

CITY OF ANACORTES, WASHINGTON

ORDINANCE NO. 4017

AN ORDINANCE relating to the combined utility system of the City; providing for the issuance of not to exceed \$8,100,000 principal amount utility system refunding revenue bonds, in one or more series, to provide the funds (i) to carry out a refunding of all or a portion of the City's outstanding Utility System Revenue Bonds, 2012, and (ii) to pay the costs of issuance of the Bonds and the administrative costs of carrying out the refunding; appointing the City's designated representative to approve the Bond Sale Terms and establishing parameters for certain of those Bond Sale Terms; authorizing the sale in a manner to be selected by the City's designated representative; and providing for other related matters.

Passed March 28, 2022

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Exhibits

- Exhibit A Parity Conditions
- Exhibit B Parameters for the Bond Sale Terms

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NOW THEREFORE, the City Council of the City of Anacortes, Washington (the "City"), does ordain as follows:

Section 1. Recitals and Findings. The City Council makes the findings and determinations set forth below. Capitalized terms that are not defined have the meanings given in Section 2 of this ordinance.

1.1 Utility System. The City of Anacortes (the "City") now owns, operates and maintains a water supply and distribution system, a storm drainage system, garbage utility, and a sanitary sewage system. Pursuant to Ordinance No. 2763, passed and approved on May 21, 2007, these utilities were combined into a combined utility system (the "Utility System"), pursuant to RCW 35.67.320.

1.2 Outstanding Parity Obligations. Pursuant to the 2017 Parity Lien Ordinance and the 2020 Parity Lien Ordinance, the City issued its Utility System Revenue Refunding Bond, 2017, and Utility System Improvement and Refunding Revenue Bonds, 2020, respectively, which constitute a lien and charge upon the Net Revenue prior and superior to any other charges whatsoever, and will constitute a first priority lien and charge upon any Pledged ULID Assessments, and reserved the right to issue additional Utility System revenue bonds on a parity of lien under certain conditions set forth in the 2017 Parity Lien Ordinance and the 2020 Parity Lien Ordinance.

1.3 Parity Conditions Met. As a condition of issuance and sale of the Bonds authorized herein, as set forth in Section 4 and Exhibit B (Parameters for the Bond Sale Terms), the City's Designated Representative must determine that the conditions set forth in the 2017 Parity Lien Ordinance and the 2020 Parity Lien Ordinance for the issuance of additional Parity Obligations have been met and satisfied as of the date the Bonds are issued and delivered to the Purchaser.

1.4 Sufficiency of Gross Revenue. The City Council finds and determines that the Gross Revenue and benefits to be derived from the operation and maintenance of the System at the rates to be charged for services from the System will be more than sufficient to meet all Operations and Maintenance Costs and to permit the setting aside into the Bond Fund out of the Gross Revenue of amounts sufficient to pay the principal of and interest on the outstanding Parity Obligations (including the Bonds) when due. The City Council declares that in fixing the amounts to be paid into the Bond

Fund under this ordinance it has exercised due regard for Operations and Maintenance Costs and has not obligated the City to set aside and pay into the Bond Fund a greater amount of Gross Revenue of the System than in its judgment will be available over and above such Operations and Maintenance Costs.

1.5 Findings with Respect to the Refunding of the 2012 Senior Lien Bonds. Pursuant to the 2012 Senior Lien Bond Ordinance, the City previously issued Utility System Revenue Bonds, 2012 (the “2012 Senior Lien Bonds”) in the original aggregate principal amount \$12,320,000, in order to (i) pay part of the cost of carrying out a plan of additions relating to the water treatment plant and other water system facilities, (ii) make a deposit into a reserve account, and (iii) pay the costs of issuance and sale of the 2012 Senior Lien Bonds. In the 2012 Senior Lien Bond Ordinance, the City reserved the right to redeem the 2012 Senior Lien Bonds maturing on and after December 1, 2022 prior to their maturity at any time on or after June 1, 2022, at a price of par plus accrued interest to the date fixed for redemption.

1.6 Refunding Plan. Pursuant to chapter 39.53 RCW and other applicable State law, the City is authorized to carry out the Refunding Plan, and after due consideration, it appears to the City Council that, in order to achieve an overall debt service savings, it is in the best interest of the City and its ratepayers to issue and sell the combined utility system revenue bonds authorized in this ordinance, in order to refund the outstanding 2012 Senior Lien Bonds by carrying out the Refunding Plan (as defined herein). Further, to effect that refunding in the manner most advantageous to the City, the Council finds it necessary and advisable to purchase certain Acquired Obligations (as defined below), bearing interest and maturing at such time or times as may be necessary to accomplish the refunding, out of a portion of the proceeds of the Bond and other money of the City.

1.7 Issuance of the Bonds. For the purposes described herein, the City Council finds that it is in the best interests of the City and its ratepayers to issue and sell the Bonds to the Purchaser, pursuant to the terms set forth in the Bond Sale Terms, as approved by the City’s Designated Representative consistent with this ordinance.

Section 2. Definitions. As used in this ordinance the following words shall have the following meanings:

“2012 Senior Lien Bond Ordinance” means Ordinance No. 2882, passed on July 2, 2012, authorizing the issuance of the 2012 Senior Lien Bonds.

“2012 Senior Lien Bonds” means the City’s Utility System Revenue Bonds, 2012, issued in the original aggregate principal amount of \$12,320,000, pursuant to the 2012 Senior Lien Bond Ordinance.

“2017 Parity Obligation” means the City’s Utility System Revenue Refunding Bond, 2017 (Parity Obligation Lien), issued in the original principal amount of \$6,635,000 pursuant to the 2017 Parity Lien Ordinance.

“2017 Parity Lien Ordinance” means Ordinance No. 3015, passed on December 4, 2017, authorizing the issuance of the 2017 Parity Obligation.

“2020 Parity Obligation” means the City’s Utility System Improvement and Refunding Revenue Bonds, 2020, issued in the original principal amount of \$24,925,000 pursuant to the 2020 Parity Lien Ordinance.

“2020 Parity Lien Ordinance” means Ordinance No. 3075, passed on September 14, 2020, authorizing the issuance of the 2020 Parity Obligation.

“Acquired Obligations” means those United States Treasury Certificates of Indebtedness, Notes, and Bonds – State and Local Government Series or other Government Obligations, as identified in the Refunding Trust Agreement, which are purchased to accomplish the refunding of the Refundable Bonds as authorized by this ordinance.

“Adjusted Net Revenue” means Net Revenue, adjusted by adding (a) any amount on deposit in the Parity Obligation Debt Service Account on the last business day prior to the commencement of that calendar year, or (b) for current year calculations, the amount on deposit in such accounts as of a date not more than 30 days prior to the date of calculation.

“Annual Debt Service” for any calendar year means the sum of the amounts required in such calendar year to pay (a) the interest due in such calendar year on all Parity Obligations then outstanding, excluding interest to be paid from the proceeds of the sale of Parity Obligations or other bonds; (b) the principal of all Parity Obligations that are Serial Bonds coming due in such calendar year; and (c) the mandatory redemption payments scheduled for such calendar year in respect of Parity Obligations that are Term Bonds. For purposes of calculating and determining compliance with the Coverage Requirement, the Reserve Requirement and the conditions for the issuance of Future Parity Obligations, the following shall apply: (i) Annual Debt Service shall generally be calculated on a calendar year basis, beginning with the calendar year following the date of calculation; (ii) Annual Debt Service shall be reduced by the amount of all Tax Credit Subsidy Payments that are scheduled to be received by the City in respect of Tax Credit Subsidy Bonds; (iii) Annual Debt Service shall be reduced by the amount of Pledged ULID Assessments due in that calendar year and not delinquent; and (iv) Annual Debt Service shall be reduced by any amount provided to be paid from proceeds of bonds (including amounts in a refunding or defeasance escrow account), and by earnings from investments in any Parity Reserve Account.

“Authorized Denomination” means \$5,000 or any integral multiple thereof within a maturity.

“Average Annual Debt Service” means, as of its date of calculation, the sum of Annual Debt Service for all calendar years during which the applicable bonds are scheduled to remain outstanding, divided by the number of those calendar years (without regard to bond years).

“Beneficial Owner” means, with respect to any Parity Obligation at any time Outstanding, the owner of any beneficial interest in that Parity Obligation.

“Bond Counsel” means Stradling Yocca Carlson & Rauth, a Professional Corporation, or any firm of lawyers nationally recognized and accepted as bond counsel and so engaged by the City for that purpose.

“Bond Purchase Contract” means, in the case of a competitive sale, the winning bidder’s bid, together with the official notice of sale and a Pricing Certificate confirming the Bond Sale Terms. In the case of a negotiated sale, the Bond Purchase Contract may be in the form of a written offer to

purchase the Bonds presented by the Purchaser and accepted by the Designated Representative, acting on behalf of the City, setting forth the Bond Sale Terms. In the case of a direct placement, the Bond Purchase Contract may be in the form of a direct placement agreement, continuing covenant agreement, or other similar form of written agreement with a direct purchaser of the Bonds.

“Bond Register” means the books or records maintained by the Bond Registrar on which are recorded the names and addresses of the Registered Owner of each of the Parity Obligations.

“Bond Registrar” means, as determined by the City’s Designated Representative, the City’s Finance Director, the Fiscal Agent, or another agent qualified to serve as registrar and to maintain the Bond Register in accordance with the Registration Ordinance.

“Bond Sale Terms” means the terms and conditions for the sale of the Bonds approved by the City’s Designated Representative consistent with the parameters set forth in Exhibit B, including the amount, date or dates, denominations, interest rate or rates (or mechanism for determining the interest rate or rates), payment dates, final maturity, redemption rights, price and other terms, conditions or covenants. The Bond Sale Terms shall be set forth in a written Bond Purchase Contract, which, in the case of a competitive sale, may include a Pricing Certificate confirming the purchase price and Bond Sale Terms.

“Bonds” means the not to exceed \$8,100,000 aggregate principal amount Utility System Refunding Revenue Bonds, 2022, authorized to be issued by this ordinance.

“Book-Entry Form” means a fully registered form in which physical bond certificates are registered only in the name of the Securities Depository (or its nominee), as Registered Owner, with the physical bond certificates held by and immobilized in the custody of the Securities Depository (or its designee), where the system for recording and identifying the transfer of ownership interest of the Beneficial Owners in those bonds is neither maintained by nor the responsibility of the City or the Bond Registrar.

“City” means the City of Anacortes, Washington, a code city duly organized and existing under the laws of the State.

“City Contribution” means legally available money of the City from any source other than proceeds of sale of the Bonds that is allocated to carrying out the Refunding Plan.

“City Council” means the City Council of the City.

“Code” means the Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

“Common Reserve Bonds” means any Series of Future Parity Obligations that may be designated by the City as a Common Reserve Bond, secured by the Common Reserve Account. The Bonds authorized by this ordinance are not designated as Common Reserve Bonds.

“Common Reserve Account” means an account to serve as a common reserve for all Common Reserve Bonds, created and maintained within the Utility System Bond Fund for the purpose of securing Future Parity Obligations that are designated as Common Reserve Bonds. The Common Reserve Account is a Parity Reserve Account.

“Continuing Disclosure Agreement” means a written undertaking to provide continuing disclosure entered into pursuant to Section 23 of this ordinance, in connection with a public offering of the Bonds.

“Contract Resource Obligation” means an obligation of the City that is designated as a Contract Resource Obligation and is entered into in accordance with Section 18.

“Coverage Requirement” means that Adjusted Net Revenue in each calendar year must be equal to at least 1.25 times the Average Annual Debt Service on all then-outstanding Parity Obligations.

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

“Designated Representative” means the officer or employee of the City appointed in Section 4 of this ordinance to serve as the City’s designated representative in accordance with RCW 39.46.040(2) for purposes of accepting, on behalf of the City, an offer to purchase the Bond on Bond Sale Terms consistent with this ordinance and the parameters set forth herein.

“Event of Default” shall have the meaning assigned to that term in Section 22.

“Finance Director” means the person who holds the office or has the official responsibilities of Treasurer of the City or successor office.

“Fiscal Agent” means the fiscal agent of the State, as the same may be designated by the State from time to time.

“Future Parity Obligation Ordinance” means any ordinance passed by the City Council providing for the issuance and sale of a series of Future Parity Obligations, and any other ordinance amending or supplementing the provisions of any such ordinance.

“Future Parity Obligations” means all revenue bonds and other obligations of the City for borrowed money (including, without limitation, financing leases) issued or incurred after the date of the issuance of the Bonds authorized by this ordinance, the payment of which constitutes a lien and charge on the Net Revenue and Pledged ULID Assessments equal in rank with the lien and charge upon such revenue and assessments required to be paid into the Parity Obligation Debt Service Account to pay and secure the payment of the principal of and interest on the Bonds and other outstanding Parity Obligations.

“Government Obligations” means, unless otherwise limited in the Bond Purchase Contract, those obligations described under the definition of government obligations in RCW 39.53.010(4), as it now reads or hereafter may be amended, and which are otherwise lawful investments for the City at the time of such investment.

“Gross Revenue” means all of the earnings and revenues received by the City from the maintenance and operation of the Utility System from any source whatsoever, including but not limited to revenues from the sale, lease or furnishing of commodities, services, properties or facilities; all earnings from the investment of money in the Utility System Bond Fund; earnings from the investment of money in any maintenance fund or similar fund; all connection and capital improvement charges collected for the purpose of defraying the cost of capital facilities of the Utility System; and withdrawals from the Rate Stabilization Fund. However, the Gross Revenue shall not include: (a)

revenues from general ad valorem taxes; (b) principal proceeds of Parity Obligations or any other borrowings, or earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund obligations relating to the Utility System (until commingled with other earnings and revenues included in the Gross Revenue) or held in a special account for the purpose of paying a rebate to the United States Government under the Code; (c) income and revenue which may not legally be pledged for revenue bond debt service; (d) improvement district assessments; (e) federal or state grants, and gifts from any source, allocated to capital projects; (f) payments under bond insurance or other credit enhancement policy or device; (g) insurance or condemnation proceeds used for the replacement of capital projects or equipment; (h) proceeds from the sale of System property; (i) earnings in any construction fund or bond redemption fund; (j) deposits to the Rate Stabilization Fund; or (k) revenue from any Separate System.

“Independent Utility Consultant” means a professional consultant experienced with municipal utilities of comparable size and character to the Utility System.

“Issue Date” means the date of initial delivery of the Bonds to the Purchaser.

“Letter of Representations” means the Blanket Issuer Letter of Representations between the City and DTC, substantially in the form on file with the City Clerk, as it may be amended from time to time, and any successor or substitute letter relating to the operational procedures of the Securities Depository.

“MSRB” means the Municipal Securities Rulemaking Board.

“Maximum Annual Debt Service” means, as of the date of calculation, the maximum amount of Annual Debt Service that will mature or come due in the current calendar year or any future calendar year with respect to the relevant bonds.

“Net Revenue” for any calendar year means the Gross Revenue for that calendar year less Operations and Maintenance Costs for that calendar year plus any withdrawals from the Rate Stabilization Fund made in accordance with Section 19 of this ordinance. In calculating Net Revenue, the City shall not take into account any non-cash gains or losses with respect to any real or personal property, investment or agreement that it may be required to recognize under generally accepted accounting principles, such as unrealized mark-to-market gains and losses.

“Official Statement” means an offering document or other disclosure document required to be provided to purchasers and potential purchasers in connection with an initial public offering of the Bonds in conformance with Rule 15c2-12 or other applicable regulation of the SEC.

“Operations and Maintenance Costs” means all reasonable expenses incurred by the City in causing the Utility System to be operated and maintained in good repair, working order and condition, including without limitation payments of premiums for insurance on the Utility System; costs incurred in connection with the acquisition of water or the securing of water rights; payments to any public or private entity for water service, sewage treatment and disposal service or other utility service in the event that the City combines such service into the combined utility system and enters into a contract for such service, including pro-rata budget allocations or charges for the City’s administration expenses where those represent a reasonable distribution and share of actual costs; and any State-imposed taxes. Operations and Maintenance Costs shall exclude depreciation, amortization or other similar recognitions of non-cash expense items made for accounting purposes only; taxes levied or imposed

by the City; payments-in-lieu-of-taxes paid to the City; capital additions and capital replacements to the Utility System.

“Owner” means, without distinction, the Registered Owner and the Beneficial Owner.

“Parity Certificate” means a certificate delivered for purposes of satisfying the Parity Conditions.

“Parity Conditions” means (a) with reference to issuance of the Bonds as Parity Obligations, the Parity Conditions set forth in the 2017 Parity Lien Ordinance and the 2020 Parity Lien Ordinance, and (b) with reference to the issuance of additional Future Parity Obligations, the conditions set forth in Exhibit A to this ordinance.

“Parity Debt Service Account” means that special fund or account created pursuant to Section 14 of the 2017 Parity Lien Ordinance within the established Utility System Bond Fund, to provide for the payment of principal of and interest on the Parity Obligations.

“Parity Obligations” means the 2017 Parity Obligation, the 2020 Parity Obligation, the Bonds, and any Future Parity Obligations.

“Parity Reserve Account” means any account within the Utility System Bond Fund that may be created in the future as a debt service reserve account securing payment of the principal of and/or interest on one or more series of Parity Obligations. The Common Reserve Account (if any) is a Parity Reserve Account.

“Permitted Investments” means investments that are legal investments for the City at the time of such investment.

“Pledged ULID Assessments” means all utility local improvement district assessments and installments thereof (including interest and penalties on assessments) collected in respect of a ULID created to finance improvements to the Utility System, which assessments are pledged to the payment of Parity Obligations.

“Pricing Certificate” means a certificate executed by the City’s Designated Representative as of the pricing date of a Series of the Bonds, confirming the Bond Sale Terms for the sale of that Series of the Bonds to the Purchaser thereof, in accordance with the parameters set forth in Exhibit B.

“Purchaser” means the corporation, firm, association, partnership, trust, bank, financial institution or other legal entity or group of entities selected by the Designated Representative to serve as purchaser in a direct placement, underwriter in a negotiated sale or awarded as the successful bidder in a competitive sale of a Series of the Bonds.

“Rate Stabilization Fund” means the fund described in Section 19 of this ordinance.

“Rating Agency” means Moody’s Investors Service Inc., S&P Global Ratings and/or Fitch Ratings, the recognized successors of any of the foregoing, or any other nationally-recognized securities rating agency or agencies then maintain a rating on any of the City’s then-outstanding Utility System Revenue Bonds at the request of the City.

"Redemption Date" means the date or dates as set forth in the Refunding Plan for the call, payment and redemption of the Refundable Bonds.

"Record Date" means, unless otherwise defined in the Bond Purchase Contract for the Series of the Bonds, in the case of each interest or principal payment date, the Bond Registrar's close of business on the 15th day of the month preceding the interest or principal payment date. With regard to redemption of the Bonds prior to their maturity, the Record Date shall mean the Bond Registrar's close of business on the day prior to the date on which the Bond Registrar sends the notice of redemption to the Registered Owners of the Bonds.

"Refundable Bonds" means the following currently outstanding maturities of the 2012 Senior Lien Bonds, the refunding of which is authorized by this ordinance:

Maturity (Dec. 1)	Principal Amount	Interest Rate
2022	\$ 590,000	4.000%
2023	610,000	4.000
2024	635,000	4.000
2025	660,000	4.000
2026	685,000	3.000
2027	705,000	3.000
2028	730,000	3.125
2029	750,000	3.250
2032*	2,410,000	3.500

*Term Bonds

"Refunding Plan" means the following plan for the refunding of the Refundable Bonds, as it may be further detailed in the Refunding Trust Agreement:

(a) The deposit with the Refunding Trustee of proceeds of the City Contribution, together with those proceeds of sale of the Bonds allocated to the Refunding Plan, in an amount sufficient to acquire the Acquired Obligations and establish a beginning cash balance;

(b) The purchase by the Refunding Trustee of the maturing principal of and interest on the Acquired Obligations and the application of such amounts, together with any other cash balance held by it on the Redemption Date, to the call payment and redemption of the Refundable Bonds at a price equal to 100% of the principal amount to be redeemed plus accrued interest to that date; and

(c) At the direction of the City's Designated Representative, the payment of the costs of issuing the Bonds and the costs of carrying out the foregoing elements of the Refunding Plan.

"Refunding Trust Agreement" means a refunding trust agreement between the City and the Refunding Trustee providing for the carrying out of the Refunding Plan.

"Refunding Trustee" means the trustee, or any successor trustee, selected by the Designated Representative to serve as refunding trustee pursuant to Section 11.

“Registered Owner” means the person in whose name a Bond is registered on the Bond Register. If the Bond is in Book-Entry Form under the Letter of Representations, Registered Owner shall mean the Securities Depository.

“Registration Ordinance” means Ordinance No. 1944 establishing a system of registration for the City’s bonds and other obligations.

“Reserve Requirement” means (a) for each Series of the Bonds, zero dollars, unless a greater amount (not to exceed the maximum dollar amount permitted by the Code to be allocated to a debt service reserve fund from tax-exempt or tax-advantaged bond proceeds, without requiring such amounts to be invested at a restricted yield) is deemed necessary or convenient by the Designated Representative and agreed to in the Bond Sale Terms for such Series; (b) for any Future Parity Obligations that are designated as Common Reserve Bonds, an incremental amount to be added to the Common Reserve Account, determined as set forth in the Future Parity Obligation Ordinance, provided that the sum of the Reserve Requirements for all Common Reserve Bonds may not exceed the maximum dollar amount permitted by the Code to be allocated to a debt service reserve fund from tax-exempt or tax-advantaged bond proceeds, without requiring such amounts to be invested at a restricted yield; and (c) for any Future Parity Obligations other than those designated as Common Reserve Bonds, an amount determined as set forth in the ordinance authorizing such Series of Future Parity Obligations, which amount may be zero.

“Reserve Security” means any bond insurance, security, letter of credit, guaranty, surety bond or similar credit enhancement device providing for or securing the payment of all or part of the principal of and interest on the Parity Obligations, issued by an institution which has been assigned a credit rating at the time of issuance of the Reserve Security that is in one of the two highest rating categories of at least one nationally recognized rating agency, without regard to any gradations within a rating category.

“Rule 15c2-12” means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended.

“SEC” means the United States Securities and Exchange Commission.

“Securities Depository” means DTC, any successor thereto, any substitute securities depository selected by the City (or the nominee of any of the foregoing). Any successor or substitute Securities Depository must be qualified under applicable laws and regulations to provide the services proposed to be provided by it.

“Separate System” means any water supply, sewage collection or treatment, stormwater or other utility service or facilities that may be created, acquired or constructed by the City as provided in Section 17 of this ordinance.

“Serial Bonds” means obligations maturing in specified years, which are not designated as Term Bonds and for which no mandatory redemption installments are scheduled.

“Series of Bonds” or “Series” means a series of Bonds issued pursuant to this ordinance.

“Significant Wholesale Customer” means any person, firm, corporation or municipal corporation under any executed contract for water or other utility service, the revenue from which contract comprises 10% or more of the Gross Revenue of the Utility System.

“State” means the State of Washington.

“State Auditor” means the office of the Auditor of the State or such other department or office of the State authorized and directed by State law to make audits.

“Tax Credit Subsidy Bond” means any bond that is designated by the City as a “build America bond” or other similar type of tax credit bond pursuant to the Code, and which is further designated as a “qualified bond” under Section 6431 of the Code (or a similar section of the Code), and with respect to which the City is eligible to receive a Tax Credit Subsidy Payment.

“Tax Credit Subsidy Payment” means the amounts which the City expects to receive as a tax credit payable by the United States Treasury to the City under Section 6431 of the Code (or a similar section of the Code), in respect of any bonds issued as Tax Credit Subsidy Bonds.

“Term Bond” means a Utility System Revenue Obligation that is subject to mandatory redemption prior to its scheduled maturity date or dates in mandatory redemption installments set forth in the Bond Purchase Contract or Pricing Certificate.

“ULID” means utility local improvement district.

“Utility System” or **“System”** means (a) the water supply and distribution system of the City, as it now exists and including all additions, betterments and extensions at any time made; (b) the sanitary sewage collection, treatment and disposal system, septic inspection and maintenance system of the City; (c) any storm and surface water drainage system of the City; (d) any garbage and refuse collection and disposal system; and (e) any other system or utility that may lawfully be combined with the foregoing. The Utility System shall not include any Separate System of the City.

“Utility System Bond Fund” means the special fund known as the Utility System Bond Fund, created pursuant to Section 10 of Ordinance No. 2763, passed on May 21, 2007, for the purpose of paying and securing the obligations of the Utility System of the City.

“Utility System Revenue Obligations” means the Parity Obligations (including the Bonds) and any other obligations that may be authorized in the future that are made payable solely from accounts within the Utility System Bond Fund.

Section 3. Authorization of Bonds. The City is authorized to issue the Bonds in one or more Series in an aggregate principal amount not to exceed \$8,100,000, for the purpose of providing the funds (a) to carry out a refunding of all or a portion of the City’s outstanding Utility System Revenue Bonds, 2012, and (b) to pay the costs of issuance of the Bonds and the administrative costs of carrying out the refunding.

Section 4. Appointment of Designated Representative. For purposes of this ordinance, the Finance Director and the Mayor are each, acting independently and within the parameters set forth in Exhibit B, appointed and authorized to act as the City’s Designated Representative pursuant to RCW 39.46.040(2), to conduct the sale of the Bonds in the manner and upon the terms deemed most

advantageous to the City, and to approve the Bond Sale Terms, with such additional terms and covenants, not inconsistent with Exhibit B, as the Designated Representative deems advisable.

Section 5. Bond Registrar; Registration and Transfer of Bond.

5.1 Registration of the Bond; Bond Registrar. The Bonds shall be issued only in registered form as to both principal and interest and shall be recorded on the Bond Register. The Fiscal Agent is appointed to act as Bond Registrar for each Series of the Bonds, unless otherwise determined by the Designated Representative.

5.2 Transfer and Exchange of Bonds. The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond Register shall contain the name and mailing address of the Registered Owner of each Bond and the principal amount and number of each of Bond held by the Registered Owner. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver those Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's paying agent for the Bonds, and to carry out all of the Bond Registrar's powers and duties under this ordinance and the Registration Ordinance.

The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on each Bond. The Bond Registrar may become an Owner with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Owners.

If a Bond is surrendered to the Bond Registrar, it may be exchanged for a Bond or Bonds in any Authorized Denomination of an equal aggregate principal amount and of the same interest rate, maturity and Series. The Bond may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall be without cost to the Owner or transferee. The Bond Registrar shall not be obligated to exchange any Bond or transfer registered ownership during the period between the applicable Record Date and the next upcoming interest payment or redemption date.

5.3 Securities Depository; Book-Entry Only Form. Unless otherwise determined by the Designated Representative, the Bonds initially shall not be issued and registered in Book-Entry Form. The Bonds so registered shall be held fully immobilized in Book-Entry Form by the Securities Depository in accordance with the provisions of the Letter of Representations. Registered ownership of a Bond held in Book-Entry Form, or any portion thereof, may not be transferred except: (i) to any successor Securities Depository appointed by the City or such substitute Securities Depository's successor; (ii) to any substitute Securities Depository appointed by the City or such substitute Securities Depository's successor; or (iii) to any person if the Bond is no longer held in Book-Entry Form. Upon the resignation of the Securities Depository from its functions as depository, or upon a determination by the Finance Director to discontinue utilizing the then-current Securities Depository, the Finance Director may appoint a substitute Securities Depository. If the Securities Depository resigns from its functions as depository and no substitute Securities Depository can be obtained, or if the Director of Finance determines not to utilize a Securities Depository, then the Bonds shall no longer be held in Book-Entry Form and ownership may be transferred only as provided herein. Nothing herein shall prevent the Bond Sale Terms from providing that a Series of the Bonds shall be issued in certificated form without utilizing a Securities Depository, and that the Bonds of such Series shall be

registered as of their Issue Date in the name of the Owners thereof, in which case ownership may be transferred only as provided herein. Neither the City nor the Bond Registrar shall have any responsibility or obligation to participants of the Securities Depository or the persons for whom they act as nominees with respect to the Bonds regarding the accuracy of any records maintained by the Securities Depository or its participants of any amounts in respect of principal of or interest on the Bonds or any notice which is permitted or required to be given to Registered Owners hereunder (except such notice as is required to be given by the Bond Registrar to the Securities Depository). For so long as a Bond is held in Book-Entry Form, the Securities Depository shall be deemed to be the Registered Owner for all purposes hereunder and all references to Registered Owner shall mean the Securities Depository and shall not mean the Beneficial Owner.

5.4 Lost or Stolen Bond. In case any Bond shall be lost, stolen or destroyed, the Bond Registrar may authenticate and deliver a new bond or bonds of like amount, date, tenor, and effect to the Registered Owner(s) thereof upon the Registered Owner paying the expenses and charges of the City in connection therewith and upon filing with the Bond Registrar evidence satisfactory to the Bond Registrar that such bond or bonds were actually lost, stolen or destroyed and of Registered Ownership thereof, and upon furnishing the City with indemnity satisfactory to both.

5.5 DTC Letter of Representations. If the Bonds are to be issued in Book-Entry Form and to the extent required to induce DTC to accept the Bonds as eligible for deposit at DTC, the City approves the Letter of Representations. If necessary, the Designated Representative is authorized and directed to execute the Letter of Representations, on behalf of the City, and to deliver it to DTC on or before the Issue Date.

Section 6. Form and Execution of Bonds. Each Bond shall be prepared in a form consistent with the provisions of this ordinance and State law. Each Bond shall be signed by the Mayor and City Clerk, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon. Only a Bond bearing a certificate of authentication in substantially the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance: "This Bond is one of the fully registered City of Anacortes, Washington, Utility System Refunding Revenue Bonds, 2022 [Series XX], described in [this ordinance]." The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance. If any officer whose manual or facsimile signature appears on a Bond ceases to be an officer of the City authorized to sign bonds before the Bond bearing his or her manual or facsimile signature is authenticated by the Bond Registrar or issued or delivered by the City, that Bond nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. Any Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bond.

Section 7. Payment of the Bond; Failure to Pay.

7.1 Payment. Principal of and interest on each Bond shall be payable in lawful money of the United States of America on the dates and in the amounts provided in the Bond Purchase Contract. Principal of and interest on each Bond issued as a Parity Obligation shall be payable solely out of the

Parity Obligation Debt Service Account. The Bonds shall not be general obligations of the City. The Bonds may not be subject to acceleration under any circumstances.

7.2 Bonds Held in Book-Entry Form. Principal of and interest on each Bond held in Book-Entry Form is payable in the manner set forth in the Letter of Representations

7.3 Bond Not Held in Book-Entry Form. Interest on each Bond not held in Book-Entry Form is payable by electronic transfer on the interest payment date, or by check or draft of the Bond Registrar mailed on the interest payment date to the Registered Owner at the address appearing on the Bond Register on the Record Date. However, the City is not required to make electronic transfers except pursuant to a request by a Registered Owner in writing received on or prior to the Record Date and at the sole expense of the Registered Owner. Principal of each Bond not held in Book-Entry Form is payable upon presentation and surrender (unless waived by the City) of the Bond by the Registered Owner to the Bond Registrar.

7.4 Failure to Pay the Bond. If the principal of any Bond is not paid when the Bond is properly presented at its maturity or date fixed for redemption, the City shall be obligated to pay, solely from the Parity Obligation Debt Service Account, interest on that Bond at the same rate provided in the Bond from and after its maturity or date fixed for redemption until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Utility System Bond Fund, or in a trust account established to refund or defease the Bond, and the Bond has been called for payment by giving notice of that call to the Registered Owner.

Section 8. Redemption and Purchase Provisions.

8.1 Optional Redemption. Any of the Bonds may be subject to redemption prior to their stated maturity dates at the option of the City at the times and on the terms set forth in the applicable Bond Purchase Contract.

8.2 Mandatory Redemption. Any of the Bonds may be designated as Term Bonds, subject to mandatory redemption on the dates and in the amounts as set forth and confirmed in the applicable Pricing Certificate. If not redeemed or purchased at the City's option prior to maturity, a Term Bond (if any) must be redeemed, at a price equal to one hundred percent of the principal amount to be redeemed, plus accrued interest, on the dates and in the years and amounts as set forth in the Pricing Certificate. If the City optionally redeems, defeases or purchases a Term Bond prior to maturity, the principal amount of that Term Bond that is so redeemed, defeased or purchased (irrespective of its redemption or purchase price) shall be credited against the remaining scheduled mandatory redemption installments in the manner as directed by the Finance Director. In the absence of direction by the Finance Director, credit shall be allocated to the remaining installments for that Term Bond on a *pro rata* basis.

8.3 Partial Redemption; Selection of Bonds for Redemption. If fewer than all of the outstanding Bonds of any Series are to be redeemed at the option of the City, the Finance Director shall select the Series and maturity or maturities to be redeemed. If less than all of the principal amount of a maturity of the selected Series is to be redeemed, if such Series is held in Book-Entry Form, the portion of such maturity to be redeemed shall be selected for redemption by the Securities Depository in accordance with the Letter of Representations, and if the Series is not then held in Book-Entry Form, the portion of such maturity to be redeemed shall be selected by the Bond Registrar using such method of random selection as the Bond Registrar shall determine. All or a portion of the principal amount of

any Bond that is to be redeemed may be redeemed in any applicable Authorized Denomination. If less than all of the outstanding principal amount of any Bond is redeemed, upon surrender of that Bond to the Bond Registrar there shall be issued to the Registered Owner, without charge, a new Bond (or Bonds, at the option of the Registered Owner) of the same Series, seniority, maturity, and interest rate in any Authorized Denomination in the aggregate principal amount to remain outstanding.

8.4 Notice of Redemption. If a Series of the Bonds are held in Book-Entry Form, notice of redemption shall be given in accordance with the Letter of Representations. Otherwise, unless waived by the Registered Owner or unless otherwise provided in the Bond Purchase Contract, notice of any intended redemption must be given not less than 20 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Registered Owner of the Bond to be redeemed (or portion thereof) at the address appearing on the Bond Register on the Record Date. The requirements of the preceding sentence shall be deemed to have been fulfilled when notice has been mailed as so provided, whether or not it is actually received by the Owner of that Bond. In addition, the redemption notice shall be mailed or sent electronically within the same period to the MSRB (if required under any Continuing Disclosure Agreement), to each Rating Agency, and to such other persons and with such additional information as the Finance Director shall determine, but these additional mailings shall not be a condition precedent to the redemption of any Bond.

8.5 Rescission of Optional Redemption Notice. In the case of an optional redemption or an extraordinary redemption, the notice of redemption may state that the City retains the right to rescind the redemption notice and the redemption by giving a notice of rescission to the affected Registered Owners at any time on or prior to the date fixed for redemption. Any notice of optional redemption that is so rescinded shall be of no effect, and each Bond (or portion thereof) for which a notice of redemption has been rescinded shall remain outstanding.

8.6 Effect of Redemption. If notice of redemption is given as provided in this ordinance and is not rescinded (as provided in Section 8.5), that Bond (or portion thereof called for redemption) shall become due on the date fixed for redemption. Interest on that Bond (or portion thereof) shall cease to accrue on the date fixed for redemption unless that Bond (or portion thereof) is not paid when properly presented.

8.7 Purchase by City. The City reserves the right and option to purchase any or all of the Bonds available for purchase at any time at any price acceptable to the City plus accrued interest to the date of purchase.

Section 9. Refunding or Defeasance of the Bond. The City may issue refunding bonds pursuant to the laws of the State or use money available from any other lawful source to pay when due the principal of and interest on those Parity Obligations, or any portion thereof included in a refunding or defeasance plan (the "Defeased Bonds"), and to redeem and retire, refund or defease such Defeased Bonds and to pay the costs of such refunding or defeasance. If the City deposits irrevocably with an escrow agent money and/or Government Obligations sufficient in amount, together with the earnings thereon, sufficient to pay the principal of and premium, if any, on the Defeased Bonds, together with all interest accruing thereon to the due date or redemption date, and pays or makes provision for payment of all fees, costs and expenses of that escrow agent due or to become due with respect to the Defeased Bonds, all liability of the City and the Utility System with respect to the Defeased Bonds shall cease, the Defeased Bonds shall be deemed not to be outstanding hereunder and the registered owners of the Defeased Bonds shall be restricted exclusively to the money or Government Obligations so deposited, together with any earnings thereon, for any claim of whatsoever nature with respect to

the Defeased Bonds, and that escrow agent shall hold that money, Government Obligations and earnings in trust exclusively for those registered owners and that money, Government Obligations and earnings shall not secure any other Parity Obligations under this ordinance. After establishing such an escrow account, the City may apply any money in any other fund or account established for the payment or redemption of the Defeased Bonds to any lawful purposes as it shall determine, subject only to the rights of the owners of any other Parity Obligations then outstanding. Defeased Bonds shall be excluded from computation of the Coverage Requirements and other covenants under this ordinance.

Section 10. Deposit of Bond Proceeds.

10.1 Refunding Plan. On the Issue Date, the City shall cause the proceeds of the Bonds that are allocated to carrying out the Refunding Plan to be deposited with the Refunding Trustee and used to carry out the Refunding Plan in accordance with Section 11 and the Refunding Trust Agreement.

10.2 Costs of Issuance. The portion of the proceeds allocable to payment of costs related to the sale, issuance, and delivery of the Bonds may be transferred to the Refunding Trustee to be used to pay such costs in accordance with an executed Refunding Trust Agreement, or may be retained by the City to be used to pay such costs directly, as the Finance Director may determine is most convenient.

10.3 Remaining Proceeds (if any). The proceeds of any Series of the Bonds remaining after the City makes all deposits described in this section shall be deposited into the Parity Obligation Debt Service Account to pay interest on that Series on the next interest payment date.

Section 11. Refunding of the Refundable Bonds.

11.1 Appointment of the Refunding Trustee; Selection of Refundable Bonds. The Finance Director is authorized and directed to appoint a Refunding Trustee in accordance with chapter 39.53 RCW, and the Designated Representative is authorized to execute on behalf of the City a Refunding Trust Agreement providing for the carrying out of the Refunding Plan, as defined herein and as further detailed therein.

11.2 Use of Bond Proceeds for Refunding Plan; Acquisition of Acquired Obligations. On the Issue Date, bond proceeds allocated to carrying out the Refunding Plan (together with any City Contribution) shall be deposited with the Refunding Trustee and used to discharge the obligations of the City relating to the Refundable Bonds by carrying out that Refunding Plan in accordance with the Refunding Trust Agreement. The Acquired Obligations (if any) shall be listed and more particularly described in an exhibit attached to the Refunding Trust Agreement, shall conform to the requirements of the 2012 Senior Lien Bond Ordinance, and are subject to substitution as set forth below. Any Bond proceeds or other money deposited with the Refunding Trustee not needed to carry out the Refunding Plan (or to pay administrative costs and costs of issuance) shall be returned to the City for deposit in the Parity Obligation Debt Service Account to pay interest on the Bonds on the next upcoming interest payment date.

11.3 Substitution of Acquired Obligations. The City reserves the right at any time to substitute cash or other Government Obligations conforming to the requirements of the 2012 Senior Lien Bond Ordinance (“Substitute Obligations”) for any of the Acquired Obligations if the City obtains, (a) an opinion of Bond Counsel to the effect that the interest on the Bonds and the Refundable

Bonds will remain excluded from gross income for federal income tax purposes under Sections 103, 148 and 149(d) of the Code, and (b) a verification by a nationally recognized independent certified public accounting firm that such substitution will not impair the timely payment of the amounts required to be paid by the Refunding Plan. Any surplus money resulting from the sale, transfer, other disposition or redemption of the Acquired Obligations and the substitutions therefor shall be released from the trust estate and transferred to the City to be used for any lawful City purpose.

11.4 Refunding Trust Agreement; Administration of Refunding Plan. The Designated Representative is authorized to execute a Refunding Trust Agreement setting forth the duties, obligations and responsibilities of the Refunding Trustee in connection with the carrying out of the Refunding Plan. The Refunding Trust Agreement may, among other things, authorize and direct the Refunding Trustee to purchase the Acquired Obligations (or Substitute Obligations) and shall direct the Refunding Trustee to make the payments required to be made by the Refunding Plan. The money deposited with the Refunding Trustee (and Acquired Obligations or Substitute Obligations acquired therewith) and any income therefrom shall be held irrevocably, invested and applied in accordance with the provisions of the applicable 2012 Senior Lien Bond Ordinance, this ordinance, chapter 39.53 RCW and other applicable State law. All administrative costs (including without limitation all necessary and proper fees, compensation and expenses of the Refunding Trustee for the Bonds and all other costs incidental to the setting up of the escrow to accomplish the Refunding Plan) and costs of issuance of the Bonds may be paid out of the amounts deposited with the Refunding Trustee or other available money of the City, in accordance with the Refunding Trust Agreement.

11.5 Call for Redemption of the Refundable Bonds. The Finance Director is authorized to take all action necessary to call the Refundable Bonds for redemption on the Redemption Date in accordance with the 2012 Senior Lien Bond Ordinance and this ordinance. Such call for redemption shall identify the Refundable Bonds, the maturity dates, the Redemption Date and redemption price (expressed as a percentage of par, plus accrued interest), and shall be irrevocable after the Bonds are delivered to the Purchaser. The Finance Director is authorized and directed to give or cause to be given such notices as may be required, at the times and in the manner required pursuant to the applicable 2012 Senior Lien Bond Ordinance, and to take all other actions necessary to effect the redemption of the Refundable Bonds on the Redemption Date.

11.6 Refunding Conditions and Findings Required. The City Council finds and determines that upon the findings made by the Designated Representative pursuant to this subsection, the Refunding Plan will discharge and satisfy the obligations, pledges, charges, trusts, covenants and agreements of the City under the 2012 Senior Lien Bond Ordinance as to the Refundable Bonds, and the Refundable Bonds shall no longer be deemed to be outstanding under the 2012 Senior Lien Bond Ordinance immediately upon the deposit of the money specified in the Refunding Plan with the Refunding Trustee. Prior to approving the sale of the Bonds, the Designated Representative must determine in writing that, in his or her judgment, each of the following conditions are met:

(a) The Redemption Date is the earliest practical date on which the Refundable Bonds may be called for redemption.

(b) The savings that will be effected (as measured by the difference between the principal and interest cost over the life of the Bonds and the principal and interest cost over the life of the Refundable Bonds but for such refunding) shall be equal to at least the percentage savings set forth in Exhibit B. In making such determination, the Designated Representative shall give consideration to the fixed maturities (and scheduled mandatory principal redemptions) of the Bonds and the Refundable

Bonds, the costs of issuance of the Bonds and the known earned income from the investment of the proceeds of the issuance and sale of the Bonds pending payment and redemption of the Refundable Bonds.

(c) The Refunding Plan to be effected by the issuance and sale of the Bonds will provide sufficient funds to discharge and satisfy the obligations of the City under the 2012 Senior Lien Bond Ordinance. In making such determination, the Designated Representative may rely upon a certification of the City's financial advisor or an independent verification agent.

Section 12. Security for the Bond.

12.1 Pledge of Net Revenue and Pledged ULID Assessments. The Bonds shall be special limited obligations of the City payable from and secured solely by the Net Revenue and all Pledged ULID Assessments (if any) and money in the Parity Obligation Debt Service Account and any subaccounts created therein. The Bonds are not Common Reserve Bonds and are not secured by any amounts in a Parity Reserve Account or other debt service reserve account. The Net Revenue and Pledged ULID Assessments (if any) are pledged to make the payments into the Parity Obligation Debt Service Account required by this ordinance. This pledge constitutes a charge and lien upon such Net Revenue that is prior and superior to all other liens and charges whatsoever, and constitutes a first priority charge and lien upon the Pledged ULID Assessments. The Bond shall not constitute a general obligation of the City, the State or any political subdivision of the State or a charge upon any general fund or upon any money or other property of the City, the State, or any political subdivision of the State not specifically pledged by this ordinance.

12.2 Lien Position. The Bonds shall be issued on parity of lien with any Future Parity Obligations, without regard to date of issuance or authorization and without preference or priority of right or lien. The City further covenants that, for as long as any Parity Obligations remain outstanding, it will not issue any revenue obligations (or create any special fund or account therefor), which will have any priority over or which will rank on a parity with the payments required in respect of the Parity Obligations, and that it will issue Future Parity Obligations only accordance with the Parity Conditions. Nothing in this ordinance prevents the City from issuing revenue bonds or other obligations which are a charge or lien upon Net Revenue subordinate to the payments required to be made from Net Revenue into the Parity Obligation Debt Service Account and the subaccounts therein.

Section 13. Flow of Funds; Priority of Expenditure of Gross Revenue. The Gross Revenue shall be deposited as received in the combined Utility System Funds created for each component utility, and used for the following purposes only and applied in the following order of priority:

13.1 To pay the Operations and Maintenance Costs;

13.2 To make all payments required to be made into the Parity Obligation Debt Service Account in respect of the interest on and principal of all Parity Obligations when due;

13.3 To make all payments required to be made into any Parity Reserve Account and to make payments due under any reimbursement agreement with the provider of a Reserve Security that requires those payments to be made on a parity with the payments to be made into a Parity Reserve Account;

13.4 To make when due the required payments to be made into any revenue bond, note warrant or other revenue obligation redemption fund, debt service account or reserve account created to pay and secure the payment of any revenue bonds, warrants, notes or other obligations of the Utility System having a charge upon the Net Revenue junior and inferior to the charge thereon for the payment of the principal of and premium (if any), and interest on the Parity Obligations, in any priority not inconsistent with this ordinance, that the City may hereafter establish by ordinance; and

13.5 Without priority, to any of the following purposes: to retire by redemption or purchase any outstanding revenue bonds or revenue obligations of the Utility System; to make necessary additions, betterments, improvements, repairs, extensions, and replacements of the Utility System; to pay City taxes or other payments in lieu of taxes payable from Gross Revenue; to make deposits to the Rate Stabilization Account; or for any other lawful purpose of the Utility System.

Section 14. The Utility System Bond Fund; Parity Obligation Debt Service Account

Created. The Utility System Bond Fund was previously created within the City treasury by the Ordinance No. 2763, passed on May 21, 2007 (authorizing the issuance of the 2007 Senior Lien Bonds and creating accounts within that Fund securing payment of the principal of and interest the Senior Lien Bonds).

14.1 **Parity Obligation Debt Service Account Created.** For the sole purpose of paying and securing payment of the Parity Obligations, the 2017 Parity Lien Ordinance created the Parity Obligation Debt Service Account in the Utility System Bond Fund. The Finance Director may create additional sinking fund accounts or other subaccounts in the Parity Obligation Debt Service Account to pay or secure the payment of Future Parity Obligations, so long as the maintenance of such accounts does not conflict with the rights of the owners of Parity Obligations. The Finance Director may create Parity Reserve Accounts within the Utility System Bond Fund to additionally secure payment of Future Parity Obligations, in accordance with the ordinances authorizing their issuance.

14.2 **Required Payments into the Parity Obligation Debt Service Account.** So long as any Parity Obligation remains outstanding, the City obligates and binds itself to set aside and pay into the Parity Obligation Debt Service Account all Pledged ULID Assessments and, out of the Net Revenue, certain fixed amounts without regard to any fixed proportion, namely, on or before each debt service payment date an amount which, together with Pledged ULID Assessments and other money on deposit therein, will be sufficient to pay the principal of and interest on the Parity Obligations (including the Bonds) coming due and payable on such debt service payment date, including mandatory redemption amounts due on that date with respect to any Parity Obligation that is a Term Bond. If the City fails to set aside and pay into the Parity Obligation Debt Service Account the amounts set forth, the Registered Owner of an outstanding Parity Obligation may bring action against the City and compel the setting aside and payment.

14.3 **Investment of Money in Parity Obligation Debt Service Account and Parity Reserve Account(s) (if any).** All money in the Parity Obligation Debt Service Account and any Parity Reserve Account may be kept in cash or invested in Permitted Investments maturing not later than the date when needed (for investments in the Parity Obligation Debt Service Account) or the last maturity of any outstanding Parity Obligations (for investments in the Parity Reserve Account). In no event shall any money in the Parity Obligation Debt Service Account, any Parity Reserve Account or any other money reasonably expected to be used to pay principal of and/or interest on the Parity Obligations be invested at a yield which would cause any Series issued as tax-exempt Bonds or Tax Credit Subsidy Bonds to be arbitrage bonds within the meaning of Section 148 of the Code. Income from investments

in the Parity Obligation Debt Service Account shall be deposited in that account. Income from investments in any Parity Reserve Account shall be retained in that account until the amount therein is equal to the Reserve Requirement for all Parity Obligations secured by that account, and thereafter shall be deposited in the Parity Obligation Debt Service Account. Notwithstanding the provisions for deposit or retention of earnings in the Parity Obligation Debt Service Account or Parity Reserve Account, any earnings which are subject to a federal tax or rebate requirement may be withdrawn from such account for deposit in a separate fund or account for that purpose. If no longer required for such rebate, money in that separate fund or account shall be returned to the Parity Obligation Debt Service Account or Parity Reserve Account, as applicable.

Section 15. Covenants. The City covenants and agrees with the Owner of the Bond, as follows:

15.1 Maintenance and Operation. The City will pay all Operations and Maintenance Costs and will at all times maintain and keep the Utility System in good repair, working order and condition, and also will at all times operate such utility and the business in connection therewith in an efficient manner and at a reasonable cost.

15.2 Rates and Charges.

(a) **Debt Service Coverage.** The City will establish, maintain, revise as necessary, and collect such rates and charges for the services furnished by the Utility System (including those furnished under contract with wholesale customers) sufficient to produce Net Revenue that meets or exceeds the Coverage Requirement.

(b) **Significant Wholesale Customer Contracts.** The City will not reduce any rate or charge for services of the Utility System as is now established by the existing rate ordinance or ordinances of the City, or any contract with a Significant Wholesale Customer, if such change would substantially reduce the annual Net Revenue below that which would have been obtained before such change unless the City has on file a certificate from an Independent Utility Consultant, stating that after such change, the Net Revenue will remain sufficient to comply with all the covenants and requirements of this ordinance, including the Coverage Requirement.

(c) **No Free Service.** Except to aid the poor or infirm, to provide for resource conservation or to provide for the proper handling of hazardous materials, the City will not furnish or supply or permit the furnishing or supplying of any service or facility in connection with the operation of the Utility System free of charge to any person, firm or corporation, public or private, other than the City, so long as any Utility System Revenue Bond remain outstanding.

15.3 Pledged ULID Assessments. The City will collect promptly all Pledged ULID Assessments (if any). Such assessments may be used to pay the principal or interest on any Parity Obligations without those assessments being particularly allocated to the payment of principal or interest on any particular series of Parity Obligations.

15.4 Restrictions on Sale or Disposition of Utility System. The City will not sell, lease, mortgage or in any manner encumber or dispose of all the property of the Utility System unless provision is made for payment into the Utility System Bond Fund of a sum sufficient to pay the principal of and interest on all then-outstanding Utility System Revenue Bonds. Furthermore, it will not sell, lease, mortgage, or in any manner encumber or dispose of any part of the property of the

Utility System that is used, useful and material to its operation, unless provision is made (a) for the replacement of that portion of the Utility System, or (b) for the payment into the Utility System Bond Fund of an amount bearing the same ratio to the principal amount of then-outstanding Utility System Revenue Bonds as the amount of Net Revenue available for debt service derived during the preceding 12 month period from that portion of the Utility System bears to the total Net Revenue available for debt service for such bonds for the same period. Any such money so paid into the Utility System Bond Fund shall be used to retire Utility System Revenue Bonds at the earliest possible date and may be invested to the same extent and in the same manner as provided for the investment of money in the Utility System Bond Fund until so used.

15.5 Books and Accounts. The City will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the Utility System. Upon request of any Registered Owner of a Utility System Revenue Bond, it also will furnish a copy of the most recently completed audit of the City's accounts by the State Auditor of Washington, or such other audit as is authorized by law in lieu thereof.

15.6 Insurance. The City will at all times carry fire and such other forms of insurance on such of the buildings, equipment, facilities and properties of the Utility System as are ordinarily carried on such buildings, equipment, facilities, and properties by utilities engaged in the operation of similar utility systems to the full insurable value thereof, and also will carry adequate public liability insurance (and war risk insurance if available at reasonable rates) at all times. The premiums on such insurance policies are declared to be a normal part of Operations and Maintenance Costs.

Section 16. Future Parity Obligations. The City reserves the right to issue Future Parity Obligations if the Parity Conditions are met and complied with at the time of the issuance of those Future Parity Obligations. If Future Parity Obligations are being issued for the sole purpose of refunding Utility System Revenue Bonds (including costs of issuance and providing for the Reserve Requirement, if any), no Parity Certificate is required if, as result of the issuance of those Future Parity Obligations, (a) the Annual Debt Service on the Future Parity Obligations to be issued is not increased by more than \$5,000 over the Annual Debt Service for that year of the Utility System Revenue Bonds being refunded, and (b) the final maturity of the Future Parity Obligations will not extend more than one year longer than the Utility System Revenue Bonds being refunded.

Nothing in this ordinance shall prevent the City from issuing Future Parity Obligations to refund maturing Utility System Revenue Bonds then outstanding, money for the payment of which is not otherwise available. Furthermore, nothing in this ordinance shall prevent the City from issuing revenue bonds or other obligations that are a charge upon the Gross Revenue of the Utility System subordinate to the payments required to be made into the Utility System Bond Fund for the payment of the Utility System Revenue Bonds, or from pledging the payment of ULID assessments into a bond redemption fund created for the payment of the principal of and interest on those subordinate bonds or obligations if such ULID assessments are levied for improvements constructed from the proceeds of those subordinate bonds.

Section 17. Separate Utility Systems. The City may create, acquire, construct, finance, own and operate one or more additional systems for water supply, sewer service, water, sewage or stormwater transmission, treatment or other commodity or utility service. The revenue of that Separate System, and any ULID assessments payable solely with respect to improvements to a Separate System, shall not be included in the Gross Revenue and may be pledged to the payment of revenue obligations issued to purchase, construct, condemn or otherwise acquire or expand the Separate System. The Net

Revenue may be pledged to the payment of any obligations issued to finance a Separate System only on a basis subordinate to the lien of the Parity Obligations.

Section 18. Contract Resource Obligations. The City may at any time enter into one or more Contract Resource Obligations for the acquisition, from facilities to be constructed or improved by the use of payments under such Contract Resource Obligations, of any water, wastewater, stormwater, solid waste or other utility commodity or service relating to the Utility System, as follows:

18.1 The City may determine that, and may agree under a Contract Resource Obligation to provide that, all payments under that Contract Resource Obligation (including payments prior to the time that water, wastewater, stormwater, solid waste or other utility service is being provided, or during a suspension or after termination of supply or service) shall be an Operations and Maintenance Cost if the payments required to be made under the Contract Resource Obligation are not subject to acceleration and the following additional requirements are met at the time such a Contract Resource Obligation is entered into:

(a) No event of default has occurred and is continuing under the terms of any debt obligation of the City in respect of the Waterworks Utility; and

(b) There is on file a certificate of an independent licensed professional engineer or engineering firm stating that in his, her or its professional opinion: (i) the payments to be made by the City in connection with the Contract Resource Obligation are reasonable for the supply or transmission rendered; (ii) the source of any new supply, and any facilities to be constructed to provide the supply or transmission, are sound from a water or other commodity supply or transmission planning standpoint, are technically and economically feasible in accordance with prudent utility practice, and are likely to provide supply, transmission or service no later than a date set forth in the independent licensed professional engineer's certification; and (iii) the Net Revenue of the Utility System will be sufficient to meet the Coverage Requirement for each of the five Fiscal Years following the Fiscal Year in which the Contract Resource Obligation is incurred, where the calculation of Net Revenue (A) takes into account the adjustments to Gross Revenue permitted in the Parity Certificate, and (B) adjusts the Operations and Maintenance Costs by the independent licensed professional engineer's estimate of the payments to be made in accordance with the Contract Resource Obligation.

18.2 Nothing in this section shall prevent the City from entering into other agreements for the acquisition of water supply, transmission or other commodity or service relating to the Waterworks Utility from existing facilities and from treating those payments as an Operations and Maintenance Cost.

18.3 Nothing in this section shall prevent the City from entering into other agreements for the acquisition of water, wastewater, stormwater, solid waste or other utility commodity or service relating to the Utility System from facilities to be constructed and from agreeing to make payments with respect thereto, such payments constituting a lien and charge on the Net Revenue subordinate to that of the Parity Obligations.

Section 19. Rate Stabilization Fund. There has been previously created and established in the City treasury a Rate Stabilization Fund. The City may at any time, as determined by the Finance Director and consistent with Section 13 of this ordinance, deposit into the Rate Stabilization Fund amounts from Gross Revenue and any other money received by the Utility System and available to be used for that purpose, excluding principal proceeds of any Future Parity Obligations. No deposit shall

be made into the Rate Stabilization Fund to the extent that such deposit would prevent the City from meeting the Coverage Requirement in the relevant calendar year.

The Finance Director may at any time, upon authorization by ordinance withdraw money from the Rate Stabilization Fund for inclusion in the Net Revenue for the current fiscal year of the Utility System, except that the total amount withdrawn from the Rate Stabilization Fund in any calendar year may not exceed the total debt service of the Utility System Revenue Bonds in that year. Such deposits or withdrawals may be made up to and including the date 90 days after the end of the calendar year for which the deposit or withdrawal will be reflected in the calculation of Net Revenue.

Earnings from investments in the Rate Stabilization Fund shall be deposited in that fund and shall not be included as Net Revenue unless and until withdrawn from that fund as provided in this section. The Finance Director may also deposit earnings from investments in the Rate Stabilization Fund into any System fund as authorized by ordinance, and such deposits shall be included as Net Revenue in the year of deposit.

Section 20. Federal Tax Covenants.

20.1 Preservation of Tax Exemption for Interest on the Bonds. The City covenants that, for any Series of the Bonds that are designated as tax-exempt Bonds, it will take all actions necessary to prevent interest on the tax-exempt Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the tax-exempt Bonds or other funds of the City treated as proceeds of the tax-exempt Bonds at any time during the term of the tax-exempt Bonds which will cause interest on the tax-exempt Bonds to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirement of Section 148 of the Code is applicable to the tax-exempt Bonds, take all actions necessary to comply (or to be treated as having complied) with that requirement in connection with the tax-exempt Bonds, including the calculation and payment of any penalties that the City may elect to pay (if any) as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section 148 of the Code to prevent interest on the tax-exempt Bonds from being included in gross income for federal income tax purposes.

20.2 Post-Issuance Compliance. The Finance Director is authorized and directed to review and update the City's written procedures to facilitate compliance by the City with the covenants in this ordinance and the applicable requirements of the Code that must be satisfied after the Issue Date to prevent interest on the Bonds from being included in gross income for federal tax purposes.

Section 21. Amendatory and Supplemental Ordinances. This ordinance may not be supplemented or amended in any respect subsequent to the Issue Date for so long as the Bonds remain outstanding, except in accordance with and subject to the provisions of this section.

21.1 Amendments Without Bond Owner Consent. From time to time and at any time, without the consent of or notice to any owners of any Parity Obligation, the City may supplement or amend this ordinance and the related bond documents for any of the purposes set forth in this subsection. Any such supplement or amendment may be passed, adopted, or otherwise approved by the City without requiring the consent of the registered owners of any Parity Obligations, but may become effective only upon receipt by the City of an opinion of Bond Counsel stating that such supplement or amendment is authorized or permitted by this ordinance and, upon the effective date thereof, will be valid and binding upon the City in accordance with its terms, and will not adversely

affect the exclusion from gross income for federal income tax purposes of interest on the affected Parity Obligations (if applicable). The types of supplements and amendments permitted under this subsection are as follows:

- (a) To cure any formal defect, omission, inconsistency, or ambiguity in a manner not adverse to the owners of any Parity Obligations;
- (b) To impose upon the Bond Registrar (with its consent) for the benefit of the owners of Parity Obligations any additional rights, remedies, powers, authority, security, liabilities, or duties which may lawfully be granted, conferred, or imposed and which are not contrary to or inconsistent with this ordinance as theretofore in effect;
- (c) To add to the covenants and agreements of, and limitations and restrictions upon, the City in the bond documents, other covenants, agreements, limitations and restrictions to be observed by the City which are not contrary to or inconsistent with this ordinance as theretofore in effect;
- (d) To confirm, as further assurance, any pledge under (and the subjection to any claim, lien, or pledge created or to be created by) this ordinance on any other money, securities, or funds;
- (e) To alter the Authorized Denominations for any Parity Obligations and to make correlative amendments and modifications regarding exchangeability of the Bonds for different authorized denominations, redemptions of portions of Bonds in particular authorized denominations, and similar amendments and modifications of a technical nature;
- (f) To comply with any future federal law or interpretation to preserve the exclusion of the interest on any Parity Obligations issued and sold as tax-exempt Bonds from gross income for federal income tax purposes, or to preserve the entitlement of the City to receive applicable Tax Credit Subsidy Payments in respect of any series of Parity Obligations issued and sold as Tax Credit Subsidy Bonds;
- (g) To add to the covenants and agreements of (or limitations and restrictions upon) the City, such additional or alternative covenants, agreements, limitations, or restrictions to be observed by the City as the City may determine are necessary or convenient to accommodate a provider of Qualified Insurance or provider of a Reserve Security and which are not materially adverse to the owners of any Parity Obligations; and
- (h) To modify, alter, amend or supplement the ordinance and related bond documents in any other respect which is not materially adverse to the owners of the Parity Obligations and which does not involve a change described in subsection 21.3.

21.2 Amendments With Bond Owner Consent. With the consent of registered owners of not less than 60% in aggregate principal amount of the Parity Obligations then outstanding, the City may pass, adopt, or otherwise approve any supplement or amendment (other than amendments requiring unanimous consent as set forth in subsection 21.3) that is deemed necessary or desirable by the City for the purpose of modifying, altering, amending, supplementing, or rescinding, in any particular, any of the terms or provisions contained in any ordinance authorizing the issuance of Parity

Obligations or the related bond documents other than those terms and provisions described in subsection 21.3.

21.3 Amendments Prohibited Except Upon Unanimous Consent. Unless approved in writing by or on behalf of the registered owner of each Parity Obligation then outstanding, nothing contained in this section shall permit, or be construed as permitting (a) a change in the times, amounts, or currency of payment of the principal of or interest on any outstanding Parity Obligation, (b) a reduction in the principal amount or redemption price of any outstanding Parity Obligation, (c) a change in the method of determining the rate of interest thereon (other than a conversion to a new interest rate mode in accordance with the applicable ordinance and related documents), (d) a preference or priority of any Parity Obligation over any other Parity Obligation, or (e) a reduction in the percentage of the aggregate principal amount of the then-outstanding Parity Obligations required to effect a change under subsection 21.2.

21.4 Notice to Bond Owners. If at any time the City passes, adopts, or otherwise approves a supplement or amendment for any of the purposes of subsection 21.2 or 21.3, the Bond Registrar shall cause notice of the proposed supplement or amendment to be given by first class mail (a) to all registered owners of the then outstanding Parity Obligations, (b) to each provider of a Reserve Security (if any), and (c) to each Rating Agency then providing a rating on the Parity Obligations. Such notice shall briefly set forth the nature of the proposed supplement or amendment and shall state that a copy is on file at the office of the City Clerk for inspection by all owners of the then outstanding Parity Obligations.

21.5 Effective Date; Consents. Any supplement or amendment, substantially as described in the notice mailed pursuant to subsection 21.4, may go into effect upon delivery to the Bond Registrar of (a) the required consents, in writing, of registered owners of the Parity Obligations, and (b) an opinion of Bond Counsel stating that such supplement or amendment is authorized or permitted by this ordinance and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any tax-exempt Bonds. Upon the effective date thereof, such supplement or amendment will be valid and binding upon the City in accordance with its terms.

21.6 Effect of Amendment. If registered owners of not less than the percentage of Parity Obligations required by this section shall have consented to and approved such a supplement or amendment, no owner of any Parity Obligation shall have any right (a) to object to the passage, adoption, or approval of such supplement or amendment, (b) to object to any of the terms and provisions contained therein or the operation thereof, (c) in any manner to question the propriety of the passage, adoption, or approval thereof, (d) to enjoin or restrain the City from passing, adopting, or otherwise approving the same, or (e) to enjoin or restrain the City, any authorized official thereof, or the Bond Registrar from taking any action pursuant to the provisions thereof. It shall not be necessary to obtain approval of the particular form of any proposed supplement, but it shall be sufficient if the consent shall approve the substance thereof. Upon the effective date of any supplement or amendment, this ordinance or the related bond document shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City and all owners of Parity Obligations then outstanding shall thereafter be determined, exercised, and enforced in accordance with and subject in all respects to such modifications and amendments. All the terms and conditions of any such supplement or amendment shall be deemed to be a part of this ordinance and the bond documents for any and all purposes.

Section 22. Defaults and Remedies.

22.1 Events of Default. Each of the following shall constitute an Event of Default with respect to the Bond:

(a) If a default is made in the payment of the principal of or interest on the Bond when the same shall become due and payable; or

(b) If the City defaults in the observance and performance of any other of the covenants, conditions and agreements on the part of the City set forth in this ordinance or in the Bonds, and such default or defaults have continued for a period of six months after the City has received from the Registered Owners of the Bonds (or a Bondowners' Trustee for the outstanding Parity Obligations, as defined in subsection 22.3) a written notice specifying and demanding the cure of such default. However, if the default in the observance and performance of any other of the covenants, conditions and agreements is one which cannot be completely remedied within the six months after written notice has been given, it shall not be an Event of Default with respect to the Bonds as long as the City has taken active steps within the six months after written notice has been given to remedy the default and is diligently pursuing such remedy.

22.2 No Acceleration. Nothing contained in this section shall, in any event or under any circumstance, be deemed to authorize the acceleration of the maturity of principal on the Parity Obligations, and the remedy of acceleration is expressly denied to the registered owners of the Parity Obligations under any circumstances including, without limitation, upon the occurrence and continuance of an Event of Default.

22.3 Limitations on Remedies. The City reserves the right to issue Future Parity Obligations limiting the remedies of the Owners of Parity Obligations (including the Bonds) upon an Event of Default, as follows:

(a) **Bondowners' Trustee.** If an Event of Default has occurred and has not been remedied, a bondowners' trustee (the "Bondowners' Trustee") may be appointed by the registered owners of 25% or more in principal amount of the then outstanding Parity Obligations, by an instrument or concurrent instruments in writing signed and acknowledged by such registered owners of the Parity Obligations or by their attorneys-in-fact duly authorized and delivered to such Bond Owners' Trustee, notification thereof being given to the City. That appointment shall become effective immediately upon acceptance thereof by the Bond Owners' Trustee. Any Bond Owners' Trustee appointed under the provisions of this subsection shall be a bank or trust company organized under the laws of the State of Washington or the State of New York or a national banking association. The bank or trust company acting as Bond Owners' Trustee may be removed at any time, and a successor Bond Owners' Trustee may be appointed, by the registered owners of a majority in principal amount of the Parity Obligations, by an instrument or concurrent instruments in writing signed and acknowledged by such registered owners of the Parity Obligations or by their attorneys-in-fact duly authorized. The Bond Owners' Trustee may require such security and indemnity as may be reasonable against the costs, expenses and liabilities that may be incurred in the performance of its duties. If, in the sole judgment of the Bond Owners' Trustee, any Event of Default is cured and the Bond Owners' Trustee furnishes to the City a certificate so stating, that Event of Default shall be conclusively deemed to be cured and the City, the Bond Owners' Trustee and the registered owners of the Parity Obligations shall be restored to the same rights and position which they would have held if no Event of Default had occurred. The Bond Owners' Trustee appointed in the manner herein provided, and each successor thereto, is declared

to be a trustee for the registered owners of all the Parity Obligations and is empowered to exercise all the rights and powers herein conferred on the Bond Owners' Trustee.

(b) Suits at Law or in Equity. Upon the occurrence of an Event of Default and during the continuance thereof, the Bond Owners' Trustee may, and upon the written request of the registered owners of not less than 25% in principal amount of the Parity Obligations outstanding shall, take such steps and institute such suits, actions or other proceedings, all as it may deem appropriate for the protection and enforcement of the rights of the registered owners of the Parity Obligations, to collect any amounts due and owing to or from the City, or to obtain other appropriate relief, and may enforce the specific performance of any covenant, agreement or condition contained in this ordinance or set forth in any of the Parity Obligations. Any action, suit or other proceedings instituted by the Bond Owners' Trustee hereunder shall be brought in its name as the Bond Owners' Trustee and all such rights of action upon or under any of the Parity Obligations or the provisions of this ordinance may be enforced by the Bond Owners' Trustee without the possession of any of those Parity Obligations and without the production of the same at any trial or proceedings relative thereto except where otherwise required by law. Any such suit, action or proceeding instituted by the Bond Owners' Trustee shall be brought for the ratable benefit of all of the registered owners of those Parity Obligations, subject to the provisions of this ordinance. The respective registered owners of the Parity Obligations, by taking and holding the same, shall be conclusively deemed irrevocably to appoint the Bond Owners' Trustee the true and lawful trustee of the respective registered owners of those Parity Obligations, with authority to institute any such action, suit or proceeding; to receive as trustee and deposit in trust any sums becoming distributable on account of those Parity Obligations; to execute any paper or documents for the receipt of money; and to do all acts with respect thereto that the registered owner himself or herself might have done in person. Nothing herein shall be deemed to authorize or empower the Bond Owners' Trustee to consent to accept or adopt, on behalf of any owner of the Parity Obligations, any plan of reorganization or adjustment affecting the Parity Obligations or any right of any registered owner thereof, or to authorize or empower the Bond Owners' Trustee to vote the claims of the registered owners thereof in any receivership, insolvency, liquidation, bankruptcy, reorganization or other proceeding to which the City is a party.

(c) Application of Money Collected by Bond Owners' Trustee. Any money collected by the Bond Owners' Trustee at any time pursuant to this section shall be applied in the following order of priority: (i) to the payment of the charges, expenses, advances and compensation of the Bond Owners' Trustee and the charges, expenses, counsel fees, disbursements and compensation of its agents and attorneys; (ii) to the payment to the persons entitled thereto of all installments of interest then due on the Parity Obligations in the order of maturity of such installments and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the persons entitled thereto, without any discrimination or preference; and (iii) to the payment to the persons entitled thereto of the unpaid principal amounts of any Parity Obligations which shall have become due (other than Parity Obligations previously called for redemption for the payment of which money is held pursuant to the provisions of the applicable bond documents), whether at maturity or by proceedings for redemption or otherwise, in the order of their due dates and, if the amount available shall not be sufficient to pay in full the principal amounts due on the same date, then to the payment thereof ratably, according to the principal amounts due thereon to the persons entitled thereto, without any discrimination or preference.

(d) Duties and Obligations of Bond Owners' Trustee. The Bond Owners' Trustee shall not be liable except for the performance of such duties as are specifically set forth herein.

During an Event of Default, the Bond Owners' Trustee shall exercise such of the rights and powers vested in it hereby, and shall use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. The Bond Owners' Trustee shall have no liability for any act or omission to act hereunder except for the Bond Owners' Trustee's own negligent action, its own negligent failure to act or its own willful misconduct. The duties and obligations of the Bond Owners' Trustee shall be determined solely by the express provisions of this ordinance, and no implied powers, duties or obligations of the Bond Owners' Trustee shall be read into this ordinance. The Bond Owners' Trustee shall not be required to expend or risk its own funds or otherwise incur individual liability in the performance of any of its duties or in the exercise of any of its rights or powers as the Bond Owners' Trustee, except as may result from its own negligent action, its own negligent failure to act or its own willful misconduct. The Bond Owners' Trustee shall not be bound to recognize any person as a registered owner of any Parity Obligation until his or her title thereto, if disputed, has been established to its reasonable satisfaction. The Bond Owners' Trustee may consult with counsel and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. The Bond Owners' Trustee shall not be answerable for any neglect or default of any person, firm or corporation employed and selected by it with reasonable care.

(e) Suits by Individual Parity Obligation Owners Restricted. No owner of any one or more Parity Obligations shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of same unless: (i) an Event of Default has happened and is continuing; (ii) a Bond Owners' Trustee has been appointed; (iii) such owner previously shall have given to the Bond Owners' Trustee written notice of the Event of Default on account of which such suit, action or proceeding is to be instituted; (iv) the registered owners of 25% in principal amount of the Parity Obligations, after the occurrence of such Event of Default, have made written request of the Bond Owners' Trustee and have afforded the Bond Owners' Trustee a reasonable opportunity to institute such suit, action or proceeding; (v) there have been offered to the Bond Owners' Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby; and (vi) the Bond Owners' Trustee has refused or neglected to comply with such request within a reasonable time. No owner of any Parity Obligation shall have any right in any manner whatever by his or her action to affect or impair the obligation of the City to pay from Net Revenue the principal of and interest on such Parity Obligations to the respective registered owners thereof when due.

Section 23. Sale and Delivery of the Bonds; Official Statement; Continuing Disclosure.

23.1 Manner of Sale of Bonds; Delivery of Bonds. The Designated Representative is authorized to sell each Series of Bonds by negotiated sale, direct placement or competitive sale, based on the assessment of the Designated Representative of market conditions, in consultation with appropriate City officials, staff, municipal advisors, Bond Counsel and other advisors. In determining the method of sale and accepting the Bond Sale Terms, the Designated Representative shall take into account those factors that, in the judgment of the Designated Representative, may be expected to result in the lowest true interest cost to the City.

23.2 Procedure for Competitive Sale. If the Designated Representative determines that a Series of Bonds are to be sold by competitive sale, the Designated Representative shall cause the preparation of an official notice of bond sale setting forth bid parameters that the Designated Representative deems appropriate consistent with this ordinance. Bids for the purchase of the Bonds shall be received at such time or place and by such means as the Designated Representative directs.

On the date and time established for the receipt of bids, the Designated Representative (or the designee of the Designated Representative) shall accept bids and shall cause the bids to be mathematically verified. The Designated Representative is authorized to award, on behalf of the City, the winning bid and to accept the winning bidder's offer to purchase the Bonds with such adjustments to the aggregate principal amount and principal amount per maturity as the Designated Representative deems appropriate consistent with the terms of this ordinance. The Designated Representative may reject any or all bids submitted and may waive any formality or irregularity in any bid or in the bidding process if the Designated Representative deems it to be in the City's best interest to do so. If all bids are rejected, the Bonds may be sold pursuant to negotiated sale or in any manner provided by law as the Designated Representative determines is in the best interest of the City, within the parameters set forth in this ordinance.

23.3 Procedure for Negotiated Sale or Direct Placement. If the Designated Representative determines that a Series of Bonds is to be sold by negotiated sale or direct placement, the Designated Representative shall select one or more Purchasers with which to negotiate such sale. The Bond Purchase Contract shall set forth the Bond Sale Terms. The Designated Representative is authorized to execute and deliver the Bond Purchase Contract on behalf of the City, so long as the terms provided therein are consistent with the terms of this ordinance.

23.4 Preparation, Execution and Delivery of the Bonds. The Bonds will be prepared at City expense and will be delivered to the Purchaser in accordance with the Bond Purchase Contract, together with the approving legal opinion of Bond Counsel regarding the Bonds.

23.5 Official Statement.

(a) **Preliminary Official Statement.** In connection with a public offering of the Bonds, the Designated Representative and other appropriate City officials are directed to cause the preparation of and review the form of a preliminary Official Statement in connection with each sale of one or more Series to the public. For the sole purpose of an underwriter's compliance with paragraph (b)(1) of Rule 15c2-12, if applicable, the Designated Representative is authorized to deem that preliminary Official Statement final as of its date, except for the omission of information permitted to be omitted by Rule 15c2-12. The City approves the distribution to potential purchasers of the Bonds of a preliminary Official Statement that has been deemed final in accordance with this subsection.

(b) **Final Official Statement.** In connection with a public offering of the Bonds, the City approves the preparation of a final Official Statement for the Bonds to be sold to the public in the form of the preliminary Official Statement that has been deemed final in accordance with subsection (a), with such modifications and amendments as the Designated Representative deems necessary or desirable, and further authorizes the Designated Representative to execute and deliver such final Official Statement to the Purchaser, if required under Rule 15c2-12. The City authorizes and approves the distribution by the Purchaser of the final Official Statement so executed and delivered to purchasers and potential purchasers of the Bonds.

23.6 Agreement to Provide Continuing Disclosure. In connection with a public offering of the Bonds, and if necessary to meet the requirements of paragraph (b)(5) of Rule 15c2-12, as applicable to the Purchaser acting as a participating underwriter for the Bonds, the Designated Representative is authorized to execute a written undertaking to provide continuing disclosure for the benefit of holders of the Bonds in a form acceptable to the Designated Representative.

Section 24. General Authorization and Ratification. The Designated Representative and other appropriate officers of the City are severally authorized to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this ordinance, and to do everything necessary for the prompt delivery of the Bond to the Purchaser (including approving additional terms, conditions or covenants as set forth in Exhibit B) and for the proper application, use and investment of the proceeds of the Bonds. All actions taken prior to the effective date of this ordinance in furtherance of the purposes described in this ordinance and not inconsistent with the terms of this ordinance are ratified and confirmed in all respects.

Section 25. Severability. The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

Section 26. Effective Date. This ordinance shall take effect and be in force from and after its passage and five days following its publication as provided by law.

PASSED by the City Council of the City of Anacortes, Washington, at a regular open public meeting thereof on the 28th day of March, 2022, and signed in authentication of its passage this 28th day of March, 2022.



Mayor

AUTHENTICATED:



City Clerk

APPROVED AS TO FORM:



Bond Counsel

Exhibit A

Parity Conditions

The City may issue Future Parity Obligations only for lawful Utility System purposes and only if the following conditions are met and complied with at the time of the issuance of those Future Parity Obligations:

- (a) There must be no deficiency in the Utility System Bond Fund and there must be no event of default, nor any event or condition that with notice and the passage of time would constitute an event of default, which shall have occurred and be continuing, nor may the issuance of those Future Parity Obligations in and of itself cause an event of default or an event or condition which with notice and the passage of time would constitute an event of default.
- (b) The Future Parity Obligation Ordinance must provide that all Pledged ULID Assessments is to be paid directly into the Parity Obligation Debt Service Account.
- (c) The Future Parity Obligation Ordinance must provide for the payment of the principal of and interest on such Parity Obligations out of the Parity Obligation Debt Service Account.
- (d) If the Future Parity Obligations are to be secured by a Parity Reserve Account, the Future Parity Obligation Ordinance must provide for the deposit into the Reserve Account of any combination of Future Parity Obligation proceeds, Reserve Securities and other legally available money, in the amounts and at the times necessary to satisfy the Reserve Requirement for those Future Parity Obligations.
- (e) There must be on file with the City a Parity Certificate, prepared by either:
 - (i) The City Finance Director, demonstrating that the Coverage Requirement was satisfied during any twelve consecutive calendar months out of the immediately preceding 24 calendar months, assuming that (A) those Future Parity Obligations were outstanding and that the debt service payable on those Future Parity Obligations in that 12 month period was equal to the Average Annual Debt Service on those Future Parity Obligations, and (B) any Parity Obligations to be refunded by those Future Parity Obligations are not outstanding; or
 - (ii) An Independent Utility Consultant, which may take into account the adjustments described below, stating that in his or her opinion (which opinion and underlying assumptions shall be set forth in the certificate), the Coverage Requirement will be satisfied (assuming that those Future Parity Obligations are outstanding and any Parity Obligations to be refunded by those Future Parity Obligations are not outstanding) (A) in each of the calendar years for the five calendar years next following the earlier of: (I) the year in which those Future Parity Obligations are issued (or, if interest is capitalized, the end of the period during which the interest on those Future Parity Obligations is fully capitalized), (II) the date on which substantially all new facilities or improvements financed in substantial part by those Future Parity Obligations are expected to commence operations; and (B) in the calendar year in which those Future Parity Obligations are issued and any subsequent year prior to but not included in the years for which certification is provided. In determining whether the City is able to comply with the terms of the Parity Conditions, the coverage certificate required above may take into account the following adjustments to the historical Net Revenue:

A. Any change in Utility System rates and charges that has taken place or been adopted by ordinance or contract may be reflected, including any changes in the rates charged to any Significant Wholesale Customer in effect and being charged, or expected to be charged in accordance with a program of specific levels or increase (or decreases) in overall revenue.

B. Revenue from customers added or projected to be added to the Utility System after the relevant 12 month period, including revenue from new Significant Wholesale Customers, may be adjusted to reflect one year's Net Revenue allocable to those new customers.

C. A full year's revenue may be included on a *pro forma* basis from any customer being served but who has not been receiving service for the full period of operation used as a basis for the certificate.

D. Actual or reasonably anticipated changes in the Operations and Maintenance Costs subsequent to the relevant 12 month period shall be added or deducted, as is applicable.

E. Net Revenue allocable to any person, firm, corporation or municipal corporation under any executed contract for water or other utility service, which revenue was not included in the historical Net Revenue, may be included in Net Revenue.

F. Transfers into or out of the Rate Stabilization Fund may be taken into account, and those amounts may be added to or deducted from Net Revenues, as applicable.

Exhibit B**Parameters for the Bond Sale Terms**

- (a) **Principal Amount.** The Bonds may be issued in one or more Series. The aggregate principal amount of the Bonds shall not exceed \$8,100,000, and the refunding portion shall not exceed the amount necessary to carry out the refunding and pay the costs of issuance and administrative costs of carrying out the Refunding Plan.
- (b) **Date or Dates.** Each Series of the Bonds shall be dated its Issue Date, which date may not be later than December 31, 2022.
- (c) **Denominations, Name, etc.** Each Series of the Bonds shall be issued in Authorized Denominations and shall be numbered in such manner and shall bear such name and additional designation as deemed necessary or appropriate by the Designated Representative.
- (d) **Interest Rate(s).** Each Series of the Bonds shall bear interest at fixed or variable rates from the Issue Date or from the most recent date for which interest has been paid or duly provided for, whichever is later, as set forth in the Bond Purchase Contract for that Series. One or more rates of interest may be fixed for a Series of the Bonds. The rate of interest for any Bond may not exceed 5.00% and the true interest cost to the City may not exceed 4.00%.
- (e) **Payment Dates.** Interest shall be payable at least semiannually on dates acceptable to the Designated Representative as set forth in a Bond Purchase Contract. Principal payments shall commence on a date acceptable to the Designated Representative and shall be payable at maturity or in mandatory redemption installments on dates acceptable to the Designated Representative as set forth in a Bond Purchase Contract.
- (f) **Final Maturity.** The final maturity shall not extend beyond December 1, 2032.
- (g) **Redemption Rights.** The Designated Representative may approve in a Bond Purchase Contract provisions for the optional and mandatory redemption of Bonds, subject to the following:
- (1) **Optional Redemption.** The Designated Representative may designate any Bond as subject to optional redemption prior to its maturity. Any Bond

that is subject to optional redemption prior to maturity must be callable on at least one or more date(s) occurring not more than 10½ years after the Issue Date, consistent with Section 8.1.

(2) Mandatory Redemption. The Designated Representative may designate any Bond as a Term Bond, subject to mandatory redemption prior to its maturity on the dates and in principal payment amounts set forth in mandatory redemption payments, consistent with Section 8.2.

(h) Price.

The purchase price for any Series of the Bonds may not be less than 98% or more than 125% of the stated principal amount of that Series.

(j) Other Terms and Conditions.

(1) Satisfaction of Parity Conditions. The Designated Representative must determine that the Parity Conditions have been met or satisfied as of the Issue Date for each Series.

(2) Refunding Conditions. The Designated Representative must find that:

(a) The net present value savings that will be effected (as measured by the difference between the principal and interest cost over the life of the Bonds allocable to the Refunding Plan and the principal and interest cost over the life of the Refunded Bonds, but for such refunding) shall be at least equal to 0.00%. In making such determination, the Designated Representative shall give consideration to the fixed maturities of the Bonds and the Refunded Bonds, the costs of issuance of the Bonds and the known earned income from the investment of the proceeds of the Bonds pending redemption of the Refunded Bonds.

(b) The Refunding Plan will provide sufficient funds to discharge and satisfy the obligations of the City under the Refunded Bond Ordinance. In making such determination, the Designated Representative may rely upon a certification or verification by a nationally recognized independent certified public accounting firm or a certification provided by the City's municipal advisor.

4) Additional Credit Enhancement, Terms, Conditions and Agreements. The Designated

Representative may determine whether it is in the City's best interest to provide for a Reserve Requirement that is greater than zero, for bond insurance or other credit enhancement, or for the purchase of a Reserve Security; and may accept such additional terms, conditions, and covenants as he or she may determine are in the best interests of the City, consistent with this ordinance.

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mattm@cityofanacortes.org

Mayor

City of Anacortes

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