

RESOLUTION R- 4236

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN THE PUBLIC WORKS TRUST FUND AGREEMENT WITH THE STATE OF WASHINGTON FOR THE DESIGN IMPROVEMENTS TO THE JUANITA SEWER LIFT STATION.

WHEREAS, the City of Kirkland will be making design improvements to the Juanita Sewer Lift Station; and

WHEREAS, the State of Washington, Public Works Trust Fund Board has agreed to provide a low interest loan to the City of Kirkland for use in the design of the improvements to the Juanita Sewer Lift Station; and

WHEREAS, the City of Kirkland is authorized by RCW Chapter 39.34 to enter into agreements with other governmental entities;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The Public Works Trust Fund Pre-Construction Loan Agreement with the State of Washington Department of Community, Trade and Economic Development is approved and the City Manager or his delegate is hereby authorized to execute the agreement on behalf of the City in substantially the form attached hereto as Exhibit A and incorporated herein by this reference.

Passed by majority vote of the Kirkland City Council in open meeting this 21st day of March, 2000.

Signed in authentication thereof this 21st day of March, 2000.



MAYOR

Attest:



City Clerk

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

**NUMBER PW-99-691-PRE-107
Kirkland**

PART I: ENTIRE AGREEMENT

This agreement, and incorporated attachments, contains all terms and conditions agreed to by the DEPARTMENT and the LOCAL GOVERNMENT. This contract consists of nine 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 DEPARTMENT 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 by
Attorney General

Federal Taxpayer Identification Number

Signature On File
Suzanne Shaw
Assistant Attorney General

January 5, 1999
Date

PART II: INTRODUCTION

This loan agreement is made and entered into by and between the DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT, (or its successor) a department of the state of Washington (referred to as the "DEPARTMENT") on behalf of the PUBLIC WORKS BOARD, or its successor, (referred to as the "BOARD"), and Kirkland (referred to as the "LOCAL GOVERNMENT").

The DEPARTMENT has received an appropriation from the Washington State Legislature under the authority of Chapter 43.155 RCW to provide financial assistance to selected units of local government for the repair, replacement, reconstruction, rehabilitation, or improvement of bridges, roads, domestic water systems, sanitary sewer, and storm sewer systems. 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 DEPARTMENT 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, as well as in the Public Works Trust Fund Application submitted to the BOARD by the LOCAL GOVERNMENT and upon which this agreement is based. The assisted 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 DEPARTMENT, using funds appropriated from the Public Works Assistance Account, shall loan the LOCAL GOVERNMENT a sum not to exceed \$227,500.00. The interest rate shall be one percent (1%) per annum on the outstanding principal balance. The term of the loan shall not exceed 5 years, with the final payment due July 1, 2004.

4.02 Local Project Share

The LOCAL GOVERNMENT pledges an amount of locally-generated revenue not less than thirty percent (30%) 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 DEPARTMENT shall issue warrants 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 seventy percent (70%) 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 provided by the DEPARTMENT. 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 by the DEPARTMENT 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 DEPARTMENT 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 seventy percent (70%) of the eligible project costs or the total of \$227,500.00 whichever is less, nor shall this disbursement occur prior to the completion of all project activities and clearance of all Close-out documents and/or any applicable documents from the Department of Revenue and the Department of Labor & Industries. 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 seventy percent (70%) of eligible costs, all funds in excess of seventy percent (70%) shall be repaid to the DEPARTMENT 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 funds disbursed by the DEPARTMENT and 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 part of the eligible project costs that are in excess of ATTACHMENT I: SCOPE OF WORK estimates. (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.

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, 2000, 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 percent (1%) per annum, calculated on a 360-day year of twelve 30-day months, applied to funds received from the DEPARTMENT. Interest will begin to accrue from the date the DEPARTMENT 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 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 _____

4.08 Default in Repayment

Loan repayments shall be made to the DEPARTMENT 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 DEPARTMENT 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 DEPARTMENT 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 DEPARTMENT 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. _____ **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 DEPARTMENT 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 LOCAL GOVERNMENT agrees to keep such records as the DEPARTMENT may require. Such records will include information pertinent to work undertaken as part of the project, including demonstration of compliance with the terms and provisions of this agreement and all applicable state and local laws and ordinances. The LOCAL GOVERNMENT agrees to retain these records for a period of three years from the date of project completion.

The DEPARTMENT 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.

4.11 Reports

The LOCAL GOVERNMENT, at such times and on such forms as the DEPARTMENT or the BOARD may require, shall furnish the DEPARTMENT 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 4.15.

4.12 Indemnification

The LOCAL GOVERNMENT will defend, protect, indemnify, save, and hold harmless the DEPARTMENT, 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 of either in the performance of this agreement, however caused. In the case of negligence of both the DEPARTMENT 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 DEPARTMENT and the LOCAL GOVERNMENT and attached hereto. No conditions or provisions of this agreement may be waived unless approved by the DEPARTMENT in writing.

4.14 Disputes

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement that is not disposed of by this agreement shall be decided by a panel consisting of a representative of the DEPARTMENT, a representative of the LOCAL GOVERNMENT, and a representative of the BOARD. The panel shall reduce its decision to writing and furnish a copy to all parties to the agreement. The decision of the panel shall be final and conclusive.

This clause does not preclude the consideration of questions of law in connection with decisions provided for in the preceding paragraph provided that nothing in this agreement shall be construed as making final the decisions of any administrative official, representative, or board on a question of law.

4.15 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 DEPARTMENT may terminate the agreement in whole or in part at any time. The DEPARTMENT 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 DEPARTMENT shall declare the entire remaining balance of the loan, together with any interest accrued, immediately due and payable.

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 DEPARTMENT 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 DEPARTMENT:

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. If applicable, copies of the approved closure reports from the Department of Revenue and the Department of Labor & Industries, certifying that all sales taxes have been paid and appropriate industrial insurance and prevailing wages have been paid.

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 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)

The DEPARTMENT reserves the right to add appropriate Minority and Women's Business Enterprise language that is consistent with Initiative 200, which was approved by the voters on November 3, 1998. The DEPARTMENT will advise the LOCAL GOVERNMENT of this language by letter..

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 DEPARTMENT. The LOCAL GOVERNMENT shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute of fact may be resolved in accordance with the Section 4.14, Disputes.

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.

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

PW-99-691-PRE-107

City of Kirkland
(Jurisdiction)

Juanita Sewer Lift Station Replacement Project
(Project Title)

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):

The pre-construction activities for the new Juanita Sewer Lift Station will result in the design of a new facility to replace an existing lift station that is currently situated on the banks of Forbes Creek, surrounded by sensitive area wetlands on all sides. Physically, the current lift station's wet well is inadequately sized for both normal operation and emergency storage. In the event of a control failure there is virtually no response time prior to overflow during peak flows due to the limited size of the wet well. Electrically, the existing system is old, hard to maintain and difficult to diagnose problems due to the lack of schematics and prints for the control systems. Also, the existing generator set is operated by natural gas, which is considered vulnerable in the event of a significant earthquake event.

Under this Public Works Trust Fund loan agreement, the pre-construction activities for the Juanita Sewer Lift Station Replacement Project will consist of a number of major design engineering elements. These elements include the preparation, review and approval of a state Environmental Protection Act (SEPA) checklist, the application and processing of all required Federal, State and local permitting requirements, and the full production of bid-ready plans and specifications for a sewer lift station building and yard enclosure to house mechanical and electrical equipment for the handling of City sewage. The principal design elements will lead to the development of:

- A new primary wet well with a secondary wet well for emergency storage of effluent.
- A new dry well for the housing of pumps, motors, valves and telemetry systems.
- A diesel emergency generator set.
- The connection of existing gravity sewer main lines to the new wet well.
- A new ductile iron force main connection between the new lift station and the existing force main.
- The installation of odor control equipment
- The abandonment of the existing lift station, together with restoration of the surrounding area.

2. The term of this loan will be five years. If the local government prefers the term of its loan to be less than five years, the preferred loan term should be indicated: N/A years.

Signed: _____

Date: _____

Telephone: _____

Scope of Work

Page Two

PW-99-691-PRE-107

Estimated Project Costs:

	Repair or Replacement	Expansion Or Growth	Total
Preliminary Engineering	\$ 180,000	\$	\$ 180,000
Design Engineering	\$ 90,000	\$	\$ 90,000
Bid-document Preparation	\$ 20,000	\$	\$ 20,000
Land/R-O-W Acquisition	\$	\$	\$ -0-
Environmental Studies	\$ 20,000	\$	\$ 20,000
Sales or Use Taxes	\$	\$	\$ -0-
Contingency (5%)	\$ 15,000	\$	\$ 15,000
TOTAL ESTIMATED COSTS	\$ 325,000	\$	\$ 325,000

Anticipated Fund Sources:

A. Federal Grants	\$ -0-
State Grants	\$ -0-

B. Locally Generated Revenue	\$	
General Funds	\$	
Capital Reserves	\$ 97,500	
Other Fund	\$	
Rates	\$	
Assessments	\$	
(LID, RID, ULID)	\$	
Special Levies	\$	
Federal Loan(s) from: (identify all)	\$	
	\$	
State Loan(s) from: (identify all)	\$	
	\$	
Other: identify sources)	\$	
	\$	
TOTAL LOCAL REVENUE	\$	97,500
C. PUBLIC WORKS TRUST FUND LOAN	\$	<u>227,500</u>

Scope of Work

Page 3

PW-99-691-PRE-107

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

Calculate as follows:

$$\frac{\text{Total Local Revenue}}{\text{PWTF Loan} + \text{Total Local Revenue}} = \text{Local Loan Percentage } \underline{30}$$

The local contribution must be at least:

Ten percent (10%)	for a loan interest rate of 3%
Twenty percent (20%)	for a loan interest rate of 2%
Thirty percent (30%)	for a loan interest rate of 1%