbursed to the LOCAL GOVERNMENT as follows:

Within thirty (30) days of the formal execution of this agreement, a sum not to exceed twenty percent (20%) of the approved Public Works Trust Fund loan shall be disbursed to the LOCAL GOVERNMENT.

Within thirty (30) days of the execution of a Notice to Proceed, which follows the formal award of a construction contract, or contract for engineering services, a sum not to exceed twenty five percent (25%) of the approved Public Works Trust Fund loan shall be disbursed to the LOCAL GOVERNMENT.

When the LOCAL GOVERNMENT certifies that 35% of the Public Works Trust Fund loan amount has been spent, a sum not to exceed twenty five percent (25%) of the approved Public Works Trust Fund loan shall be disbursed to the LOCAL GOVERNMENT.

When the LOCAL GOVERNMENT certifies that 60% of the Public Works Trust Fund loan amount has been spent, a sum not to exceed twenty five percent (25%) of the approved Public Works Trust Fund loan shall be disbursed to the LOCAL GOVERNMENT.

At the time of project completion, a Close-out Report, (refer to Section 4.19 for Close-out Report), shall be submitted to the BOARD by the LOCAL GOVERNMENT certifying total actual project costs.

The final Public Works Trust Fund loan disbursement shall not bring the total loan in excess of eighty five percent (85%) of the eligible project costs or the total of \$10,000,000.00 whichever is less. The Close-out Report shall serve as a contract AMENDMENT for determining the final loan amount, interest rate, and local share.

In the event that the final costs identified in the Close-out Report indicate that the LOCAL GOVERNMENT has received Public Works Trust Fund monies in excess of eighty five percent (85%) of eligible costs, all funds in excess of eighty five percent (85%) shall be repaid to the Public Works Assistance Account by payment to the Department of Community, Trade and Economic Development, or its successor, within thirty (30) days of submission of the Close-out Report.



#### 4.04 Interest Earned on Public Works Trust Fund Monies

All interest earned on Public Works Trust Fund Monies held by the LOCAL GOVERNMENT shall accrue to the benefit of the LOCAL GOVERNMENT and be applied to the eligible costs of the approved project. Benefits shall accrue in one of two ways:

1. Reduce the amount of the Public Works Trust Fund loan.
2. Pay any part of eligible project costs that are in excess of ATTACHMENT I: SCOPE OF WORK estimates, if there is an overrun of project costs.

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

#### 4.05 Time of Performance

The LOCAL GOVERNMENT shall begin the activities identified within ATTACHMENT I: SCOPE OF WORK no later than three months after loan agreement execution, and reach project completion no later than forty-eight (48) months after the date of agreement execution.

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

The term of this agreement shall be for the entire term of the loan, irrespective of actual project completion, unless terminated sooner as provided herein.

#### 4.06 Repayment

The first loan repayment under this agreement is due July 1, 2005, and subsequent installments are due on July 1 of each year during the term of the loan. The first repayment under this agreement shall consist of interest only at the rate of one-half percent (1/2%) per annum, calculated on a 360-day year of twelve 30-day months, applied to funds received. Interest will begin to accrue from the date each warrant is issued to the LOCAL GOVERNMENT. Subsequent repayments shall consist of the principal balance due divided by the loan term remaining plus interest on the unpaid balance of the loan. The final payment shall be an amount sufficient to bring the loan balance to zero.

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

The LOCAL GOVERNMENT will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Department of Community, Trade and Economic Development, or its successor, and sent to:

Department of Community, Trade and Economic Development  
Administrative Services Division/Fiscal Unit  
906 Columbia Street S.W.  
P.O. Box 48300  
Olympia, Washington 98504-8300

#### 4.07 Repayment Account

The LOCAL GOVERNMENT shall repay the loan according to the option designated in Section 4.09 Loan Security. The name of the fund, account, or sub-account shall be utility fund 401.

#### 4.08 Default in Repayment

Loan repayments shall be made on the loan in accordance with Section 4.06 of this agreement. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a daily penalty beginning on the thirty-first (31) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be twelve percent (12%) per annum calculated on a 360-day year for the delinquent amount.

The same penalty terms shall apply to delinquent repayment of funds paid in excess of eligible costs as provided for in Section 4.03.

The LOCAL GOVERNMENT acknowledges and agrees to the BOARD'S right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the LOCAL GOVERNMENT of such delinquency including, without limitation, the state government and the United States of America or its agencies, credit rating agencies, and the municipal finance market.

The LOCAL GOVERNMENT shall pay the costs and reasonable legal fees incurred by the BOARD in any action undertaken to enforce its rights under this section.

4.09 Loan Security

The LOCAL GOVERNMENT must select **one** of the following options for securing repayment of the loan. **Please initial the appropriate option.**

1. \_\_\_\_\_ **General Obligation:** This loan is a general obligation of the LOCAL GOVERNMENT.

OR

2. DA **Revenue Obligation:** This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer or solid waste utility project. LOCAL GOVERNMENTS performing a storm sewer project that have not created a storm sewer utility or a combined sanitary sewer/storm sewer utility may not use this option. Projects providing for a mixture of bridge, road, domestic water, sanitary sewer, and storm sewer activities may not use this option.

This loan is a revenue obligation of the LOCAL GOVERNMENT payable solely from the net revenue of the utility system indicated below. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The BOARD grants the LOCAL GOVERNMENT the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan agreement.

**Please choose and initial one of the following utility systems:**

- \_\_\_\_\_ Water
- \_\_\_\_\_ Sanitary Sewer (Wastewater)
- \_\_\_\_\_ Stormwater
- DA Water/Sanitary Sewer
- \_\_\_\_\_ Stormwater/Sanitary Sewer
- \_\_\_\_\_ Solid Waste

OR

3. \_\_\_\_\_ **Local Improvement District:** Pursuant to RCW 35.51.050, the LOCAL GOVERNMENT pledges to repay this loan from assessments collected from a Local Improvement District, Local Utility District or other similar special assessment district in which the improvements financed by this loan are located. The name of the special assessment district is \_\_\_\_\_

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

#### 4.10 Recordkeeping and Access to Records

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

The LOCAL GOVERNMENT agrees to retain all records pertaining to this project and this agreement for a period of six years from the date of project close-out. If any litigation, claim or audit is started before the expiration of the six year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

#### 4.11 Reports

The LOCAL GOVERNMENT, at such times and on such forms as the BOARD may require, shall furnish the BOARD with such periodic reports as it may request pertaining to the activities undertaken pursuant to this agreement including, but not limited to, quarterly progress reports, the Close-Out Report, and any other matters covered by this agreement. Failure to file periodic reports as requested may result in termination of this agreement as per Section 4.14.

#### 4.12 Indemnification

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

#### 4.13 Amendments, Modifications, and Waivers

Except for an increase in the amount of the loan governed by this agreement, the LOCAL GOVERNMENT may request an amendment to this agreement for the purpose of modifying the SCOPE OF WORK or for extending the time of performance as provided for in Section 4.05. No modification or amendment resulting in an extension of time shall take effect until a request in writing has been received and approved by the BOARD in accordance with Section 4.05. No amendment or modification shall take effect until approved in writing by both the BOARD and the LOCAL GOVERNMENT and attached hereto. No conditions or provisions of this agreement may be waived unless approved by the BOARD in writing.

#### 4.14 Termination for Cause

If the LOCAL GOVERNMENT fails to comply with the terms of this agreement, or fails to use the loan proceeds only for those activities identified in ATTACHMENT I: SCOPE OF WORK, the BOARD may terminate the agreement in whole or in part at any time. The BOARD shall promptly notify the LOCAL GOVERNMENT in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Nothing in this section shall affect LOCAL GOVERNMENT obligations to repay the unpaid balance of the loan.

#### 4.15 Termination For Convenience

The BOARD may terminate this agreement in the event that federal or state funds are no longer available to the BOARD, or are not allocated for the purpose of meeting the BOARD'S obligations under this agreement. Termination will be effective when the BOARD sends written notice of termination to the LOCAL GOVERNMENT. Nothing in this section shall affect LOCAL GOVERNMENT obligations to repay the unpaid balance of the loan.

#### 4.16 Governing Law and Venue

This agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this agreement shall be the Superior Court of Thurston County, Washington. The prevailing party is entitled to recover costs in accordance with Washington State Law (Chapter 4.84 RCW).

#### 4.17 Severability

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

#### 4.18 Project Completion

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

1. A certified statement of the actual dollar amounts spent, from all fund sources, in completing the project as described.
2. A certified statement that the project, as described in the Loan Agreement's Scope of Work, is complete and has been designed/constructed to required standards.
3. Certification that all costs associated with the project have been incurred. Costs are incurred when goods and services are received and/or contract work is performed.
4. Provide a date for reporting LOCAL GOVERNMENT conformance with the performance measures identified in ATTACHMENT I: SCOPE OF WORK.

#### 4.19 Project Close-Out

In accordance with Section 4.03 of this agreement, the LOCAL GOVERNMENT will submit, together with the Close-out Report, a request for a sum not to exceed the final five percent (5%) of the loan amount. This disbursement shall not occur prior to the completion of all project activities. The LOCAL GOVERNMENT shall be responsible to ensure that their contractor(s) are in compliance with the Department of Revenue and the Department of Labor & Industries requirements.

#### 4.20 Audit

Audits of the LOCAL GOVERNMENT'S project activities may be conducted by the Municipal Division of the State Auditor's Office in accordance with state law and any guidelines the Department of Community, Trade and Economic Development, or its successor, may prescribe. Payment for the audit shall be made by the LOCAL GOVERNMENT.

#### 4.21 Project Signs

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

#### 4.22 Nondiscrimination Provision

During the performance of this contract, the LOCAL GOVERNMENT shall comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the LOCAL GOVERNMENT'S noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the LOCAL GOVERNMENT may be declared ineligible for further contracts with the BOARD. The LOCAL GOVERNMENT shall, however, be given a reasonable time in which to cure this noncompliance.

#### 4.23 Historical and Cultural Artifacts

The LOCAL GOVERNMENT agrees that if historical or cultural artifacts are discovered during construction, the LOCAL GOVERNMENT shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at the Washington State Office of Archeology and Historic Preservation.

The LOCAL GOVERNMENT shall require this provision to be contained in all contracts for work or services related to ATTACHMENT ONE: SCOPE OF WORK.

**PART V: SPECIAL ASSURANCES**

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

5.01 RCW 43.155.060

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

5.02 WAC 399-30-030(3)

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

5.03 Assignment

Neither this agreement nor any claims arising under this agreement, shall be transferred or assigned by the LOCAL GOVERNMENT without prior written consent of the BOARD.

✓ OK

**PUBLIC WORKS TRUST FUND  
CONSTRUCTION LOAN**

**ATTACHMENT 1: SCOPE OF WORK**

PW-04-691-045

**CITY OF MARYSVILLE**

**WASTEWATER TREATMENT PLANT UPGRADE AND EXPANSION**

1. Provide a clear description of the project to be financed in part by a Public Works Trust Fund loan.

**Wastewater Treatment Plant Improvements-Phase 2**

- expansion of aerated lagoon system to Cells 3A and 3B – 18 additional aerators,
- expanded effluent filtration capacity – expanding capacity from 3.5 to 10.4 mgd (maximum-month capacity),
- additional disinfection facilities (both UV and liquid hypochlorite) – peak flow capacity of 15.6 mgd,
- site improvements including upgrades to plant electrical and control systems,
- additions to the plant operations center for adequate staff support,
- new plant maintenance facility and associated facilities.

**Effluent Transfer Pipeline**

- plan and profile drawings for open-trench pipelines – 1550 feet of 36-inch diameter, and 16,000 feet of two 26-inch diameter HDPE pipelines,
- plan and profile drawings for horizontal directional drilling – two borings for 36-inch diameter HDPE pipe with lengths of 2860 feet and 2115 feet, respectively,
- associated site civil, paving and piping details

*The plant upgrade will be bid in three separate packages to minimize overall project costs as follows:*

- *Wastewater Treatment Plant Improvements – Phase 2*
- *Effluent Transfer Pipeline – Contract A (Open Trench)*
- *Effluent Transfer Pipeline – Contract B (Horizontal Directional Drill)*



**Scope of Work**

Page 2

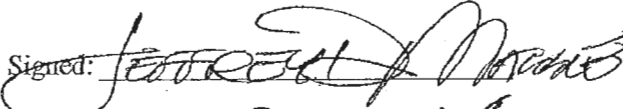
Loan Number PW-04-691-045

2. Identify the project's performance measures.

*The project will allow the City to process collected sewage flows from the Marysville service area with a projected 2020 population of 72,021 (compared to the 1999 population of 42,753) and corresponding 2020 peak hourly flow of 26.5 million gallons per day.*

*By 2004 the City will have met the NPDES Waste Discharge Permit No. WA-00249-7 standards for discharging treated effluent into the Snohomish River estuary.*

3. The term of this loan will be based on an engineer's certification of the expected useful life of the improvements, as stated below, or 20 years, whichever is less. If the local government prefers the term of its loan to be less than either 20 years or the useful life of the improvements, the preferred loan term should be indicated: 20 years.
4. I, Jeffrey D. Massie, P.E., licensed engineer, certify that the average expected useful life for the improvements described above is 20 years.

Signed: 

Date: 3-16-04

Telephone: 360 651 5139

**Scope of Work**

Page 3

Loan Number PW-04-691-045

Estimated Project Costs:

	Total Costs
Engineering	\$ <u>3,715,426</u>
Environmental Review	\$ <u>200,000</u>
Land/R-O-W Acquisition	\$ _____
Public Involvement/Information	\$ <u>50,000</u>
Other Fees	\$ _____
Construction	\$ <u>34,792,551</u>
Construction Inspection & Mgt.	\$ <u>1,505,023</u>
Contingency (___%)	\$ _____
1. Other (Specify)	\$ _____
2. Other (Specify)	\$ _____
<b>TOTAL ESTIMATED COSTS</b>	<b>\$ <u>40,263,000</u></b>

Anticipated Fund Sources:

A. Federal Grants	\$ _____
State Grants	\$ _____
B. Locally Generated Revenue	
General Funds	\$ _____
Capital Budget	\$ <u>1,000,000</u>
Other Fund (Revenue Bonds)	\$ <u>18,263,000</u>
Rates	\$ _____
Assessments	\$ _____
(LID, RID, ULID)	\$ _____
Special Levies	\$ _____
Federal Loan(s) from: (identify all)	\$ _____
_____	\$ _____
_____	\$ _____
State Loan(s) from: (identify all)	
PWTF Loan #PW-01-691-PRE-114	\$ <u>1,000,000</u>
PWTF Loan #PW-02-691-033	\$ <u>10,000,000</u>
Other: (identify sources)	\$ _____
_____	\$ _____
_____	\$ _____
<b>TOTAL LOCAL REVENUE</b>	<b>\$ <u>30,263,000</u></b>
C. PUBLIC WORKS TRUST FUND LOAN	<b>\$ <u>10,000,000</u></b>

**Scope of Work**

Page 4

Loan Number PW-04-691-045

Calculating Local Percentage:

**Notes:** 1. Grant funds **cannot** be counted as local match.

Calculate as follows:

$$\frac{\text{Total Local Revenue}}{\text{PWTF Loan} + \text{Total Local Revenue}} = \text{Local Percentage } 75.2$$

The local contribution must be at least:

Five percent (5%)	for a loan interest rate of	2%
Ten percent (10%)	for a loan interest rate of	1%
Fifteen percent (15%)	for a loan interest rate of	0.5%

PUBLIC WORKS TRUST FUND

ATTACHMENT II: ATTORNEY'S CERTIFICATION

I, Grant K. Weed, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the City of Marysville

(the LOCAL GOVERNMENT); and

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

Based on the foregoing, it is my opinion that:

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

Grant K. Weed  
Signature of Attorney

5-10-04  
Date

Grant K. Weed  
Name

21 Ave A Snohomish Wa. 98290  
Address