

CITY OF BELLINGHAM, WASHINGTON

ORDINANCE NO. 1999-04-019

AN ORDINANCE relating to the combined water and sewage system of the City; providing for the issuance of \$8,220,000 principal amount of Water and Sewer Revenue Refunding Bonds, 1999, of the City for the purpose of providing a part of the funds to pay the cost of advance refunding the callable portion of the City's outstanding Water and Sewer Revenue Bonds, 1992, and to pay the administrative costs of such refunding and of costs of issuing the bonds; fixing the date, form, terms, interest rates, maturities and covenants of such bonds; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of the bonds authorized herein and for the use and application of the money derived from those investments; authorizing the execution of an agreement with U.S. Bank Trust National Association, Seattle, Washington; providing for the call, payment and redemption of the bonds to be refunded; providing for bond insurance; and approving the sale and providing for the delivery of such bonds to Dain Rauscher Incorporated of Seattle, Washington.

Passed April 26, 1999

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AN ORDINANCE relating to the combined water and sewage system of the City; providing for the issuance of \$8,220,000 principal amount of Water and Sewer Revenue Refunding Bonds, 1999, of the City for the purpose of providing a part of the funds to pay the cost of advance refunding the callable portion of the City's outstanding Water and Sewer Revenue Bonds, 1992, and to pay the administrative costs of such refunding and of costs of issuing the bonds; fixing the date, form, terms, interest rates, maturities and covenants of such bonds; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of the bonds authorized herein and for the use and application of the money derived from those investments; authorizing the execution of an agreement with U.S. Bank Trust National Association, Seattle, Washington; providing for the call, payment and redemption of the bonds to be refunded; providing for bond insurance; and approving the sale and providing for the delivery of such bonds to Dain Rauscher Incorporated of Seattle, Washington.

WHEREAS, the City of Bellingham, Washington (the "City"), now owns, operates and maintains a combined water supply and distribution system and sewage collection and disposal system (the "System"); and

WHEREAS, the City has issued and has outstanding the following water and sewer revenue bonds:

<u>Designation</u>	<u>Date of Issue</u>	<u>Authorizing Ordinance</u>	<u>Principal Amount Outstanding as of April 2, 1999</u>
Water and Sewer Revenue Bonds, 1990	August 1, 1990	No. 10092 passed July 9, 1990	\$1,900,000
Water and Sewer Revenue Bonds, 1992	January 1, 1992	No. 10261 passed December 2, 1991	\$8,000,000

Water and Sewer Revenue and Refunding Revenue Bonds, 1999	February 1, 1994	No. 10508 Passed January 24, 1994	\$14,370,000
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(collectively, and to the extent not refunded pursuant to this ordinance, the “Outstanding Parity Bonds”); and

WHEREAS, the City also has outstanding as of April 2, 1999, (i) a subordinate lien water and sewer revenue obligation in the form of a Public Works Trust Fund Loan Agreement dated May 16, 1989, and (ii) a subordinate lien water and sewer revenue obligation in the form of a Public Works Trust Fund Loan Agreement dated May 21, 1991 (collectively, the “Outstanding Subordinate Lien Bonds”); and

WHEREAS, there are presently outstanding \$7,525,000 par value of Water and Sewer Revenue Bonds, 1992, maturing on August 1 of each of the years 2003 through 2011, inclusive, and bearing various interest rates from 6.50% to 6.55% (the “Refunded Bonds”); and

WHEREAS, after due consideration, it appears to the City Council that the Refunded Bonds may be refunded by the issuance and sale of the water and sewer revenue bonds authorized herein (the “Bonds”) so that a substantial saving will be effected by the difference between the principal and interest cost over the life of the Bonds and the principal and interest cost over the life of the Refunded Bonds but for such refunding, which refunding will be effected by:

- (a) The issuance of the Bonds and the payment of the costs of the issuance of the Bonds and the costs of the refunding; and
- (b) The payment of the interest on the Refunded Bonds when due up to and including August 1, 2002, and the call, payment and redemption on August 1, 2002, of all of the Refunded Bonds at a price of 102% of par;

and

WHEREAS, in order to effect such refunding in the manner that will be most advantageous to the City it is found necessary and advisable that certain Acquired Obligations (hereinafter defined) bearing interest and maturing at such time or times as necessary to accomplish the refunding as aforesaid be purchased out of the proceeds of the Bonds; and

WHEREAS, the ordinances pursuant to which the Outstanding Parity Bonds were issued (collectively, the “Outstanding Parity Bond Ordinances”) provide that additional water and sewer revenue bonds may be issued on a parity of charge or lien on the Revenue of the System with the Outstanding Parity Bonds if certain conditions are met; and

WHEREAS, it appears to the Council that the parity conditions set forth in Outstanding Parity Bond Ordinances (the “Parity Conditions”) can be met and that it is in the best interests of the City that \$8,220,000 principal amount of Bonds be issued on a parity of lien with the Outstanding Parity Bonds to provide a part of the funds necessary to advance refund the Refunded Bonds and to pay the costs of the refunding and of the issuance and sale of the Bonds; and

WHEREAS, Dain Rauscher Incorporated of Seattle, Washington, has offered to purchase the Bonds under the terms and conditions hereinafter set forth; and

WHEREAS, Financial Security Assurance Inc., New York, New York, has made a commitment to issue an insurance policy (the “Municipal Bond Insurance Policy”) relative to the Bonds effective as of the date of issuance of the Bonds, and the City Council deems that the purchase of the Municipal Bond Insurance Policy is in the best interest of the City;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Definitions. As used in this ordinance, the following words shall have the following meanings:

“Acquired Obligations” means those United States Treasury Certificates of Indebtedness, Notes and Bonds--State and Local Government Series and other direct, noncallable obligations of the United States of America purchased to accomplish the refunding of the Refunded Bonds as authorized by this ordinance.

“Adjusted Net Revenue” means Net Revenue adjusted by an independent licensed professional engineer or certified public accountant meeting the requirements of the Parity Conditions and Section 22 of this ordinance.

“Annual Debt Service” means, for any fiscal year, the aggregate amount required in such year for the payment of the principal of and interest on the Parity Bonds then outstanding (except the principal maturity of Term Bonds) to which the term Annual Debt Service refers, plus the principal of any Term Bonds subject to a mandatory sinking fund payment or mandatory prior redemption requirement from a Sinking Fund Account for that fiscal year.

“Average Annual Debt Service” means, as of any calculation date, the sum of the Annual Debt Service for the remaining years to the last scheduled maturity of the issue or issues of Parity Bonds then outstanding, divided by the number of those years.

“Bond Fund” means, collectively, the Principal and Interest Account, the Reserve Account and any Sinking Fund Account(s).

“Bond Insurer” means Financial Security Assurance Inc., a New York stock insurance company, or any successor thereto or assignee thereof.

“Bond Register” means the registration books on which are maintained the names and addresses of the owners of the Bonds.

“Bond Registrar” means the fiscal agency of the State of Washington in either Seattle, Washington, or New York, New York, for the purposes of registering and authenticating the

Bonds, maintaining the Bond Register, effecting transfer of ownership of the Bonds, and paying the principal of, premium, if any, and interest on the Bonds.

“Bonds” means the \$8,220,000 principal amount of Water and Sewer Revenue Refunding Bonds, 1999, of the City issued pursuant to and for the purposes provided in this ordinance.

“1990 Bonds” means the outstanding Water and Sewer Revenue Bonds, 1990, of the City authorized by Ordinance No. 10092 and dated August 1, 1990, and maturing in the years 1999 and 2000.

“1992 Bonds” means the outstanding Water and Sewer Revenue Bonds, 1992, of the City authorized by Ordinance No. 10261 and dated January 1, 1992, and maturing in the years 1999 through 2002, inclusive.

“1994 Bonds” means all of the outstanding Water and Sewer Revenue and Refunding Revenue Bonds, 1994, of the City authorized by Ordinance No. 10508 and dated February 1, 1994.

“Capital Reserve Accounts” means, collectively, those special accounts in the Water Fund and the Sewer Fund of the City previously combined and known as the Water and Sewer System Renewal, Replacement and Contingency Fund, created by Section 17 of Ordinance No. 9289, and now known as the “Cash (Restricted for Capital)” accounts.

“City” means the City of Bellingham, Washington, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Washington.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Costs of Maintenance and Operation” means all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expenses of the System, and reasonable pro rata budget charges for services

provided to the System by City departments, but excluding depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the System, municipal taxes, and payments to the City in lieu of taxes.

“Council” means the legislative body of the City as the same shall be duly and regularly constituted from time to time.

“Coverage Requirement” means Net Revenue equal to 1.25 times Maximum Annual Debt Service, except that for purposes of calculating the Coverage Requirement for the parity certificate required by the Parity Conditions, the Net Revenue may be Adjusted Net Revenue as therein provided. For calculating the Coverage Requirement for Variable Interest Rate Bonds, such Future Parity Bonds shall be assumed to bear interest at a fixed rate equal to the higher of (i) 10% and (ii) (a) the highest variable rate borne during the preceding 24 months by any outstanding variable rate water and sewer revenue bonds of the City or, (b) if no such variable rate bonds are outstanding at the time of calculation, the rate borne by other variable rate debt the interest rate for which is determined by reference to an index comparable to the index to be used to determine the interest rate on the Future Parity Bonds proposed to be issued.

“DTC” means The Depository Trust Company, New York, New York.

“Finance Director” means the Finance Director of the City.

“Future Parity Bonds” means any revenue bonds of the City issued after the date of issuance of the Bonds having a charge or lien upon the Revenue of the System for payment of the principal thereof and interest thereon equal in priority to the charge or lien upon the Revenue of the System for the payment of the principal of and interest on the Outstanding Parity Bonds and the Bonds.

“Letter of Representations” means the Blanket Issuer Letter of Representations between the City and DTC authorized to be executed by this ordinance.

“Maximum Annual Debt Service” means the maximum amount of Annual Debt Service which will become due in any fiscal year hereafter on the Parity Bonds then outstanding.

“Municipal Bond Insurance Policy” means the policy issued by the Bond Insurer insuring the payment of the principal of and interest on the Bonds when due.

“Net Revenue” means the Revenue of the System less the Costs of Maintenance and Operation.

“Outstanding Parity Bond Ordinances” means the ordinances authorizing the issuance of the Outstanding Parity Bonds.

“Outstanding Parity Bonds” means the outstanding 1990 Bonds, 1992 Bonds and 1994 Bonds.

“Outstanding Subordinate Lien Bonds” means (i) the Public Works Trust Fund loan and authorized by Public Works Trust Fund Loan Agreement No. PW-5-89-962-0013 dated May 16, 1989, and (ii) the Public Works Trust Fund loan authorized by Public Works Trust Fund Loan Agreement No. PW-5-91-280-012 dated May 21, 1991.

“Parity Bonds” means the Outstanding Parity Bonds, the Bonds and any Future Parity Bonds.

“Parity Conditions” means the requirements for the issuance of Future Parity Bonds set forth in the Outstanding Parity Bond Ordinances and in this ordinance.

“Permitted Investment” means any investment that is a legal investment for cities in the State of Washington, except that as long as the municipal bond insurance policy for the 1994

Bonds is in effect, Permitted Investments shall be restricted to those listed in Exhibit B to Ordinance No. 10508.

“Principal and Interest Account” means, collectively, those special accounts in the Water Fund and the Sewer Fund of the City previously combined and created as part of the Bellingham 1963 Water and Sewer Revenue Refunding Bond Redemption Fund by Section 7 of Ordinance No. 7428, and now known as the “Cash (Restricted for Debt Payment)” accounts within those funds, used for the payment of the principal of and interest on the Outstanding Parity Bonds, the Bonds and any Future Parity Bonds.

“Refunded Bonds” means the Water and Sewer Revenue Bonds, 1992, maturing in the years 2003 through 2011, inclusive.

“Refunding Plan” means:

(a) the placement of sufficient proceeds of the Bonds which, with other money of the City, if necessary, will acquire the Acquired Obligations to be deposited, with cash, if necessary, with the Refunding Trustee;

(b) the payment of the interest on the Refunded Bonds when due up to and including August 1, 2002, and the call, payment and redemption on August 1, 2002, of all of the Refunded Bonds at a price of 102% of par; and

(c) the payment of the costs of issuing the Bonds and the costs of carrying out the foregoing elements of the Refunding Plan.

“Refunding Trust Agreement” means a Refunding Trust Agreement between the City and the Refunding Trustee substantially in the form of that which is on file with the Finance Director and by this reference incorporated herein.

“Refunding Trustee” means U.S. Bank Trust National Association of Seattle, Washington, serving as trustee or escrow agent or any successor trustee or escrow agent.

“Registered Owner” means the person named as the registered owner of a Bond on the Bond Register.

“Reserve Account” means, collectively, those special accounts in the Water Fund and the Sewer Fund of the City previously combined and created as the account of that name in the Bond Fund by Section 8 of Ordinance No. 7428, and now known as the “Cash (Restricted for Debt Service Reserve)” accounts within those funds, used for the purpose of securing the payment of the principal of and interest on the Parity Bonds.

“Reserve Insurance” means, in lieu of cash and investments, insurance equal to the Reserve Requirement for any Future Parity Bonds then outstanding for which such insurance is obtained, but no insurance may be used to satisfy the Reserve Requirement for Future Parity Bonds unless (i) the insurance policy is non-cancelable, and (ii) the insurer as of the time of issuance of such insurance is rated in the highest rating categories by both Moody’s Investors Service, Inc., and Standard & Poor’s.

“Reserve Requirement” means Maximum Annual Debt Service. For calculating the Reserve Requirement for Variable Interest Rate Bonds, such Future Parity Bonds shall be assumed to bear interest at a fixed rate equal to the interest rate borne by those Future Parity Bonds on their date of issuance.

After all the outstanding 1990 Bonds, 1992 Bonds and 1994 Bonds are fully redeemed, refunded or defeased, “Reserve Requirement” means an amount equal to the least of 125% of Average Annual Debt Service, Maximum Annual Debt Service or 10% of the proceeds of the Parity Bonds then Outstanding. For calculating the Reserve Requirement for Variable Interest Rate Bonds, such Future Parity Bonds shall be assumed to bear interest at a fixed rate equal to the interest rate borne by those Future Parity Bonds on their date of issuance.

“Revenue of the System” means all earnings, revenue and money received by the City from or on account of the operation of the System, except proceeds from the sale of property of

the System, but including income from investments of money in the Bond Fund or from any other investments of such earnings and revenue except the income from investments irrevocably pledged to the payment of revenue bonds of the System pursuant to a plan of refunding or retirement adopted by the City. Revenue of the System also shall include any federal or state reimbursements of operating expenses to the extent such expenses constitute Costs of Maintenance and Operation.

“Sinking Fund Account” means any account created in the Bond Fund to amortize the principal or make mandatory redemptions of Term Bonds.

“System” means the combined water supply and distribution system and sewerage collection and disposal system of the City as it now exists and as the same may be added to, improved and extended for as long as any Parity Bonds remain outstanding. The Council may, by ordinance, combine with and include as a part of the System any other utility owned and operated by the City.

“Term Bonds” means any Parity Bonds identified as such in the ordinance or resolution authorizing the issuance thereof, the payment of which is provided for by a requirement for mandatory deposits of money by the City into a Sinking Fund Account in the Bond Fund or for mandatory redemptions of those Term Bonds.

“Variable Interest Rate Bonds” means those Future Parity Bonds bearing interest at a variable rate.

Section 2. Compliance With Parity Conditions. The Council finds and determines as required by the provisions of the Outstanding Parity Bond Ordinances relating to the issuance of Future Parity Bonds as follows:

First: The Bonds are being issued for the purpose of providing funds to refund at or prior to their maturity certain outstanding Parity Bonds.

Second: At the time of the passage and approval of this ordinance and at the time of the issuance and delivery of the Bonds, there is not nor will there be any deficiency in the Bond Fund or any account therein.

Third: This ordinance contains the provisions and covenants required to be included herein by the provisions of the Outstanding Parity Bond Ordinances relating to the issuance of Future Parity Bonds.

Fourth: The issuance of the Bonds does not require a greater amount to be paid out of the Revenue of the System for principal and interest over the life of the Bonds than would be required to be paid out of such Revenue of the System for principal and interest over the life of the Refunded Bonds and therefore the engineer's or accountant's certificate required by the Parity Conditions need not be obtained.

The Parity Conditions having been complied with or assured, the payments required herein to be made out of the Revenue of the System to pay and secure the payment of the principal of and interest on the Bonds shall constitute a lien and charge upon such Revenue of the System equal in rank to the lien and charge thereon of the payments to be made into the Principal and Interest Account, the Reserve Account and any Sinking Fund Account(s) to pay and secure the payment of the principal of and interest on the Outstanding Parity Bonds.

Section 3. Findings and Determinations. The Council finds and determines that the issuance and sale of the Bonds at this time will effect a saving to the City and its ratepayers and is in the best interest of the City and in the public interest. In making such finding and determination, the Council has given consideration to the fixed maturities of the Bonds and the Refunded Bonds, the costs of issuance of the Bonds and the known earned income from the investment of the proceeds of the issuance and sale of the Bonds and other money of the City used in the Refunding Plan pending payment and redemption of the Refunded Bonds.

The Council further finds and determines that the money to be deposited with the Refunding Trustee for the Refunded Bonds in accordance with Section 12 of this ordinance will discharge and satisfy the obligations of the City under Ordinance No. 10261 with respect to the

Refunded Bonds, and the pledges, charges, trusts, covenants and agreements of the City therein made or provided for as to those Refunded Bonds, and that the Refunded Bonds shall no longer be deemed to be outstanding under Ordinance No. 10261 immediately upon the deposit of such money with the Refunding Trustee.

The Council further finds and determines that the Revenue of the System and benefits to be derived from the operation and maintenance of the System at the rates to be charged for water and sanitary sewage disposal service from the entire System will be more than sufficient to meet all Costs of Maintenance and Operation and the debt service requirements of the Outstanding Parity Bonds and the Outstanding Subordinate Lien Bonds and to permit the setting aside into the Principal and Interest Account of the Bond Fund out of the Revenue of the System amounts sufficient to pay the principal of and interest on the Bonds when due.

The Council further finds and determines that it has exercised due regard for the Costs of Maintenance and Operation (and the cost of operation and maintenance as contemplated by RCW 35.92.100) and those debt service requirements and that it has not obligated the City to set aside and pay into the Bond Fund a greater amount of the Revenue of the System than in its judgment will be available over and above such Costs of Maintenance and Operation (and such cost of operation and maintenance).

Section 4. Authorization and Description of Bonds. For the purpose of providing a part of the money required to carry out the Refunding Plan, the City shall issue and sell the Bonds in the aggregate principal amount of \$8,220,000. The Bonds shall be designated the Water and Sewer Revenue Refunding Bonds, 1999; shall be dated May 1, 1999; shall be issued in fully registered form; shall be in the denomination of \$5,000 or any integral multiple thereof within a single maturity; shall be numbered separately, in the manner and with any additional

designation as the Bond Registrar deems necessary for purposes of identification; shall bear interest (computed on the basis of a 360-day year of twelve 30-day months), payable semiannually on each succeeding February 1 and August 1, commencing February 1, 2000; and shall mature on August 1 in years and amounts and bear interest at the rates per annum as follows:

<u>Maturity</u> <u>Years</u>	<u>Amounts</u>	<u>Interest</u> <u>Rates</u>
2001	\$ 90,000	3.70%
2002	90,000	3.80
2003	395,000	3.90
2004	490,000	4.00
2005	585,000	4.10
2006	675,000	4.15
2007	765,000	4.25
2008	880,000	4.35
2009	985,000	4.45
2010	1,120,000	4.50
2011	2,145,000	4.60

Section 5. Registration and Transfer of Bonds. The Bonds shall be issued only in registered form as to both principal and interest and recorded on the Bond Register. The Bond Register shall contain the name and mailing address of the Registered Owner of each Bond and the principal amount and number of each of the Bonds held by each Registered Owner.

Bonds surrendered to the Bond Registrar may be exchanged for Bonds in any authorized denomination of an equal aggregate principal amount and of the same maturity and interest rate. Bonds may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall be without cost to the Registered Owner or transferee, except for any tax or other governmental charge required to be paid for such exchange

or transfer. The Bond Registrar shall not be obligated to exchange or transfer any Bond during the 15 days preceding any principal payment or redemption date.

The Bonds initially shall be registered in the name of Cede & Co., as the nominee of DTC. The Bonds so registered shall be held in fully immobilized form by DTC as depository in accordance with the provisions of the Letter of Representations substantially in the form on file with the Finance Director of the City and by this reference made a part hereof. To induce DTC to accept the Bonds as eligible for deposit at DTC, the City approves the Letter of Representations. The Mayor or Finance Director of the City is authorized and directed to execute and deliver the Letter of Representations, on behalf of the City, to DTC on or before the date of delivery of the Bonds to the purchaser thereof and the payment therefor, with such changes as the Mayor or Finance Director deems to be in the best interests of the City, and execution and delivery of the Letter of Representations shall evidence irrevocably the approval of the Letter of Representations by the City. Neither the City nor the Bond Registrar shall have any responsibility or obligation to DTC participants or the persons for whom they act as nominees with respect to the Bonds regarding accuracy of any records maintained by DTC or DTC participants of any amount in respect of principal of or interest on the Bonds, or any notice which is permitted or required to be given to Registered Owners hereunder (except such notice as is required to be given by the Bond Registrar to DTC).

For so long as any Bonds are held in fully immobilized form, DTC or its successor depository shall be deemed to be the Registered Owner for all purposes hereunder and all references to registered owners, bondowners, bondholders or the like shall mean DTC or its nominees and shall not mean the owners of any beneficial interests in the Bonds. Registered ownership of such Bonds, or any portions thereof, may not thereafter be transferred except: (i) to

any successor of DTC or its nominee, if that successor shall be qualified under any applicable laws to provide the services proposed to be provided by it; (ii) to any substitute depository appointed by the City or such substitute depository's successor; or (iii) to any person if the Bonds are no longer held in immobilized form.

Upon the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository, or a determination by the City that it no longer wishes to continue the system of book entry transfers through DTC or its successor (or any substitute depository or its successor), the City may appoint a substitute depository. Any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it.

If (i) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (ii) the City determines that the Bonds are to be in certificated form, the ownership of Bonds may be transferred to any person as provided herein and the Bonds no longer shall be held in fully immobilized form.

Section 6. Payment of Bonds. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be paid by checks or drafts of the Bond Registrar mailed on the interest payment date to the Registered Owners at the addresses appearing on the Bond Register on the 15th day of the month preceding the interest payment date or, if requested in writing by a Registered Owner of \$1,000,000 or more in principal amount of Bonds prior to the applicable record date, by wire transfer on the interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the Registered Owners at either of the principal offices of the Bond Registrar at the option of the owners. Notwithstanding the foregoing, as long as the Bonds are registered in

the name of DTC or its nominee, payment of principal of and interest on the Bonds shall be made in the manner set forth in the Letter of Representations (as it may be changed).

Section 7. Redemption; Open Market Purchase; and Cancellation.

7.01 Optional Redemption. Bonds maturing in the years 2001 through 2009, inclusive, shall be issued without the right or option of the City to redeem those Bonds prior to their stated maturity dates. The City reserves the right and option to redeem the Bonds maturing on or after August 1, 2010, prior to their stated maturity dates at any time on or after August 1, 2009, as a whole or in part (within one or more maturities selected by the City and randomly within a maturity in such manner as the Bond Registrar shall determine), at the price of par plus accrued interest to the date fixed for redemption.

7.02 Partial Redemption. Portions of the principal of any Bond, in installments of \$5,000 or any integral multiple thereof, may be redeemed. If less than all of the principal amount of any Bond is redeemed, upon surrender of that Bond at either of the principal offices of the Bond Registrar, there shall be issued to the Registered Owner, without charge therefor, a new Bond (or Bonds, at the option of the Registered Owner) of the same interest rate and maturity in any of the denominations authorized by this ordinance in the aggregate principal amount remaining unredeemed.

7.03 Open Market Purchase. The City further reserves the right to use at any time any surplus Revenue of the System available after providing for the payments required by paragraphs First through Seventh, inclusive, of Section 14 of this ordinance, or other available funds, to purchase any of the Bonds in the open market at any time and at any price.

7.04 Cancellation of Bonds. All Bonds purchased or redeemed under this section shall be cancelled.

7.05 Selection of Bonds. Notwithstanding the foregoing, for so long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, selection of Bonds for redemption shall be in accordance with the Letter of Representations (as it may be changed).

Section 8. Notice of Redemption. The City shall cause notice of any intended redemption of Bonds to be given not less than 30 nor more than 60 days prior to the date fixed for redemption by first class mail, postage prepaid, to the Registered Owner of any Bond to be redeemed at the address appearing on the Bond Register at the time the Bond Registrar prepares the notice, and the requirements of this sentence shall be deemed to have been fulfilled when notice has been mailed as so provided, whether or not it is actually received by the owner of any Bond. Interest on Bonds called for redemption shall cease to accrue on the date fixed for redemption unless the Bond or Bonds called are not redeemed when presented pursuant to the call. In addition, the redemption notice shall be mailed within the same time period, postage prepaid, to Moody's Investors Service, Inc., and Standard & Poor's at their offices in New York, New York, or their successors, to Dain Rauscher Incorporated at its principal office in Seattle, Washington, or its successor, to the Bond Insurer at its principal office, and to such other persons and with such additional information as the Finance Director shall determine, but these additional mailings shall not be a condition precedent to the redemption of Bonds. Notwithstanding the foregoing, for so long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, notice of redemption shall be given in accordance with the Letter of Representations (as it may be changed).

Bonds called for redemption for which money has been set aside for payment shall be deemed not to be outstanding for any purposes hereunder, except that the Registered Owners

thereof shall be entitled to receive payment of the principal thereof and accrued interest thereon to the redemption date from the money set aside for such purpose.

Section 9. Failure to Redeem Bonds. If any Bond is not redeemed when properly presented at its maturity or call date, the City shall be obligated to pay interest on that Bond at the same rate provided in the Bond from and after its maturity or call date until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Bond Fund and the Bond has been called for payment by giving notice of any call to the Registered Owner of that unpaid Bond.

Section 10. Form and Execution of Bonds. The Bonds shall be typed, printed or lithographed on good bond paper in a form consistent with the provisions of this ordinance and State law and shall be signed by the Mayor and Finance Director, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon.

Only Bonds bearing a Certificate of Authentication in the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance:

CERTIFICATE OF AUTHENTICATION

This Bond is one of the fully registered City of Bellingham, Washington, Water and Sewer Revenue Refunding Bonds, 1999, described in the Bond Ordinance.

WASHINGTON STATE FISCAL AGENCY
Bond Registrar

By _____
Authorized Signer

The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered and are entitled to the benefits of this ordinance.

If any officer whose facsimile signature appears on the Bonds ceases to be an officer of the City authorized to sign bonds before the Bonds bearing his or her signature are authenticated or delivered by the Bond Registrar or issued by the City, those Bonds nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. Any Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bonds.

Section 11. Bond Registrar. The City specifies and adopts the system of registration for the Bonds approved by the Washington State Finance Committee. The Bond Registrar shall keep, or cause to be kept, at its principal corporate trust office, the Bond Register which shall be open to inspection by the City at all times. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's Bond Registrar for the Bonds and to carry out all of the Bond Registrar's powers and duties under this ordinance.

The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on the Bonds. The Bond Registrar may become the owner of Bonds with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to

act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Bond owners.

Section 12. Refunding of the Refunded Bonds.

12.01 Appointment of Refunding Trustee. U.S. Bank Trust National Association, Seattle, Washington, is appointed the Refunding Trustee.

12.02 Use of Bond Proceeds; Acquisition of Acquired Obligations. The proceeds of the sale of the Bonds, exclusive of the accrued interest thereon which shall be deposited into the Principal and Interest Account in the Bond Fund, shall be deposited immediately upon the receipt thereof with the Refunding Trustee and used, together with other money of the City to be deposited with the Refunding Trustee, to discharge the obligations of the City relating to the outstanding Refunded Bonds under Ordinance No. 10261 by providing for the payment of the amounts required to be paid by the Refunding Plan. The Refunding Plan shall be carried out and proceeds of the Bonds shall be applied in accordance with the provisions of chapter 39.53 RCW. To the extent practicable, such obligations shall be discharged fully by the Refunding Trustee's simultaneous purchase of the Acquired Obligations, bearing such interest and maturing as to principal and interest in such amounts and at such times so as to provide, together with a beginning cash balance, if necessary, for the payment of the amounts required to be paid by the Refunding Plan. The Acquired Obligations are listed and more particularly described in Schedule A attached to the Refunding Trust Agreement, but are subject to substitution as set forth below. Any Bond proceeds or other money deposited with the Refunding Trustee not needed to purchase the Acquired Obligations and provide a beginning cash balance, if any, and pay the costs of issuance of the Bonds shall be returned to the City at

the time of delivery of the Bonds to the initial purchase thereof and deposited in the Principal and Interest Account to pay interest on the Bonds on the first interest payment date.

Prior to the purchase of any such Acquired Obligations, the City reserves the right to substitute other direct, noncallable obligations of the United States of America (“Substitute Obligations”) for any of the Acquired Obligations and to use any savings created thereby for any lawful City purpose if (a) in the opinion of Foster Pepper & Shefelman PLLC, bond counsel to the City, its successor, or other nationally recognized bond counsel to the City, the interest on the Bonds will remain excluded from gross income for federal income tax purposes under Sections 103, 148 and 149(d) of the Code, and (b) such substitution shall not impair the timely payment of the amounts required to be paid by the Refunding Plan, as verified by a nationally recognized firm of independent certified public accountants.

After the purchase of the Acquired Obligations by the Refunding Trustee, the City reserves the right to substitute therefor cash or Substitute Obligations subject to the conditions that such money or securities held by the Refunding Trustee shall be sufficient to carry out the Refunding Plan, that such substitution will not cause the Bonds to be arbitrage bonds within the meaning of Section 148 of the Code and regulations thereunder in effect on the date of such substitution and applicable to obligations issued on the issue date of the Bonds, and the City obtains, at its expense: (1) verification by a nationally recognized independent certified public accounting firm acceptable to the Refunding Trustee confirming that the payments of principal of and interest on the substitute securities, if paid when due, and any other money held by the Refunding Trustee will be sufficient to carry out the Refunding Plan; and (2) an opinion from Foster Pepper & Shefelman PLLC, bond counsel to the City, its successor, or other nationally recognized bond counsel to the City, to the effect that the disposition and substitution or

purchase of such securities, under the statutes, rules and regulations then in force and applicable to the Bonds, will not cause the interest on the Bonds or the Refunded Bonds to be included in gross income for federal income tax purposes and that such disposition and substitution or purchase is in compliance with the statutes and regulations applicable to the Bonds. Any surplus money resulting from the sale, transfer, other disposition or redemption of the Acquired Obligations and the substitutions therefor shall be released from the trust estate and transferred to the City to be used for any lawful City purpose.

12.03 Administration of Refunding Plan. The Refunding Trustee is authorized and directed to purchase the Acquired Obligations (or Substitute Obligations) and to make the payments required to be made by the Refunding Plan from the Acquired Obligations (or Substitute Obligations) and money deposited with the Refunding Trustee pursuant to this ordinance. All Acquired Obligations (or Substitute Obligations) and the money deposited with the Refunding Trustee and any income therefrom shall be held irrevocably, invested and applied in accordance with the provisions of Ordinance No. 10261, this ordinance, chapter 39.53 RCW and other applicable statutes of the State of Washington and the Refunding Trust Agreement. All necessary and proper fees, compensation and expenses of the Refunding Trustee for the Bonds and all other costs incidental to the setting up of the escrow to accomplish the refunding of the Refunded Bonds and costs related to the issuance and delivery of the Bonds, including bond printing, rating service fees, verification fees, insurance premium, bond counsel's fees and other related expenses, shall be paid out of the proceeds of the Bonds.

12.04 Authorization for Refunding Trust Agreement. In order to carry out the Refunding Plan provided for by this ordinance, the Mayor or Finance Director of the City is authorized and directed to execute and deliver to the Refunding Trustee a Refunding Trust

Agreement substantially in the form on file with the Finance Director and by this reference made a part hereof setting forth the duties, obligations and responsibilities of the Refunding Trustee in connection with the payment, redemption and retirement of the Refunded Bonds as provided herein and stating that the provisions for payment of the fees, compensation and expenses of such Refunding Trustee set forth therein are satisfactory to it. Prior to executing the Refunding Trust Agreement, the Mayor or Finance Director is authorized to make such changes therein which do not change the substance and purpose thereof or which assure that the escrow provided therein and the Bonds are in compliance with the requirements of federal law governing the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 13. Call for Redemption of Refunded Bonds. The City calls for redemption on August 1, 2002, all of the Refunded Bonds at 102% of par. The date on which the Refunded Bonds are called for redemption is the earliest date on which those bonds may be called for redemption. Such call for redemption shall be irrevocable after the delivery of the Bonds to the initial purchaser thereof.

The Finance Director is authorized and directed to give or cause to be given such notices, at the times and in the manner required by Ordinance No. 10261 in order to effect the redemption prior to their maturity of the Refunded Bonds.

Section 14. Priority of Payments From Revenue of the System. The Revenue of the System, except income from the investment of money in the Bond Fund and the accounts therein, shall be used only for the following purposes and in the following order of priority:

First, to pay the Costs of Maintenance and Operation of the System;

Second, to make all payments required to be made into the Principal and Interest Account in the Bond Fund to pay the interest on any Parity Bonds;

Third, to make all payments required to be made into the Principal and Interest Account in the Bond Fund to pay the maturing principal of any Parity Bonds;

Fourth, to make all payments required to be made into any Sinking Fund Account for the payment of the principal or mandatory redemption of any Term Bonds;

Fifth, to make all payments required to be made into the Reserve Account created to secure the payment of the Parity Bonds and to make all payments required to be made pursuant to a reimbursement agreement in connection with Reserve Insurance, except that if there is not sufficient money to make all payments under reimbursement agreements the payments will be made on a pro rata basis;

Sixth, to make all payments required to be made into any revenue bond redemption fund or revenue warrant redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or revenue warrants of the City, including the Outstanding Subordinate Lien Bonds, having a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds;

Seventh, to make all payments required to be made into the Construction Reserve Accounts; and

Eighth, to retire by redemption or purchase in the open market any outstanding revenue bonds or revenue warrants of the City, to make necessary additions, betterments and improvements to and extensions of the System, or for any other lawful City purposes.

Section 15. Principal and Interest Account. The Principal and Interest Account in the Bond Fund shall be drawn upon for the sole purpose of paying the principal of and premium, if any, and interest on all Parity Bonds as the same shall become due.

As long as any Bonds remain outstanding, the City obligates and binds itself to set aside and pay into the Principal and Interest Account out of the Revenue of the System the following fixed amounts necessary, together with other money then on hand and available in the Principal and Interest Account, to pay the principal of and the interest on the Bonds as the same

respectively become due and payable. Such payments shall be made into the Principal and Interest Account on or before the 20th day of each month as follows:

(a) Commencing with the month of June, 1999, at least one-eighth of the amount which, together with other money paid into and on hand in the Principal and Interest Account, will equal the interest to become due and payable on February 1, 2000, and continuing thereafter for as long as any of the Bonds are outstanding and unpaid, at least one-sixth of the amount which, together with other money paid into and on hand in the Principal and Interest Account, will equal the interest to become due and payable on the next interest payment date on the Bonds.

(b) Commencing with the month of August, 2000, and continuing for as long as any of the Bonds are outstanding and unpaid, at least one-twelfth of the amount which, together with other money paid into and on hand in the Principal and Interest Account, will equal the principal of or mandatory sinking fund requirement for the Bonds to become due and payable on the next principal payment date.

Section 16. Reserve Account. The Reserve Account in the Bond Fund shall be used solely for the purpose of securing the payment of the principal of and the interest on all bonds payable out of the Bond Fund.

16.01 Funding for Bonds. The City finds and determines that the amount remaining on hand in the Reserve Account after the issuance and delivery of the Bonds will be at least equal to the Reserve Requirement for all Outstanding Parity Bonds and the Bonds.

16.02 Funding for Future Parity Bonds. The City covenants and agrees that, in the event it issues any Future Parity Bonds, it will provide in the ordinance authorizing the issuance of the same for the deposit within the period and in the manner prescribed by the Parity Conditions and Section 22(d) of this ordinance into the Reserve Account out of the Revenue of the System (or out of any other funds of the City on hand and legally available therefor) of amounts of money and Reserve Insurance which, together with the money and Reserve Insurance already on deposit therein, will be at least equal to the Reserve Requirement. Investments in the

Reserve Account shall be valued at least semiannually and immediately upon a withdrawal at the market value of such investments.

In the event the rating of an insurer providing Reserve Insurance falls below the highest rating category of either Moody's Investors Service, Inc., or Standard & Poor's, the City shall make deposits from Net Revenue into the Reserve Account in approximately equal annual installments in amounts sufficient to bring the balance in the Reserve Account to the Reserve Requirement within five years from the date the City receives notice of such rating.

16.03 Maintenance of Reserve Account. The City further covenants and agrees that when the required deposits have been made into the Reserve Account, it will at all times maintain such amounts therein. Whenever there is a sufficient amount in the Bond Fund, including the accounts therein, to pay the principal of, premium, if any, and interest on all outstanding Parity Bonds, the money in the Reserve Account may be used to pay such principal, premium, if any, and interest.

16.04 Withdrawals from Reserve Account. Money in the Reserve Account may be withdrawn to pay the principal of and premium, if any, and interest on any outstanding Parity Bonds, as long as the money or Reserve Insurance, as the case may be, left remaining on deposit in the Reserve Account is at least equal to the Reserve Requirement for the Parity Bonds then outstanding.

16.05 Use of Reserve Account for Refunding Parity Bonds. In the event that any Parity Bonds are refunded, the money in the Reserve Account may be used to retire such Parity Bonds or may be transferred to any reserve account which may be created to secure the payment of any bonds issued to refund such Parity Bonds, as long as the money left remaining in the Reserve Account is at least equal, together with Reserve Insurance, to the Reserve Requirement.

16.06 Use of Reserve Account for Payment of Debt Service. In the event the money in the Bond Fund over and above the amount therein set aside and credited to the Reserve Account is insufficient to meet maturing installments of either interest on or principal of and interest on the outstanding bonds payable out of Bond Fund, such deficiency shall be made up from the Reserve Account by the withdrawal of money or proceeds of Reserve Insurance therefrom, as the case may be. Any deficiency created in the Reserve Account by reason of any such withdrawal or claim against Reserve Insurance shall then be made up out of the Revenue of the System (or out of other funds of the City on hand and legally available therefor), after making necessary provision for the payments required to be made by subparagraphs First through Fourth, inclusive, of Section 14 of this ordinance.

Section 17. Investment of Money in the Bond Fund. Money in the Bond Fund may be invested in Permitted Investments. Investments of money in the Bond Fund shall mature on or prior to the date on which such money shall be needed for required interest or principal payments. Investments of money in the Reserve Account shall mature not later than the last maturity of any then outstanding Parity Bonds. Investments of money in any Sinking Fund Account shall mature on or prior to the date when such money shall be needed to pay or make a mandatory redemption of the Term Bonds. All interest earned and income or profits derived by virtue of investments of money in the Bond Fund shall be deposited in the Principal and Interest Account in the Bond Fund and used to meet any of the required deposits therein. Notwithstanding the provisions for the deposit of earnings, any earnings which are subject to a federal tax or rebate requirement may be withdrawn from the Bond Fund for deposit into a separate fund or account for that purpose.

Section 18. Capital Reserve Accounts. Money in the Capital Reserve Accounts shall be used for the following purposes: (i) to make up any deficiency in the Bond Fund or any accounts therein; (ii) to pay the cost of repairs to and renewals and replacements of the System; and (iii) to pay extraordinary maintenance and operation expenses.

The City covenants and agrees for as long as any of the Parity Bonds remain outstanding that it will budget for and deposit into the Capital Reserve Accounts in each fiscal year out of the Revenue of the System (or out of other funds of the City on hand and legally available therefor) an amount, together with the money already on deposit therein, which is sufficient in the judgment of the Council to provide for reasonably anticipated repairs to and renewals and replacements of the System and other contingencies.

Section 19. Lien of Bonds. The amounts pledged to be paid out of the Revenue of the System into the Bond Fund to pay the principal of and interest on the Bonds, including amounts to be deposited in the Reserve Account, are declared to be a prior lien and charge upon such Revenue of the System superior to all other charges of any kind or nature except the Costs of Maintenance and Operation of the System, and equal in rank to the charges upon such Revenue of the System to pay and secure the payment of the principal of and interest on the Outstanding Parity Bonds and any Future Parity Bonds.

Section 20. Bonds Limited Obligations. The Bonds shall be obligations only of the Bond Fund and shall be payable and secured as provided herein. The Bonds are not general obligations of the City or the State of Washington.

Section 21. Covenants. The City covenants and agrees with the owners of each of the Bonds for as long as any Parity Bonds remain outstanding as follows:

- (a) Maintenance and Operations. The City shall at all times maintain, preserve and keep the properties of the System in good repair, working order and

condition, and will make all necessary and proper additions, betterments, renewals and repairs thereto, and improvements, replacements and extensions thereof, and will at all times operate or cause the properties of the System and the business in connection therewith to be operated in an efficient manner and at a reasonable cost.

(b) Establishment and Collection of Rates and Charges. The City shall establish, maintain and collect rates and charges for all services and facilities provided and all commodities sold or supplied by the System which shall be fair and nondiscriminatory, and shall adjust such rates and charges from time to time so that:

(1) The Revenue of the System will at all times be sufficient (i) to pay all Costs of Maintenance and Operation on a current basis, (ii) to pay when due all amounts which the City is obligated to pay into the Bond Fund and the accounts therein, and (iii) to pay all taxes, assessments or other governmental charges lawfully imposed on the System or the revenue therefrom or payments in lieu thereof and any and all other amounts which the City may now or hereafter become obligated to pay from the Revenue of the System by law or contract; and

(2) The Net Revenue in each fiscal year will be at least equal to the Coverage Requirement.

(c) Sale or Disposition of the System. The City will not sell or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition, provision is made for the payment into the Bond Fund of cash or "government obligations," as such obligations are now or hereafter defined in chapter 39.53 RCW or its successor statute, if any, sufficient together with interest to be earned thereon to pay the principal of and interest on all Parity Bonds then outstanding.

The City will not sell, lease, mortgage or in any manner encumber or otherwise dispose of any part of the System, including all additions and improvements thereto and extensions thereof at any time made, that are used, useful or material in the operation of the System, unless provision is made for the replacement thereof or for payment into the Bond Fund of the greatest of the following:

(1) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and accounts therein) that the Revenue of the System from the portion of the System sold or

disposed of for the preceding year bears to the total Revenue of the System for such period; or

(2) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined above) that the Net Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Net Revenue for such period; or

(3) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined above) that the depreciated cost value of the facilities sold or disposed of bears to the depreciated cost value of the entire System immediately prior to such sale or disposition.

In addition, if the municipal bond insurance policy for the 1994 Bonds is in effect and if the value of the portion of the System to be sold, leased, mortgaged, encumbered or otherwise disposed of equals or exceeds 10% of the value of the System, the City shall not make such disposition unless it has on file either (A) a certificate from an independent licensed professional engineer experienced in the design, construction and operation of municipal utilities, or from a certified public accountant (which certificate shall be dated not more than 90 days prior to the proposed disposition), to the effect that the Net Revenue of the System after such disposition will continue to meet the Coverage Requirement or (B) the consent of the bond insurer for the 1994 Bonds to such disposition.

Notwithstanding any other provision of this subsection, the City in its discretion may sell or otherwise dispose of any of the works, plant, properties or facilities of the System or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, without making any deposit into the Bond Fund. In no event shall such proceeds be treated as Revenue of the System for purposes of this ordinance.

(d) Liens Upon the System. The City will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the System or the Revenue of the System, or any part thereof, prior or superior to the lien thereon for the payment of the Parity Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Revenue of the System, or any part thereof, prior to or superior to the lien of the Parity Bonds, or which might impair the security of the Parity Bonds.

(e) Books and Accounts. The City shall keep proper books, records and accounts with respect to the operations, income and expenditures of the

System in accordance with proper accounting procedures and any applicable rules and regulations prescribed by the State of Washington. The City shall prepare balance sheets and annual financial and operating statements within 120 days of the close of each fiscal year showing in reasonable detail the financial condition of the System as of the close of the previous year, and the income and expenses for such year, including the amounts paid into the Bond Fund and into any and all special funds or accounts created pursuant to or described in this ordinance, the status of all funds and accounts as of the end of such year, and the amounts expended for maintenance, renewals, replacements, and capital additions to the System. Such statements shall be sent to the owner of any Parity Bond upon written request therefor being made to the City.

(f) No Free Service. The City will not furnish or supply or permit the furnishing or supplying of any commodity, service or facility in connection with the operation of the System free of charge to any person, firm or corporation, public or private, other than the City and Whatcom County, so long as any Parity Bonds are outstanding.

(g) Fire and Extended Coverage Insurance. The City will at all times carry fire and extended coverage and such other forms of insurance with responsible insurers and with policies payable to the City on such of the buildings, equipment, works, plants, facilities and properties of the System as are ordinarily carried by municipal or privately owned utilities engaged in the operation of like systems, or will implement and maintain a self-insurance or an insurance pool program with reserves adequate, in the judgment of the Council, to protect the System and the owners of the Parity Bonds against loss.

(h) Public Liability and Property Damage Insurance. The City will at all times keep or arrange to keep in full force and effect such policies of public liability and property damage insurance with responsible insurers and with policies payable to the City against such claims for damages as are ordinarily carried by municipal or privately owned utilities engaged in the operation of like systems, or will implement and maintain a self-insurance or an insurance pool program with reserves adequate, in the judgment of the Council, to protect the System and the owners of the Parity Bonds against loss.

(i) Collection of Delinquent Accounts. The City will, on at least an annual basis, determine all accounts that are delinquent and will take all necessary action to enforce payment of such accounts against those property owners whose accounts are delinquent.

Section 22. Issuance of Future Parity Bonds. The City covenants and agrees that the City will not issue any bonds or other obligations having a greater or equal priority of lien upon the Revenue of the System and the money in the Bond Fund to pay and secure the payment of

the principal of and interest on such bonds or other obligations than the lien created on such Revenue of the System and money to pay and secure the payment of the principal of and interest on the Parity Bonds, except that it reserves the right,

First, to issue Future Parity Bonds for the purpose of providing funds to acquire, construct or replace any equipment, facilities, additions, betterments or other capital improvements to the System or for any other purpose for which the City is authorized by law to issue revenue bonds, or

Second, to issue Future Parity Bonds for the purpose of refunding at or prior to their maturity any outstanding Parity Bonds,

and to pledge and bind itself to make payments into the Bond Fund out of the Revenue of the System which will be sufficient to pay and secure the payment of the principal of and interest on such Future Parity Bonds, which payments shall rank equally with the payments required by this ordinance to be made into the Bond Fund and the accounts therein to pay and secure the payment of principal of and interest on the Bonds, upon compliance with the following conditions:

(a) No Bond Fund Deficiency. At the time of the issuance of such Future Parity Bonds there shall be no deficiency in the Bond Fund or any accounts therein.

(b) Payable Out of Bond Fund. Each ordinance providing for the issuance of such Future Parity Bonds shall provide for the payment of the principal thereof and premium, if any, and interest thereon out of the Bond Fund.

(c) Use of Bond Fund Money in Refunding. All money held in the Bond Fund and the accounts therein for the purpose of paying or securing the payment of the principal of and interest on Parity Bonds being refunded shall either be used to pay the principal of and interest on such bonds or be maintained in the Bond Fund and accounts therein to pay and secure the payment of such refunding Future Parity Bonds.

(d) Reserve Requirement. Each ordinance providing for the issuance of such Future Parity Bonds shall provide for the deposit into the Reserve Account of (i) an amount equal to the Reserve Requirement for those Future Parity Bonds from the proceeds of those Future Parity Bonds, (ii) Reserve Insurance equal to the Reserve Requirement for those Future Parity Bonds, or (iii) to the extent that the Reserve Requirement is not fully funded from Future Parity Bond proceeds or Reserve Insurance at the time of issuance of those Future Parity

Bonds, from Net Revenue in approximately equal annual installments so that the balance in the Reserve Account equals the Reserve Requirement for those Future Parity Bonds within five years from their date of issuance.

(e) Rate Covenant. The City will covenant in each ordinance providing for the issuance of such Future Parity Bonds to establish, maintain and collect rates and charges for all services and facilities provided by the System so that the Net Revenue will be sufficient to meet the Coverage Requirement.

(f) Parity Certificate. Prior to the delivery of such Future Parity Bonds the City shall have on file a certificate from an independent licensed professional engineer experienced in the design, construction and operation of municipal utilities, or from a certified public accountant (which certificate may not be dated more than 90 days prior to the date of delivery of such Future Parity Bonds), showing that in his professional opinion the Net Revenue, determined and adjusted as hereinafter provided for each fiscal year after the issuance of such Future Parity Bonds (the "Adjusted Net Revenue"), will equal at least the Coverage Requirement.

The Adjusted Net Revenue shall be the Net Revenue for a period of any 12 consecutive months out of the 24 months immediately preceding the month of delivery of such proposed Future Parity Bonds as adjusted by such engineer or accountant to take into consideration changes in Net Revenue estimated to occur under one or more of the following conditions for each year after such delivery for so long as any Parity Bonds, including the Future Parity Bonds proposed to be issued, shall be outstanding:

(1) any increase or decrease in Net Revenue which would result if any change in rates and charges effective on or approved by the Council prior to the date of such certificate and subsequent to the beginning of such 12-month period had been in force during the full 12-month period;

(2) any increase or decrease in Net Revenue estimated by such engineer or accountant to result from any additions, betterments or improvements to or extensions of any facilities of the System which (i) became fully operational during such 12-month period, (ii) were under construction at the time of such certificate, or (iii) will be acquired, constructed or installed from the proceeds of sale of the Future Parity Bonds proposed to be issued;

(3) the additional Net Revenue which would have been received if any customers added to the System during such 12-month period were customers for the entire period;

(4) the additional Net Revenue estimated to be received from any person, firm, association, or private or municipal corporation under any executed water or sanitary sewage service contract, which Net Revenue is not included in any of the sources of Net Revenue previously described in this subsection (f); and

(5) any increase or decrease in Net Revenue as a result of any actual or reasonably anticipated changes in the Costs of Maintenance and Operation subsequent to the 12-month period.

Such engineer or accountant shall base his certification upon, and his certificate shall have attached thereto, financial statements of the System audited by the State (unless such an audit is not available for a 12-month period within the preceding 24 months) and certified by the Finance Director, showing income and expenses for the period upon which the same is based.

The certificate of such engineer or accountant shall be conclusive and the only evidence required to show compliance with the provisions and requirements of this subsection (f).

(g) No Parity Certificate for Certain Refunding Future Parity Bonds. In the event that any Future Parity Bonds provided for in this section are issued for the purpose of refunding at or prior to maturity any or all of the then outstanding Parity Bonds, and the issuance of such refunding Future Parity Bonds does not require a greater amount to be paid out of the Revenue of the System for principal and interest over the life of such refunding Future Parity Bonds than would be required to be paid out of such Revenue of the System for principal and interest over the life of the Parity Bonds being refunded, then the certificate required in subsection (f) of which section need not be obtained to permit such refunding Future Parity Bonds to be issued on a parity with any Parity Bonds then outstanding.

(h) Inapplicability to Certain Future Parity Bonds. Nothing contained herein shall prevent the City from issuing Future Parity Bonds to refund maturing Parity Bonds of the City for the payment of which money is not otherwise available.

Such Future Parity Bonds may be Variable Interest Rate Bonds.

Section 23. Advance Refunding or Defeasance. The City may issue advance refunding bonds pursuant to the laws of the State of Washington or use money available from any other lawful source to pay when due the principal of and interest on the Bonds, or any portion thereof included in a refunding or defeasance plan, and to redeem and retire, refund or

defeasement all such then outstanding Bonds (hereinafter collectively called the "defeased Bonds") and to pay the costs of the refunding or defeasance. If money and/or "government obligations" (as defined in chapter 39.53 RCW, as now or hereafter amended) maturing at a time or times and bearing interest in amounts (together with money, if necessary) sufficient to redeem and retire, refund or defeasement the defeased Bonds in accordance with their terms are set aside in a special trust fund irrevocably pledged to that redemption and retirement of defeased Bonds (hereinafter called the "trust account"), then all right and interest of the owners of the defeased Bonds in the covenants of this ordinance, in the Revenue of the System, and in the funds and accounts obligated to the payment of the defeased Bonds, other than the right to receive the funds so set aside and pledged, shall cease and become void. The owners of defeased Bonds shall have the right to receive payment of the principal of and interest on the defeased Bonds from the trust account. The defeased Bonds shall be deemed no longer outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the defeased Bonds to such lawful purposes as it shall determine, subject only to the rights of the owners of any other Bonds or bonds then outstanding.

In the event that the refunding plan provides that the Bonds being refunded or the refunding bonds to be issued be secured by money and/or government obligations pending the prior redemption of those Bonds being refunded and if such refunding plan also provides that certain money and/or government obligations are pledged irrevocably for the prior redemption of those Bonds included in the refunding plan, then only the debt service on the Bonds which are not defeased Bonds and the refunding bonds, the payment of which is not so secured by the refunding plan, shall be included in any computation of the Coverage Requirement for the

issuance of Future Parity Bonds and the annual computation of coverage for determining compliance with the rate covenant.

In the event that the principal of and/or interest due on the Bonds is paid by the Bond Insurer pursuant to the Municipal Bond Insurance Policy, the Bonds shall not be considered paid by the City, and the covenants, agreements and other obligations of the City to the registered owners of the Bonds shall continue to exist and the Bond Insurer shall be subrogated to the rights of the registered owners.

Section 24. Subordinate Lien Obligations. Nothing contained herein shall prevent the City from issuing revenue bonds or other obligations which are a charge or lien upon the Revenue of the System subordinate to the payments required to be made therefrom into the Bond Fund and the accounts therein.

Section 25. Preservation of Tax Exemption for Interest on Bonds. The City covenants that it will take all actions necessary to prevent interest on the Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bonds or other funds of the City treated as proceeds of the Bonds at any time during the term of the Bonds which will cause interest on the Bonds to be included in gross income for federal income tax purposes.

The City also covenants that, to the extent that the arbitrage rebate requirement of Section 148 of the Code is applicable to the Bonds, it will take all actions necessary to comply (or to be treated as having complied) with that requirement in connection with the Bonds, including the calculation and payment of any penalties that the City has elected to pay as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section

148 of the Code to prevent interest on the Bonds from being included in gross income for federal income tax purposes.

The City certifies that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

Section 26. Amendments.

26.01 Amendments Without Bondowners' Consent. The Council from time to time and at any time may pass an ordinance or ordinances supplemental hereto, which ordinance or ordinances thereafter shall become a part of this ordinance, for any one or more of the following purposes:

(a) To add to the covenants and agreements of the City contained in this ordinance other covenants and agreements thereafter to be observed which shall not adversely affect the interests of the owners of any Bonds, or to surrender any right or power herein reserved to or conferred upon the City.

(b) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this ordinance in regard to matters or questions arising under this ordinance as the Council may deem necessary or desirable and not inconsistent with this ordinance and which shall not adversely affect the interests of the owners of the Bonds in any material respect.

Any such supplemental ordinance of the City may be passed without the consent of the owners of any Bonds at any time outstanding, notwithstanding any of the provisions of Section 26.02.

26.02 Amendments With Bondowners' Consent. With the consent of the owners of not less than 65% in aggregate principal amount of the Bonds then outstanding, the Council may pass an ordinance or ordinances supplemental hereto for the purpose of adding any

provisions to or changing in any manner or eliminating any of the provisions of this ordinance or of any supplemental ordinance, except no such supplemental ordinance shall:

(a) Extend the fixed maturity of any Bonds, or reduce the rate of interest thereon, or extend the times of payment of interest from their respective due dates, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the owner of each Bond so affected; or

(b) Reduce the aforesaid percentage of Bondowners required to approve any such supplemental ordinance, without the consent of the owners of all of the Bonds then outstanding.

It shall not be necessary for the consent of Bondowners under this subsection to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

26.03 Effect of Amendment. Upon the passage of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this ordinance shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all the terms and conditions of any such supplemental ordinance shall be deemed to be a part of the terms and conditions of this ordinance for any and all purposes.

26.04 Notation on Bonds. Bonds executed and delivered after the execution of any supplemental ordinance passed pursuant to the provisions of this section may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new Bonds modified to conform, in the opinion of the Council, to any modification of this ordinance contained in any such supplemental ordinance may be

prepared by the City and delivered without cost to the owners of any affected Bonds then outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

Section 27. Lost or Destroyed Bonds. In case any Bonds shall be lost, stolen or destroyed, the City may execute and the Bond Registrar may deliver a new Bond or Bonds of like date, number and tenor to the owner thereof upon the owner's paying the expenses and charges of the City and the Bond Registrar in connection therewith and upon filing by the owner with the Bond Registrar evidence satisfactory to the Bond Registrar that such Bond or Bonds were actually lost, stolen or destroyed, and of the ownership thereof, and upon furnishing the City and the Bond Registrar with indemnity satisfactory to the Finance Director and the Bond Registrar, respectively.

Section 28. Sale of Bonds and Approval of Bond Purchase Contract. Dain Rauscher Incorporated of Seattle, Washington (the "Purchaser"), has presented a Bond Purchase Contract (the "Bond Purchase Contract") to the City under which the Purchaser has offered to purchase the Bonds under the terms and conditions provided in the Bond Purchase Contract, which written Bond Purchase Contract is on file with the Finance Director and is incorporated herein by this reference. The Council finds that entering into the Bond Purchase Contract is in the City's best interest and therefore accepts the offer contained in the Bond Purchase Contract and authorizes the execution of the Bond Purchase Contract by City officials.

The Bonds will be printed at City expense and will be delivered to the Purchaser in accordance with the Bond Purchase Contract with the approving legal opinion of Foster Pepper & Shefelman PLLC, municipal bond counsel of Seattle, Washington, regarding the Bonds.

The proper City officials are authorized and directed to do everything necessary for the prompt delivery of the Bonds to the Purchaser, including without limitation the execution of the final official statement, and for the proper application and use of the proceeds of the sale thereof.

Section 29. Preliminary Official Statement Deemed “Final.” The Council has been provided with copies of a preliminary official statement dated April 13, 1999 (the “Preliminary Official Statement”), prepared in connection with the sale of the Bonds. For the sole purpose of the Purchaser’s compliance with Securities and Exchange Commission (“SEC”) Rule 15c2-12(b)(1), the City “deems final” that Preliminary Official Statement as of its date, except for the omission of information as to offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, maturity dates, options of redemption, delivery dates, ratings and other terms of the Bonds dependent on such matters.

Section 30. Undertaking to Provide Continuing Disclosure. To meet the requirements of SEC Rule 15c2-12(b)(5) (the “Rule”), as applicable to a participating underwriter for the Bonds, the City makes the following written undertaking (the “Undertaking”) for the benefit of holders of the Bonds:

(a) Undertaking to Provide Annual Financial Information and Notice of Material Events. The City undertakes to provide or cause to be provided, either directly or through a designated agent:

(i) To each nationally recognized municipal securities information repository designated by the SEC in accordance with the Rule (“NRMSIR”) and to a state information depository, if any, established in the State of Washington (the “SID”) annual financial information and operating data of the type included in the final official statement for the Bonds and described in subsection (b) of this section (“annual financial information”);

(ii) To each NRMSIR or the Municipal Securities Rulemaking Board (“MSRB”), and to the SID, timely notice of the occurrence of any of the following events with respect to the Bonds, if material: (1) principal and interest payment delinquencies; (2) non-payment related defaults; (3)

unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the Bonds; (7) modifications to rights of holders of the Bonds; (8) Bond calls (other than scheduled mandatory redemptions of Term Bonds); (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds; and (11) rating changes; and

(iii) To each NRMSIR or to the MSRB, and to the SID, timely notice of a failure by the City to provide required annual financial information on or before the date specified in subsection (b) of this section.

(b) Type of Annual Financial Information Undertaken to be Provided. The annual financial information that the City undertakes to provide in subsection (a) of this section:

(i) Shall consist of (1) annual financial statements prepared (except as noted in the financial statements) in accordance with applicable generally accepted accounting principles promulgated by the Government Accounting Standards Board (“GASB”), as such principles may be changed from time to time, which statements need not be audited, except, however, that if and when audited financial statements are otherwise prepared and available to the City they will be provided; (2) a statement of authorized, issued and outstanding bonded debt secured by the Revenue of the System, (3) debt service coverage ratios, and (4) general customer statistics for the System;

(ii) Shall be provided to each NRMSIR and the SID, not later than the last day of the ninth month after the end of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the City’s fiscal year ending December 31, 1999; and

(iii) May be provided in a single or multiple documents, and may be incorporated by reference to other documents that have been filed with each NRMSIR and the SID, or, if the document incorporated by reference is a “final official statement” with respect to other obligations of the City, that has been filed with the MSRB.

(c) Amendment of Undertaking. The Undertaking is subject to amendment after the primary offering of the Bonds without the consent of any holder of any Bond, or of any broker, dealer, municipal securities dealer, participating underwriter, rating agency, NRMSIR, the SID or the MSRB, under the circumstances and in the manner permitted by the Rule.

The City will give notice to each NRMSIR or the MSRB, and the SID, of the substance (or provide a copy) of any amendment to the Undertaking and a brief statement of the reasons for the amendment. If the amendment changes the type of annual financial information to be provided, the annual financial information containing the amended financial information will include a narrative explanation of the effect of that change on the type of information to be provided.

(d) Beneficiaries. The Undertaking evidenced by this section shall inure to the benefit of the City and any holder of Bonds, and shall not inure to the benefit of or create any rights in any other person.

(e) Termination of Undertaking. The City's obligations under this Undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the City's obligations under this Undertaking shall terminate if those provisions of the Rule which require the City to comply with this Undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of nationally recognized bond counsel or other counsel familiar with federal securities laws delivered to the City, and the City provides timely notice of such termination to each NRMSIR or the MSRB and the SID.

(f) Remedy for Failure to Comply with Undertaking. As soon as practicable after the City learns of any failure to comply with the Undertaking, the City will proceed with due diligence to cause such noncompliance to be corrected. No failure by the City or other obligated person to comply with the Undertaking shall constitute a default in respect of the Bonds. The sole remedy of any holder of a Bond shall be to take such actions as that holder deems necessary, including seeking an order of specific performance from an appropriate court, to compel the City or other obligated person to comply with the Undertaking.

(g) Designation of Official Responsible to Administer Undertaking. The Finance Director of the City (or such other officer of the City who may in the future perform the duties of the Finance Director) or his or her designee is authorized and directed in his or her discretion to take such further actions as may be necessary, appropriate or convenient to carry out the Undertaking of the City in respect of the Bonds set forth in this section and in accordance with the Rule, including, without limitation, the following actions:

(i) Preparing and filing the annual financial information undertaken to be provided;

(ii) Determining whether any event specified in subsection (a) has occurred, assessing its materiality with respect to the Bonds, and, if material, preparing and disseminating notice of its occurrence;

(iii) Determining whether any person other than the City is an “obligated person” within the meaning of the Rule with respect to the Bonds, and obtaining from such person an undertaking to provide any annual financial information and notice of material events for that person in accordance with the Rule;

(iv) Selecting, engaging and compensating designated agents and consultants, including but not limited to financial advisors and legal counsel, to assist and advise the City in carrying out the Undertaking; and

(v) Effecting any necessary amendment of the Undertaking.

Section 31. Bond Insurance. The City is authorized to purchase the Municipal Bond Insurance Policy from the Bond Insurer and agrees to the conditions for obtaining that policy, including the payment of the premium therefor. The Finance Director of the City is authorized on behalf of the City to enter into such agreements with the Bond Insurer as she may deem necessary and appropriate, concerning approvals, investments, the provision of notice, information and financial statements, and such other matters as are not inconsistent with this ordinance.

The Bond Insurer requires that the following sections be included in this ordinance, the provisions of which shall govern, notwithstanding anything to the contrary set forth in this ordinance:

(a) The City shall obtain the written consent of the Bond Insurer before obtaining any Reserve Insurance.

(b) The Bond Insurer shall be deemed to be the sole holder of the Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Bonds insured by it are entitled to take pursuant to this ordinance. The maturity

of Bonds insured by the Bond Insurer shall not be accelerated without the consent of the Bond Insurer.

(c) No modification, amendment or supplement to this ordinance may become effective except upon obtaining the prior written consent of the Bond Insurer.

(d) Copies of any modification or amendment to this ordinance shall be sent to Standard & Poor's Ratings Services and Moody's Investor Service, Inc., at least 10 days prior to the effective date thereof.

(e) Amounts paid by the Bond Insurer under the Municipal Bond Insurance Policy shall not be deemed paid for purposes of this ordinance and shall remain outstanding and continue to be due and owing until paid by the City in accordance with this ordinance. The Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Municipal Bond Insurance Policy. This ordinance shall not be discharged unless all amounts due or to become due to the Bond Insurer have been paid in full or duly provided for.

(f) Claims Upon the Municipal Bond Insurance Policy and Payments by and to the Bond Insurer.

If, on the third business day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Bond Registrar, after making all transfers and deposits required under this ordinance, money sufficient to pay the principal of and interest on the Bonds due

on such Payment Date, the Bond Registrar shall give notice to the Bond Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency, by 12:00 noon, New York City time, on such business day. If, on the second business day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Payment Date, the Bond Registrar shall make a claim under the Municipal Bond Insurance Policy and give notice to the Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Bond Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Municipal Bond Insurance Policy.

In the event the claim to be made is for a mandatory sinking fund redemption installment, upon receipt of the money due, the Bond Registrar shall authenticate and deliver to affected Bondholders who surrender their Bonds a new Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered. The Bond Registrar shall designate any portion of the payment of principal of Bonds paid by the Bond Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a

replacement Bond to the Bond Insurer, registered in the name of Financial Security Assurance Inc., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Bond Registrar's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the City on any Bond or the subrogation rights of the Bond Insurer.

The Bond Registrar shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal paid in respect of any Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Bond Registrar.

Upon payment of a claim under the Municipal Bond Insurance Policy the Bond Registrar shall establish a separate special purpose trust account for the benefit of Bondholders referred to herein as the "Policy Payments Account" and over which the Bond Registrar shall have exclusive control and sole right of withdrawal. The Bond Registrar shall receive any amount paid under the Municipal Bond Insurance Policy in trust on behalf of Bondholders and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Bond Registrar to Bondholders in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from

the check or wire transfer used to pay debt service with other funds available to make such payments.

Funds held in the Policy Payments Account shall not be invested by the Bond Registrar and may not be applied to satisfy any costs, expenses or liabilities of the Bond Registrar.

Any funds remaining in the Policy Payments Account following a Payment Date shall promptly be remitted to the Bond Insurer.

(g) The Bond Insurer shall be provided with all reports, notices and correspondence to be delivered under the terms of this ordinance.

(h) The City shall pay or reimburse the Bond Insurer for any and all charges, fees, costs and expenses which the Bond Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in this ordinance; (ii) the pursuit of any remedies under this ordinance or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, this ordinance whether or not executed or completed, (iv) the violation of the City of any law, rule or regulation, or any judgment, order or decree applicable to it or (v) any litigation or other dispute in connection with this ordinance or the transactions contemplated hereby, other than amounts resulting from the failure of the Bond Insurer to honor its obligations under the Municipal Bond Insurance Policy. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of this ordinance.

(i) The Bond Insurer shall be entitled to pay principal of or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the City (as such terms are defined in the Municipal Bond Insurance Policy) and any amounts due on the Bonds as a result of acceleration of the maturity thereof in accordance with this ordinance, whether or not the Bond Insurer has received Notice of Nonpayment (as such terms are defined in the Municipal Bond Insurance Policy) or a claim upon the Municipal Bond Insurance Policy.

(j) The notice address of the Bond Insurer is: Financial Security Assurance Inc., 350 Park Avenue, New York, New York 10022-6022, Attention: Managing Director – Surveillance: Re: Policy No. _____ ; Telephone: (212) 826-0100; Telecopier: (212) 339-3529. In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

(k) The City shall provide the Bond Insurer with copies of all notices, reports and financial statements delivered to the NRMSIRs in accordance with Section 30 of this ordinance, and shall give the Bond Insurer (i) prior notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof; (ii) notice of the resignation or removal of the Bond Registrar and the appointment of, and acceptance of duties by, any successor thereto; (iii) notice of the commencement of any proceeding by or against the City commenced under the United States Bankruptcy Code or any

other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an “Insolvency Proceeding”); and (v) notice of the making of any claim in connection with any insolvency proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Bonds.

(l) The City shall not enter into any contract or take any action by which the rights of the Bond Insurer or the security for or sources of payment of the Bonds may be impaired or prejudiced except upon obtaining the prior written consent of the Bond Insurer.

(m) To accomplish the defeasance of any Bonds, the City shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Bond Insurer (“Accountant”) verifying the sufficiency of the escrow established to pay the Bonds to be defeased in full on the maturity or redemption date (“Verification”), (ii) an escrow deposit agreement (which shall be acceptable in form and substance to the Bond Insurer), and (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds to be defeased are no longer outstanding hereunder; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the City and the Bond Insurer. In the event a forward purchase agreement will be employed in the refunding, such agreement shall be subject to the approval of the Bond Insurer and shall be accompanied by such opinions of counsel as may be required by the Bond Insurer. The Bond Insurer shall be provided with final drafts of the above-

referenced documentation not less than five business days prior to the funding of the escrow.

Section 32. General Authorization. The Mayor and the Finance Director of the City and the other appropriate officers of the City are each hereby authorized and directed to do everything as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this ordinance.


Section 33. Cover Page and Table of Contents. The cover page and table of contents of this ordinance are for convenience of reference only, and shall not be used to resolve any question of interpretation of this ordinance.

Section 34. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of any Bonds.


Section 35. Ratification of Prior Acts. All acts taken pursuant to the authority of this ordinance but prior to its effective date are ratified and confirmed.

Section 36. Effective Date. This ordinance shall be effective 15 days after its final passage.

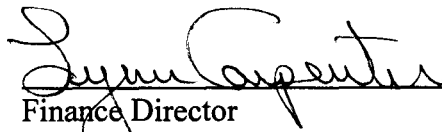
PASSED by the City Council of the City of Bellingham, Washington, at a regular meeting thereof held this 26th day of April, 1999.

By 
Council President

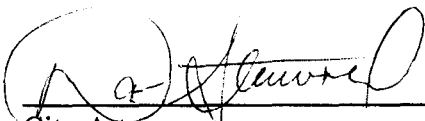
APPROVED by me this 28th day of April, 1999.

By 
Mayor

ATTEST:


Finance Director

APPROVED AS TO FORM:


City Attorney

PUBLISHED: 4/30/99