

CITY OF BELLINGHAM, WASHINGTON  
WATER AND SEWER REVENUE BONDS, 2011

ORDINANCE NO. 2011-08-041

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, APPROVING CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE CITY'S COMBINED WATER AND SEWAGE SYSTEM; AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE BONDS OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$48,000,000 TO PAY COSTS OF SAID IMPROVEMENTS; DELEGATING AUTHORITY TO APPROVE THE FINAL TERMS OF THE BONDS; AND RESERVING THE RIGHT TO ISSUE REVENUE BONDS ON A PARITY WITH THE BONDS UPON COMPLIANCE WITH CERTAIN CONDITIONS.

PASSED: AUGUST 1, 2011

PREPARED BY:

PACIFICA LAW GROUP LLP

Seattle, Washington

CITY OF BELLINGHAM  
ORDINANCE NO. 2011-08-041  
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- Exhibit A: Description of Projects
- Exhibit B: Form of Certificate of Award

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\* This Table of Contents is provided for convenience only and is not a part of this ordinance.

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AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, APPROVING CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE CITY'S COMBINED WATER AND SEWAGE SYSTEM; AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE BONDS OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$48,000,000 TO PAY COSTS OF SAID IMPROVEMENTS; DELEGATING AUTHORITY TO APPROVE THE FINAL TERMS OF THE BONDS; AND RESERVING THE RIGHT TO ISSUE REVENUE BONDS ON A PARITY WITH THE BONDS UPON COMPLIANCE WITH CERTAIN CONDITIONS.

WHEREAS, the City of Bellingham, Washington (the "City"), 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 August 2, 2011</u>
Water and Sewer Revenue Improvement and Refunding Bonds, 2004	05/01/2004	No. 2004-05-030	\$ 3,700,000
Water and Sewer Revenue Bonds, 2006	06/15/2006	No. 2006-05-050	7,970,000
Water and Sewer Revenue Bonds, 2008	08/21/2008	No. 2008-07-073	4,630,000

(collectively, the "Outstanding Parity Bonds"); and

WHEREAS, the ordinances authorizing the issuance of the Outstanding Parity Bonds (collectively, the "Outstanding Parity Bond Ordinances") provide that additional water and sewer

revenue bonds may be issued on a parity of lien with the Outstanding Parity Bonds if certain conditions are met; and

WHEREAS, the System is in need of additions, betterments and improvements (the “Projects”); and

WHEREAS, the City is authorized pursuant to chapters 35.92 and 39.46 RCW to issue revenue bonds payable from operating revenues of the System for the purpose of financing costs of the Projects; and

WHEREAS, the City Council has determined that the conditions to the issuance of parity bonds have been met and that it is in the best interests of the City and its ratepayers that it issue water and sewer revenue bonds in the aggregate amount of not to exceed \$48,000,000 (the “Bonds”) for the purpose of financing the Projects, funding a debt service reserve fund, and paying costs of issuance; and

WHEREAS, the City Council wishes to delegate authority to the Finance Director (the “Designated Representative”), for a limited time, to approve the interest rates, maturity dates, redemption terms and principal maturities for the Bonds within the parameters set by this ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLINGHAM, WASHINGTON DOES ORDAIN AS FOLLOWS:

Section 1. Definitions and Interpretation of Terms

(a) *Definitions.* As used in this ordinance, the following words have the following meanings:

*Account* means one of a variety of ways to track individual assets, liabilities, fund balances, revenues, and expenses so that each item is separately and clearly distinguishable from all other accounts and provides a clear audit trail of sources and uses.

*Acquisition and Construction Account* means the “Cash — 2011 Acquisition and Construction Revenue Bond” account established in the office of the Finance Director.

*Adjusted Net Revenue* means Net Revenue adjusted by an independent licensed professional engineer or certified public accountant in accordance with the requirements of the Parity Conditions and Section 16 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 any 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 Register** means the registration books showing the name, address and tax identification number of each Registered Owner of the Bonds, maintained pursuant to Section 149(a) of the Code.

**Bond Registrar** means, initially, the fiscal agency of the State of Washington, for the purposes of registering and authenticating the Bonds, maintaining the Bond Register, effecting transfer of ownership of the Bonds and paying interest on and principal of the Bonds.

**Bond Year** means each one-year period that ends on the date selected by the City. The first and last Bond Years may be short periods. If no day is selected by the City before the earlier of the final maturity date of the Bonds or the date that is five years after the date of issuance of the Bonds, Bond Years end on each anniversary of the date of issue and on the final maturity date of the Bonds.

**Bonds** means the Water and Sewer Revenue Bonds, 2011, of the City issued pursuant to this ordinance.

**Capital Reserve Accounts** means, collectively, those special accounts in the Water Fund and the Sewer Fund of the City previously combined and now known as the “Cash (Restricted for Capital)” accounts.

**Certificate of Award** means the certificate signed by the Designated Representative, in the form attached hereto as Exhibit B, awarding the Bonds to a bidder as set forth in Section 20 of this ordinance.

**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 Internal Revenue Code of 1986, as amended, and shall include all applicable regulations and rulings relating thereto.

**Commission** means the Securities and Exchange Commission.

**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. *Following the full redemption, refunding or defeasance of all 2004 Bonds, 2006 Bonds and 2008 Bonds, the definition of "Costs of Maintenance and Operation" shall be amended to read "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, extraordinary items under then applicable accounting standards, and payments to the City in lieu of taxes."*

**Council or City Council** means the legislative body of the City as duly and regularly constituted from time to time.

**Coverage Requirement** means Net Revenue equal to 1.25 times Maximum Annual Debt Service. 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. *Following the full redemption, refunding or defeasance of all 2004 Bonds and 2006 Bonds, the definition of "Coverage Requirement" shall be amended to read "means Net Revenue equal to 1.25 times Maximum Annual Debt Service. 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) 6% per annum and (ii) (a) the highest variable rate borne during the preceding 24 months by any outstanding Variable Interest Rate Bonds or, (b) if no such Variable Interest 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."*

**Coverage Stabilization Account** means the account of that name maintained pursuant to Section 11(b) of this ordinance.

**Designated Representative** means the Finance Director or his or her designee.

**DTC** means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York, as depository for the Bonds.

**Federal Tax Certificate** means the certificate executed by the Designated Representative setting forth the requirements of the Code for maintaining the tax exemption of interest on the Bonds.

**Finance Director** means the Finance Director of the City or the successor to such officer.

**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.

**Government Obligations** mean those obligations now or hereafter defined as such in chapter 39.53 RCW.

**Letter of Representations** means the Blanket Issuer Letter of Representations given by the City to DTC, as amended from time to time.

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

**MSRB** means the Municipal Securities Rulemaking Board or any successors to its functions.

**Net Proceeds**, when used with reference to the Bonds, mean the principal amount of the Bonds, plus accrued interest and original issue premium, if any, and less original issue discount, if any.

**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 as described in the recitals to this ordinance.

**Outstanding Parity Bonds** means the outstanding 2004 Bonds, 2006 Bonds and 2008 Bonds.

**Outstanding Subordinate Lien Bonds** means (i) Public Works Trust Fund Loan Agreement No. PW-2-691-003 dated April 4, 2002; and (ii) Public Works Trust Fund Loan Agreement No. PW-06-962-007 dated July 17, 2006.

**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 Section 16 of this ordinance.

**Permitted Investment** means any investment that is a legal investment for cities in the State of Washington. In addition, as long as the municipal bond insurance policy for the 2004 Bonds is in effect, Permitted Investments shall be restricted to those listed in Exhibit B to Ordinance No. 2004-05-030.

**Principal and Interest Account** means, together, the “Cash (Restricted for Debt Payment)” accounts within the Water Fund and the Sewer Fund, used for the payment of the principal of and interest on the Outstanding Parity Bonds, the Bonds and any Future Parity Bonds.

**Private Person** means any natural person engaged in a trade or business or any trust, estate, partnership, association, company or corporation.

**Private Person Use** means the use of property in a trade or business by a Private Person if such use is other than as a member of the general public. Private Person Use includes ownership of the property by the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the property (such as a lease, management or incentive payment contract or other special arrangement) in such a manner as to set the Private Person apart from the general public. Use of property as a member of the general public includes attendance by the Private Person at municipal meetings or business rental of property to the Private Person on a day-to-day basis if the rental paid by such Private Person is the same as the rental paid by any Private Person who desires to rent the property. Use of property by nonprofit

community groups or community recreational groups is not treated as Private Person Use if such use is incidental to the governmental uses of property, the property is made available for such use by all such community groups on an equal basis and such community groups are charged only a de minimis fee to cover custodial expenses.

**Projects** mean the system or plan of additions to and betterments and improvements to the System specified, adopted and ordered to be carried out by Section 2 of this ordinance.

**Registered Owner** means the person named as the registered owner of a Bond in the Bond Register. For so long as the Bonds are held in book-entry only form, DTC shall be deemed to be the sole Registered Owner.

**Reserve Account** means, together, the "Cash (Restricted for Debt Service Reserve)" accounts within the Water Fund and the Sewer Fund, 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. *Following the full redemption, refunding or defeasance of all 2004 Bonds and 2006 Bonds, clause (ii) of the definition of "Reserve Insurance" shall be amended to read "(ii) the insurer as of the time of issuance of such insurance is rated in one of the two highest rating categories (without regard to gradation) by both Moody's Investors Service, Inc. and Standard and Poor's."*

**Reserve Requirement** means an amount equal to the least of (a) 125% of Average Annual Debt Service, (b) Maximum Annual Debt Service or (c) 10% of the proceeds of the Parity Bonds then Outstanding. For calculating the Reserve Requirement for Variable Interest Rate Bonds, such Variable Interest Rate Bonds shall be assumed to bear interest at a fixed rate equal to the interest rate borne by those Variable Interest Rate Bonds on their date of issuance. *Following the full redemption, refunding or defeasance of all 2004 Bonds, 2006 Bonds and 2008 Bonds, for calculating the Reserve Requirement for Variable Interest Rate Bonds, such Variable Interest Rate Bonds shall be assumed to bear interest at a fixed rate equal to the higher of (i) 6% per annum and (ii) (a) the highest variable rate borne during the preceding 24 months by any outstanding Variable Interest Rate Bonds or, (b) if no such Variable Interest 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 Variable Interest Rate Bonds proposed to be issued.*

**Revenue of the System** or **Revenue** 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.

**Rule** means the Commission's Rule 15c2-12 under the Securities Exchange Act of 1934, as amended from time to time.

***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 redemption of those Term Bonds.

***2004 Bonds*** means the outstanding Water and Sewer Revenue Improvement and Refunding Revenue Bonds, 2004, of the City authorized by Ordinance No. 2004-05-030 and dated May 1, 2004.

***2006 Bonds*** means the outstanding Water and Sewer Revenue Bonds, 2006, of the City authorized by Ordinance No. 2006-05-050 and dated June 15, 2006.

***2008 Bonds*** means the outstanding Water and Sewer Revenue Bonds, 2008, of the City authorized by Ordinance No. 2008-07-073 and dated August 21, 2008.

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

(b) ***Interpretation.*** In this ordinance, unless the context otherwise requires:

(1) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any

particular article, section, subdivision or clause hereof, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this ordinance;

(2) Words of the masculine gender shall mean and include correlative words of the feminine and neutral genders and words importing the singular number shall mean and include the plural number and vice versa;

(3) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(4) Any headings preceding the text of the several articles and sections of this ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect; and

(5) All references herein to “articles,” “sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof.

Section 2. Authorization of the Projects. The Council hereby finds that the public interest, welfare and convenience require the construction, acquisition and installation of certain improvements to the System, including but not limited to the improvements listed in Exhibit A attached hereto and incorporated herein by this reference (together, the “Projects”) and that said improvements are legally required and/or economically sound, and will contribute to the conduct of the business of the System in an efficient manner.

The City shall provide all equipment, connections and appurtenances together with all work as may be incidental and necessary to complete the Projects. The Project facilities shall be integrated into the System as required to provide a fully operational facility.

The City may make such changes in or additions to the Projects or in the construction or design of other facilities of the System as may be found necessary or desirable. Implementation or completion of any specified improvement shall not be required if the Council determines that, due to substantially changed circumstances, it has become advisable or impractical. If the Projects have either been completed, or its completion duly provided for, or their completion found to be impractical, the City may apply the proceeds of the Bonds or any portion thereof to other improvements to the System, as the Council in its discretion shall determine. In the event that the proceed of sale of the Bonds, plus any other moneys of the City legally available, are insufficient to accomplish all of the Projects provided by this section, the City shall use the available funds for paying the cost of those improvements for which the Bonds were approved, deemed by the Council most necessary and to the best interest of the City.

The City shall acquire by purchase, lease or condemnation, all property, both real and personal, or any interest therein, or rights-of-way and easements that may be found necessary to acquire, construct and install the Projects.

The estimated cost of this plan of additions and betterments and all costs incidental thereto (including costs of issuance of the Bonds and funding of the Reserve Requirement), is hereby declared to be as nearly as practicable the sum of \$142,500,000, a portion of which shall be provided out of the proceeds of the sale of the Bonds.

Section 3. 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 construct or acquire additions, betterments or other capital improvements to the System.

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 Council has been assured that prior to the issuance and delivery of the Bonds it will 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, showing that in his or her professional opinion the Net Revenue of the System (determined and adjusted as provided in the Parity Conditions) for each fiscal year after the issuance of the Bonds will equal at least the Coverage Requirement.

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 Bond Fund to pay and secure the payment of the principal of and interest on the Outstanding Parity Bonds.

Section 4. Findings and Determinations. The Council 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 for 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 5. Authorization and Description of Bonds. For the purpose of paying the costs of the Projects, funding the Reserve Account, and paying costs of issuance of the Bonds, the City shall issue and sell its water and sewer revenue bonds in the aggregate principal amount of not to exceed \$48,000,000 (the "Bonds").

The Bonds shall be designated "City of Bellingham, Washington, Water and Sewer Revenue Bonds, 2011"; shall be dated as of their date of delivery; shall be fully registered as to both principal and interest; shall be in the denomination of \$5,000 each, or any integral multiple thereof, within a maturity; shall be numbered separately in such manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification; and shall bear interest from their date payable on the first days of each February and August, commencing on February 1, 2012, at rates set forth in the Certificate of Award; and shall mature on the dates and in the principal amounts set forth in the Certificate of Award and as approved by the Designated Representative pursuant to Section 20. The Bonds of any of the maturities may be combined and issued as term bonds, subject to mandatory redemption as provided in the Certificate of Award.

The Bonds shall be obligations only of the Bond Fund and shall be payable and secured as provided herein. The Bonds do not constitute an indebtedness or general obligation of the City within the meaning of the constitutional provisions and limitations of the State of Washington.

Section 6. Registration, Exchange and Payments.

(a) *Bond Registrar/Bond Register.* The City hereby specifies and adopts the system of registration approved by the Washington State Finance Committee from time to time through the appointment of state fiscal agencies. The City shall cause a bond register to be maintained by the Bond Registrar. So long as any Bonds remain outstanding, the Bond Registrar shall make all necessary provisions to permit the exchange or registration or transfer of Bonds at its principal corporate trust office. The Bond Registrar may be removed at any time at the option of the Finance Director upon prior notice to the Bond Registrar and a successor Bond Registrar appointed by the Finance Director. No resignation or removal of the Bond Registrar shall be effective until a successor shall have been appointed and until the successor Bond Registrar shall have accepted the duties of the Bond Registrar hereunder. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of such Bonds and this ordinance 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 Certificate of Authentication of the Bonds.

(b) *Registered Ownership.* The City and the Bond Registrar, each in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes (except as provided in Section 21 of this ordinance), and neither the City nor the Bond Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be

made only as described in Section 6(h), but such Bond may be transferred as herein provided. All such payments made as described in Section 6(h) shall be valid and shall satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid.

(c) *DTC Acceptance/Letters of Representations.* The Bonds initially shall be held by DTC acting as depository. To induce DTC to accept the Bonds as eligible for deposit at DTC, the City has executed and delivered to DTC a Blanket Issuer Letter of Representations. Neither the City nor the Bond Registrar will have any responsibility or obligation to DTC participants or the persons for whom they act as nominees (or any successor depository) with respect to the Bonds in respect of the accuracy of any records maintained by DTC (or any successor depository) or any DTC participant, the payment by DTC (or any successor depository) or any DTC participant of any amount in respect of the principal of or interest on Bonds, any notice which is permitted or required to be given to Registered Owners under this ordinance (except such notices as shall be required to be given by the City to the Bond Registrar or to DTC (or any successor depository)), or any consent given or other action taken by DTC (or any successor depository) as the Registered Owner. For so long as any Bonds are held in by a depository, DTC or its successor depository shall be deemed to be the Registered Owner for all purposes hereunder, and all references herein to the Registered Owners shall mean DTC (or any successor depository) or its nominee and shall not mean the owners of any beneficial interest in such Bonds.

If any Bond shall be duly presented for payment and funds have not been duly provided by the City on such applicable date, then interest shall continue to accrue thereafter on the unpaid principal thereof at the rate stated on such Bond until it is paid.

(d) *Use of Depository.*

(1) The Bonds shall be registered initially in the name of “Cede & Co.”, as nominee of DTC, with one Bond maturing on each of the maturity dates for the Bonds in a denomination corresponding to the total principal therein designated to mature on such date. Registered ownership of such Bonds, or any portions thereof, may not thereafter be transferred except (A) to any successor of DTC or its nominee, provided that any such successor shall be qualified under any applicable laws to provide the service proposed to be provided by it; (B) to any substitute depository appointed by the Finance Director pursuant to subsection (2) below or such substitute depository’s successor; or (C) to any person as provided in subsection (4) below.

(2) 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 Finance Director to discontinue the system of book entry transfers through DTC or its successor (or any substitute depository or its successor), the Finance Director may hereafter 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.

(3) In the case of any transfer pursuant to clause (A) or (B) of subsection (1) above, the Bond Registrar shall, upon receipt of all outstanding Bonds, together with a written request on behalf of the Finance Director, issue a single new Bond for each maturity then outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such written request of the Finance Director.

(4) In the event that (A) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (B) the Finance Director determines that it is in the best interest of the beneficial owners of the

Bonds that such owners be able to obtain physical Bond certificates, the ownership of such Bonds may then be transferred to any person or entity as herein provided, and shall no longer be held by a depository. The Finance Director shall deliver a written request to the Bond Registrar, together with a supply of physical Bonds, to issue Bonds as herein provided in any authorized denomination. Upon receipt by the Bond Registrar of all then outstanding Bonds together with a written request on behalf of the Finance Director to the Bond Registrar, new Bonds shall be issued in the appropriate denominations and registered in the names of such persons as are requested in such written request.

(e) *Registration of Transfer of Ownership or Exchange; Change in Denominations.*

The transfer of any Bond may be registered and Bonds may be exchanged, but no transfer of any such Bond shall be valid unless it is surrendered to the Bond Registrar with the assignment form appearing on such Bond duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Bond Registrar. Upon such surrender, the Bond Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Registered Owner or transferee therefor, a new Bond (or Bonds at the option of the new Registered Owner) of the same date, maturity and interest rate and for the same aggregate principal amount in any authorized denomination, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond. Any Bond may be surrendered to the Bond Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds of the same date, maturity and interest rate, in any authorized denomination. The Bond Registrar shall not be obligated to register the transfer or to exchange any Bond during the 15 days preceding any interest payment or principal payment date any such Bond is to be redeemed.

(f) *Bond Registrar's Ownership of Bonds.* The Bond Registrar may become the Registered Owner of any Bond 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 a member of, or in any other capacity with respect to, any committee formed to protect the right of the Registered Owners of Bonds.

(g) *Registration Covenant.* The City covenants that, until all Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

(h) *Place and Medium of Payment.* 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 calculated on the basis of a year of 360 days and twelve 30-day months. For so long as all Bonds are held by a depository, payments of principal and interest thereon shall be made as provided in accordance with the operational arrangements of DTC referred to in the Letter of Representations. In the event that the Bonds are no longer held by a depository, interest on the Bonds shall be paid by check or draft mailed to the Registered Owners at the addresses for such Registered Owners appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date, or upon the written request of a Registered Owner of more than \$1,000,000 of Bonds (received by the Bond Registrar at least 15 days prior to the applicable payment date), such payment shall be made by the Bond Registrar by wire transfer to the account within the United States designated by the Registered Owner. Principal of the Bonds shall be payable upon presentation and surrender of such Bonds by the Registered Owners at the principal office of the Bond Registrar.

Section 7. Redemption Prior to Maturity and Purchase of Bonds.

(a) *Mandatory Redemption of Term Bonds and Optional Redemption, if any.* The Bonds shall be subject to optional redemption on the dates, at the prices and under the terms set forth in the Certificate of Award approved by the Designated Representative pursuant to Section 20. The Bonds shall be subject to mandatory redemption to the extent, if any, set forth in the Certificate of Award and as approved by the Designated Representative pursuant to Section 20.

(b) *Purchase of Bonds.* The City 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 of Section 11 of this ordinance, or other available funds, to purchase for retirement any of the Bonds at any price deemed reasonable by the City.

(c) *Selection of Bonds for Redemption.* For as long as the Bonds are held in book-entry only form, the selection of particular Bonds within a maturity to be redeemed shall be made in accordance with the operational arrangements then in effect at DTC. If the Bonds are no longer held by a depository, the selection of such Bonds to be redeemed and the surrender and reissuance thereof, as applicable, shall be made as provided in the following provisions of this subsection (c). If the City redeems at any one time fewer than all of the Bonds having the same maturity date, the particular Bonds or portions of Bonds of such maturity to be redeemed shall be selected by lot (or in such manner determined by the Bond Registrar) in increments of \$5,000. In the case of a Bond of a denomination greater than \$5,000, the City and the Bond Registrar shall treat each Bond as representing such number of separate Bonds each of the denomination of \$5,000 as is obtained by dividing the actual principal amount of such Bond by \$5,000. In the event that only a portion of the principal sum of a Bond is redeemed, upon surrender of such

Bond at the principal office of the Bond Registrar there shall be issued to the Registered Owner, without charge therefor, for the then unredeemed balance of the principal sum thereof, at the option of the Registered Owner, a Bond or Bonds of like maturity and interest rate in any of the denominations herein authorized. To the extent the City optionally redeems or purchases for retirement any Term Bond, any remaining mandatory sinking fund payment or mandatory prior redemption requirements for such Term Bond shall be reduced on a *pro rata* basis.

(d) *Notice of Redemption.*

(1) Official Notice. For so long as the Bonds are held in by a depository, notice of redemption shall be given in accordance with the operational arrangements of DTC as then in effect, and neither the City nor the Bond Registrar will provide any notice of redemption to any Beneficial Owners. The notice of redemption may be conditional. Thereafter (if the Bonds are no longer held by a depository), notice of redemption shall be given in the manner hereinafter provided. Unless waived by any owner of Bonds to be redeemed, official notice of any such redemption (which redemption may be conditioned by the Bond Registrar on the receipt of sufficient funds for redemption or otherwise) shall be given by the Bond Registrar on behalf of the City by mailing a copy of an official redemption notice by first class mail at least 20 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Register or at such other address as is furnished in writing by such Registered Owner to the Bond Registrar.

All official notices of redemption shall be dated and shall state:

- (A) the redemption date,
- (B) the redemption price,



(C) if fewer than all outstanding Bonds are to be redeemed, the identification by maturity (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,

(D) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and

(E) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Bond Registrar.

On or prior to any redemption date, the City shall deposit with the Bond Registrar an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

(2) Effect of Notice; Bonds Due. If an unconditional notice of redemption has been given or if the conditions set forth in a conditional notice of redemption have been satisfied, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Bond Registrar at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. All Bonds which have been redeemed shall be canceled by the Bond Registrar and shall not be reissued.

(3) Additional Notice. In addition to the foregoing notice, further notice shall be given by the City as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for

redemption if notice thereof is given as above prescribed. Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (A) the CUSIP numbers of all Bonds being redeemed; (B) the date of issue of the Bonds as originally issued; (C) the rate of interest borne by each Bond being redeemed; (D) the maturity date of each Bond being redeemed; and (E) any other descriptive information needed to identify accurately the Bonds being redeemed. Each further notice of redemption may be sent at least 20 days before the redemption date to each party entitled to receive notice pursuant to Section 21 and with such additional information as the City shall deem appropriate, but such mailings shall not be a condition precedent to the redemption of such Bonds.

(4) Amendment of Notice Provisions. The foregoing notice provisions of this Section 7, including but not limited to the information to be included in redemption notices and the persons designated to receive notices, may be amended by additions, deletions and changes in order to maintain compliance with duly promulgated regulations and recommendations regarding notices of redemption of municipal securities.

Section 8. Form of Bonds. The Bonds shall be in substantially the following form:

[STATEMENT OF INSURANCE]

UNITED STATES OF AMERICA

NO. \_\_\_\_\_

\$ \_\_\_\_\_

STATE OF WASHINGTON  
CITY OF BELLINGHAM  
WATER AND SEWER REVENUE BOND, 2011

INTEREST RATE: %                      MATURITY DATE:                      CUSIP NO.:  
REGISTERED OWNER: CEDE & CO.  
PRINCIPAL AMOUNT:

The City of Bellingham, Washington (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered

assigns, on the Maturity Date identified above, the Principal Amount indicated above and to pay interest thereon from \_\_\_\_\_, 2011, or the most recent date to which interest has been paid or duly provided for until payment of this bond at the Interest Rate set forth above, payable on February 1, 2012, and semiannually thereafter on the first days of each succeeding August 1 and February 1. Both principal of and interest on this bond are payable in lawful money of the United States of America. The fiscal agency of the State of Washington has been appointed by the City as the authenticating agent, paying agent and registrar for the bonds of this issue (the "Bond Registrar"). For so long as the bonds of this issue are held by a depository, payments of principal and interest thereon shall be made as provided in accordance with the operational arrangements of The Depository Trust Company ("DTC") referred to in the Blanket Issuer Letter of Representations (the "Letter of Representations") from the City to DTC.

The bonds of this issue are issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Washington and Ordinance No. \_\_\_\_\_ duly passed by the City Council on August 1, 2011 (the "Bond Ordinance"). Capitalized terms used in this bond have the meanings given such terms in the Bond Ordinance.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by or on behalf of the Bond Registrar or its duly designated agent.

This bond is one of an authorized issue of bonds of like date, tenor, rate of interest and date of maturity, except as to number and amount in the aggregate principal amount of \$ \_\_\_\_\_ and is issued pursuant to the Bond Ordinance to provide a portion of the funds necessary to finance additions, betterments and improvements to the combined water and sewer system of the City, to fund the Reserve Account, and to pay costs of issuance.

The bonds of this issue are subject to redemption as provided in the Bond Ordinance and the Bond Purchase Contract.

This bond and the bonds of this issue are payable solely from the special funds of the City defined as the "Bond Fund" in the Bond Ordinance. The City has irrevocably obligated and bound itself to pay into the Bond Fund out of the Revenue of the System or from such other moneys as may be provided therefor certain amounts necessary to pay and secure the payment of the principal and interest on such bonds. The bonds of this issue are not general obligations of the City.

The bonds of this issue are issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Washington and duly adopted ordinances of the City. The City hereby covenants and agrees with the owner of this bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed, and reference is hereby made to the Bond Ordinance for a complete statement of such covenants. The City does hereby pledge and bind itself to set aside from Revenue of the System and to pay into the Bond Fund and the Reserve Account the various amounts required by the Bond Ordinance to be paid into and maintained in such Fund and account, all within the times provided by the Bond Ordinance. To the extent more particularly provided by the Bond Ordinance, the amounts so pledged to be paid from the Revenue of the System into the Bond

Fund and the accounts therein shall be a lien and charge thereon equal in rank to the lien and charge upon said revenue of the Outstanding Parity Bonds and the amounts required to pay and secure the payment of revenue bonds of the City hereafter issued on a parity with the bonds of this issue and superior to all other liens and charges of any kind or nature except the Costs of Maintenance and Operation of the System.

The pledge of Revenue of the System and other obligations of the City under the Bond Ordinance may be discharged at or prior to the maturity or redemption of the bonds of this issue upon the making of provision for the payment thereof on the terms and conditions set forth in the Bond Ordinance.

The bonds of this issue have not been designated by the City as "qualified tax-exempt obligations" for investment by financial institutions under Section 265(b) of the Code.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done and performed precedent to and in the issuance of this bond have happened, been done and performed and that the issuance of this bond and the bonds of this issue does not violate any constitutional, statutory or other limitation upon the amount of bonded indebtedness that the City may incur.

IN WITNESS WHEREOF, the City of Bellingham, Washington has caused this bond to be executed by the manual or facsimile signatures of the Mayor and the Finance Director and the seal of the City imprinted, impressed or otherwise reproduced hereon as of this \_\_\_\_ day of \_\_\_\_\_, 2011.

[SEAL]

CITY OF BELLINGHAM, WASHINGTON

By           /s/ manual or facsimile            
Mayor

ATTEST:

          /s/ manual or facsimile            
Finance Director

The Bond Registrar's Certificate of Authentication on the Bonds shall be in substantially the following form:

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Bond Ordinance and is one of the Water and Sewer Revenue Bonds, 2011 of the City of Bellingham, Washington, dated \_\_\_\_\_, 2011.

WASHINGTON STATE FISCAL  
AGENCY, as Bond Registrar

By \_\_\_\_\_

Section 9.     Execution of Bonds. The Bonds shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and Finance Director of the City and the seal of the City shall be impressed, imprinted or otherwise reproduced thereon.

Only such Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this ordinance.

In case either of the officers who shall have executed the Bonds shall cease to be an officer or officers of the City before the Bonds so signed shall have been authenticated or delivered by the Bond Registrar, or issued by the City, such Bonds may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. Any Bond may be signed and attested on behalf of the City by such persons who at the date of the actual execution of such Bond, are the proper officers of the City, although at the original date of such Bond any such person shall not have been such officer of the City.

Section 10.     Application of Bond Proceeds. The City shall establish the “Cash — 2011 Acquisition and Construction Revenue Bond” (the “Acquisition and Construction Account”) into

which a portion of the proceeds of the Bonds necessary to finance or reimburse costs of the Projects shall be deposited. Money in the Acquisition and Construction Account shall be used to pay the costs of the Projects. The Finance Director may invest money in the Acquisition and Construction Account in legal investments for City funds. Earnings on such investments shall accrue to the benefit of the Acquisition and Construction Account.

If the Council shall determine that it has become impractical to undertake or complete any portion of the Projects by reason of changed conditions, the City shall not be required to undertake or complete such portions of the Project. Any part of the proceeds of the Bonds remaining in the Acquisition and Construction Account after all costs of the Projects (other than Projects that have been determined to be impractical) have been paid may be used for capital purposes of the System in accordance with the Federal Tax Certificate or may be transferred to the Bond Fund, after consultation with bond counsel to the City.

Section 11. Priority of Payments from Revenue of the System.

(a) *Priority and Application of Revenue of the System.* The Revenue of the System 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 Capital Reserve Accounts;  
and

Eighth, to retire by redemption or purchase in the open market any outstanding System revenue bonds or System 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.

(b) *Coverage Stabilization Account. Following the full redemption, refunding or defeasance of all 2004 Bonds, 2006 Bonds and 2008 Bonds, the Finance Director is hereby authorized to create a Coverage Stabilization Account. The City hereby determines that the maintenance of a Coverage Stabilization Account will moderate fluctuations in Net Revenues and help to alleviate the need for short-term rate adjustments. Money in the Coverage Stabilization Account will be transferred as determined from time to time by the City. The City may make payments into the Coverage Stabilization Account from Revenue of the System at any*

*time. Money in the Coverage Stabilization Account may be withdrawn at any time and used for the purpose for which the Revenue of the System may be used. Amounts withdrawn from the Coverage Stabilization Account shall increase Revenue of the System for the period in which they are withdrawn, and amounts deposited in the Coverage Stabilization Account shall reduce Revenue of the System for the period during which they are deposited. Credits to or from the Coverage Stabilization Account that occur within 90 days after the end of a fiscal year may be treated as occurring within such fiscal year.*

Section 12. Bond Fund. The Bond Fund has previously been created in the office of the Finance Director and within such Fund the Principal and Interest Account, the Reserve Account and any Sinking Fund Account(s).

(a) *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:

(1) Commencing with the first month after the month in which the Bonds are issued, approximately equal monthly amounts that in the aggregate, 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 Bonds on February 1, 2012, 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.

(2) Commencing with the first month after the month in which the Bonds are issued, approximately equal monthly amounts that in the aggregate, together with other money paid into and on hand in the Principal and Interest Account, will equal the principal to become due and payable on the Bonds on August 1, 2012, and continuing thereafter 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. *After all of the 2004 Bonds, 2006 Bonds and 2008 Bonds are fully redeemed, refunded or defeased, payments shall be made into the Principal and Interest Account when and in the amounts needed to pay when due interest on each interest payment date on the Bonds and the principal of or mandatory sinking fund requirement for the Bonds on each principal payment date.*

(b) *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 Parity Bonds.

(1) *Funding for Bonds.* The City covenants that on or prior to the issuance of the Bonds it shall deposit into the Reserve Account the Reserve Requirement for the Bonds from proceeds of the Bonds or other available funds of the City.

(2) *Funding for Future Parity Bonds.* The City covenants and agrees that, in the event it issues any Future Parity Bonds, it will comply with Section 16(d) of this ordinance.

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 and such Reserve Insurance is not replaced with Reserve Insurance meeting the foregoing rating requirements, 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. After all of the 2004 Bonds and the 2008 Bonds are fully redeemed, refunded or defeased, this paragraph shall be amended to read as follows: *The rating of an insurer providing Reserve Insurance must be rated in one of the two the highest rating categories (without regard to gradation) by Moody's Investors Service, Inc., and Standard & Poor's as of the time of issuance of such insurance. In the event the rating of an insurer providing Reserve Insurance falls below the foregoing rating requirements, the City shall be under no obligation to obtain replacement Reserve Insurance or make deposits into the Reserve Account as a result of such downgrade.*

(3) *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. *After all of the 2004 Bonds, 2006 Bonds and 2008 Bonds are fully redeemed, refunded or defeased, the City may, on each principal payment date recalculate the Reserve Requirement with respect to the Parity Bonds then secured by the Reserve Account (and shall continue to be permitted to recalculate the Reserve Requirement on the issuance date of any Future Parity Bonds).* 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.

(4) *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.

(5) *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.

(6) *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 11 of this ordinance.

(c) *Sinking Fund Account.* In the event that a portion of the Bonds are designated as Term Bonds in the Certificate of Award, the Finance Director is hereby authorized to create Sinking Fund Accounts, as necessary, in the Bond Fund to amortize the principal or make mandatory redemptions of Term Bonds.

(d) *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, except that earnings on amounts in the Reserve Account shall be retained therein if and to the extent necessary to maintain the Reserve Account at the Reserve Requirement. 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 13. 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 14. 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 15. 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 that 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 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 that 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 that 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 that 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.

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 that, 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 that 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 or Whatcom County, or to aid the poor or infirm and for fire-fighting purposes, 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 16. 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 of Future Parity Bond proceeds that, taking into account amounts on deposit in the Reserve Account including any Reserve Insurance, will satisfy the Reserve Requirement upon issuance of the Future Parity Bonds, (ii) Reserve Insurance that, taking into account amounts on deposit in the Reserve Account including any other Reserve Insurance, will satisfy the Reserve Requirement upon issuance of the Future Parity Bonds, or (iii) to the extent that the Reserve Requirement is not fully funded 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 within five years from the date of issuance of those Future Parity Bonds.

(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:

(i) *following the full redemption, refunding or defeasance of all 2004 Bonds, 2006 Bonds and 2008 Bonds, a certificate of the Finance Director showing that the Net Revenue as shown in the City's audited financial statements for any 12-month period selected by the City out of the 24-month period next preceding the date of issuance of Future Parity Bonds would be sufficient to meet the Coverage Requirement commencing with the first full fiscal year following the date on which interest on such Future Parity Bonds will not be paid from the proceeds of such Future Parity Bonds; or*

(ii) 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 that 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)(ii); 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 referenced herein 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 this 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 17. Subordinate Lien Obligations. Nothing contained herein shall prevent the City from issuing revenue bonds or other obligations with 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 18. Tax Covenants. The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exemption from federal income taxation of the interest on the Bonds and will take or require to be taken such acts as may reasonably be within its ability and as may from time to time be required under applicable law to continue the exemption from federal income taxation of the interest on the Bonds.

(a) *Arbitrage Covenant.* Without limiting the generality of the foregoing, the City covenants that it will not take any action or fail to take any action with respect to the proceeds of the sale of the Bonds or any other funds of the City which may be deemed to be proceeds of the Bonds pursuant to Section 148 of the Code and the regulations promulgated thereunder which, if such use had been reasonably expected on the dates of delivery of the Bonds to the initial purchasers thereof, would have caused the Bonds to be treated as “arbitrage bonds” within the meaning of such term as used in Section 148 of the Code. The City will comply with the requirements of Section 148 of the Code and the applicable regulations thereunder throughout the term of the Bonds.

(b) *Private Person Use Limitation for Bonds.* The City covenants that for as long as the Bonds are outstanding, it will not permit:

(1) More than 10% of the Net Proceeds of the Bonds to be allocated to any Private Person Use; and

(2) More than 10% of the principal or interest payments on the Bonds in a Bond Year to be directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use.

The City further covenants that, if:

(3) More than five percent of the Net Proceeds of the Bonds are allocable to any Private Person Use; and

(4) More than five percent of the principal or interest payments on the Bonds in a Bond Year are (under the terms of this ordinance or any underlying arrangement) directly or indirectly:

(A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or

(B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use, then, (i) any Private Person Use of projects described in subsection (3) hereof or financed with proceeds of the Refunded Bonds or Private Person Use payments described in subsection (4) hereof that is in excess of the five percent limitations described in such subsections (3) or (4) will be for a Private Person Use that is related to the state or local governmental use of the projects funded and refunded by the proceeds of the Bonds, and (ii) any Private Person Use will not exceed the amount of Net Proceeds of the Bonds allocable to the state or local governmental use portion of the projects to which the Private Person Use of such portion of projects by the

proceeds of the Bonds relate. The City further covenants that it will comply with any limitations on the use of the projects funded by the proceeds of the Bonds by other than state and local governmental users that are necessary, in the opinion of its bond counsel, to preserve the tax exemption of the interest on the Bonds. The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bonds.

(c) *Modification of Tax Covenants.* The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bonds. To that end, the provisions of this section may be modified or eliminated without any requirement for formal amendment thereof upon receipt of an opinion of the City’s bond counsel that such modification or elimination will not adversely affect the tax exemption of interest on any Bonds.

(d) *No Designation under Section 265(b).* The City does not designate the Bonds as “qualified tax-exempt obligations” under Section 265(b)(3) of the Code for investment by financial institutions.

Section 19. Defeasance In the event that the City, to effect the payment, retirement or redemption of any Bond, sets aside in the Principal and Interest Account of the Bond Fund or in another special account, cash or noncallable Government Obligations, or any combination of cash and/or noncallable Government Obligations, in amounts and maturities which, together with the known earned income therefrom, are sufficient to redeem or pay and retire such Bond in accordance with its terms and to pay when due the interest and redemption premium, if any, thereon, and such cash and/or noncallable Government Obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Principal and Interest Account of the Bond Fund for the payment of the principal of and interest on such Bond. The owner of a Bond so provided for shall cease to be entitled to any lien, benefit or security of this



ordinance except the right to receive payment of principal, premium, if any, and interest from the Principal and Interest Account of the Bond Fund or such special account, and such Bond shall be deemed to be not outstanding under this ordinance.

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.

The City shall give written notice of defeasance to the owners of all Bonds so provided for within 30 days of the defeasance and to each party entitled to receive notice in accordance with Section 21.

Section 20.    Sale of the Bonds

(a)    *Bond Sale.* The Bonds shall be sold at a competitive public sale. The Designated Representative shall: (1) establish the date of the public sale; (2) establish the criteria by which the successful bidder will be determined; (3) request that a good faith deposit in an amount not less than one percent of the principal amount of the offering accompany each bid; (4) cause notice of the public sale to be given; and (5) provide for such other matters pertaining to the public sale as he deems necessary or desirable.

Upon the date and time established for the receipt of bids for the Bonds, the Designated Representative shall open the bids and shall cause the bids to be mathematically verified. The Bonds shall be sold to the bidder offering to purchase them at the lowest true interest cost to the City; *provided, however*, that the City may reserve the right to reject any and all bids for the Bonds and also may waive any irregularity or informality in any bid. The final principal maturity amounts, principal payment dates, dated date, denominations, interest payment dates, redemption provisions and interest rates for the Bonds shall be approved by the Designated Representative, in the Certificate of Award; *provided* that (a) the aggregate principal amount of the Bonds does not exceed \$48,000,000, (b) the final maturity of the Bonds is no later than December 1, 2041, (c) the Bonds are sold (in the aggregate) at a price not less than 95% and not greater than 110%, and (d) the true interest cost for the Bonds (in the aggregate) does not exceed 5.70%.

Following the sale of the Bonds, the Designated Representative shall provide a report to Council describing the final terms of the Bonds approved pursuant to the authority delegated in this section. The authority granted to the Designated Representative by this Section 20 shall expire 120 days after the effective date of this ordinance. If the Bonds have not been sold within 120 days after the effective date of this ordinance, the authorization for the issuance of the Bonds shall be rescinded, and the Bonds shall not be issued nor their sale approved unless such Bonds shall have been re-authorized by ordinance of the Council. The ordinance re-authorizing the issuance and sale of such Bonds may be in the form of a new ordinance repealing this ordinance in whole or in part or may be in the form of an amendatory ordinance approving a bond purchase contract or establishing terms and conditions for the authority delegated under this Section 20.

(b) *Delivery of Bonds; Documentation.* Upon the passage and approval of this ordinance, the proper officials of the City including the Designated Representative, are authorized and directed to undertake all action necessary for the prompt execution and delivery of the Bonds to the Underwriter and further to execute all closing certificates and documents required to effect the closing and delivery of the Bonds in accordance with the terms of the Certificate of Award.

(c) *Preliminary and Final Official Statements.* The Finance Director is hereby authorized to ratify and to deem final the preliminary Official Statement relating to the Bonds for the purposes of the Rule. The Finance Director is further authorized to ratify and to approve for purposes of the Rule, on behalf of the City, the Official Statement relating to the issuance and sale of the Bonds and the distribution of the Official Statement pursuant thereto with such changes, if any, as may be deemed by her to be appropriate.

Section 21. Undertaking to Provide Ongoing Disclosure (a)

*Contract/Undertaking.* This section constitutes the City's written undertaking for the benefit of the owners, including Beneficial Owners, of the Bonds as required by Section (b)(5) of the Rule.

(b) *Financial Statements/Operating Data.* The City agrees to provide or cause to be provided to the Municipal Securities Rulemaking Board ("MSRB"), the following annual financial information and operating data for the prior fiscal year (commencing in 2012 for the fiscal year ended December 31, 2011):

1. Annual financial statements, which statements may or may not be audited, showing ending fund balances for the System prepared in accordance with the Budgeting

Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200;

2. Updated financial and operating data of the type contained in the Official Statement for the Bonds and identified in a closing certificate executed by the Designated Representative and referencing this section. Item 2 shall be required only to the extent that such information is not included in the annual financial statements.

The information and data described above shall be provided on or before nine months after the end of the City's fiscal year. The City's current fiscal year ends December 31. The City may adjust such fiscal year by providing written notice of the change of fiscal year to the MSRB. In lieu of providing such annual financial information and operating data, the City may cross-reference to other documents available to the public on the MSRB's internet website or filed with the Commission.

If not provided as part of the annual financial information discussed above, the City shall provide the City's audited annual financial statement prepared in accordance with the Budgeting Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute) when and if available to the MSRB.

(c) *Listed Events.* The City agrees to provide or cause to be provided to the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, notice of the occurrence of any of the following events with respect to the Bonds:

- Principal and interest payment delinquencies;
- Non-payment related defaults, if material;
- Unscheduled draws on debt service reserves reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;

- Substitution of credit or liquidity providers, or their failure to perform;
- Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- Modifications to the rights of Bondholders, if material;
- Bond calls, if material, and tender offers;
- Defeasances;
- Release, substitution, or sale of property securing repayment of the Bonds, if material;
- Rating changes;
- Bankruptcy, insolvency, receivership or similar event of the City;
- The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- Appointment of a successor or additional trustee or the change of name of a trustee, if material.

The City shall promptly determine whether the events described above are material.

(d) *Format for Filings with the MSRB.* All notices, financial information and operating data required by this undertaking to be provided to the MSRB must be in an electronic

format as prescribed by the MSRB. All documents provided to the MSRB pursuant to this undertaking must be accompanied by identifying information as prescribed by the MSRB.

(e) *Notification Upon Failure to Provide Financial Data.* The City agrees to provide or cause to be provided, in a timely manner, to the MSRB notice of its failure to provide the annual financial information described in Subsection (b) above on or prior to the date set forth in Subsection (b) above.

(f) *Termination/Modification.* The City's obligations to provide annual financial information and notices of certain listed events shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. Any provision of this section shall be null and void if the City (i) obtains an opinion of nationally recognized bond counsel to the effect that the portion of the Rule that requires that provision is invalid, has been repealed retroactively or otherwise does not apply to the Bonds and (ii) notifies the MSRB of such opinion and the cancellation of this section.

The City may amend this section with an opinion of nationally recognized bond counsel in accordance with the Rule. In the event of any amendment of this section, the City shall describe such amendment in the next annual report, and shall include, a narrative explanation of the reason for the amendment and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (A) notice of such change shall be given in the same manner as for a listed event under Subsection (c), and (B) the annual report for the year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form)

between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

(g) *Bond Owner's Remedies Under This Section.* The right of any bondowner or Beneficial Owner of Bonds to enforce the provisions of this section shall be limited to a right to obtain specific enforcement of the City's obligations under this section, and any failure by the City to comply with the provisions of this undertaking shall not be an event of default with respect to the Bonds.

(h) *No Default.* Except as otherwise disclosed in the City's Official Statement relating to the Bonds, the City is not and has not been in default in the performance of its obligations of any prior undertaking for ongoing disclosure with respect to its obligations.

Section 22. Amendments

(a) *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:

(1) 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.

(2) 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 (b) below.

(b) *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:

(1) Extend the fixed maturity of any outstanding 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

(2) 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.

(c) *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.

(d) *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 23. Lost, Stolen or Destroyed Bonds. In case any Bond or Bonds shall be lost, stolen or destroyed, the Bond Registrar may execute and deliver a new Bond or Bonds of like date, number and tenor to the Registered Owner thereof upon the Registered Owner's paying the expenses and charges of the City and the Bond Registrar in connection therewith and upon his/her filing with the City evidence satisfactory to the City that such Bond was actually lost, stolen or destroyed and of his/her ownership thereof, and upon furnishing the City and/or the Bond Registrar with indemnity satisfactory to the City and the Bond Registrar.

Section 24. Severability; Ratification. 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 of this ordinance and shall in no way affect the validity of

the other provisions of this ordinance or of the Bonds. All acts taken pursuant to the authority granted in this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 25. 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 1st of August, 2011.

By  \_\_\_\_\_  
Council President


APPROVED by me this 1st of August, 2011.

By  \_\_\_\_\_ 8/12/11  
Mayor

ATTEST

 \_\_\_\_\_  
Finance Director

APPROVED AS TO FORM

 \_\_\_\_\_  
City Attorney

PUBLISHED: August 5, 2011

## EXHIBIT A

### Project Description

- Waste water treatment plant facility upgrade and expansion
- Security improvements for the Waste Water System
- Waste water Lift Station equipment
- Annual Sewer Main Replacement program
- Sewer Inflow and Infiltration Projects
- Wet weather peak flow facility
- Security improvements for the Water System
- Water metering of all customers
- King Mountain Reservoir
- Water treatment plant pre-treatment facility

EXHIBIT B

**FORM OF CERTIFICATE OF AWARD**

**CITY OF BELLINGHAM, WASHINGTON  
WATER AND SEWER REVENUE BONDS, 2011**

With respect to the above-captioned bonds (the "Bonds"), the undersigned certify as follows:

1. The undersigned is the Designated Representative of the City of Bellingham, Washington (the "City"), and make this certification for and on behalf of the City pursuant to the authorization and direction contained in Ordinance No. 2011-08-041 of the City passed by the City Council on August 1, 2011 (the "Ordinance").
2. In accordance with the Ordinance, the Notice of Sale dated \_\_\_\_\_, 2011, has been prepared and distributed. Attached as Annex A hereto is the Notice of Sale, together with any amendments or supplements.
3. On \_\_\_\_\_ [date of Bond sale], 2011, bids for the purchase of the Bonds, as summarized on Annex B hereto, were received and opened in accordance with the Notice of Sale.
4. The sale of the Bonds is hereby awarded to \_\_\_\_\_ (the "Purchaser"), the Purchaser's bid being the best responsible bid determined by the method of calculation therefor contained in the Notice of Sale as follows:

True Interest Cost: \_\_\_\_\_%

A copy of the Purchaser's bid setting forth interest rates and purchase price for the Bonds is attached as Annex C hereto.

5. All bids received other than that of the Purchaser are hereby rejected.

Dated: \_\_\_\_\_ [date of Bond sale], 2011

CITY OF BELLINGHAM, WASHINGTON

By: \_\_\_\_\_  
John Carter, Finance Director

CERTIFICATION

I, the undersigned, Finance Director of the City of Bellingham, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. 2011-08-041 (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular time and meeting place thereof on August 1, 2011, as that ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect after its passage; and

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of August, 2011.

CITY OF BELLINGHAM, WASHINGTON

  
John Carter, Finance Director