

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

**NUMBER PW-07-962-PRE-118  
CITY OF OLYMPIA**

**PART I: ENTIRE AGREEMENT**

**1 4 3 6 8**

This agreement, and incorporated attachments contains all terms and conditions agreed to by the WASHINGTON STATE PUBLIC WORKS BOARD (referred to as the "BOARD") and the CITY OF OLYMPIA (referred to as the "BORROWER") and no other statements or representations, written or oral, shall be deemed a part thereof. This contract includes ATTACHMENT I: SCOPE OF WORK, which consists of a description of local project activities, certification of the project's useful life, estimated project costs and fund sources; and ATTACHMENT II: ATTORNEY'S CERTIFICATION. These attachments are, by this reference, incorporated into this agreement as though set forth fully herein.

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

PUBLIC WORKS BOARD

*Kelly Snyder*  
Kelly Snyder, Assistant Director

9/10/07  
Date

BORROWER

*Mark Foutch*  
Signature

Mark Foutch  
Print Name

Mayor  
Title

Sep. 5, 2007  
Date

JI 91-6001261  
Federal Taxpayer Identification Number

APPROVED AS TO FORM ONLY

This 4th Day of May, 2007

Rob McKenna  
Attorney General

By: Signature On File  
Andrew Scott  
Assistant Attorney General

## **PART II: INTRODUCTION**

This loan agreement is made and entered into by and between the BOARD, or its successor, and the BORROWER.

Acting under the authority of Chapter 43.155 RCW, the BOARD has awarded the BORROWER a Public Works Trust Fund loan for an approved public works project.

## **PART III: PURPOSE**

The BOARD and the BORROWER 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 BORROWER 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 BORROWER a sum not to exceed \$325,500. The interest rate shall be 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, 2012.

The BOARD may extend the term limit of the Pre-Construction project to twenty years when the jurisdiction demonstrates that construction for this project will occur. The BORROWER must provide written documentation of construction funding commitment before the first principal payment is due.

### **4.02 Eligible Project Costs and Local Project Share**

Eligible project costs must consist of expenditures eligible under WAC 399-30-030 and be related only to project activities described in ATTACHMENT I: SCOPE OF WORK. Only those costs incurred after execution of this loan agreement can be reimbursed with Public Works Trust Fund monies.

The BORROWER pledges to use an amount of local funds as local project share of not less than 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. The amount of the local funds will be verified at project closeout. Expenditures made up to twelve (12) months prior to the execution of the loan agreement and verified at the time of project closeout may be used as match for local project share. Any increase in the percentage of local funds may require an adjustment in the loan amount or interest rate charged, or both. The interest rate adjustment will apply to the remaining payments beginning the fiscal year

of closeout. The BORROWER agrees to execute the Certified Closeout Amendment as an amendment to this agreement adjusting the loan amount or interest rate, as appropriate.

#### 4.03 Disbursement of Loan Proceeds

The availability of funds in the Public Works Assistance Account is a function of tax collection, loan repayment, and legislative appropriation. If funding or appropriation is not available at the time the invoice is submitted, or when the agreement is executed, the issuance of warrants will be delayed or suspended until such time as funds become available. Therefore, subject to the availability of funds, warrants shall be issued to the BORROWER for payment of allowable expenses incurred by the BORROWER 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 85% of the eligible actual project costs. The BORROWER shall initiate a loan disbursement using a Washington State Invoice Voucher form. The loan funds will be disbursed to the BORROWER as follows:

Upon formal execution of this agreement, a sum not to exceed seventy-five percent (75%) of the approved Public Works Trust Fund loan may be disbursed to the BORROWER.

At the time of project completion, a Certified Closeout Amendment, (refer to Section 4.17 for Certified Closeout Amendment), shall be submitted to the BOARD by the BORROWER certifying total actual project costs.

The final Public Works Trust Fund loan disbursement shall bring the total loan to the lesser of 85% of the eligible project costs or the total of \$325,500. The Certified Closeout Amendment shall serve as a contract amendment determining the final loan amount, local share, and interest rate.

In the event that the final costs identified in the Certified Closeout Amendment indicate that the BORROWER has received Public Works Trust Fund monies in excess of 85% of eligible costs, all funds in excess of 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 30 days of submission of the Certified Closeout Amendment.

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

All interest earned on Public Works Trust Fund Monies held by the BORROWER shall accrue to the benefit of the BORROWER 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, or
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 BORROWER 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. In event of

termination, all principal, interest earned on invested loan principal, and accrued interest payable shall be repaid in full within 30 days by the BORROWER.

#### 4.05 Time of Performance

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

Failure to meet Time of Performance shall constitute default of this agreement. In the event of extenuating circumstances, the BORROWER 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, regardless of actual project completion, unless terminated sooner as provided herein.

#### 4.06 Repayment

Loan repayment installments are due on July 1<sup>st</sup> of each year during the term of the loan. The first loan repayment is due July 1, 2008. Interest only will be charged for this payment if a draw is made prior to this date. All subsequent payments shall consist of principal and accrued interest due on July 1<sup>st</sup> of each year during the remaining term of the loan.

Repayment of the loan under this agreement shall include an interest rate of 1/2% per annum based on a 360 day year of twelve 30 day months. Interest will begin to accrue from the date each warrant is issued to the BORROWER. The final payment shall be on or before July 1<sup>st</sup>, 2012 of an amount sufficient to bring the loan balance to zero.

The BORROWER has the right to repay the unpaid balance of the loan in full at any time or make accelerated payments without penalty.

The BORROWER 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 Washington State Department of Community, Trade and Economic Development, or its successor.

#### 4.07 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 monthly penalty beginning on the first (1<sup>st</sup>) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be one percent (1%) per month or twelve percent (12%) per annum. The same penalty terms shall apply at project closeout if the repayment of loan funds in excess of eligible costs are not repaid within 30 days as provided for in Section 4.03.

The BORROWER 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 BORROWER of such delinquency.

The BORROWER shall be responsible for all legal fees incurred by the BOARD in any action undertaken to enforce its rights under this section.

#### 4.08 Loan Security

This loan is a revenue obligation of the BORROWER payable solely from the net revenue of the Sanitary Sewer system. 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 BORROWER 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. This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer or solid waste utility project.

Nothing in this section shall absolve the BORROWER 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.

#### 4.09 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 BORROWER and of persons, firms, or organizations with which the BORROWER may contract, involving transactions related to this project and this agreement.

The BORROWER agrees to retain all records pertaining to this project and this agreement for a period of six years from the date of project closeout. 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.

#### 4.10 Reports

The BORROWER shall furnish the BOARD with quarterly progress reports, a Certified Closeout Amendment and other periodic reports at such times and on such forms as the BOARD may require, pertaining to the activities undertaken pursuant to this agreement. Failure to file periodic reports as requested may result in termination of this agreement as per Section 4.13.

#### 4.11 Indemnification

The BORROWER 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 BORROWER 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 BORROWER, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party.

#### 4.12 Amendments, Modifications, Assignments, and Waivers

BORROWER may request an amendment to this agreement, which does not increase the amount of the loan, for the purpose of modifying the ATTACHMENT I: SCOPE OF WORK or for extending the time of performance as provided for in Section 4.05. Neither this agreement nor any claims arising under this agreement may be transferred or assigned by the BORROWER without prior written consent of the BOARD. No conditions or provisions of this agreement may be waived unless approved by the BOARD in writing. No amendment or modification shall take effect until approved in writing by both the BOARD and the BORROWER and attached hereto.

#### 4.13 Termination for Cause

If the BORROWER 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 notify the BORROWER 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 the BORROWER's obligation to repay the unpaid balance of the loan.

#### 4.14 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 appropriated 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 BORROWER. Nothing in this section shall affect BORROWER obligations to repay the unpaid balance of the loan.

#### 4.15 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).

#### 4.16 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.

#### 4.17 Project Completion and Certified Closeout Amendment

The BORROWER shall initiate a Certified Closeout Amendment when activities identified in ATTACHMENT I: SCOPE OF WORK are complete. The BOARD will supply the BORROWER with the Certified Closeout Amendment documents upon request.

The BORROWER shall 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 status of performance measures identified in ATTACHMENT I: SCOPE OF WORK.
5. In accordance with Section 4.03 of this agreement, the BORROWER will submit, together with the Certified Closeout Amendment, a request for a sum not to exceed the loan amount or refund of any excess loan funds. Any final disbursement shall not occur prior to the completion of all project activities.
6. Repayment of excess loan funds disbursed to the BORROWER must be made within 30 days of completion of the Certified Closeout Amendment.

#### 4.18 Contractor Requirement

The BORROWER shall be responsible to ensure that their contractor(s) are in compliance with the Department of Revenue and the Department of Labor & Industries requirements.

#### 4.19 Audit

Audits of the BORROWER'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 BORROWER.

#### 4.20 Project Signs

If the BORROWER 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.

#### 4.21 Nondiscrimination Provision

During the performance of this contract, the BORROWER 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 BORROWER'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 BORROWER may be declared ineligible for further contracts with the

BOARD. The BORROWER shall, however, be given a reasonable time in which to cure this noncompliance.

#### 4.22 Historical and Cultural Artifacts

Borrower agrees that Borrower is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of Borrower's public works project funded under this agreement.

In addition to the requirements set forth in this agreement Borrower shall, in accordance with Executive Order 05-05, coordinate with DAHP, including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed public works project. Borrower agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing pre-requisite to receipt of funds under this agreement.

Borrower agrees to furnish to the Board copies of any monitoring plan or agreement arising from Borrower's coordination and consultation with DAHP or an affected tribe.

Failure by Borrower to fully comply with the requirements set forth in this provision to the satisfaction of the Board shall result in a suspension of loan disbursements or termination of this agreement if not timely cured.

#### 4.23 Competitive Bidding Requirements

The BORROWER 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.

### **PART V: SPECIAL CONDITIONS**

None

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

**PW-07-692-PRE-118  
City of Olympia**

Loan Term: 5 years

Project Title: Sleater-Kinney Sewerage Project

Scope of Work:

Provide surveying, engineering design, review of cultural and historic significance, bid documents preparation, land purchase and permitting needed to construct approximately 2,500 linear feet of gravity sewer pipe, 4,000 linear feet of sewer force main and a sewer pump station.

**Scope of Work**

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Estimated Project Costs:

Engineering Report	\$ 15,000
Environmental Review	\$ 15,000
Cultural and Historical Resources Review (Executive Order 05-05)	\$15,000
Land/ROW Acquisition	\$60,000
Permits	\$15,000
Public Involvement/Information	\$ 3,000
Bid Documents	\$210,000
Construction	\$
Other Fees	\$
Contingency (15 %)	\$ 49,950
Other: _____	\$
<b>TOTAL ESTIMATED COSTS</b>	<b>\$ 382,950</b>

Anticipated Fund Sources:

A.	Federal <b>Grants</b>	\$	<u>0</u>
	State <b>Grants</b>	\$	<u>0</u>
B.	Locally Generated Revenue	\$	_____
	General Funds	\$	_____
	Capital Reserves	\$	_____
	Wastewater Utility	\$	<u>57,450</u>
	Rates	\$	_____
	Assessments (LID, RID, ULID)	\$	_____
	Special Levies	\$	_____
	Federal <b>Loan(s)</b> from: (identify all)	\$	_____
	State <b>Loan(s)</b> from: (identify all)	\$	_____
	Other: (identify sources)	\$	_____
	<b>TOTAL LOCAL REVENUE</b>	\$	<u>57,450</u>
C.	<b>PUBLIC WORKS TRUST FUND LOAN</b>	\$	<u><u>325,500</u></u>

**Scope of Work**

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

Calculate as follows:

$$\frac{\text{Total Local Revenue}}{\text{PWTF Loan} + \text{Total Local Revenue}} = \text{Local Loan Percentage: 15\%}$$

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, Darren Nierobe, 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 Olympia

(the BORROWER); 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 BORROWER 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 BORROWER 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 BORROWER from repaying the Public Works Trust Fund loan extended by the DEPARTMENT with respect to such project. The BORROWER 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 BORROWER.

Darren Nierobe  
Signature of Attorney

9-5-07  
Date

Darren Nierobe  
Name

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Address