

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 82-367
THE METROPOLITAN SERVICE DISTRICT	)	
(METRO) TO ENTER INTO A LOAN	)	Introduced by the
CONTRACT WITH THE DEPARTMENT OF	)	Executive Officer
ENVIRONMENTAL QUALITY (DEQ) TO	)	
FINANCE AND CONSTRUCT THE SANITARY	)	
SEWER IN EAST BURNSIDE.	)	

WHEREAS, Metro unanimously passed Resolution No. 82-344 on July 22, 1982, authorizing Metro to apply for a loan to the Oregon Department of Environmental Quality (DEQ) on behalf of the Central County Service District of Multnomah County and the city of Gresham for the purpose of constructing a sanitary sewer in East Burnside; and

WHEREAS, On September 2, 1982, the legislative Emergency Board ordered DEQ to make a \$3 million loan to Metro for the purpose of constructing said sanitary sewer subject to certain conditions; and

WHEREAS, On October 28, 1982, the Metro Council adopted Resolution No. 82-363 authorizing Metro to enter into an Intergovernmental Agreement for the purpose of delineating the roles and responsibilities of the appropriate parties in the financing and construction of such sanitary sewer; and

WHEREAS, The Metro Council certifies that Metro is statutorily authorized to execute said loan agreement with DEQ under which Metro will receive a \$3 million loan from DEQ as pass-through agent for construction of sewer lines in the East Burnside light rail corridor; now, therefore,

BE IT RESOLVED,

That the Executive Officer is hereby authorized to enter into a loan contract with DEQ which exempts Metro from any loan repayment responsibilities and delineates Metro's responsibilities in relationship to handling the loan proceeds.

ADOPTED by the Council of the Metropolitan Service District  
this 28th day of October, 1982.

  
\_\_\_\_\_  
Presiding Officer

SB/gl  
7030B/318  
10/20/82

STAFF REPORT

Agenda Item No. 7.2

Meeting Date 10/28/82

CONSIDERATION OF RESOLUTION NO. 82-367 FOR THE PURPOSE OF AUTHORIZING METRO TO ENTER INTO A \$3 MILLION LOAN CONTRACT FOR THE FINANCING AND CONSTRUCTION OF SEWERS IN EAST MULTNOMAH COUNTY IN CONJUNCTION WITH CONSTRUCTION OF LIGHT RAIL TRANSIT.

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Date: October 28, 1982

Presented by: Phillip Whitmore

FACTUAL BACKGROUND AND ANALYSIS

The factual background and analysis are essentially identical to the previous agenda item with the following additional information. The loan contract was completed by DEQ on October 19, 1982. Therefore, it has not been presented to the Council Coordinating Committee or to the Regional Development Committee. The provisions affecting Metro in the loan contract are the same as the revisions in the Intergovernmental Agreement. Specifically:

1. Metro is the applicant and recipient of the loan.
2. Metro functions as a pass-through agent with no responsibility for loan repayment.
3. Metro is entitled to \$10,000 for its expenses.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer has reviewed the loan contract and is satisfied that it is useful and prudent for Metro to enter into the loan contract on the behalf of the city of Gresham, and the Multnomah County Central County Service District.

COMMITTEE CONSIDERATION AND RECOMMENDATION

The loan agreement has not been presented to any Metro committees.

SB/gl  
7030B/318  
10/20/82

## LOAN AGREEMENT

This Loan Agreement effective November 1, 1982 is between the DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) and the CITY OF GRESHAM (CITY), the MULTNOMAH COUNTY CENTRAL COUNTY SERVICE DISTRICT (DISTRICT), the METROPOLITAN SERVICE DISTRICT (METRO), and MULTNOMAH COUNTY (COUNTY). In consideration of the mutual covenants and agreements herein and other good and valuable consideration the parties agree as follows:

Subject to the terms and conditions which follow, DEQ makes a loan to CITY, DISTRICT and COUNTY in the amounts set forth in Paragraph B. Transfer of the proceeds of the loan shall be made directly to METRO which shall act as agent (with fiduciary responsibilities) for CITY, DISTRICT and COUNTY through the construction phase of the project which is defined in Paragraph A. CITY and DISTRICT shall own and operate the project as set forth in paragraph A. The relationship of the parties shall be as further described in Attachment A, Intergovernmental Agreement. If there are any inconsistencies between the obligations of the parties set forth in this LOAN AGREEMENT and Attachment A, this LOAN AGREEMENT shall be controlling.

### A. Project Description

The project shall consist of the construction of sewer lines as described in Attachment A, together with design, engineering and such other sewer lines, pump station and appurtenances as may be needed to assure an operable project. State funds shall be applied first to fully complete sewer construction

within the Light Rail Line project. Funds in excess of this need may then be applied in priority order to (1) reimbursement for design and engineering costs, and (2) construction outside the right-of-way necessary to connect the light rail corridor sewers to existing sewers so as to make the project operable. In the event state loaned funds and accrued interest thereon are in excess of the need for the project, the excess shall be returned to DEQ to be applied to loan interest and principal. In the event state loaned funds are insufficient to fund completion of an operable system, the CITY, DISTRICT and COUNTY agree to complete their respective portions using locally derived or other funds by not later than 1987.

B. Loan Amount

The total amount of the loan shall be \$3,000,000. CITY shall be initially responsible for repayment of \$1,500,000 plus interest accrued thereon pursuant to the maturity schedule set forth in Attachment B. DISTRICT and COUNTY shall be jointly and severally initially responsible for repayment of \$1,500,000 plus interest accrued thereon pursuant to the maturity schedule set forth in Attachment C. METRO shall not be responsible to repay the loan, except excess funds, if any, shall be returned to DEQ as provided in paragraph A. Pursuant to the procedures in paragraph D the parties shall revise the maturity schedules based upon actual construction costs incurred to reallocate principal and corresponding interest but not to extend the payment

schedule.

C. Plans and Specifications

Engineering plans and specifications for all sewerage facilities constructed with funds provided pursuant to this agreement, shall be submitted to DEQ for review and approval prior to construction as required by ORS 468.742. Such plans shall clearly delineate the respective ownerships of CITY and DISTRICT and shall become a part of this agreement upon approval. Significant change orders necessary during construction shall also be submitted to DEQ for approval.

D. Revisions

During the course of sewer construction, this agreement may be revised upon signature of all parties. Repayment provisions may be modified by separate individual agreements between DEQ and CITY or between DEQ and DISTRICT and COUNTY. Execution of a modified repayment agreement with one party shall not adversely affect the obligation of the other party or parties.

E. Further Assurances and Covenants

Attachment D is incorporated herein.

This loan is offered pursuant to the above terms this 1st day of November, 1982.

For the DEPARTMENT OF ENVIRONMENTAL QUALITY

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William H. Young, Director

This loan is accepted pursuant to the above terms.  
Signators warrant that they have been duly authorized pursuant to their applicable statutes, charters, ordinances and resolutions, to execute this LOAN AGREEMENT on behalf of their jurisdiction and that the LOAN AGREEMENT is binding upon the respective jurisdictions.

For the CITY OF GRESHAM

\_\_\_\_\_  
Mayor Date \_\_\_\_\_

\_\_\_\_\_  
City Manager Date \_\_\_\_\_

For the MULTNOMAH COUNTY CENTRAL COUNTY SERVICE DISTRICT

\_\_\_\_\_  
Date \_\_\_\_\_

For the METROPOLITAN SERVICE DISTRICT

\_\_\_\_\_  
Date \_\_\_\_\_

For MULTNOMAH COUNTY

\_\_\_\_\_  
Date \_\_\_\_\_

*approved as to form*  
*John Fealey*  
*County Council*  
Page 4 - LOAN AGREEMENT

INTERGOVERNMENTAL AGREEMENT

This Agreement is by and between the Metropolitan Service District (METRO), 527 S. W. Hall Street, Portland, Oregon 97201; the Tri-County Metropolitan Transportation District (TRI-MET), 4012 S. E. 17th Avenue, Portland, Oregon 97202; the City of Gresham, Oregon (the "CITY"), 1333 N. W. Eastman Avenue, Gresham, Oregon 97030; the Multnomah County Central County Service District (the "DISTRICT"), 2115 S. E. Morrison Street, Portland, Oregon 97214; and Multnomah County, Oregon (the "COUNTY"), 1021 S. W. Fourth Avenue, Portland, Oregon 97204. This Agreement is effective as of November 1, 1982.



## RECITALS

1. In order to provide for future urban growth along the Banfield light rail line in East Multnomah County, it is necessary that sewer lines be installed in that area.

2. Tri-Met is presently beginning construction of the Banfield Light Rail Transit project (LRT), a portion of which runs along East Burnside Street. Such construction will include excavation in that right-of-way, which excavation could include the installation of sanitary sewer lines. Such sewer line installation after construction of the LRT would necessitate duplicative excavation of the same area resulting in possible disruption of the LRT system, Burnside Street auto traffic, and require additional excavation. Consequently, it would be in the public interest to install necessary sanitary sewer lines in the corridor in conjunction with construction of the LRT.

3. In addition to sewer line construction in the LRT corridor by Tri-Met, it is also contemplated that the City and the District will construct and install connecting sewer lines within their drainage basins in conjunction with the lines to be constructed by Tri-Met.

4. The Oregon Department of Environmental Quality (DEQ) has been authorized by the State Emergency Board to loan not to exceed \$3 million from the Pollution Control Bond Fund for construction of sanitary sewers in the East Burnside LRT Corridor, subject to certain conditions provided in a letter of August 10, 1982, from the DEQ to the State Emergency Board, a copy of which is attached hereto as Attachment A and incorporated herein.

5. It is the purpose of this agreement, which is authorized by ORS ch. 190, to specify the relationship and obligations of the parties hereto with respect to the receipt, investment, expenditure and repayment of the above-mentioned DEQ loan and the design, engineering, construction, inspection, use and ownership of the sewer lines to be installed and financed by that loan.

6. The sewer lines to be financed and constructed pursuant to this agreement are as described in Attachments B, C, D and E hereto which are incorporated herein.

Wherefore, the parties agree as follows:

A. Responsibility of Metro.

1. Metro shall be the applicant for and recipient of the DEQ loan and shall hold and invest the proceeds of said loan in a prudent manner and in accordance with Oregon State law regulating investment by municipal corporations.

2. Metro's role in providing loan funds to other parties hereto shall be that of pass-through agent. Metro shall provide funds, not to exceed \$3 million, plus accrued interest thereon, from the DEQ loan to Tri-Met, the City and the District for the design, engineering, construction, installation and associated costs of the sewer lines. Such provision of funds shall be made based upon detailed monthly billings from Tri-Met, the City and the District in such amounts as are necessary to defray Tri-Met's, District's and City's costs of constructing the sewer lines provided for herein. Billings for work performed by Tri-Met under Attachment B shall be approved by the City before submission to Metro. Billings for work

performed by Tri-Met under Attachment C shall be approved by the District before submission to Metro. All such billings from Tri-Met shall be approved by the City or District, within seven (7) days of presentation by Tri-Met and prior to submission to Metro for payment, and Metro shall pay approved billings within seven (7) days of receipt thereof. All billings from the City and District under Attachments D and E shall be submitted to Metro for payment and Metro shall pay such billings within seven (7) days of receipt thereof.

3. Metro shall in no way be obligated to repay the DEQ loan or the accrued interest thereon from its own funds or resources or otherwise; provided however, that Metro shall return to DEQ all loan funds and interest income received by Metro but not needed, obligated or expended for design, inspection, administration, and construction of the sewer lines. Return of such excess funds shall require the written consent of all parties hereto. Such return shall be credited to the City and the District in the same proportion as the total amount of each jurisdiction's obligation bears to the total amount of the loan.

4. Metro shall be entitled to reimbursement of its necessary and appropriate legal and administrative expenses, incurred in preparation of and as a result of this agreement, from the proceeds of the loan or, paragraph 3 above notwithstanding, from the interest income earned and received by Metro from investment of loan proceeds. Such reimbursement shall be in the total amount of \$10,000 and shall be in the form of two transfers of \$5,000 each from the loan funds to the Metro general fund, such transfers to be made in June 1983 and June 1984.

B. Responsibilities of Tri-Met.

1. Tri-Met shall construct and install, or cause to be constructed and installed, the sewer lines described in Attachments B and C. Such construction and installation shall be accomplished in conjunction with the construction of the LRT in the East Burnside Corridor. Tri-Met will carry out its responsibility to construct the sanitary sewer lines fully described in Attachments B and C in accordance with the detailed plans and specifications submitted by the County and City and shall obtain all City and County permits and approvals required for the sewer lines. Tri-Met will competitively bid and award a Construction Contract to a single General Contractor for constructing the LRT and the sewer lines. In performing the work required by this Agreement, Tri-Met shall comply with all terms and conditions for third party contracts as required by the UMTA Third-Party Contracting Guidelines. Tri-Met will provide staff consultants to administer contracts for constructing the sewer lines.

2. Tri-Met will award the construction contract required to build the sewer lines to the lowest responsive and responsible bidder. Tri-Met shall require the contractor to bid the project separately from any Light Rail improvements and require contractor's invoices to separate out costs for the City and District's portion or the sewers associated with construction.

3. Tri-Met shall provide detailed monthly billings to Metro for work performed on the construction and installation of the sewer lines and shall certify therewith that said work has been performed pursuant to the specifications of the project.

4. Tri-Met shall have no financial obligation to DEQ or any of the parties hereto with respect to repayment of the loan.

5. Tri-Met shall maintain detailed and accurate records and accounts of all funds expended and all work performed in pursuance of this agreement, and shall make such records and accounts available to any party hereto and to the State of Oregon for inspection at any reasonable time. In addition, Tri-Met shall provide to the parties and to the DEQ monthly program reports on the construction and installation of the sewer lines.

6. Tri-Met shall permit the District or City project managers and any other City or District personnel directly associated with this project access to the project site to observe and inspect the work during construction.

C. Responsibilities of the City, County and District.

1. Project plans and specifications shall be provided by the District and the City. Such plans and specifications, and all bids and bid documents, shall be approved by the parties hereto in writing prior to execution of any subcontracts for construction and installation of the sewer lines. All design changes, change orders and extra work orders shall be approved by the City and District. All such approvals shall be by the City and District engineers. Any changes or modifications requested by the District or City in the Construction Documents relative to the project subsequent to District submission of plans and written authorization to proceed shall be made at City or District expense. District and City shall hold Tri-Met harmless from any damages or additional cost as a result of a District or City directed change.

2. The City and District may construct and install, or cause to be constructed and installed, the sewer lines described in Attachments D and E. Such construction and installation shall be accomplished in conjunction with construction of the LRT in the East Burnside Corridor and shall be in accordance with the plans and specifications provided by the City and District therefore. The City and District shall provide detailed monthly billings to Metro for payment from loan funds. The City and District shall maintain detailed and accurate records and accounts of all funds expended and all work performed in pursuance of this Agreement, and shall make such records and accounts available to all parties and to the State of Oregon at any reasonable time.

3. The City, County and District shall have full financial responsibility for the repayment of the DEQ loan not to exceed a total of \$3 million plus accrued interest. Said financial responsibility shall be apportioned, and repayment shall be made, as indicated in the loan agreement between DEQ, Metro, City, County and District. The amount apportioned to the City shall be the responsibility of the City. The amount apportioned to the District and the County jointly shall be the primary responsibility of the District; provided, however, that should the District be unable for any reason to make timely repayment of the County's and District's allocated share of the loan, the County shall have full responsibility for repayment of that share.

4. The District and the City shall own in fee simple absolute interest in the sewer lines to be installed and constructed pursuant to this Agreement. Specifically, the District and the City shall separately own that portion of the sewer line designated in

Attachments B, C, D and E as being the responsibility and property of each respectively. All parties agree to execute any and all deeds, easements or other documents of title which may be necessary to carry out the purpose of this paragraph. District and City shall be responsible for maintenance of the sewer lines and all costs associated therewith.

5. The City, County and District hereby certify that the placement of the sewer lines described in Attachments B, C, D and E is consistent with their respective comprehensive plans, zoning ordinances and other applicable plans, ordinances and regulations.

6. It shall be the responsibility of the County and City to inspect their respective portions of the construction and installation of the sewer lines and to accept and certify the lines, once completed, as being in compliance with applicable state and local construction and specialty codes and as being consistent with the approved plans and specifications therefor. Upon receipt of Tri-Met's notice that the project is ready for final inspection and acceptance and upon receipt of a final invoice, District and City will make inspection, and when District and City find the work acceptable under this Agreement, District and City will approve final payment to Tri-Met and forward to Tri-Met and Metro a written letter accepting the Project. The date of this letter shall be the Date of Final Completion.

7. Repayment of the loan by City, County and District shall be made directly to the State of Oregon in accordance with the loan agreement between DEQ, Metro and other parties.

8. The City and District shall each designate in writing a representative who shall have authority to approve billings prior

to submission to Metro.

9. District and City shall have the responsibility of providing any relocation assistance and any such relocation shall be accomplished pursuant to Titles II and III of the Uniform Relocation Assistance and Real Property Policies Act of 1970 or other applicable state law. Tri-Met shall not bear any costs associated with the relocation of any utilities required as a result of the sewer project.

D. Miscellaneous Provisions.

1. Coordination and Disputes: Disputes which may arise between or among the parties shall be resolved by submission of the dispute by any party to a committee of the parties. Such committee shall consist of a designated representative of Tri-Met, the City and the District. A decision of a majority of the committee members shall be binding on all parties and shall be implemented by the party responsible pursuant to this Agreement. The designated representatives shall also be responsible for project coordination and shall be the official contact persons by whom and through whom the parties shall communicate.

2. Liability: Liability for damages for injury to persons or property resulting from the design and engineering of the sewer lines shall be with the City or District depending upon which agency prepared the design and engineering documents which result in such injury. Liability for injury to persons or property resulting from construction and installation of the sewer lines shall be with



Tri-Met for the portion of the lines to be installed by Tri-Met, and with the City for the portion of the lines to be installed by the City, and to the District for the portion to be installed by the District. Tri-Met, the City and the District shall defend and hold all other parties harmless from any claims of negligence or injury arising from the design, engineering, construction or installation of the lines which are the responsibility of Tri-Met, the District or the City respectively. Tri-Met shall require its Contractor and Subcontractors to hold Metro, County, City and District harmless, in sums not less than each party's maximum liability under the Oregon Tort Claims Act and to post a 100 percent Performance Bond for Project work.

3. Delays and Overruns: The parties understand that installation of the sewer lines may cause some delays, alterations and consequential cost increases in the construction of the LRT, and that Tri-Met should not bear the amount of such cost increases over and above that amount which is reasonably foreseeable as a necessary consequence of joint construction of the LRT and the sewer lines. Therefore, Tri-Met will be responsible only for increased LRT construction costs which are reasonably foreseeable as a necessary consequence of joint construction; provided, however, that cost increases on the LRT construction which occur as a direct result of joint construction of the sewer lines and which are beyond the costs which could reasonably have been anticipated by Tri-Met shall be paid by Metro from the DEQ loan funds in accordance with section A2 of this Agreement. Conversely, construction of the LRT may cause delays, alterations, deficiencies and consequent cost increases in construction of the sewer lines which cost increases should not be

borne by the City and County over and above the amount which could reasonably be foreseen as a necessary consequence of joint construction. Therefore, increased costs of sewer line construction which result from delays, alterations or deficiencies in construction of the LRT shall be the responsibility of Tri-Met and shall not be charged to the DEQ loan funds. Disputes relating to the allocation of such costs shall be resolved pursuant to section D1 of this Agreement.

4. Inspections: Inspections of construction and installation shall be performed by the District and City with respect to sewer lines in their respective jurisdictions. Inspectors shall have authority to order any termination, suspension or alteration of project work through Tri-Met and shall not give instructions directly to contractors.

5. The parties understand that funds to pay for the construction of the Light Rail Project will be made available from the United States Department of Transportation through the Urban Mass Transportation Administration (UMTA) and in accordance with UMTA Grant Agreement with Tri-Met. If this Agreement is disapproved by UMTA, Tri-Met is not liable for performance and may suspend or terminate this Agreement, without penalty, until such time as this Agreement is approved. Tri-Met shall notify the parties promptly in writing of the nonallocation, delay, or disapproval of funding.

6. All notices provided for hereunder shall be in writing and sufficient if deposited in the United States Mail, postage prepaid, to the parties addressed as indicated on page 1 of this Agreement.

7. This constitutes the entire, complete, and final expression of the Agreement of the parties, and this Agreement shall be interpreted under the laws of the State of Oregon.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter indicated.

For Metro:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

For District:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

For County:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

For Tri-Met:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

For City:

*James R. Keller*  
\_\_\_\_\_

Date: October 20, 1982

Approved as to form:

\_\_\_\_\_  
(Metro General Counsel)

\_\_\_\_\_  
(Multnomah County Counsel)

*Thomas Spensler*  
\_\_\_\_\_  
(Gresham City Attorney)

*M. Bruce Plym*  
\_\_\_\_\_  
(Tri-Met Legal Counsel)

AJ/gl/6877B/242



## Department of Environmental Quality

522 SOUTHWEST 5TH AVE, PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

August 10, 1982

The Honorable Fred W. Heard, Co-Chairman  
 The Honorable Hardy Myers, Co-Chairman  
 State Emergency Board  
 115 State Capitol  
 Salem, OR 97310

Gentlemen:

The Department of Environmental Quality (DEQ) respectfully requests Emergency Board authorization to loan up to \$3,000,000 in Pollution Control Bond Funds for construction of sewer lines along the East Burnside Eight Rail Corridor by the City of Gresham and the Multnomah County Central Service District.

### NATURE OF THE EMERGENCY

The Portland-Gresham Light Rail project has been in various stages of planning for several years. Land use plans call for construction of sewers to eliminate discharge of wastes to the ground water aquifer via cesspools and to accommodate the greatly increased densities of development that are projected along the light rail corridor.

Tri-Met is now preparing to obtain bids for initial construction on the East Burnside section between 102nd and 197th avenues. Failure to install sewers as part of the initial construction will lead to significantly increased costs later and potential disruption of light rail service. The regional sewerage plan assigns responsibility to the Multnomah County Central County Service District for sewer construction between 102nd and about 148th. Gresham is assigned responsibility for providing sewer service in the section between 148th and 197th. Unfortunately, detailed planning for financing and constructing sewers has lagged far behind the planning for the Light Rail project, with the result that the responsible agencies are unable to secure financing through regular process in the time now available.

Gresham and Multnomah County have therefore asked the Metropolitan Service District (METRO) to apply on their behalf to the Department for a loan of funds from the Pollution Control Bond Fund to permit sewers to be constructed as part of the initial Light Rail project construction. Gresham and the Multnomah County Central County Service District would be

The Honorable Fred W. Heard  
The Honorable Hardy Myers  
August 10, 1982  
Page 2

responsible for repayment of the loan. Several possible alternatives for repayment were identified, but none are formally in place. A commitment to sewer construction must be made before repayment arrangements can be formally put in place.

#### AGENCY ACTION

The Department has reviewed the information submitted by METRO. The Department is authorized to advance monies from the Pollution Control Bond Fund provided the state is assured timely repayment of principal and interest to retire state bonds. This objective has historically been met by purchasing legally authorized General Obligation or Revenue Bonds issued by local governments to finance qualifying pollution control facilities. As a matter of prudent and fiscally secure management of the Bond Fund, unusual loan requests have been submitted to the Legislative Ways and Means Committee or Emergency Board for review. Pursuant to law, specific legislative approval (and appropriation of General Funds for related debt service) is required for any grants from the bond fund.

The Department is prepared to recommend that the Emergency Board concur with a proposal to advance Pollution Control Bond Funds for this project subject to the following:

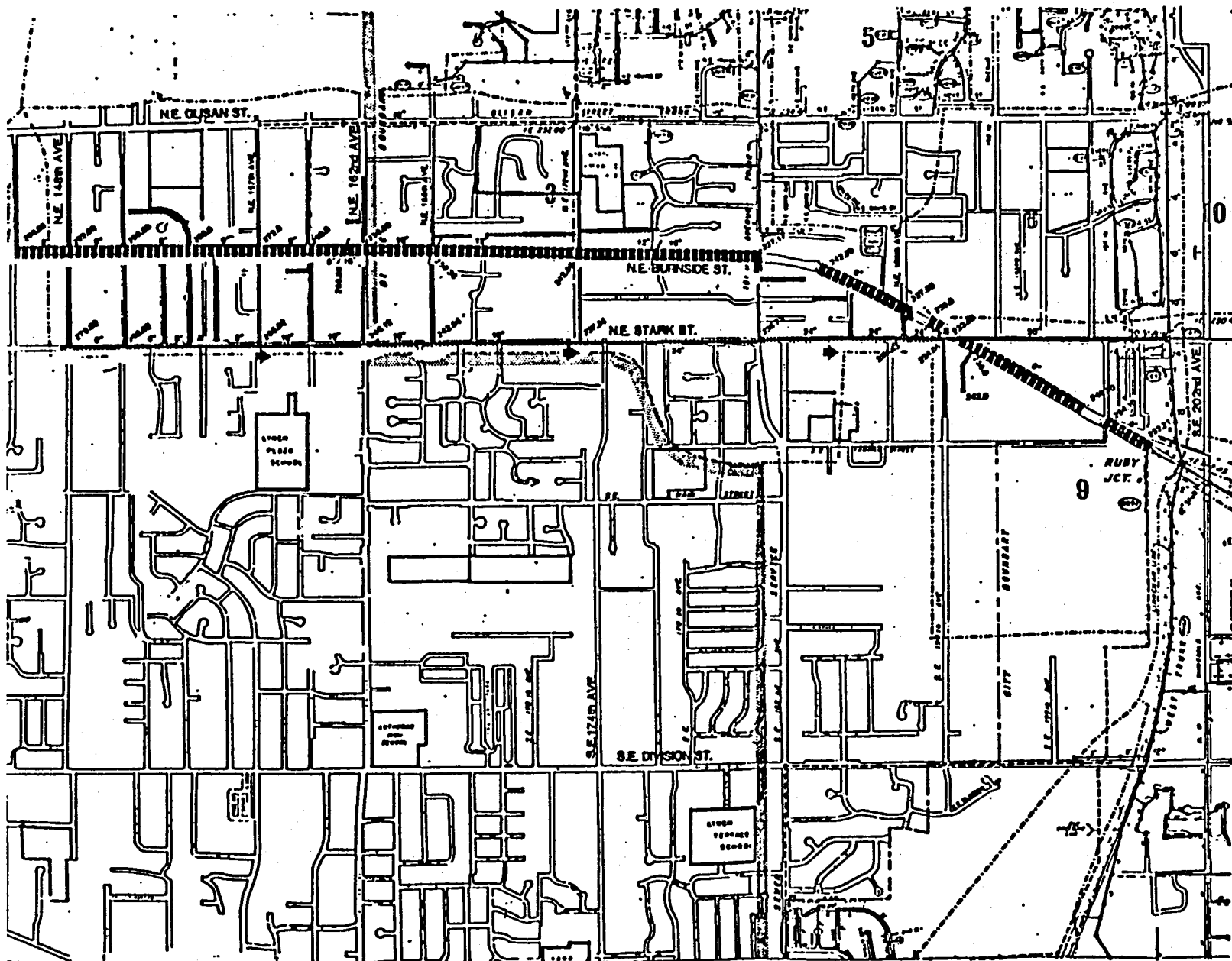
A contract or contracts will have to be executed between the Department and the appropriate responsible local governments wherein they accept full responsibility for the loan and commit to a repayment plan. As ultimate security, the responsible local governments will have to acknowledge that in the event adopted repayment plans do not generate sufficient funds to assure timely loan repayment, state shared revenues may be withheld pursuant to ORS 468.240. The contracts must therefore bear the appropriate signatures of local governments that are eligible to receive state shared revenues.

Acceptable contracts will have to be executed before any funds are advanced.

Ordinances establishing special sewer connection charges or other proposed primary methods for repayment of loaned funds will have to be in place before funds are advanced.

Legal counsel, preferably bond counsel, for each local government entering into loan contracts with the Department will have to render a favorable opinion regarding the authority of the local governments to enter into the contract.

ATTACHMENT "B"







CITY OF GRESHAM,  
OREGON

# Burnside Corridor Sewers

148th Avenue to  
199th Avenue


**FIGURE 5.1**

**LEGEND**

-  PROPOSED CORRIDOR SEWERS
-  PROPOSED FURTHER SEWER EXTENSIONS
-  PROPOSED CITY & MASTER PLAN SEWER EXTENSIONS
-  EXISTING SEWERS

**SCALE :**

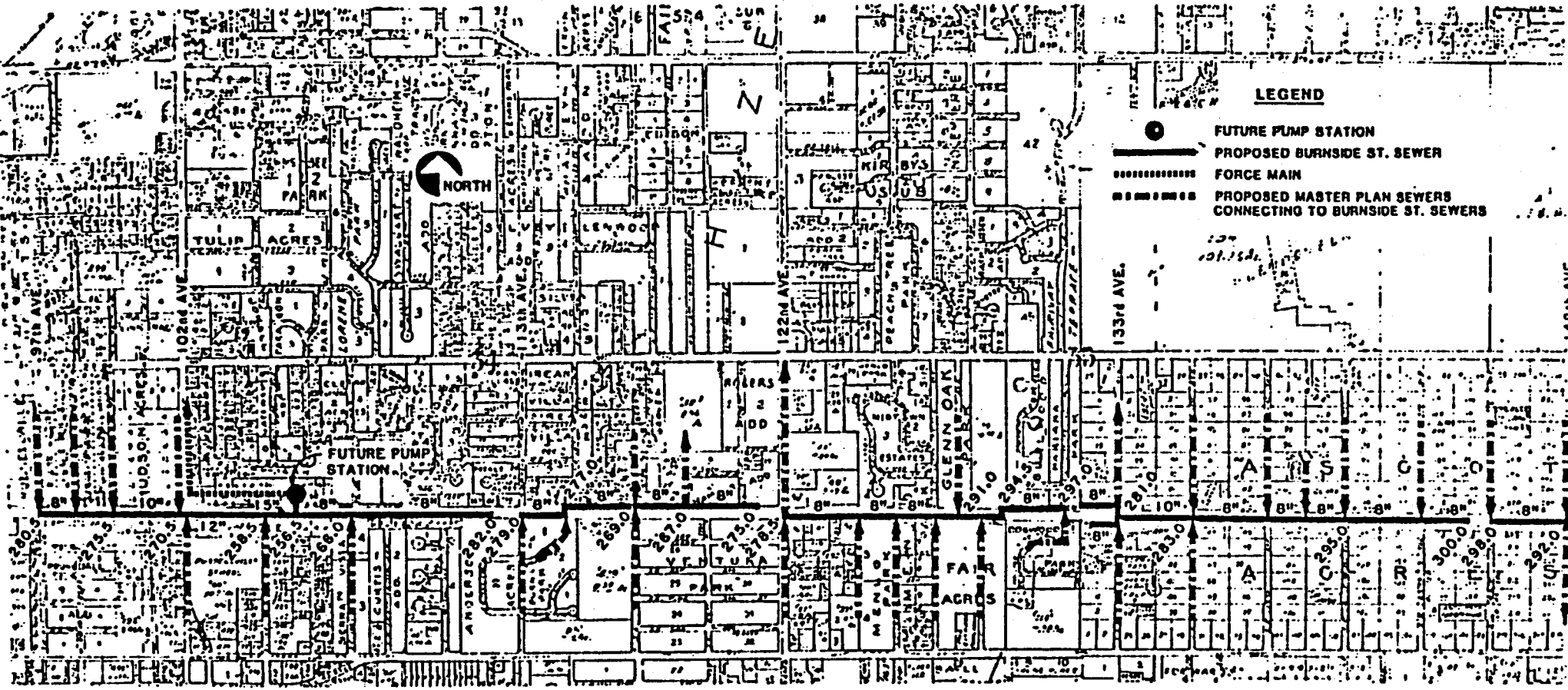
0' 600' 1200' 1800'

 NORTH

**CONSULTANTS :**

KRAMER, CHIN, & MAYO, INC.  
10 S.W. ASH STREET  
PORTLAND, OREGON 97204

COOPER CONSULTANTS, INC.  
11675 S.W. 66th AVE.  
PORTLAND, OREGON 97223



KCM / CCI

KRAMER, CHIN, & MAYO, INC.  
10 S W ASH STREET  
PORTLAND, OREGON 97204

COOPER CONSULTANTS, INC.  
11675 S.W. 66th AVE  
PORTLAND, OREGON 97223

CENTRAL COUNTY SERVICE DISTRICT  
MULTNOMAH COUNTY, OREGON  
**BURNSIDE CORRIDOR  
SEWERS**  
97th Avenue to 148th Avenue

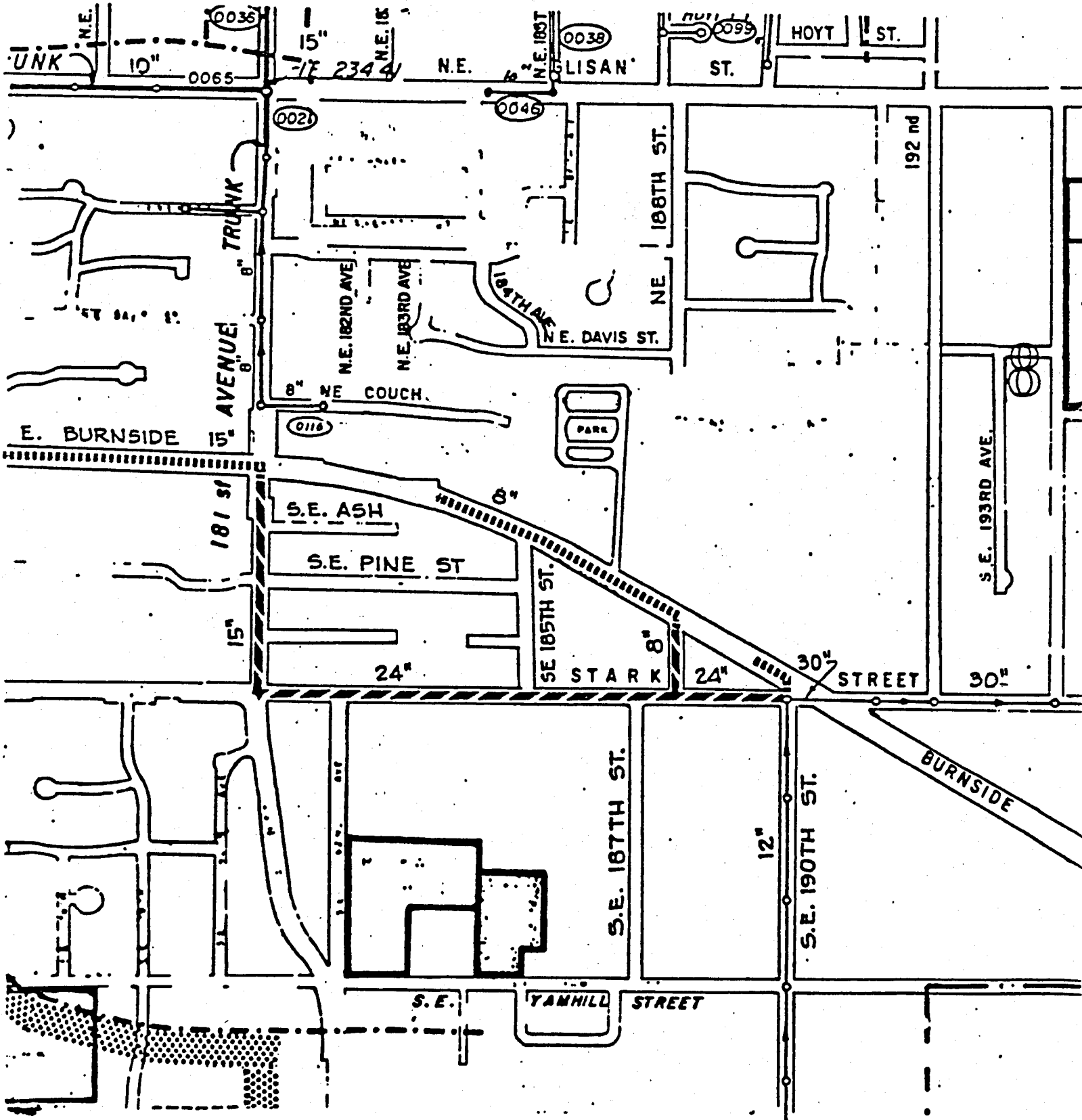
# ATTACHMENT "D"



SCALE 1"=600'

## LEGEND

- EXISTING SANITARY SEWER
- PROPOSED BURNSIDE CORRIDOR SEWER
- PROPOSED CITY OF GRESHAM SEWER





STATE OF OREGON  
DEPARTMENT OF ENVIRONMENTAL QUALITY

LOAN REPAYMENT SCHEDULE

City of Gresham

Cash Advanced November 1, 1982 to METRO for account of City of Gresham per this State Loan Agreement and the Intergovernmental Agreement effective November 1, 1982.

\$1,500,000

Interest @ 9.1% compounded March 1 and September 1 through September 1, 1987

806,669

Total for repayment commencing September 1, 1987

\$2,306,669

YEAR ENDING Sep 1	INTEREST RATE	DUE Mar 1	DUE September 1			TOTAL ANNUAL REQUIREMENT
		INTEREST	INTEREST	PRINCIPAL	TOTAL	
1987	---	-0-	-0-	146,669	146,669.00	146,669.00
1988	9.8	102,830.00	102,830.00	160,000	262,830.00	365,660.00
1989	10.0	94,990.00	94,990.00	170,000	264,990.00	359,980.00
1990	9.7	86,490.00	86,490.00	190,000	276,490.00	362,980.00
1991	10.0	77,275.00	77,275.00	210,000	287,275.00	364,550.00
1992	10.2	66,775.00	66,775.00	240,000	306,775.00	373,550.00
1993	10.2	54,535.00	54,535.00	260,000	314,535.00	369,070.00
1994	8.7	41,275.00	41,275.00	280,000	321,275.00	362,550.00
1995	8.9	29,095.00	29,095.00	310,000	339,095.00	368,190.00
1996	9.0	<u>15,300.00</u>	<u>15,300.00</u>	<u>340,000</u>	<u>355,300.00</u>	<u>370,600.00</u>
		568,565.00	568,565.00	2,306,669	2,875,234.00	3,443,799.00

On behalf of the City of Gresham, we, the undersigned, being duly authorized to take such action as evidenced by documents submitted to the Department of Environmental Quality do hereby agree to have the City of Gresham, pay the foregoing amounts upon the dates and times and in the manner established.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

STATE OF OREGON  
DEPARTMENT OF ENVIRONMENTAL QUALITY

LOAN REPAYMENT SCHEDULE

Multnomah County Central County Service District  
and  
Multnomah County

Cash Advanced November 1, 1982 to METRO for account of Multnomah County Central Service District per this State Loan Agreement and the Intergovernmental Agreement effective November 1, 1982.	\$1,500,000
Interest @ 9.1% compounded March 1 and September 1 through September 1, 1987	<u>806,669</u>
Total for repayment commencing September 1, 1987	\$2,306,669

YEAR ENDING Sep 1	INTEREST RATE	DUE Mar 1 INTEREST	INTEREST	DUE September 1 PRINCIPAL	TOTAL	TOTAL ANNUAL REQUIREMENT
1987	---	-0-	-0-	146,669	146,669.00	146,669.00
1988	9.8	102,830.00	102,830.00	160,000	262,830.00	365,660.00
1989	10.0	94,990.00	94,990.00	170,000	264,990.00	359,980.00
1990	9.7	86,490.00	86,490.00	190,000	276,490.00	362,980.00
1991	10.0	77,275.00	77,275.00	210,000	287,275.00	364,550.00
1992	10.2	66,775.00	66,775.00	240,000	306,775.00	373,550.00
1993	10.2	54,535.00	54,535.00	260,000	314,535.00	369,070.00
1994	8.7	41,275.00	41,275.00	280,000	321,275.00	362,550.00
1995	8.9	29,095.00	29,095.00	310,000	339,095.00	368,190.00
1996	9.0	<u>15,300.00</u>	<u>15,300.00</u>	<u>340,000</u>	<u>355,300.00</u>	<u>370,600.00</u>
		568,565.00	568,565.00	2,306,669	2,875,234.00	3,443,799.00

On behalf of Multnomah County Central County Service District, I, the undersigned, being duly authorized to take such action as evidenced by documents submitted to the Department of Environmental Quality do hereby agree to have Multnomah County Central County Service District, pay the foregoing amounts upon the dates and times and in the manner established.

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Representative

On behalf of Multnomah County, I, the undersigned, being duly authorized to take such action as evidenced by documents submitted to the Department of Environmental Quality do hereby agree to have Multnomah County pay the foregoing amounts upon the dates and times and in the manner established, with the understanding that payment in full by Multnomah County Central County Service District shall satisfy Multnomah County's obligation hereunder.

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Representative

ATTACHMENT D - ASSURANCES AND COVENANTS

CITY, DISTRICT, METRO and COUNTY (hereinafter collectively referred to as "the Parties") each represents to the DEQ and each agrees that:

1. Each party will comply with the provisions of ORS Chapters 279 and other statutes relating to bidding, required statements, preference of materials, contributions, payments, liens, labor and working conditions, contract termination, and all other conditions and terms necessary to be inserted into public contracts.
2. The offer and acceptance of this loan is conditioned by all provisions of DEQ program requirements, statutes and rules, including, but not limited to, ORS 468.220 and the applicable provisions of OAR Chapter 340, including Division 81.
3. The project will not be advertised or placed on the market for bidding until the final plans and specifications have been approved by DEQ.
4. The construction contracts will require the contractors to furnish performance and payment bonds, the amounts of which shall each be in an amount equal to the contract price, and to maintain during the life of the contracts adequate fire and extended coverage, workmen's compensation, public liability and property damage insurance.
5. Any change or changes in the contracts which make any major alteration in the work required by the plans and specifications will be submitted to DEQ for prior approval.
6. The construction contracts will provide that the representatives of DEQ will have access to the work whenever it is in preparation or progress and that the contract will provide proper facilities for such access and inspection.
7. The DEQ or its authorized agents will be provided access to the project and the records pertaining to its operation at any reasonable time following completion of construction for the purpose of inspecting the operation and maintenance of the project.
8. DEQ or other duly authorized representatives of the State of Oregon shall have access for the purpose of audit and examination to any books, documents, papers and records of each party that are pertinent to loans received under this contract; and each party shall submit to DEQ or other duly authorized representatives of the State of Oregon such documents and information as they may require in connection with this project.

9. Each party shall make such reports, in such form and containing such information as DEQ may reasonably require, including interim project reports of progress and expenditures.

10. Competent and adequate engineering supervision and inspection at the project to insure that the construction conforms with the approved plans and specifications will be provided and maintained.

11. All funds loaned pursuant to law and this agreement shall be expended solely for carrying out the approved project.

12. The construction contracts shall contain a condition that the contract may be canceled for any willful failure or refusal on the part of the contractor to faithfully perform the contract according to its terms.

13. Adequate accounting and fiscal records will be maintained which fully disclose the amount, receipt and disposition of the loan assistance provided, the total cost of the project in connection with which the loan has been offered, the amount and identification of that portion of the cost of the project supplied from other sources and such other records as DEQ may prescribe to facilitate an effective audit.

14. CITY and DISTRICT will demonstrate to the satisfaction of DEQ that they have or will have a fee simple or such other estate or interest in the site of the project, including necessary easements and rights-of-way as DEQ finds sufficient to assure undisturbed use and possession for the purposes of construction and operation for the estimated life of the project.

15. The declarations, ordinances, resolutions, assurances, covenants, representations and statements made by the parties in all documents, amendments, and communications filed with DEQ by the parties in support of its request for a loan, will be fulfilled.

16. The project shall be expeditiously constructed in accordance with plans and specifications approved by DEQ.

17. Should any litigation to enforce the terms of this LOAN AGREEMENT develop between the DEQ and any of the Parties, the prevailing party shall be entitled to reasonable attorneys' and experts' fees, expenses of litigation and costs from the other party.

18. Time is of the essence in this agreement.

19. Each Party will indemnify and reimburse the DEQ for any payments made or losses suffered by the DEQ on behalf of each party as a result of its negligence, omissions or breach of any covenant or condition of this agreement.

20. Each party will not cause or permit any voluntary dissolution of itself, merge or consolidate with another public agency, dispose of or transfer its title to the project, or any part thereof, other than for normal replacement purposes, including lands and interest in lands by sale, mortgage, lease or other encumbrance as it relates to the sewer project without obtaining the prior written consent of the Department.

This section shall not be deemed to prevent mergers or consolidations initiated or commenced as the result of proceedings authorized by the Legislative Assembly of Oregon.

21. CITY and DISTRICT will comply with applicable state laws and the rules and regulations of the DEQ and continually operate and maintain the facility in good condition upon completion of construction.

22. CITY and DISTRICT each will not modify or cause to be modified or amended its charter, ordinances, regulations or resolutions relating in any manner to its sewerage facilities or their operation which would materially and adversely affect its ability to charge fees sufficient to pay principal and interest on this loan as and when they become payable, without obtaining the prior written consent of the DEQ.

This section shall not be deemed as a restriction upon the CITY or DISTRICT to fulfill its legislative authority and responsibility to its electorate and citizens in governing its local affairs. The purpose of this section is to insure that the CITY and DISTRICT continue to maintain sufficient revenues for the payment of this loan and operating and maintenance costs as set forth in their supporting documents.

23. CITY, DISTRICT and COUNTY each has hereby incurred "indebtedness" as the term is used in Ballot Measure No. 3 at the General Election, November 2, 1982.

24. CITY and DISTRICT have adopted and shall maintain for the life of the loan an ordinance or resolution establishing sewer rates, connection and other charges for the facilities to be constructed.

25. Each party has obtained a legal opinion from its attorney (preferably its bond counsel) confirming its legal authority to enter into and carry out its obligations under this LOAN AGREEMENT and the validity of this LOAN AGREEMENT.

26. CITY, DISTRICT, and COUNTY each has identified the sources and amounts of revenue which each has dedicated to payment of the loan which are: systems development charges and connection fees from the project and state-shared revenues. Each is of the reasonable opinion that those revenues will be sufficient to make the project self-supporting and self-liquidating.

27. Commencing in fiscal year 1986-87, CITY and DISTRICT each shall furnish the DEQ an annual audit report to show that adequate and acceptable revenues continue to be available for loan retirement.

28. All of the revenues described in paragraph 26 are hereby irrevocably pledged to the punctual payment of the principal of the interest on the loan. Such revenue shall not be used for any other purpose while any of the loan principal or interest remains outstanding. Said pledge shall constitute a first and exclusive lien on said revenues for the payment of the loan in accordance with terms hereof.

29. Should any part of the installments of principal or interest not be timely paid, the DEQ may cause the State of Oregon to withhold any amounts otherwise due from the State to the CITY, COUNTY or DISTRICT, and apply to payment of this loan.

30. Following receipt of construction bids METRO shall cause three copies of the following documents to be submitted to the DEQ for review and approval of contract award: tabulation of all bids received; engineers' analysis of bids; engineers' recommendations; low bidder's proposal; publisher's affidavits of advertising; and DEQ form "Part B", Supplemental Project Information."

### 31. EVENTS OF DEFAULT

The following shall be "events of default" under this AGREEMENT and the terms "events of default" or "default" shall mean, whenever they are used in the AGREEMENT, any one or more of the following events:

(a) Failure by CITY, DISTRICT or COUNTY to make any required payments within the time specified herein.

(b) Failure by CITY, DISTRICT or COUNTY to observe or perform any covenant, condition or agreement in this LOAN AGREEMENT on its part to be observed or performed, other than as referred to in subsection (a) of this section, or the breach of any warranty by CITY, DISTRICT or COUNTY for a period of 30 days, or such additional time as is reasonably required to correct any such defaults after the CITY, DISTRICT or COUNTY's receipt of written notice thereof, specifying such failure or breach and requesting that it be remedied, has been given to the CITY, DISTRICT or COUNTY by the DEQ, unless the DEQ

agrees in writing to an extension of such time prior to its expiration.

(c) The making of any representation or warranty by CITY, DISTRICT or COUNTY in this LOAN AGREEMENT or in any document executed in connection with this LOAN AGREEMENT which is false or misleading in any material respect.

(d) The dissolution or liquidation of any borrower.

(e) The filing by CITY, DISTRICT or COUNTY of any petition or the institution of any proceedings under the Bankruptcy Act, either as such Act now exists or under any amendment thereof which may hereafter be enacted, or under any act or acts, state or federal, dealing with or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such acts or acts, either as a bankrupt, or as an insolvent, or as a debtor, or in any similar capacity, whether in or whereby the CITY, DISTRICT or COUNTY prays to be adjudicated a bankrupt, or is to be discharged from any or all of the CITY, COUNTY or DISTRICT's debts or obligations, or offers to the CITY, DISTRICT or COUNTY's creditors to effect a composition or extension of time to pay the CITY, DISTRICT or COUNTY's debts or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the CITY, COUNTY or DISTRICT's debts, or for any other similar relief, or if any such petition or any such proceedings of the same or similar kind or character be filed or be instituted against the CITY, DISTRICT or COUNTY and not discharged or dismissed within sixty days, or if a receiver of the business or of the property or assets or any CITY, DISTRICT or COUNTY shall be appointed by any court, except a receiver appointed at the instance or request of the DEQ. The appointment of a receiver, trustee or liquidator of any CITY, DISTRICT or COUNTY in any proceeding described in this subsection (e) shall not be deemed a default by the CITY, DISTRICT or COUNTY hereunder if such receiver, trustee or liquidator shall be discharged within sixty days after such appointment.

(f) The assignment or transfer of any of CITY, DISTRICT or COUNTY's interest in the LOAN AGREEMENT, or any part thereof, without the written consent of the DEQ, either voluntarily or by operation of law.

The happening of any event of default above mentioned and the continuance thereof beyond the times herein limited, shall constitute a breach of this LOAN AGREEMENT.



### 32. REMEDIES ON DEFAULT

(a) Until the principal and interest have been paid in full, upon the happening of any event of default and the continuance thereof beyond the times herein limited, the DEQ shall have and may exercise all of the rights provided by law and may take any one or more of the following remedial steps; provided that no remedies hereunder shall be exercised prior to thirty days after receipt by the CITY, DISTRICT or COUNTY of notice of an event of default occurring under section 32(b), such notice to state the alleged event of default:

(1) The DEQ or its assignee shall declare all installments of loan payments for the remainder of the term of this LOAN AGREEMENT, and accrued interest, to be immediately due and payable, whereupon the same shall become immediately due and payable.

(2) The DEQ or its assignee may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due hereunder, to effect entry on or take possession of the project and operate or lease the project, or to enforce performance and observance of any obligation, condition or covenant of the borrower under this LOAN AGREEMENT. The DISTRICT and COUNTY shall, upon the request of the DEQ, make the project available to the DEQ and its assignee.

(b) No remedy herein conferred upon or reserved to the DEQ is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the LOAN AGREEMENT or now or hereafter existing at law or in equity or by statute, including those remedies made available to secured creditors under the Oregon Revised Statutes. No delay in exercising or omission to exercise any right or power, or shall be construed to be a waiver thereof; but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the DEQ or any assignee to exercise any remedy reserved to it by this section, it shall not be necessary to give any notice other than such notice as may be herein expressly required. Each and all of the remedies given to the DEQ hereunder or by any law now or thereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the DEQ to any or all other remedies.

### 33. OBLIGATIONS UNCONDITIONAL

The obligations of CITY, DISTRICT and COUNTY to make the loan payments and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional. Until such time as its obligations shall have been discharged

CITY, COUNTY and DISTRICT each (i) will not suspend or discontinue any payments provided herein, (ii) will perform and observe all of its other agreements contained in this LOAN AGREEMENT, and (iii) will not terminate this LOAN AGREEMENT for any cause, including, without limiting the generality of the foregoing, failure to complete the project, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the project, commercial frustration of purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either, or any failure of the DEQ to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this LOAN AGREEMENT.

#### 34. LIENS

The CITY and DISTRICT shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies or equipment furnished or alleged about the project and which may be secured by any mechanic's, materialmen's or other lien against the project or the CITY or DISTRICT's interest therein, and will cause such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that, if the CITY or DISTRICT desires to contest any such lien, it may do so. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, the CITY or DISTRICT shall forthwith pay and discharge said judgment.

#### 35. ENTIRE AGREEMENT.

This Agreement represents the entire contract between the parties.

#### 36. WAIVER.

The waiver by the DEQ of any breach by any Party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

#### 37. NON-LIABILITY OF DEQ and EQC.

The DEQ, the Environmental Quality Commission (EQC) and their commissioners, officers, agents and employees shall not be liable to any of the Parties hereto or to any other person whomsoever in, on or about the premises and the project and any claims arising out of the planning, construction, use and operation of the project, including claims for violation of civil rights. The parties hereto shall, and do hereby, indemnify and hold the DEQ, EQC and their commissioners, officers, agents and employees

harmless from, and defend each of them against, any and all claims, liens and judgments for death of or injury to any person or damage to property whatsoever occurring in, on or about the project and any claims arising out of the use and operation of the project, including claims for violations of civil rights, and, to the extent permitted by law, any reasonable attorneys' fees and expenses, whether incurred at trial, on appeal or prior to the filing of any action (whether or not any action is actually filed) incurred in connection with litigation against the DEQ challenging or questioning the validity of this LOAN AGREEMENT.

#### 38. NOTICES AND CONSENTS

All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by any party to any other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if deposited, certified mail, return receipt requested with postage prepaid in a post office letter box to the COUNTY, addressed to Multnomah County, Attention County Executive, 1021 S.W. Fourth Avenue, Portland, Oregon 97204; to DEQ addressed to Department of Environmental Quality, P.O. Box 1760, Portland, Oregon 97207, Attention: Business Manager; to METRO addressed to the Metropolitan Service District, Attention: General Counsel, 527 S.W. Hall Street, Portland, Oregon 97201; to the DISTRICT addressed to the Multnomah County Central County Service District, Attention: Sewer Development Manager, 2115 S.E. Morrison Street, Portland, Oregon 97214; and to the CITY addressed to the City of Gresham, Attention: City Manager, Gresham, Oregon, 1333 N.W. Eastman Avenue, Gresham, Oregon 97030; or to such other addresses as the respective parties may from time to time designate by notice in writing.

39. Loan proceeds shall be applied only to costs which are eligible under Article XI-H of the Oregon Constitution and the enabling legislation and administrative rules.

40. Each Party shall execute any and every document necessary to carry out the purposes of this LOAN AGREEMENT.

41. The project is consistent with the applicable comprehensive plans, zoning and other plans, ordinances, regulations and resolutions and state law including the State Wide Land Use Goals and Guidelines.

42. In the event that any Party obtains any grant of Federal Funds applicable to any of this sewer project, it will apply those funds first to prepay the loan.