

**PUBLIC WORKS TRUST FUND
CONSTRUCTION LOAN AGREEMENT**

**NUMBER PC08-951-020
King County**

PART I: ENTIRE AGREEMENT

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

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

PUBLIC WORKS BOARD

BORROWER

Kelly Snyder, Assistant Director

Signature

Date

Print Name

Title

**APPROVED AS TO FORM ONLY
This 6th Day of March, 2007**

**Rob McKenna
Attorney General**

Date

Federal Taxpayer Identification Number

By: Signature on File

**Andrew Scott
Assistant Attorney General**

PART II: INTRODUCTION

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

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

PART III: PURPOSE

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

PART IV: TERMS AND CONDITIONS

The parties to this agreement agree as follows:

4.01 Rate and Term of Loan

The BOARD, using funds appropriated from the Public Works Assistance Account, shall loan the BORROWER a sum not to exceed \$7,000,000.00. The interest rate shall be 0.50% per annum on the outstanding principal balance. The term of the loan shall not exceed 20 years, with the final payment due July 1, 2028.

4.02 Eligible Project Costs and Local Project Share

The BORROWER pledges to use an amount of local funds as local project share of not less than 15.0% of the total eligible portion of the project cost not funded by federal or state grants as identified in ATTACHMENT I: SCOPE OF WORK. The amount of the local funds will be verified at project closeout. Any increase in the percentage of local funds may require an adjustment in the loan amount or interest rate charged, or both. The interest rate adjustment will apply to the remaining payments beginning the fiscal year of closeout. The BORROWER agrees to execute the Certified Closeout Amendment as an amendment to this agreement adjusting the loan amount or interest rate, as appropriate.

Eligible project costs must consist of expenditures eligible under WAC 399-30-030 and be related only to project activities described in ATTACHMENT I: SCOPE OF WORK. Only those costs incurred after execution of this loan agreement can be reimbursed with Public Works Trust Fund monies. Expenditures made up to twelve (12) months prior to the execution of the loan agreement and verified at the time of project close out may be used as match for local project share.

4.03 Disbursement of Loan Proceeds

The availability of funds in the Public Works Assistance Account is a function of tax collection, loan repayment, and legislative appropriation. If funding or appropriation is not available at the time the invoice is submitted, or when the agreement is executed, the issuance of warrants will be delayed or suspended until such time as funds become available. Therefore, subject to the availability of funds, warrants shall be issued to the BORROWER for payment of allowable expenses incurred by the BORROWER while undertaking and administering approved project activities in accordance with ATTACHMENT I: SCOPE OF WORK. In no event shall the total Public Works Trust Fund loan exceed 85.00 % of the eligible actual project costs. The BORROWER shall initiate a loan disbursement using a Washington State Invoice Voucher form. The loan funds will be disbursed to the BORROWER as follows:

Upon formal execution of this agreement, a sum not to exceed 20% of the approved Public Works Trust Fund loan may be disbursed to the BORROWER. Monies shall not be used for any construction costs incurred prior to compliance with Executive Order 05-05 Archaeological and Cultural Resources as referenced in Section 4.22 or Section 106 of the National Historic Preservation Act, whichever applies to this project.

Upon execution of a Public Works Trust Fund Notice to Proceed, which follows the formal award of a construction contract, and documented compliance with Executive Order 05-05 Archaeological and Cultural Resources as referenced in Section 4.22 or Section 106 of the National Historic Preservation Act, whichever applies to this project, a sum not to exceed 25% of the approved Public Works Trust Fund loan may be disbursed to the BORROWER.

When the BORROWER certifies that 35% of the Public Works Trust Fund loan amount has been spent, a sum not to exceed 25% of the approved Public Works Trust Fund loan may be disbursed to the BORROWER.

When the BORROWER certifies that 60% of the Public Works Trust Fund loan amount has been spent, a sum not to exceed 25% of the approved Public Works Trust Fund loan may be disbursed to the BORROWER.

At the time of project completion, the BORROWER shall submit, to the BOARD, a Certified Closeout Amendment certifying the total actual project costs and local share.

The final Public Works Trust Fund loan disbursement shall bring the total loan to the lesser of 85.00 % of the eligible project costs or the total of \$7,000,000.00. The Certified Closeout Amendment shall serve as a contract amendment determining the final loan amount, local share and interest rate.

In the event that the final costs identified in the Certified Closeout Amendment indicate that the BORROWER has received Public Works Trust Fund monies in excess of 85.00 % of eligible costs, all funds in excess of 85.00 % shall be repaid to the Public Works Assistance Account by payment to the Department of Community, Trade and Economic Development, or its successor, within 30 days of submission of the Certified Closeout Amendment.

4.04 Interest Earned on Public Works Trust Fund Monies

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

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

The BORROWER shall establish procedures to ensure that all monies received from the Public Works Trust Fund loan can be readily identified and accounted for at any time during the life of this loan agreement. Such procedures shall consist of the establishment of a separate fund, account, sub-account or any other method meeting generally accepted accounting principles. In event of termination, all principal, interest earned on invested loan principal, and accrued interest payable shall be repaid in full within 30 days by the BORROWER.

4.05 Time of Performance

The BORROWER shall begin the activities identified within ATTACHMENT I: SCOPE OF WORK no later than three (3) months after loan agreement execution. No later than Twenty-four (24) months after loan agreement execution, the BORROWER must issue a Public Works Trust Fund Notice to Proceed, which follows the formal award of a construction contract. No later than forty-eight (48) months after the date of agreement execution the BORROWER must reach project completion.

Failure to meet Time of Performance shall constitute default of this agreement. In the event of extenuating circumstances, the BORROWER may request, in writing, that the BOARD extend the deadline for project completion. The BOARD may, by a two-thirds vote, extend the deadline.

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

4.06 Repayment

Loan repayment installments are due on July 1st of each year during the 20-year fixed term of the loan. The first loan repayment is due July 1, 2009. Interest only will be charged for this payment if a draw is made prior to this date. All subsequent payments shall consist of principal and accrued interest due on July 1st of each year during the remaining term of the loan.

Repayment of the loan under this agreement shall include an interest rate of 0.50% per annum based on a 360 day year of twelve 30 day months. Interest will begin to accrue from the date each warrant is issued to the BORROWER. The final payment shall be on or before July 1, 2028, of an amount sufficient to bring the loan balance to zero.

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

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

4.07 Default in Repayment

Loan repayments shall be made on the loan in accordance with Section 4.06 of this agreement. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1st) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be one percent (1%) per month or twelve percent (12%) per annum. The same penalty terms shall apply at project closeout if the repayment of loan funds in excess of eligible costs are not repaid within 30 days as provided for in Section 4.03.

The BORROWER acknowledges and agrees to the BOARD'S right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the BORROWER of such delinquency.

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

4.08 Loan Security

This loan is a revenue obligation of the BORROWER payable solely from the net revenue of the Stormwater Sanitary Sewer system. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The BOARD grants the BORROWER the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan agreement. This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer or solid waste utility project.

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

4.09 Recordkeeping and Access to Records

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

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

4.10 Reports

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

4.11 Indemnification

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

4.12 Amendments, Modifications, Assignments, and Waivers

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

4.13 Termination for Cause

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

4.14 Termination For Convenience

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

4.15 Governing Law and Venue

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

4.16 Severability

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

4.17 Project Completion and Certified Closeout Amendment

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

The BORROWER shall provide the following information to the BOARD:

1. A certified statement of the actual dollar amounts spent, from all fund sources, in completing the project as described.
2. A certified statement that the project, as described in the Loan Agreement's Scope of Work, is complete and has been designed/constructed to required standards.
3. Certification that all costs associated with the project have been incurred. Costs are incurred when goods and services are received and/or contract work is performed.
4. Provide status of performance measures identified in ATTACHMENT I: SCOPE OF WORK.
5. In accordance with Section 4.03 of this agreement, the BORROWER will submit, together with the Certified Closeout Amendment, a request for a sum not to exceed the loan amount or refund of any excess loan funds. Any final disbursement shall not occur prior to the completion of all project activities.
6. Repayment of excess loan funds disbursed to the BORROWER must be made within 30 days of completion of the Certified Closeout Amendment.

4.18 Contractor Requirement

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

4.19 Audit

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

4.20 Project Signs

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

4.21 Nondiscrimination Provision

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

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

4.22 Historical and Cultural Artifacts

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

The BORROWER agrees that, unless Borrower is proceeding under an approved historical and cultural artifacts monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the BORROWER shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at the Washington State Department of Archaeology and Historic Preservation (DAHP).

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

In addition to the requirements set forth in this agreement Borrower agrees to comply with Revised Code of Washington (RCW) 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and, Washington Administrative Code (WAC) 25-48 regarding Archaeological Excavation and Removal Permits.

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

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

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

PART V: SPECIAL CONDITION

None

PART VI: SPECIAL ASSURANCES

The BORROWER 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 Competitive Bidding Requirements

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

5.02 Eligible Project Costs

The BORROWER assures compliance with WAC 399-30-030 which identifies eligible costs for projects assisted with Public Works Trust Fund loans.

ATTACHMENT 1: SCOPE OF WORK

PUBLIC WORKS TRUST FUND

CONSTRUCTION LOAN PROGRAM

PC08-951-020

King County

Brightwater Reclaimed Water Pipeline

Scope of Work:

The purpose of this construction project is to convey reclaimed water from the Brightwater Treatment Plant to the Sammamish Valley. This project will construct the first phase of the "Brightwater Backbone", a set of conveyance pipelines for reclaimed water. The first priority is to provide about a half million gallons per day to the Willows Run Golf Course to meet the County's commitment to the Washington State Department of Ecology and reduce withdrawals of 250-acre feet per year from the Sammamish River currently being made for irrigation purposes.

This project involves construction of Brightwater Reclaimed Water Pipeline Sections 1 (BWRW1) and 2 (BWRW Sec 2), necessary to carry reclaimed water from the Brightwater Treatment Plant to north end of the Sammamish Valley. The completed pipelines will have a capacity of about 9 million gallons per day (mgd), which is sufficient to meet predicted reclaimed water uses as far south as the City of Redmond. Section 1 will carry reclaimed water (via 2300 lineal feet of 30-inch pipe) from the Brightwater Influent Pump Station to the existing conveyance pipelines (North Creek Forcemains) at the North Creek Pump Station site near the north end of the Sammamish Valley. Section 2 will carry reclaimed water (via 10,800 lineal feet of 24-inch pipe) from the end of the existing conveyance pipelines (North Creek Forcemains) at the York Pump Station site, to the Willows Run Golf Course.

The initial system will provide up to 7 mgd of reclaimed water to users in the South Segment beginning in 2011.

**SCOPE OF WORK
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Revised Performance Measures:	
REVISED Performance Measure (For Construction and Emergency applicants only):	<i>Describe how the success of the project will be measured. Be sure to identify how the change will be measured, the standard against which the change will be noted, the amount of change that is expected, and when the change will have occurred.</i>
	<ol style="list-style-type: none"> 1. Reduce withdraw of water from Sammamish River. 2. Use reclaimed water to offset use of potable water for the same purposes at various pumping facilities served by sections of the Brightwater Reclaimed Water System. 3. Reduce Sammamish River temperature.

How is the Measure to be Measured:	<i>Such as reduce outflow by 20% or Reduce accidents by 5%</i>
<p>1. Upon project completion, there will be a reduction in withdrawals of 250-acre feet per year from the Sammamish River under the County's water right certificate number S1-20633C. This will be a reduction to 0.0-acre feet per year of withdrawal for irrigation supply under the portion of the County's water right temporarily transferred to the Willows Run Golf Course on December 19, 2002. The change is expected to occur in July 2012 when reclaimed water fully replaces existing groundwater withdrawals at Willows Run Golf Course.</p> <p>2. Use of reclaimed water for various pumping facilities served by Sections 1 and 2 of the Brightwater Reclaimed Water System will offset potable water that would otherwise be used for the same purposes. Four pumping stations, the Brightwater Influent Pump Station, and North Creek, York, and Hollywood pump stations, will use reclaimed water for process uses including seal water, washdown, motor and VFD cooling, and odor control. Additionally, during the first year of operation, the existing North Creek and York force mains will use reclaimed water for flushing, cleaning, and disinfection in preparation for conversion and standby activities needed to put them in standby mode to support the Brightwater treatment system functions. Finally, monthly flushing and pump exercising activities will use reclaimed water at the York and North Creek pump stations. Total first year reclaimed water use is estimated to be 101 million gallons. Annual use in subsequent years is estimated to be 79 million gallons. Flow meters on the force mains would be used to measure flows for flushing and cleaning. Since there are no flow meters on the process water pipelines at the various pump stations, a comparison of potable water bills before and after conversion to reclaimed water would be used to calculate the actual amount of potable offset.</p> <p>3. By utilizing reclaimed water to decrease withdrawal of river water, the average temperature of the river is projected to decrease from an average summer maximum temperature of 19 degrees Celsius to 18.96 degrees Celsius, a reduction of 0.04 degrees Celsius. The environmental success of the project will be measured by estimating pre- and post-implementation groundwater flow to the Sammamish River using data collected from the pumping wells (water level and temperature) and the river (water level, flow, and temperature) prior to and through project implementation in 2012. The maximum expected benefit resulting from the project is a 0.04 degrees Celsius decrease in river temperature over the long term. The change is expected to occur begin in July 2012 when reclaimed water replaces existing groundwater withdrawals at Willows Run Golf Course. The full effect of the change may be realized over several years.</p>	

When is the Measure going to be Measured:

Such as measurement will be accomplished after project completion or by the end of a particular year.

1. Prior to July 2012

2. Prior to July 2012

3. Prior to July 2012

Date Planned to Complete Performance Measure

7/31/2012

SCOPE OF WORK
Estimated Project Costs:
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COST CATEGORY	REVISED BUDGET
Engineering Report	\$ 960,000.00
Environmental Review	\$ 63,000.00
Historical Review (Section 106 or 05-05)	\$ 10,000.00
Land/ROW Acquisition	\$ 55,000.00
Permits	\$ 74,000.00
Public Involvement/Information	\$ 38,000.00
Bid Documents	\$567,000.00
Construction	\$7,256,000.00
Other Fees	\$0.00
Contingency	\$725,600.00
Other: King County Staff	\$ 500,000.00
Other: Construction support services	\$ 330,000.00
Other:	\$ 0.00
Other:	\$0.00
TOTAL ESTIMATED COSTS	\$10,578,600.00

**SCOPE OF WORK
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Anticipated Funding Sources:

Type of Funding	Source	Revised Budget Amount
Grants		
Grant #1	PW-06-692-PRE-105	\$1,000,000.00
Grant #2		\$0.00
Grant #3		\$0.00
Other Grants (list sources)		\$0.00
Total Grants		1,000,000.00
Loans		
This P WTF Loan Request	Public Works Board	\$7,000,000.00
Other Loan #1		\$0.00
Other Loan #2		\$0.00
Other Loans (list sources)		\$0.00
Total Loans		\$7,000,000.00
Local Revenue		
Source #1	REVENUE BONDS	\$2,372,312.00
Source #2	SEWER RATE REV.	\$206,288.00
Source #3		\$0.00
Other Local Revenue (list sources)		\$0.00
Total Local Revenue		\$2,578,600.00
Other Funds		\$0.00
Total Other Funds		\$0.00
Summary Totals		
Total Funding		\$ 10,578,600.00

SCOPE OF WORK

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Calculating Local Percentage:

Note: Grant funds **cannot** be counted as local match.

Calculate as follows:

$$\frac{\text{Total Local Revenue}}{\text{PWTF Loan} + \text{Total Local Revenue}} = \text{Local Percentage } \underline{15.0\%}$$

The local contribution must be at least:

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