

SEWER UTILITY
CONSERVATION LOAN AGREEMENT

This Loan Agreement (the Agreement) is made and entered into this ____ day of _____, _____, by and between the City of Tacoma Public Works Department, Sewer Utility Division (the City) and _____, (the Borrower) on the following terms and conditions:

RECITALS

1. As authorized by the Constitution of the State of Washington, the City of Tacoma Department of Public Works, Sewer Utility Division lends funds to City of Tacoma Sewer Utility customers for purchase and installation of equipment that will conserve conveyance and treatment capacity in the City's sewer systems, or which will reduce pollution to public waters.
2. The Borrower wishes to purchase and install sewer conservation equipment. The City has agreed to lend to the Borrower the sum of up to _____ dollars and _____ cents (\$ _____) which total sum shall be used for a qualifying sewer conservation project to be completed at the Borrower's property located at _____, Tacoma, Pierce County, Washington, and more particularly described in Exhibit A, attached hereto and by this reference made a part hereof.

AGREEMENT

1. Terms of Loan

- a. Amount: _____ Dollars (\$ _____)
- b. Term: _____ (____) years.
- c. Interest Rate: _____ % based on a 360 day year.
- d. Default Interest Rate: Twelve percent (12%)
- e. Late Charges: 5% of scheduled payment per 30 day period, if any payment is more than fifteen (15) days past due.
- f. Payment Schedule: _____
- g. Prepayment Privilege: Open for prepayment at any time. Any amount paid in excess of scheduled payment will be applied to principal.
- h. Application Fee: \$ _____ payable and fully earned upon application for Loan by Borrower.

3. Purpose of Loan. The Borrower warrants that the Loan proceeds shall be used only for:

4. Disbursements. Subject to the availability of the funds allocated to the Sewer Conservation Loan Fund by the City of Tacoma (the City), and satisfaction of all conditions to the use of the funds as described by law, the proceeds shall be disbursed only for the purposes described above. The making of any disbursement or part of any disbursement, shall not be deemed an approval by the City of any activity of the Borrower. It is the Borrower's duty to obtain all pertinent permits for construction and installation of equipment described above.

The City may require fifteen (15) days advance notice in writing from Borrower before a disbursement shall be called for. All disbursements shall be made at the office of Sewer Utility Source Control, or at such other place as the City may designate and only upon delivery of such certifications, assurances and/or warranties required under any federal state or local law, regulation, or rule, and upon such other adequate documentation satisfactory to the City, including, but not limited to:

- a. evidence that all of the security interests provided for herein are valid and have the priority described below;
- b. copies of the invoice or invoices covering the acquisition of the items of Equipment being financed with the disbursement, together with copies of the bills of sale, if any, conveying such items to Borrower;
- c. evidence satisfactory to the Authority that all insurance coverages are provided in accordance with the provisions of this Agreement;
- d. evidence that all filings, recordings and other actions deemed necessary or desirable by the City in order to establish, protect, preserve and perfect its security interests in the real property have been completed, and that all fees, taxes, and other charges relating to the acquisition or installation of the Equipment have been paid or provided for;
- e. evidence that all representations and warranties of the Borrower are true and correct in all respects as of the date of the making of the disbursement and that no default or event of default shall be in existence on the date of making the disbursement; and
- f. full performance of all of Borrower's obligations under this Agreement and the Loan Documents due on or before the date of disbursement.

4. Security. As security for the Loan, the Borrower agrees to execute and deliver to the City the following documents (the Loan Documents):
 - a. a promissory note in form and content satisfactory to the City:
 - b. the Real Estate Lien in form and content satisfactory to the City.
5. Insurance. Borrower will obtain and maintain with a company or companies and in amounts satisfactory to the City and for the benefit of the City, insurance policies on the real property covered by the Real Estate Lien and the Borrower's personal property located thereon against loss or damage by fire or other hazards, for the full replacement value thereof, or such other value as may be reasonably required by the City; and the Borrower's activities thereon against any liability customarily covered by a comprehensive general liability policy. Borrower shall provide the City, upon request, with proof of insurance satisfactory to the City.
6. No Sales or Other Transfers. If the real property covered by the Real Estate Lien or any interest of the Borrower therein is sold, leased, or otherwise transferred, including any voluntary or involuntary transfer, or transfer by operation of law, excluding, however, the creation of a lien or encumbrance subordinate to the City's security interest therein, without the prior written consent of the City, then the City may declare the Loan immediately due and payable. This provision shall apply to each and every sale, transfer, conveyance or encumbrance, regardless of whether or not the City has consented or waived its rights, whether by action or inaction, in connection with any previous sale, transfer, conveyance or encumbrance, whether one or more.
7. Borrower's Covenants. In addition to the other requirements of this Agreement, the Borrower covenants and agrees to all of the following:
 - a. Borrower will promptly give written notice to the City of the occurrence of any default or event of default under this Agreement or any of the other Loan Documents.
 - b. Borrower will not make or authorize any improvement, change, addition or alteration to the real properties covered by the Real Estate Lien if such improvement, change, addition or alteration will impair the value of the real property covered by the Real Estate Lien as it existed prior to such improvement, change, addition or alteration.
 - c. Borrower shall not create, incur, assume, or suffer to exist any lien upon any of the real property covered by the Real Estate Lien, except liens or charges for current taxes, assessments or other governmental charges that are delinquent, purchase money security interests for property acquired by the Borrower which is not part of the collateral and liens subordinate to the City's interests provided for herein.

9. Consent to Default No consent or waiver, express or implied, by the City, to any breach or default by Borrower in the performance by Borrower of its obligations hereunder, shall be deemed or construed to be a consent to or waiver of such breach, or any other breach or default, in the performance by Borrower hereunder.
10. Conditions. The obligations of the city hereunder are specifically conditioned upon the completion or satisfaction of all of the following conditions at or prior to closing:
- a. the availability of funds from the Sewer Conservation Loan Fund;
 - b. the execution and delivery of all loan Documents by the Borrower and the completions of all of Borrower's obligations as provided herein; and
 - c. the loan is closed on or before _____ () months from the date of this agreement.
11. Default. In any of the following events, all obligations on the part of the City to make the Loan or to make any further advances shall, if the City so elects, cease and terminate, and the Note and all of the obligations of the Borrower under the Note and other Loan Documents, at the option of the holder thereof, shall become immediately due and payable:
- a. if the real property covered by the Real Estate Lien or Borrower's personal property located thereon, is encumbered in any way not provided for herein, without the consent of the City;
 - b. if the borrower shall fail to comply with any of the terms, covenants or conditions contained in this Agreement, the Note, or the other Loan Documents; or
 - c. if a petition in bankruptcy is filed by or against the Borrower or a receiver or trustee of the Borrower or a Guarantor is appointed, or if Borrower files a petition for reorganization, under any of the provisions of the bankruptcy laws, or any other laws, state or federal, or makes an assignment for the benefit of creditors, or is adjudged insolvent by any state or federal court of competent jurisdiction.

If Borrower is in default in any way hereunder, such default shall be a default under the terms of the Note and the Loan Documents, and the City shall have any and all rights and remedies provided therein, and/or by applicable law. In addition, in the event of such default, the city may, at its option, take any actions to preserve and protect the conservation equipment, the real property covered by the Real Estate Lien and the borrower's personal property located thereon, including any improvements thereon, and pay all bills and expenses, complete any construction of

any improvements deemed necessary or appropriate by the City and do such other things as may, in the discretion of the City, be reasonable and necessary for protection of the City's interest in the conservation equipment, the real property covered by the Real Estate Lien, and in the borrower's personal property located thereon, and any and all such amounts expended shall be deemed to have been advanced under the terms of the Loan and made in accordance with the terms of this Agreement.

12. Warranties of Borrower. Borrower warrants and certifies to the City that as of the closing of the Loan:
- a. all of the information and documents provided by Borrower to the city in connection with the Loan are true, correct, and complete;
 - b. on the date of each disbursement hereunder Borrower shall have good and marketable title to the real property covered by the Real Estate Lien and all of the Equipment covered by such disbursement subject to no liens except those specifically permitted herein and the security interests therein created in favor of the City;
 - c. on the date of each disbursement, the city shall have a legal, valid and continuing security interest in the Premises, subject to no other liens except as provided herein, and all filings, recordings and other actions necessary or desirable in order to establish, protect and perfect such security interest in favor of the City will have been duly effected, and all taxes, fees and other charges in connection therewith shall have been duly paid;
 - d. this Agreement has been duly authorized, executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms; and
 - e. when executed and delivered, the other Loan Documents shall have been duly authorized, executed and delivered by Borrower and shall constitute legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms; and

13. Miscellaneous

- a. Limitation on Assignment. This Agreement, and the Loan Documents, are nonassignable and nontransferable by Borrower, by operation of law, or otherwise, and any attempt to do so shall be null and void. This Agreement and the Loan Documents may be fully assigned by the City.
- b. Time of Essence. Time is of the essence in the performance of all of Borrower's obligations hereunder.

- c. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington. The reference to any law, ordinance, regulation or rule shall include any amendments, replacements, or other changes in form or content thereof.
- d. Attorney's Fees and Costs. In the event either party commences any proceeding to enforce the Agreement, the prevailing party therein shall be entitled to an award of all of its costs and expenses incurred therein and in connection therewith, including its reasonable attorney's fees.
- e. Survival of Agreement. This Agreement and all of the terms hereof shall survive the closing of the Loan provided for herein and be and remain one of the Loan Documents for the entire term of the Loan and as applicable thereafter.
- f. Entire Agreement. This agreement, and the documents executed pursuant hereto, contain the sole and entire agreement and understanding of the parties with respect to the subject matter hereof, and incorporate all prior discussions, negotiations and understandings. This Agreement cannot be changed, modified or amended, except in writing, executed by all parties hereto. This Agreement is solely for the benefit of Borrower, and no person shall be deemed a third party beneficiary of this Agreement.
- g. Notice Concerning Oral Agreements. Oral agreements or oral commitments to lend money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

Tacoma Sewer Utility

By _____

Title _____

Address: 2201 Portland Avenue
Tacoma, WA 98421-2711

Borrower

By _____

Address: _____

Exhibit A

LEGAL DESCRIPTION:

Situated in the County of Pierce, State of Washington.