CITY OF KENT, WASHINGTON

ORDINANCE NO. 3258

AN ORDINANCE of the City of Kent, Washington, relating to the water supply and distribution system of the City; authorizing the issuance of water revenue refunding bonds in the aggregate principal amount of $7,790,000 to provide the funds with which to pay part of the cost of refunding, paying and retiring all of the City’s outstanding Water Revenue Refunding Bonds, 1973, Water Revenue Bonds, 1976, Water Revenue Bonds, 1978, Water Revenue Refunding Bonds, 1985, and Water Revenue Refunding Bonds, 1987, and to pay the administrative costs of such refunding and the costs of issuance and sale of the bonds; fixing the date, form, maturities, interest rates, terms and covenants of the bonds; creating certain funds and accounts of the City; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of the bonds herein authorized and for the use and application of the money derived from those investments; authorizing the execution of an agreement with First Trust Washington of Seattle, Washington, as refunding trustee; providing for the call, payment and redemption of the outstanding bonds to be refunded; providing for bond insurance; and approving the sale and providing for the delivery of the bonds to Lehman Brothers Inc. of Seattle, Washington.

Prepared by:

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CITY OF KENT, WASHINGTON
WATER REVENUE REFUNDING BONDS, 1995

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AN ORDINANCE of the City of Kent, Washington, relating to the water supply and distribution system of the City; authorizing the issuance of water revenue refunding bonds in the aggregate principal amount of $7,790,000 to provide the funds with which to pay part of the cost of refunding, paying and retiring all of the City's outstanding Water Revenue Refunding Bonds, 1973, Water Revenue Bonds, 1976, Water Revenue Bonds, 1978, Water Revenue Refunding Bonds, 1985, and Water Revenue Refunding Bonds, 1987, and to pay the administrative costs of such refunding and the costs of issuance and sale of the bonds; fixing the date, form, maturities, interest rates, terms and covenants of the bonds; creating certain funds and accounts of the City; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of the bonds herein authorized and for the use and application of the money derived from those investments; authorizing the execution of an agreement with First Trust Washington of Seattle, Washington, as refunding trustee; providing for the call, payment and redemption of the outstanding bonds to be refunded; providing for bond insurance; and approving the sale and providing for the delivery of the bonds to Lehman Brothers Inc. of Seattle, Washington.

WHEREAS, the City of Kent, Washington (the "City"), owns and operates a water supply and distribution system (the "Water System"); and

WHEREAS, pursuant to Ordinance No. 1822, the City heretofore issued its $1,005,000 par value Water Revenue Refunding Bonds, 1973 (the "1973 Bonds"), of which $670,000 par value presently are outstanding maturing on September 1 of each of the years 1996 through 1999, and bearing interest at the rate of 5.70% per annum, and by that ordinance reserved the right to redeem the 1973 Bonds prior to their maturity on March 1, 1986, or on any interest payment date thereafter, at a price of par plus accrued interest to the date fixed for redemption; and
WHEREAS, pursuant to Ordinance No. 1967, the City heretofore issued its $1,000,000 par value Water Revenue Bonds, 1976 (the "1976 Bonds"), of which $325,000 par value presently are outstanding maturing on June 1 of each of the years 1996 through 1999, and bearing interest at various rates ranging from 6.75% to 6.80% per annum, and by that ordinance reserved the right to redeem the 1976 Bonds prior to their maturity on June 1, 1986, or on any interest payment date thereafter, at a price of 102% of par, reducing 1/2 of 1% annually to par on or after June 1, 1990, plus accrued interest to the date fixed for redemption; and

WHEREAS, pursuant to Ordinance No. 2118, the City heretofore issued its $2,000,000 par value Water Revenue Bonds, 1978 (the "1978 Bonds"), of which $1,470,000 par value presently are outstanding maturing on October 1 of each of the years 1996 through 2002, and bearing interest at various rates ranging from 6.15% to 6.40% per annum, and by that ordinance reserved the right to redeem the 1978 Bonds prior to their maturity on October 1, 1988, at a price of 102% of par, reducing 1/2 of 1% annually to par on or after October 1, 1992, plus accrued interest to the date fixed for redemption; and

WHEREAS, pursuant to Ordinance No. 1985, the City heretofore issued its $5,545,000 par value Water Revenue Refunding Bonds, 1985 (the "1985 Bonds"), of which $3,100,000 par value presently are outstanding maturing on December 1 of each of the years 1996 through 2002, and bearing interest at various rates ranging from 8.15% to 8.75% per annum, and by that ordinance reserved the right to redeem the 1985 Bonds prior to their maturity on June 1, 1996,
at a price of 102% of par plus accrued interest to the date fixed for redemption; and

WHEREAS, pursuant to Ordinance No. 2713, the City heretofore issued its $3,135,000 par value Water Revenue Refunding Bonds, 1987 (the "1987 Bonds"), of which $2,020,000 par value presently are outstanding maturing on December 1 of each of the years 1996 through 2004, and bearing interest at various rates ranging from 6.05% to 6.90% per annum, and by that ordinance reserved the right to redeem the 1987 Bonds prior to their maturity on December 1, 1997, at a price of par plus accrued interest to the date fixed for redemption; and

WHEREAS, other than the Refunded Bonds, the City has no other outstanding water revenue bonds of the Water System; and

WHEREAS, after due consideration, it appears to the City Council that all of the outstanding 1973 Bonds, 1976 Bonds, 1978 Bonds, 1985 Bonds and 1987 Bonds (collectively, the "Refunded Bonds") may be refunded by the issuance and sale of the water revenue refunding bonds authorized herein (the "Bonds") to effect a savings to the City and its ratepayers and to allow desirable changes in the covenants and other terms applicable to the revenue obligations of the Water System; and

WHEREAS, to effect that refunding in the manner that will be most advantageous to the City it is found necessary and advisable that certain Acquired Obligations (hereinafter defined) bearing interest and maturing at such time or times as necessary to accomplish the refunding as aforesaid be purchased out of a portion of the proceeds of the Bonds and other money of the City; and
WHEREAS, the City Council deems it to be in the best interests of the City to issue and sell the Bonds to pay part of the cost of refunding the Refunded Bonds and to pay the administrative costs of such refunding and the costs of issuance and sale of the Bonds; and

WHEREAS, AMBAC Indemnity Corporation, a Wisconsin-domiciled stock insurance company ("AMBAC Indemnity" or the "Bond Insurer"), has made a commitment to issue an insurance policy (the "Municipal Bond Insurance Policy") insuring the payment when due of the principal of and interest on the Bonds as provided therein, and the City Council deems that the purchase of the Municipal Bond Insurance Policy is in the best interest of the City; and

WHEREAS, Lehman Brothers Inc. of Seattle, Washington, has offered to purchase the Bonds on the terms and conditions set forth in this resolution; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES ORDAIN as follows:

Section 1. Definitions. As used in this ordinance and for the purposes of this ordinance the following words shall have the following meanings:

"Accreted Value" means:

(a) with respect to any Capital Appreciation Bonds, as of the time of calculation, the sum of the amount representing the initial principal amount of such Capital Appreciation Bonds as set forth in the applicable Parity Bond Authorizing Ordinance plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date, or
(b) with respect to original issue discount bonds under the Code, as of the time of calculation, the amount representing the initial public offering price of such original issue discount bonds plus the amount of the discounted principal which has accreted since the date of issue, determined in accordance with the provisions of the applicable Parity Bond Authorizing Ordinance.

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

"Annual Debt Service" means, for any fiscal year of the Water System, all amounts required to be paid in respect of interest on and principal of Parity Bonds (excluding interest payments capitalized by Parity Bonds and excluding the accrued interest paid to the City upon the issuance of Parity Bonds) and Payment Agreement Payments in respect of Parity Payment Agreements, subject to the following:

(a) Debt Service on Term Bonds. For purposes of calculating debt service on Term Bonds, only the scheduled mandatory redemption amounts payable in respect of principal of Term Bonds shall be taken into account in any fiscal year prior to the Term Bond Maturity Year, and only the principal amount scheduled to remain outstanding after payment of all prior mandatory redemption amounts shall be taken into account in the Term Bond Maturity Year;
(b) Interest on Parity Bonds. For purposes of determining compliance with the Coverage Requirement, the Reserve Requirement and the conditions for the issuance of Future Parity Bonds or the creation of Contract Resource Obligations,

(1) Generally. Except as otherwise provided by subparagraph (b)(2) with respect to Variable Interest Rate Bonds and by subparagraph (b)(3) with respect to Parity Bonds with respect to which a Payment Agreement is in force, interest on any issue of Parity Bonds payable in a fiscal year shall be calculated based on the actual amount of accrued, accreted or otherwise accumulated interest that is payable in that fiscal year in respect of that issue taken as a whole, at the rate or rates set forth in the Parity Bond Authorizing Ordinance;

(2) Interest on Variable Interest Rate Bonds. The amount of interest deemed to be payable on any issue of Variable Interest Rate Bonds shall be calculated on the assumption that the interest rate on those bonds would be equal to the rate (the "assumed RBI-based rate") that is 90% of the average Bond Buyer Revenue Bond Index or comparable index during the fiscal quarter preceding the quarter in which the calculation is made; except that, for purposes of determining actual compliance with the Coverage Requirement under Section 17(b)(2) in any past fiscal year, the actual amount of interest paid on any issue of Variable Interest Rate Bonds shall be taken into account;

(3) Interest on Parity Bonds With Respect to Which a Payment Agreement or Parity Payment Agreement is in Force. Debt service on Parity Bonds with respect to which a Payment Agreement
or Parity Payment Agreement is in force shall be based on the net economic effect on the City expected to be produced by the terms of the Parity Bonds and the terms of the Payment Agreement, including but not limited to the effects set forth in Section 33 of this ordinance.

"Average Annual Debt Service" means the sum of the Annual Debt Service for the remaining years to the last scheduled maturity of the applicable issue or issues of Parity Bonds divided by the number of those years, with any partial year treated as one year for this purpose.

"Bond Counsel" means a firm of lawyers nationally recognized and accepted as bond counsel and so employed by the City for any purpose under this ordinance applicable to the use of that term.

"Bond Fund" means that special fund of the City known as the Water Revenue Bond Fund created by this ordinance for the payment of the principal of, mandatory sinking fund payments and interest on the Parity Bonds.

"Bond Insurance" means any bond insurance, 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 any Parity Bonds.

"Bond Insurer" means any provider of Bond Insurance approved by the City Council by ordinance. For the Bonds, "Bond Insurer" or "AMBAC Indemnity" means AMBAC Indemnity Corporation, a Wisconsin-domiciled stock insurance company.
"Bond Register" means the books or records maintained by the Bond Registrar on which are recorded the names and mailing addresses of the owners of each of the Bonds and the principal amount and number of each of the Bonds held by each owner.

"Bond Registrar" means the Fiscal Agency.

"Bonds" means the Water Revenue Refunding Bonds, 1995, authorized to be issued by this ordinance.


"1985 Bonds" means the City’s Water Revenue Refunding Bonds, 1985, authorized to be issued by Ordinance No. 2570, passed July 1, 1985.


"Capital Appreciation Bonds" means any Parity Bonds, all or a portion of the interest on which is compounded and accumulated at the rates or in the manner, and on the dates, set forth in the applicable Parity Bond Authorizing Ordinance and is payable only upon redemption or on the maturity date of such Parity Bonds. Parity Bonds that are issued as Capital Appreciation Bonds, but
later convert to obligations on which interest is paid periodically, shall be Capital Appreciation Bonds until the conversion date and thereafter shall no longer be Capital Appreciation Bonds, but shall be treated as having a principal amount equal to their Accreted Value on the conversion date.

"City" means the City of Kent, Washington.

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

"Contract Resource Obligation" means an obligation of the City, designated as a Contract Resource Obligation and entered into pursuant to Section 22 of this ordinance, to make payments for water supply, transmission or other commodity or service to another person or entity (including without limitation a separate utility system created pursuant to Section 21 of this ordinance).

"Coverage Requirement" in any fiscal year of the Water System means an amount of Net Revenue of the Water System equal to at least 1.25 times the Annual Debt Service payable in that year on all Parity Bonds and in no event less than an amount of Net Revenue of the Water System equal to at least Annual Debt Service plus any amounts required to be deposited in the Reserve Account and/or paid as reimbursement to the provider of Reserve Insurance. For purposes of determining the Coverage Requirement for the issuance of Future Parity Bonds having variable interest rates, such bonds shall be assumed to bear interest at a fixed rate equal to the average variable rate borne by any outstanding variable rate water revenue bonds of the City during the preceding 12 months, or if no
such variable rate bonds are outstanding at the time of calculation but are then proposed to be issued, the rate borne by other variable rate debt the interest rate for which is determined by reference to an index comparable to the index to be used to determine the interest rate on the Future Parity Bonds.

"Fiscal Agency" means either of the fiscal agencies of the State of Washington located in Seattle, Washington, and New York, New York, or any other paying agent/registrar of the City, as the same may be designated from time to time.

"Future Parity Bonds" means all revenue bonds and other obligations (including Parity Payment Agreements) of the City issued or entered into after the date of the issuance of the Bonds and then outstanding, the payment of which constitutes a charge and lien on the Net Revenue of the Water System equal in rank with the charge and lien upon such revenue required to be paid into the Bond Fund to pay and secure the payment of the principal of and interest on the Bonds.

"Government Obligations" means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.

"Gross Revenue of the Water System" or "Gross Revenue" means in any fiscal year of the Water System all of the revenues of the Water System, including but not limited to revenue from the sale or transmission of water; the sale, lease or furnishing of other commodities, services, properties or facilities; the imposition of connection, capital improvement or other charges; utility local improvement district assessments that are pledged to
Parity Bonds; and earnings from the investment of money in the Water Fund. However, Gross Revenue shall not include (1) earnings of a separate utility system that may be acquired or constructed by the City pursuant to Section 21 hereof, (2) principal proceeds of Parity Bonds or other borrowing, (3) grants or other capital contributions, or (4) earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund Water System obligations (until commingled with other earnings and revenues of the Water System defined as Gross Revenue) or held in a special account for the purpose of paying a rebate to the United States Government under the Code.

"Independent Utility Consultant" means either (1) an independent licensed professional engineer experienced in the design, construction or operation of municipal utilities of comparable size and character to the Water System, or (2) an independent certified public accountant or other professional consultant experienced in the development of rates and charges for municipal utilities of comparable size and character to the Water System.

"Maximum Annual Debt Service" means at the time of calculation, the maximum amount of Annual Debt Service that will mature or come due in the current year or any future year on the Parity Bonds.

"Municipal Bond Insurance Policy" means the municipal bond insurance policy issued by the Bond Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.
"Net Revenue of the Water System" or "Net Revenue" means the Gross Revenue minus (1) Operation and Maintenance Expenses, (2) proceeds from the sale of property of the Water System and (3) deposits into the Rate Stabilization Fund, and plus withdrawals from the Rate Stabilization Fund.

"Operation and Maintenance Expenses" means all expenses incurred by the City in causing the Water System of the City to be operated and maintained in good repair, working order and condition, including without limitation: deposits, premiums, assessments or other payments for insurance, if any, on the Water System; payments into pension funds; State-imposed taxes; amounts due under Contract Resource Obligations (but only at the times described in Section 22 of this ordinance); payments made to any other person or entity for the receipt of water supply or transmission or other right, commodity or service; payments made to any other person or entity that are required in connection with the operation of the Water System or the acquisition or transmission or water and that are not subordinate to the lien of the Parity Bonds; and payments with respect to any other expenses of the Water System that are properly treated as operation and maintenance expenses under generally accepted accounting principles applicable to municipal corporations. Operation and Maintenance Expenses does not include any depreciation or taxes levied or imposed by the City, Payment Agreement Payments, or payments to the City in lieu of taxes, or capital additions or capital replacements to the Water System.
"Parity Bonds" means the Bonds and any Future Parity Bonds.

"Parity Bond Authorizing Ordinance" means the ordinance of the City that authorizes the issuance and sale and establishes the terms of a particular issue of Parity Bonds and other matters relating to the same plan of finance.

"Parity Payment Agreement" means a Payment Agreement under which the City's payment obligations are expressly stated to constitute a charge and lien on the Net Revenue of the Water System equal in rank with the charge and lien upon such revenue required to be paid into the Bond Fund to pay and secure the payment of the principal of and interest on Parity Bonds.

"Payment Agreement" means a written agreement, for the purpose of managing or reducing the City's exposure to fluctuations or levels of interest rates, currencies or commodities or for other interest rate, investment, asset or liability management purposes, entered into on either a current or forward basis by the City and a Qualified Counterparty, all as authorized by any applicable laws of the State.

"Payment Agreement Payments" means the amounts periodically required to be paid by the City to the Qualified Counterparty pursuant to a Payment Agreement.

"Payment Agreement Receipts" means the amounts periodically required to be paid by the Qualified Counterparty to the City pursuant to a Payment Agreement.

"Permitted Investment" means any investment that is a legal investment for cities in the State of Washington.
"Principal and Interest Account" means the account of that name created in the Bond Fund for the payment of the principal of and interest and mandatory redemption requirements, if any, on the Parity Bonds.

"Qualified Counterparty" means a party (other than the City or a party related to the City) who is the other party to a Payment Agreement and who qualifies under RCW 39.96.040 or successor statute, but in no event a party the use of whom will result in a downgrade of the credit rating on the Water system assigned by the Rating Agencies.

"Rate Stabilization Fund" means the fund of that name created in the Water Fund for the purposes described in this ordinance.

"Rating Agencies" means Moody's Investors Service, Inc., and Standard & Poor's, and their successors, and any other nationally-recognized securities rating agency or agencies rating Parity Bonds at the request of the City.

"Refunded Bonds" means the outstanding 1973 Bonds maturing in the years 1996 through 1999, inclusive; the outstanding 1976 Bonds maturing in the years 1996 through 1999, inclusive; the outstanding 1978 Bonds maturing in the years 1996 through 2002, inclusive; the outstanding 1985 Bonds maturing in the years 1996 through 2002; and the outstanding 1987 Bonds maturing in the years 1996 through 2004, the refunding of which has been provided for by this ordinance.

"Refunding Plan" means:

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

(b) the call, payment and redemption on March 1, 1996, of all of the outstanding 1973 Bonds at a price of par plus accrued interest;

(c) the payment of the principal of and interest on the 1976 Bonds when due up to and including June 1, 1996, and the call, payment and redemption on June 1, 1996, of all of the then-outstanding 1976 Bonds at a price of par;

(d) the call, payment and redemption on April 1, 1996, of all of the outstanding 1978 Bonds at a price of par plus accrued interest;

(e) the call, payment and redemption on June 1, 1996, of all of the outstanding 1985 Bonds at a price of 102% of par plus accrued interest;

(f) the payment of the principal of and interest on the 1987 Bonds when due up to and including December 1, 1997, and the call, payment and redemption on December 1, 1997, of all of the then-outstanding 1987 Bonds at a price of par; and

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

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

"Refunding Trustee" means First Trust Washington of Seattle, Washington, serving as trustee or escrow agent or any successor trustee or escrow agent.
"Reserve Account" means the account of that name created in the Bond Fund for the purpose of securing the payment of the principal of and interest on the Parity Bonds.

"Reserve Insurance" means any bond insurance, letter of credit, guaranty, surety bond or similar credit enhancement device obtained by the City equal to part or all of the Reserve Requirement for any Parity Bonds which is issued by an institution which has been assigned a credit rating at the time of issuance of the device in one of the two highest rating categories of each of the Rating Agencies.

"Reserve Requirement" means as of any date the lesser of Maximum Annual Debt Service or 125% of Average Annual Debt Service on all the outstanding Parity Bonds, but in no event to exceed 10% of the original proceeds of the Parity Bonds.

"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.

"Term Bond Maturity Year" means any calendar year in which Term Bonds are scheduled to mature.

"Term Bonds" means those Parity Bonds designated as such in the applicable Parity Bond Authorizing Ordinance.

"Variable Interest Rate" means any variable interest rate or rates to be borne by any Parity Bonds. The method of computing such a variable interest rate shall be as specified in the applicable Parity Bond Authorizing Ordinance, which ordinance also shall specify either (1) the particular period or periods of time
or manner of determining such period or periods of time for which each value of such variable interest rate shall remain in effect or (2) the time or times upon which any change in such variable interest rate shall become effective. A Variable Interest Rate may, without limitation, be based on the interest rate on certain bonds or may be based on interest rate, currency, commodity or other indexes.

"Variable Interest Rate Bonds" means, for any period of time, any Parity Bonds that bear a Variable Interest Rate during that period, except that Parity Bonds shall not be treated as Variable Interest Rate Bonds if the net economic effect of interest rates on particular Parity Bonds of an issue and interest rates on other Parity Bonds of the same issue, as set forth in the applicable Parity Bond Authorizing Ordinance, or the net economic effect of a Payment Agreement with respect to particular Parity Bonds, in either case is to produce obligations that bear interest at a fixed interest rate; and Parity Bonds with respect to which a Payment Agreement is in force shall be treated as Variable Interest Rate Bonds if the net economic effect of the Payment Agreement is to produce obligations that bear interest at a Variable Interest Rate.

"Water Fund" means Water Fund No. 410 of the City, or any successor fund or funds, into which is paid the Gross Revenue of the Water System.

"Water System" means the water system of the City as it now exists, and all additions thereto and betterments and extensions thereof at any time made for so long as any of the
Parity Bonds are outstanding. The Water System shall not include any water supply or service or other facilities that may be created, acquired or constructed by the City as a separate utility system as provided in Section 21 of this ordinance.

Section 2. Authorization and Description of Bonds. For the purpose of providing all or a part of the money required to (1) carry out the Refunding Plan; (2) provide for bond insurance; and (3) pay the costs of issuance of the Bonds, the City shall issue the Bonds in the principal amount of $7,790,000. The Bonds shall be designated Water Revenue Refunding Bonds, 1995; shall be in the aggregate principal amount of $7,790,000; shall be dated December 1, 1995; shall be in the denomination of $5,000 or any integral multiple thereof within a single maturity; shall be numbered separately in the manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification; shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) payable semiannually on each June 1 and December 1, commencing June 1, 1996, to the maturity of the Bonds; and shall mature on December 1 in years and amounts and bear interest at the rates per annum as follows:

<table>
<thead>
<tr>
<th>Maturity Years</th>
<th>Amounts</th>
<th>Interest Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>$935,000</td>
<td>4.00%</td>
</tr>
<tr>
<td>1997</td>
<td>975,000</td>
<td>4.00</td>
</tr>
<tr>
<td>1998</td>
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<tr>
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Section 3. Registration and Transfer or Exchange of Bonds.
The Bonds shall be issued only in registered form as to both principal and interest and shall be recorded on the Bond Register.

Bonds surrendered to the Bond Registrar may be exchanged for Bonds in any authorized denomination of an equal aggregate principal amount and of the same interest rate and maturity. Bonds may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall be without cost to the owner or transferee. The Bond Registrar shall not be obligated to exchange or transfer any Bond during the 15 days preceding any principal payment or redemption date.

Section 4. Mutilated, Lost, Stolen and Destroyed Bonds. In case any Bonds issued hereunder shall become mutilated or be destroyed, stolen or lost, the City shall, if not then prohibited by law, cause to be executed and delivered a new Bond of like amount, interest rate, maturity date, series and tenor in exchange and substitution for and upon cancellation of such mutilated Bonds, or in lieu of and in substitution for such destroyed, stolen or lost Bonds, upon payment by the owner thereof of the reasonable expenses and charges of the City and the Bond Registrar in connection therewith, and in the case of a Bond destroyed, stolen or lost, the filing with the Bond Registrar of evidence satisfactory to it that such Bond was destroyed, stolen or lost, and of the ownership thereof, and furnishing the City and the Bond Registrar with indemnity satisfactory to each of them. If the mutilated, destroyed, stolen or lost Bond already has matured or

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been called for redemption in accordance with its terms it shall not be necessary to issue a new Bond prior to payment. If the provisions of State law at any time differ from the provisions of this Section 4 with respect to the requirements or procedures for replacing or otherwise handling mutilated, lost, stolen or destroyed Bonds, then the provisions of State law shall prevail.

Section 5. Payment of Bonds. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be paid by checks or drafts of the Bond Registrar mailed on the interest payment date to the registered owners at the addresses appearing on the Bond Register on the last business day of the month preceding the interest payment date or, if requested in writing by a registered owner of $1,000,000 or more in aggregate principal amount of Bonds at least 10 days before an interest payment date, by wire transfer on the interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the registered owners at either of the principal offices of the Bond Registrar at the option of the owners. The Bonds shall be payable solely out of the Bond Fund and shall not be general obligations of the City.

Section 6. Redemption and Open Market Purchase of Bonds. The Bonds shall be issued without the right or option of the City to redeem the Bonds prior to their stated maturity dates.

The City reserves the right and option to purchase any or all of the Bonds in the open market at any time at any price plus accrued interest to the date of purchase.
All Bonds purchased under this section shall be canceled.

Section 7. Failure to Redeem Bonds. If any Bond is not redeemed when properly presented at its maturity date, the City shall be obligated to pay interest on that Bond at the same rate provided in the Bond from and after its maturity 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 Principal and Interest Account and the Bond has been called for payment by giving notice of that call to the registered owner of each of those unpaid Bonds.

Section 8. Form and Execution of Bonds. The Bonds shall be printed or lithographed on good bond paper in a form consistent with the provisions of this ordinance and state law and shall be signed by the Mayor and 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 Bonds bearing a Certificate of Authentication in the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance:

CERTIFICATE OF AUTHENTICATION

This Bond is one of the fully registered City of Kent, Washington, Water Revenue Refunding Bonds, 1995, described in the Bond Ordinance.
The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered and are entitled to the benefits of this ordinance.

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

Section 9. Bond Registrar. The Bond Registrar shall keep, or cause to be kept, at its principal corporate trust office, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's paying agent for the Bonds and to carry out all
of the Bond Registrar’s powers and duties under this ordinance and City Ordinance No. 2418 establishing a system of registration for the City’s bonds and obligations.

The City reserves the right in its discretion to appoint special paying agents, registrars or trustees in connection with the payment of some or all of the principal of or interest on the Bonds. If a new Bond Registrar is appointed by the City, notice of the name and address of the new Bond Registrar shall be mailed to the registered owners of the Bonds. The notice may be mailed together with the next interest payment due on the Bonds, but, to the extent practicable, shall be mailed not less than 15 days prior to a maturity date of the principal or a mandatory redemption date of any Bond.

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

Section 10. Refunding of the Refunded Bonds.

(a) Appointment of Refunding Trustee. First Trust Washington of Seattle, Washington, is appointed Refunding Trustee.

(b) Use of Bond Proceeds; Acquisition and Substitution of Acquired Obligations. A sufficient amount of the proceeds of the sale of the Bonds, together with any other money to be used to
carry out the Refunding Plan, shall be deposited immediately upon the receipt thereof with the Refunding Trustee and used to discharge the obligations of the City relating to the Refunded Bonds under Refunded Bond Ordinances by providing for the payment of the amounts required to be paid by the Refunding Plan. To the extent practicable, such obligations shall be discharged fully by the Refunding Trustee's simultaneous purchase of the Acquired Obligations, bearing such interest and maturing as to principal and interest in such amounts and at such times so as to provide, together with a beginning cash balance, if necessary, for the payment of the amount required to be paid by the Refunding Plan. The Acquired Obligations are listed and more particularly described in Schedule A attached to the Refunding Trust Agreement between the City and the Refunding Trustee, but are subject to substitution as set forth below. Any Bond proceeds deposited with the Refunding Trustee that are not needed to purchase the Acquired Obligations and provide a beginning cash balance, if any, and pay the costs of issuance of the Bonds shall be returned to the City at the time of delivery of the Bonds for deposit in the Principal and Interest Account.

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

After the purchase of the Acquired Obligations by the Refunding Trustee, the City reserves the right to substitute therefor cash or Government Obligations subject to the conditions that such money or securities held by the Refunding Trustee shall be sufficient to carry out the Refunding Plan, that such substitution will not cause the Bonds and the Refunded Bonds to be arbitrage bonds within the meaning of Section 148 of the Code and regulations thereunder in effect on the date of such substitution and applicable to obligations issued on the issue date of the Bonds, and that it obtain, at its expense: (1) verification by a nationally recognized independent certified public accounting firm acceptable to the Refunding Trustee confirming that the payments of principal of and interest on the Government Obligations, if paid when due, and any other money held by the Refunding Trustee will be sufficient to carry out the Refunding Plan; and (2) an opinion from Foster Pepper & Shefelman, bond counsel to the City, its successor, or other nationally recognized bond counsel to the City, to the effect that the disposition and substitution or purchase of such securities, under the statutes, rules and regulations then in force and applicable to the Bonds, will not cause the interest on the Bonds or the Refunded Bonds to be included in gross income for federal income tax purposes and that such disposition and substitution or purchase is in compliance with the statutes and
regulations applicable to the Bonds. Any surplus money resulting from the sale, transfer, other disposition or redemption of the Acquired Obligations and the substitutions therefor shall be released from the trust estate and transferred to the City to be used for any lawful City purpose.

(c) Administration of Refunding Plan. The Refunding Trustee is authorized and directed to purchase the Acquired Obligations (or substitute obligations) and to make the payments required to be made by the Refunding Plan from the Acquired Obligations (or substitute obligations) and money deposited with the Refunding Trustee pursuant to this ordinance. All Acquired Obligations (or substitute obligations) and the money deposited with the Refunding Trustee and any income therefrom shall be held irrevocably, invested and applied in accordance with the provisions of Refunded Bond Ordinances, this ordinance, chapter 39.53 RCW and other applicable statutes of the State of Washington and the Refunding Trust Agreement. All necessary and proper fees, compensation and expenses of the Refunding Trustee for the Bonds and all other costs incidental to the setting up of the escrow to accomplish the refunding of the Refunded Bonds and costs related to the issuance and delivery of the Bonds, including bond printing, verification fees, bond insurance premium, bond counsel’s fees and other related expenses, shall be paid out of the proceeds of the Bonds.

(d) Authorization for Refunding Trust Agreement and Related Agreements. To carry out the Refunding Plan provided for by this ordinance, the Mayor of the City is authorized and directed to execute and deliver to the Refunding Trustee a Refunding Trust
Agreement substantially in the form on file with the City Clerk and by this reference made a part hereof setting forth the duties, obligations and responsibilities of the Refunding Trustee in connection with the payment, redemption and retirement of the Refunded Bonds as provided herein and stating that the provisions for payment of the fees, compensation and expenses of such Refunding Trustee set forth therein are satisfactory to it. The Mayor also is authorized to execute and deliver other agreements required to carry out the Refunding Plan, including, without limitation, any forward purchase or similar agreement relating to the Acquired Obligations. Prior to executing the Refunding Trust Agreement or other such agreements, the Mayor of the City is authorized to make such changes therein which do not change the substance and purpose thereof or which assure that the escrow provided therein and the Bonds are in compliance with the requirements of federal law governing the exclusion of interest on the Bonds and Refunded Bonds from gross income for federal income tax purposes.

Section 11. Call for Redemption of the Refunded Bonds. The City calls for redemption on March 1, 1996, all of the outstanding 1973 Bonds at a price of par plus accrued interest; on June 1, 1996, all then-outstanding 1976 Bonds at a price of par plus accrued interest; on April 1, 1996, all of the outstanding 1978 Bonds at a price of par plus accrued interest; on June 1, 1996, of the outstanding 1985 Bonds at a price of 102% of par plus accrued interest; and on December 1, 1997, all of the then-outstanding 1987 Bonds at a price of par plus accrued interest. Such call for
redemption shall be irrevocable after the delivery of the Bonds to the initial purchaser thereof. The dates on which the Refunded Bonds are called for redemption are the earliest dates respectively on which the those bonds may be called for redemption.

The proper officials of the City are authorized and directed to give or cause to be given such notices as required, at the times and in the manner required pursuant to the respective Refunded Bond Ordinance in order to effect the redemption prior to their maturity of each issue of the Refunded Bonds.

Section 12. City Findings with Respect to Refunding. The City Council finds and determines that the issuance and sale of the Bonds at this time will effect a savings to the City and its ratepayers and will allow desirable changes in the covenants and other terms applicable to revenue bonds of the Water System and will be in the best interest of the City and in the public interest. In making such findings and determinations, the City Council has given consideration to the fixed maturities and scheduled redemptions of the Bonds and the Refunded Bonds, the costs of issuance of the Bonds and the known earned income from the investment of the proceeds of the issuance and sale of the Bonds and other money of the City used in the Refunding Plan pending payment and redemption of the Refunded Bonds.

The City Council further finds and determines that the money to be deposited with the Refunding Trustee for the Refunded Bonds in accordance with Section 10 of this ordinance will discharge and satisfy the obligations of the City under Refunded Bond Ordinances with respect to the Refunded Bonds, and the pledges, charges,
trusts, covenants and agreements of the City therein made or provided for as to the Refunded Bonds, and that the Refunded Bonds shall no longer be deemed to be outstanding under such ordinances immediately upon the deposit of such money with the Refunding Trustee.

Section 13. Bond Fund. The Bond Fund is created in the Water Fund to be known as the Water Revenue Bond Fund, and is further divided into two accounts: the Principal and Interest Account and the Reserve Account. So long as any Parity Bonds are outstanding, the City shall set aside and pay into the Bond Fund on or before the 20th day of each month, out of the Net Revenue, certain fixed amounts without regard to any fixed proportion, namely:

(a) Into the Principal and Interest Account, beginning with the month of January, 1996, and continuing through May, 1995, 1/5 of the interest due on the Bonds on June 1, 1996, and continuing until the Bonds, both principal and interest, are paid in full, 1/6 of the next ensuing six months' requirements for interest on the Bonds; and, beginning with the month of January, 1996, and continuing through November, 1995, 1/11 of the principal due on the Bonds on December 1, 1996, and, continuing until the Bonds, both principal and interest, are paid in full, 1/12 of the next ensuing twelve months' principal requirement of the Bonds; and

(b) Into the Reserve Account an amount transferred from the reserve account for the Refunded Bonds to meet the initial Reserve Requirement for the Bonds, and thereafter into the Reserve Account, in approximately equal monthly payments, amounts necessary to fund the Reserve Requirement within three years from the date of issuance of any other Parity Bonds after taking into account the capitalization of all or any part of the Reserve Requirement. The City may at any time provide all or any part of the Reserve Requirement through Reserve Insurance, and the amount available to be drawn upon under that Reserve Insurance shall be credited against the Reserve Requirement, subject to the following:

The Reserve Insurance shall not be cancelable on less than 3 years' notice. On receipt of a notice of
cancellation of any Reserve Insurance or upon notice that the entity providing the Reserve Insurance no longer meets the requirements specified herein, the City shall substitute Reserve Insurance in the amount required to make up the deficiency created in the Reserve Account or in the alternative shall create a special account in the Water Fund and deposit therein, on or before the 25th day of each of the 36 succeeding calendar months (commencing with the 25th day of the calendar month next following the date of the notice) one 1/36th of the amount sufficient, together with other money and investments on deposit in the Reserve Account, to equal the Reserve Requirement in effect as of the date the cancellation or disqualification of the entity becomes effective. Those amounts shall be deposited in the special account from money in the Water Fund after making provision for payment of Operation and Maintenance Expenses and for required payments into the Bond Fund. Amounts on deposit in that special account shall not be available to pay debt service on Parity Bonds or for any other purpose of the City, and shall be transferred to the Reserve Account on the effective date of any cancellation of a Reserve Insurance to make up all or part of the deficiency caused thereby. Amounts in that special account or in the Reserve Account may be transferred back to the Water Fund and used for any purpose if and when qualifying Reserve Insurance is obtained.

Except for withdrawals therefrom and payments over time as authorized herein, the Reserve Account shall be maintained at the Reserve Requirement, as it is adjusted from time to time, at all times so long as any Parity Bonds are outstanding. For the purpose of determining the amount credited to the Reserve Account, obligations in which money in the Reserve Account has been invested shall be valued at fair market value.

If there shall be a deficiency in the Principal and Interest Account to meet maturing installments of either principal or interest or mandatory redemption requirements, as the case may be, that deficiency shall be made up from the Reserve Account first by the withdrawal of cash from the Reserve Account and next by drawing upon any Reserve Insurance (and by drawing pro rata upon more than
one policy or other instrument of Reserve Insurance then in effect) for that purpose. Any deficiency created in the Reserve Account by reason of any such withdrawal shall within 12 months be made up from Net Revenue available after making necessary provisions for the required payments into the Principal and Interest Account.

The money in the Reserve Account may be applied to the payment of the last outstanding bonds payable out of the Bond Fund, except that any money in the Reserve Account (including investment earnings) in excess of the Reserve Requirement may be withdrawn and deposited in the Principal and Interest Account and spent for the purpose of retiring Parity Bonds or may be deposited in any other fund or account and spent for any other lawful Water System purpose. When the total amount in the Bond Fund (including investment earnings) shall equal the total amount of principal and interest for all Parity Bonds to the last maturity thereof, no further payment need be made into the Bond Fund.

The City may provide for the purchase, redemption or defeasance of any Parity Bonds by the use of money on deposit in any account in the Bond Fund as long as the money remaining in those accounts is sufficient to satisfy the required deposits in those accounts for the remaining Parity Bonds.

All money in the Bond Fund may be kept in cash or invested in legal investments maturing, for investments in the Principal and Interest Account, not later than the dates when the funds are required for the payment of principal of or interest on the Parity Bonds and, for investments in the Reserve Account, maturing (or subject to redemption, or repurchase and redemption, at the option
of the City) on a date not later than 15 years from the date of investment.

Earnings from investments in the Principal and Interest Account shall be deposited in that account, except that when the Reserve Requirement for all Parity Bonds is fully funded, any earnings from investments in the Principal and Interest Account may be transferred to the Water Fund and treated as Gross Revenue of the Water System. Earnings from investments in the Reserve Account shall be deposited in that account. Notwithstanding the provisions for the deposit of earnings, any earnings that are subject to federal arbitrage rebate requirements may be withdrawn from the Bond Fund for deposit into a separate fund or account created for the purpose of compliance with those rebate requirements.

If the City provides for all or part of the Reserve Requirement by Reserve Insurance, excess amounts in the Reserve Account may be withdrawn from that account and deposited either in the Principal and Interest Account and/or in the Water Fund, subject to applicable state law and Section 23 of this ordinance.

The City may create sinking fund accounts or other accounts in the Bond Fund for the payment or securing the payment of Parity Bonds as long as the maintenance of such accounts does not conflict with the rights of the owners of such Parity Bonds.

Section 14. Rate Stabilization Fund. There is hereby established in the Water Fund a Rate Stabilization Fund. The City may at any time, as determined by the City and as consistent with Section 18 of this ordinance, deposit in the Rate Stabilization Fund Gross Revenue and any other money received by the Water System
and available to be used therefor, excluding principal proceeds of Parity Bonds or other borrowing. The City may withdraw money from the Rate Stabilization Fund for inclusion in the Net Revenue for any fiscal year of the Water System, except that (a) the total amount withdrawn from the Rate Stabilization Fund in any fiscal year of the Water System may not exceed the total debt service of the Water System in that year; and (b) the Net Revenue in that fiscal year, calculated without regard to the amounts withdrawn from the Rate Stabilization Fund for that fiscal year, must equal at least 1.0 times the Annual Debt Service that year on all Parity Bonds. Such deposits or withdrawals may be made up to and including the date 90 days after the end of the fiscal year for which the deposit or withdrawal will be included as Net Revenue for that fiscal year.

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 herein.

No deposit of Gross Revenue 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 fiscal year.

Section 15. Finding as to Sufficiency of Gross Revenue. The City finds and determines that the Gross Revenue and benefits to be derived from the operation and maintenance of the Water System of the City at the rates to be charged for water and other services and commodities from the Water System will be more than sufficient to meet all Operation and Maintenance Expenses 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 Bonds when due. The City further declares that in creating the Bond Fund and in fixing the amounts to be paid into the Bond Fund it has exercised due regard for Operation and Maintenance Expenses, and the City has not bound and obligated itself to set aside and pay into the Bond Fund a greater amount or proportion of the Gross Revenue than in the judgment of the City will be available over and above the Operation and Maintenance Expenses.

Section 16. Pledge of Net Revenue and Lien Position. The Net Revenue of the Water System and all money and investments held in the Bond Fund and the Rate Stabilization Fund (except money and investments allocated by the City to comply with the rebate requirement under the Code) is pledged to the payment of the Parity Bonds and Parity Payment Agreements and to make payments into the Reserve Account required by this ordinance and Parity Bond Authorizing Ordinances, and this pledge shall constitute a lien and charge upon the Net Revenue prior and superior to any other charges whatsoever. The right of the City to issue additional bonds on a parity of lien with the Refunded Bonds is cancelled and terminated.

Section 17. Covenants. The City covenants and agrees with the owner of each Bond at any time outstanding, as follows:

(a) Operation and Maintenance. It will at all times maintain, preserve and keep the properties of the Water System in good repair, working order and condition, will make all necessary and proper additions, betterments, renewals and repairs thereto, and improvements, replacements and extensions thereof, and will at all times operate or cause to be operated the properties of the Water System and the business in connection therewith in an efficient manner and at a reasonable cost.
(b) Establishment and Collection of Rates and Charges. It will establish, maintain and collect rates and charges for services and facilities provided by the Water System which will be fair and equitable, and will adjust those rates and charges from time to time so that:

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

(2) The Net Revenue of the Water System in each fiscal year of the Water System will be at least equal to the Coverage Requirement; and

The failure of the City to comply with subparagraphs (1) and (2) of this paragraph (b) shall not be an Event of Default as defined in Section 32 of this ordinance if the City promptly retains an Independent Utility Consultant to recommend to the City Council adjustments in the rates of the Water System necessary to meet the requirements of those subparagraphs and if the City Council adopts the recommended modifications within 180 days of the date the failure became known to the City Council.

(c) Sale, Transfer or Disposition of the Water System. It will sell, transfer or otherwise dispose of any of the works, plant, properties, facilities or other part of the Water System or any real or personal property comprising a part of the Water System only upon approval by ordinance and only consistent with one or more of the following:

(1) The City may exchange any of the works, plant, properties, facilities or other part of the Water System for works, plant, properties or facilities of substantially the same type, use and value; or

(2) The City in its discretion may carry out such a sale, transfer or disposition (each, as used in this subparagraph, a "transfer") if the facilities or property transferred are not material to the operation of the Water System, or shall have become unserviceable, inadequate, obsolete or unfit
to be used in the operation of the Water System or are no longer necessary, material or useful to the operation of the Water System; or

(3) The City in its discretion may carry out such a transfer if the aggregate depreciated cost value of the facilities or property being transferred under this subparagraph (3) in any fiscal year of the Water System comprises no more than three percent (3%) of the total assets of the Water System; or

(4) The City may sell, lease, mortgage or otherwise dispose of any of the works, plant, properties, facilities or other part of the Water System, including all additions to and betterments and extensions thereof at any time made, that are used, useful or material in the operation of the Water System, if provision is made for the replacement thereof or if the City receives from the purchaser or transferee an amount equal to or greater than the greatest of the following:

(A) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and accounts therein) that the Gross Revenue of the Water System from the portion of the Water System sold or disposed of for the preceding year bears to the total Gross Revenue of the Water System for that period; or

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

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

The amount required to be paid to the City under this paragraph may be reduced by any "equity credits" or similar amounts based on prior capital
contributions or other payments to the City which, under any contract between the City and the purchaser or transferee, are allowed as a setoff against the purchase or transfer price that would otherwise be payable to the City.

The City may accept from the purchaser or transferee the amount calculated as described in this paragraph, payable, with interest, amortized over the number of years of remaining life of the portion of the Water System sold or disposed of or such shorter period of time as determined by the City. However, the contract of transfer or sale must provide that the payments to the City shall be either superior to or equal to the lien on the revenues of the purchaser or transferee of all other obligations of the purchaser or transferee; or

(5) The City in its discretion may transfer to a separate system created under Section 21 any plans, works, plant, property, facilities or other part of the Water System financed with proceeds of Parity Bonds if:

(A) No Event of Default as defined in Section 32 of this ordinance has occurred and is continuing, and

(B) There shall be on file a certificate of an Independent Utility Consultant stating that the Net Revenue for the five fiscal years following the year in which the transfer is made, as such Net Revenue is estimated by the Independent Utility Consultant (with such estimate based on such factors as he or she considers reasonable), will be at least equal to the Coverage Requirement.

(d) No Free Service. Except to aid the poor or infirm and for fire-fighting purposes, it will not furnish or supply or permit the furnishing or supplying of any service or facility in connection with the operation of the Water System free of charge to any person, firm or corporation, public or private.

(e) Liens Upon the Water System. Except as otherwise provided in this ordinance, it will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the Gross Revenue or any part thereof, prior or superior to the lien thereon for the payment of the Parity Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies
which, if unpaid, might become a lien or charge upon the Gross Revenue or any part thereof, prior or superior to, or on a parity with, the lien of the Parity Bonds, or which might impair the security of the Parity Bonds.

(f) Books and Accounts. It will keep proper books, records and accounts with respect to the operations, income and expenditures of the Water System in accordance with generally accepted accounting practices relating to the municipal utilities and any applicable rules and regulations prescribed by the State, and will cause those books, records and accounts to be audited on an annual basis by the State Auditor (or, if such audit is not made by the State Auditor within one year after the close of any fiscal year of the Water System, by a certified public accountant selected by the City). It will prepare annual financial and operating statements as soon as practicable after the close of each fiscal year of the Water System showing in reasonable detail the financial condition of the Water System as of the close of the previous year, and the income and expenses for such year, including the amounts paid into the Bond Fund and into any and all special funds or accounts created pursuant to the provisions of this ordinance, the status of all funds and accounts as of the end of such year, and the amounts expended for maintenance, renewals, replacements and capital additions to the Water System. Such statements shall be sent to the owner of any Parity Bonds upon written request therefor being made to the City. The City may charge a reasonable cost for providing such financial statements.

(g) Collection of Delinquent Accounts. On at least an annual basis, it will determine all accounts that are delinquent and will take such actions as the City determines are reasonably necessary to enforce payment of those delinquent accounts.

(h) Maintenance of Insurance. It at all times will carry fire and extended coverage, public liability and property damage and such other forms of insurance with responsible insurers and with policies payable to the City on such of the buildings, equipment, works, plants, facilities and properties of the Water System as are ordinarily carried by municipal or privately owned utilities engaged in the operation of like systems, and against such claims for damages as are ordinarily carried by municipal or privately owned utilities engaged in the operation of like systems, or it will self-insure or will participate in an insurance pool or pools with reserves adequate, in the reasonable judgment of the City, to protect the Water System and the owners of the Parity Bonds against loss.
deposits into the Rate Stabilization Fund, or for any other lawful Water System purposes.

The City may transfer any money from any funds or accounts of the Water System legally available therefor, except bond redemption funds, refunding escrow funds or defeasance funds, to meet the required payments to be made into the Bond Fund.

Section 19. Provisions for Future Parity Bonds. The City reserves the right to issue Future Parity Bonds and to enter into Parity Payment Agreements for purposes of the Water System or to refund a portion of the Parity Bonds if the following conditions are met and complied with at the time of the issuance of those Future Parity Bonds or entering into the Parity Payment Agreement:

(a) There shall be no deficiency in the Bond Fund and no Event of Default as defined in Section 32 hereof shall have occurred and be continuing.

(b) The Parity Bond Authorizing Ordinance shall provide that all assessments and interest thereon that may be levied in any utility local improvement district created for the purpose of paying, in whole or in part, the principal of and interest on those Future Parity Bonds, shall be paid directly into the Bond Fund, except for any prepaid assessments permitted by law to be paid into a construction fund or account.

(c) The Parity Bond Authorizing Ordinance shall provide for the payment of the principal thereof and interest thereon out of the Bond Fund.

(d) The Parity Bond Authorizing Ordinance shall provide for the payment of amounts into the Bond Fund to meet mandatory redemption requirements applicable to any Term Bonds to be issued and for regular payments to be made for the payment of the principal of such Term Bonds on or before their maturity, or, as an alternative, the mandatory redemption of those Term Bonds prior to their maturity date from money in the Principal and Interest Account.

(e) The Parity Bond Authorizing Ordinance shall provide for the deposit into the Reserve Account of (i) an amount, if any, necessary to fund the Reserve Requirement upon the issuance of those Future Parity Bonds.
(i) **Condemnation Awards and Insurance Proceeds.** If the City receives any condemnation awards or proceeds of an insurance policy in connection with any loss of or damage to any property of the Water System, it shall apply the condemnation award or insurance proceeds, in the City's sole discretion, either (i) to the cost of replacing or repairing the lost or damaged properties, (ii) to the payment, purchase or redemption of Parity Bonds and/or Parity Payment Agreements, or (iii) to the cost of improvements to the Water System.

Section 18. **Flow of Funds.** The Gross Revenue of the Water System shall be used for the following purposes only and shall be applied in the following order of priority:

(a) To pay the Operation and Maintenance Expenses;

(b) To pay interest on Parity Bonds and net payments on Parity Payment Agreements when due;

(c) To pay the principal of Parity Bonds as it comes due at maturity or as the principal is required to be paid pursuant to mandatory redemption requirements applicable to Term Bonds, and to make payments due under any reimbursement agreement with a Bond Insurer which agreement requires those payments to be treated on a parity of lien with the Parity Bonds;

(d) To make all payments required to be made into the Reserve Account, all payments required to be made under any agreement relating to the provision of Reserve Insurance, and payments due under any reimbursement agreement with a Bond Insurer which agreement requires those payments to be treated on a parity of lien with the payments required to be made into the Reserve Account;

(e) To make all payments required to be made into any revenue bond, note, warrant or other revenue obligation redemption fund, debt service account or reserve account created to pay or secure the payment of the principal of and interest on any revenue bonds, notes, warrants or other obligations of the City having a lien upon the revenue of the Water System junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds; and

(f) To retire by redemption or purchase in the open market any outstanding revenue bonds or other revenue obligations of the Water System, to make necessary additional betterments, improvements and repairs to or extensions and replacements of the Water System, to make
Bonds from Future Parity Bond proceeds or other money legally available, or (ii) Reserve Insurance or an amount plus Reserve Insurance necessary to fund the Reserve Requirement upon the issuance of those Future Parity Bonds, or (iii) amounts necessary to fund the Reserve Requirement from Net Revenue within three years from the date of issuance of those Future Parity Bonds, in approximately equal monthly payments.

(f) There shall be on file with the City either:

(1) a certificate of the City Finance Division Director demonstrating that during any twelve consecutive calendar months out of the immediately preceding 24 calendar months Net Revenue was at least equal to 1.25 times the projected Maximum Annual Debt Service for all Parity Bonds plus the Future Parity Bonds proposed to be issued; or

(2) a certificate of an Independent Utility Consultant that in his or her opinion the Net Revenue will be at least equal to 1.25 times the projected Maximum Annual Debt Service for all Parity Bonds plus the Future Parity Bonds proposed to be issued. In providing that certificate, the Independent Utility Consultant may take into account the following adjustments:

(i) Any changes in rates in effect and being charged, or rates expected to be charged in accordance with a program of specific rates, rate levels or increases in overall rate revenue approved by ordinance or resolution;

(ii) Net revenue from customers of the Water System who have become customers during the 12 consecutive month period or thereafter, and their estimate of net revenue from any customers to be connected to the Water System who have paid the required connection charges, adjusted to reflect one year's net revenue from those customers;

(iii) The Independent Utility Consultant's estimate of net revenue from customers anticipated to be served by facilities or improvements financed in substantial part by those Future Parity Bonds (or additional Parity Bonds expected to be issued during the five-year period); and
(iv) Net revenue from 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 of the Water System.

If the Future Parity Bonds proposed to be issued are for the sole purpose of refunding outstanding bonds payable from the Bond Fund, no such coverage certification shall be required if the Annual Debt Service on the Parity Bonds after the issuance of the Future Parity Bonds is not, for any year in which Parity Bonds are to be outstanding, more than $5,000 over the Annual Debt Service on the Parity Bonds prior to the issuance of those Future Parity Bonds.

Nothing contained herein shall prevent the City from issuing Future Parity Bonds to refund maturing Parity Bonds, money for the payment of which is not otherwise available; issuing revenue bonds that are a charge or lien upon the Gross Revenue subordinate to the charge or lien of the Parity Bonds; or pledging the payment of utility local improvement district assessments into a bond redemption fund created for the payment of the principal of and interest on those junior lien bonds as long as such utility local improvement district assessments are levied for improvements constructed from the proceeds of those junior lien bonds.

Section 20. Reimbursement Obligations. If the City elects to meet the Reserve Requirement or any portion thereof through the use of Reserve Insurance or elects to secure any issue of Parity Bonds through the use of Bond Insurance, the City may contract with the entity providing such Reserve Insurance or Bond Insurance to the effect that the City's reimbursement obligation, if any, to such entity ranks on a parity of lien with the Parity Bonds.

Section 21. Separate Utility Systems. The City may create, acquire, construct, finance, own and operate one or more additional
systems for water supply, transmission, treatment or other commodity or service. The revenue of that separate utility system shall not be included in the Gross Revenue of the Water System and may be pledged to the payment of revenue obligations issued to purchase, construct, condemn or otherwise acquire or expand the separate utility system. Neither the Gross Revenue nor the Net Revenue of the Water System shall be pledged by the City to the payment of any obligations of a separate utility system except (1) as a Contract Resource Obligation upon compliance with Section 22 hereof and/or (2), with respect to the Net Revenue, on a basis subordinate to the lien of the Parity Bonds on that Net Revenue.

Section 22. Contract Resource Obligations. The City may at any time enter into one or more contracts or other obligations for the acquisition, from facilities to be constructed or from existing facilities, of water supply, transmission, treatment or other commodity or service relating to the Water System. The City may determine that such contract or other obligation is a Contract Resource Obligation, and may provide that all payments under that Contract Resource Obligation (including payments prior to the time that water supply, transmission, treatment or other commodity or service is being provided, or during a suspension or after termination of supply or service) shall be Operation and Maintenance Expenses if the following requirements are met at the time such Contract Resource Obligation is entered into:

(a) No Event of Default as defined in Section 32 of this ordinance has occurred and is continuing.
(b) There shall be on file a certificate of an Independent Utility Consultant stating that (i) the payments to be made by the City in connection with the Contract Resource Obligation are reasonable for the supply, transmission, treatment or other service rendered; (ii) the source of any new supply, and any facilities to be constructed to provide the supply, transmission, treatment or other service, 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 or transmission or other service no later than a date set forth in the Independent Utility Consultant’s certification; and (iii) the Net Revenue (further adjusted by the Independent Utility Consultant’s estimate of the payments to be made in accordance with the Contract Resource Obligation) for the five fiscal years following the year in which the Contract Resource Obligation is incurred, as such Net Revenue is estimated by the Independent Utility Consultant (with such estimate based on such factors as he or she considers reasonable), will be at least equal to the Coverage Requirement.

Payments required to be made under Contract Resource Obligations shall not be subject to acceleration.

Nothing in this Section 22 shall be deemed to prevent the City from entering into other agreements for the acquisition of water supply, transmission, treatment or other commodity or service from existing facilities and from treating those payments as Operation and Maintenance Expenses of the Water System. Nothing in this Section 22 shall be deemed to prevent the City from entering into other agreements for the acquisition of water supply, transmission, treatment or other commodity or service from facilities to be constructed and from agreeing to make payments with respect thereto, such payments constituting a lien and charge on Net Revenue subordinate to that of Parity Bonds.

Section 23. Preservation of Tax Exemption for Interest on Bonds. The City covenants that it will take all actions necessary
to prevent interest on the Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bonds or other funds of the City treated as proceeds of the Bonds at any time during the term of the Bonds which will cause interest on the Bonds to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirement of Section 148 of the Code, is applicable to the Bonds, take all actions necessary to comply (or to be treated as having complied) with that requirement in connection with the Bonds, including the calculation and payment of any penalties that the City has elected to pay as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section 148 of the Code to prevent interest on the Bonds from being included in gross income for federal income tax purposes. The City certifies that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.


Section 25. Refunding or Defeasance of the Bonds. The City may issue refunding bonds pursuant to the laws of the State of Washington or use money available from any other lawful source to pay when due the principal of and interest on the Bonds, or any portion thereof included in a refunding or defeasance plan, and to redeem and retire, refund or defease all such then-outstanding
Bonds (hereinafter collectively called the "defeased Bonds") and to pay the costs of the refunding or defeasance. If money and/or Government Obligations maturing at a time or times and bearing interest in amounts (together with money, if necessary) sufficient to redeem and retire, refund or defease the defeased Bonds in accordance with their terms are set aside in a special trust fund or escrow account irrevocably pledged to that redemption, retirement or defeasance of defeased Bonds (hereinafter called the "trust account"), then all right and interest of the owners of the defeased Bonds in the covenants of this ordinance and in the funds and accounts obligated to the payment of the defeased Bonds shall cease and become void. The owners of defeased Bonds shall have the right to receive payment of the principal of and interest on the defeased Bonds from the trust account. The City shall include in the refunding or defeasance plan such provisions as the City deems necessary for the random selection of any defeased Bonds that constitute less than all of a particular maturity of the Bonds, for notice of the defeasance to be given to the owners of the defeased Bonds and to such other persons as the City shall determine, and for any required replacement of Bond certificates for defeased Bonds. The defeased Bonds shall be deemed no longer outstanding as of the date such money and/or Government Obligations are set aside in the trust account, and 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.

If the refunding plan provides that the refunding bonds to be issued are to be secured by money and/or Government Obligations
pending the prior redemption of the defeased Bonds and if such refunding plan also provides that certain money and/or Government Obligations are pledged irrevocably for the prior redemption of the defeased Bonds included in that refunding plan, then only the debt service on the Bonds which are not defeased Bonds and the refunding bonds, the payment of which is not so secured by the refunding plan, shall be included in the computation of the Coverage Requirement for the issuance of Future Parity Bonds and the annual computation of the Coverage Requirement for determining compliance with the rate covenants.

Notwithstanding anything in this section to the contrary, if the principal of and/or interest due on the Bonds is paid by the Bond Insurer pursuant to the Municipal Bond Insurance Policy, the Bonds shall be treated as remaining outstanding for all purposes and shall not be considered paid the City, and the covenants, agreements and other obligations of the City to the registered owners of the Bonds shall continue to exist, and the Bond Insurer shall be subrogated to the rights of the registered owners.

Section 26. Deposit of Bond Proceeds. The principal proceeds received from the issuance and sale of the Bonds shall be deposited with the Refunding Trustee and used to carry out the provisions of the Refunding Plan. The accrued interest on the Bonds, if any, received at the time the Bonds are delivered to the initial purchaser shall be deposited in the Principal and Interest Account of the Bond Fund.

Section 27. Approval of Bond Purchase Contract. Lehman Brothers Inc. of Seattle, Washington, has presented a purchase
contract (the "Bond Purchase Contract") to the City offering to purchase the Bonds under the terms and conditions provided in the Bond Purchase Contract, which written Bond Purchase Contract is on file with the City Clerk and is incorporated herein by this reference. The City Council finds that entering into the Bond Purchase Contract is in the City's best interest and therefore accepts the offer contained therein and authorizes its execution by City officials.

The Bonds will be printed at City expense and will be delivered to the purchaser in accordance with the Bond Purchase Contract, with the approving legal opinion of Foster Pepper & Shefelman, municipal bond counsel of Seattle, Washington, regarding the Bonds printed on each Bond. Bond counsel shall not be required to review and shall express no opinion concerning the completeness or accuracy of any official statement, offering circular or other sales material issued or used in connection with the Bonds, and bond counsel's opinion shall so state.

The proper City officials are authorized and directed to do everything necessary for the prompt delivery of the Bonds to the purchaser and for the proper application and use of the proceeds of the sale thereof.

Section 28. Preliminary Official Statement Deemed Final. The City Council has been provided with copies of a preliminary official statement dated December 4, 1995 (the "Preliminary Official Statement"), prepared in connection with the sale of the Bonds. For the sole purpose of the Bond purchaser's compliance with United States Securities and Exchange Commission ("SEC") Rule
15c2-12(b)(1), the City "deems final" that Preliminary Official Statement as of its date, except for the omission of information as to offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, maturity dates, options of redemption, delivery dates, ratings and other terms of the Bonds dependent on such matters.

Section 29. Undertaking to Provide Continuing Disclosure. To meet the requirements of SEC Rule 15c2-12(b)(5) (the "Rule"), as applicable to a participating underwriter for the Bonds, the City makes the following written undertaking (the "Undertaking") for the benefit of holders of the Bonds:

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

   (i) To each nationally recognized municipal securities information repository designated by the SEC in accordance with the Rule ("NRMSIR") and to a state information depository, if any, established in the state of Washington (the "SID") annual financial information and operating data of the type included in the final official statement for the Bonds and described in Section 29(b) ("annual financial information");

   (ii) To each NRMSIR or the Municipal Securities Rulemaking Board ("MSRB"), and to the SID, timely notice of the occurrence of any of the following events with respect to the Bonds, if material: (1) principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the Bonds; (7) modifications to rights of holders of the Bonds; (8) Bond calls (other than scheduled mandatory redemptions of Term Bonds); (9) defeasances; (10) release, substitution, or sale of property securing
repayment of the Bonds; and (11) rating changes; and

(iii) To each NRMSIR or to the MSRB, and to the SID, timely notice of a failure by the City to provide required annual financial information on or before the date specified in Section 29(b).

(b) Type of Annual Financial Information Undertaken to be Provided. The annual financial information that the City undertakes to provide in Section 29(a):

(i) Shall consist of (1) annual financial statements for the City, including for the Water System; (2) a statement of debt service requirements of the Water System; (3) summary statistics on average daily pumpage, peak day pumpage and daily pumping capacity of the Water System; and (4) certain statistical information on the number of customers by category and the five largest customers of the Water System;

(ii) Shall be prepared in accordance with applicable generally accepted accounting principles promulgated by the Government Accounting Standards Board ("GASB"), as such principles may be changed from time to time by GASB or its successor;

(iii) Shall not be audited, except, however, that if and when audited financial statements are otherwise prepared and available they will be provided to each NRMSIR and the SID;

(iv) Shall be provided to each NRMSIR and the SID, not later than the last day of the ninth month after the end of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the City's fiscal year ending December 31, 1996; and

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

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

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

(d) Beneficiaries. The Undertaking evidenced by this Section 29 shall inure to the benefit of the City and any holder of Bonds, and shall not inure to the benefit of or create any rights in any other person.

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

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

(g) Designation of Official Responsible to Administer Undertaking. The City Finance Division Director or his or her designee (or such other officer of the City who may in the future perform the duties of the Finance Division Director) is authorized and directed in his or her discretion to take such further actions as may be necessary, appropriate or convenient to carry out the Undertaking of the City in respect of the Bonds set forth in this Section 29 and in accordance with the Rule, including, without limitation, the following actions:

(i) Preparing and filing the annual financial information undertaken to be provided;
(ii) Determining whether any event specified in Section 29(a) has occurred, assessing its materiality with respect to the Bonds, and, if material, preparing and disseminating notice of its occurrence;

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

(iv) Effecting any necessary amendment of the Undertaking.

Section 30. Temporary Bond. Pending the printing, execution and delivery to the purchaser of definitive Bonds, the City may cause to be executed and delivered to the purchaser a single temporary Bond in the total principal amount of the Bonds. The temporary Bond shall bear the same date of issuance, interest rates, principal payment dates and terms and covenants as the definitive Bonds, shall be issued as a fully registered Bond in the name of the purchaser, and otherwise shall be in a form acceptable to the purchaser. The temporary Bond shall be exchanged for definitive Bonds as soon as they are printed, executed and available for delivery.

Section 31. Amendatory and Supplemental Ordinances.

(a) This ordinance shall not be modified or amended in any respect subsequent to the initial issuance of the Bonds, except as provided in and in accordance with and subject to the provisions of this section.

(b) The City, from time to time, and at any time, without the consent of or notice to the registered owners of the Bonds, may pass supplemental or amendatory ordinances as follows:
(1) To cure any formal defect, omission, inconsistency or ambiguity in this ordinance in a manner not adverse to the owner of any Parity Bond;

(2) To impose upon the Bond Registrar (with its consent) for the benefit of the registered owners of the Bonds 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;

(3) To add to the covenants and agreements of, and limitations and restrictions upon, the City in this ordinance, other covenants, agreements, limitations and restrictions to be observed by the City which are not contrary or inconsistent with this ordinance as theretofore in effect;

(4) 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 of any other money, securities or funds;

(5) To modify, alter, amend or supplement this ordinance in any other respect which is not materially adverse to the registered owners of the Parity Bonds and which does not involve a change described in paragraph (c) of this Section 31;

(6) If a change is required to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes and such change is otherwise not materially adverse to the registered owners of the Bonds; and

(7) To add to the covenants and agreements of, and limitations and restrictions upon, the City in this ordinance, other covenants, agreements, limitations and restrictions to be observed by the City which are requested by a Bond Insurer or provider of Reserve Insurance and which are not materially adverse to the registered owners of the Parity Bonds.

Before the City shall pass any such supplemental ordinance pursuant to this subsection, there shall have been delivered to the City and the Bond Registrar an opinion of Bond Counsel, stating that such supplemental ordinance is authorized or permitted by this ordinance and, upon the execution and delivery 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 Bonds.

(c) (1) Except for any supplemental ordinance entered into pursuant to paragraph (b) of this Section 31, subject to the terms and provisions contained in this paragraph (c) and not otherwise, registered owners of not less than 60% in aggregate principal amount of the Parity Bonds shall have the right from time to time to consent to and approve the passage by the City of any supplemental ordinance 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 this ordinance; except that, unless approved in writing by the registered owners of all Parity Bonds, nothing contained in this section shall permit, or be construed as permitting:

(i) A change in the times, amounts or currency of payment of the principal of or interest on any outstanding Parity Bond, or a reduction in the principal amount or redemption price of any outstanding Parity Bond or a change in the redemption price of any outstanding Parity Bond or a change in the method of determining the rate of interest thereon, or

(ii) A preference of priority of any Parity Bond or Bonds or any other bond or bonds, or

(iii) A reduction in the aggregate principal amount of Parity Bonds, the consent of the registered owners of Parity Bonds of which is required for any such supplemental ordinance.

(2) If at any time the City shall pass any supplemental ordinance for any of the purposes of this subsection (c), the Bond Registrar shall cause notice of the proposed
supplemental ordinance to be given by first-class United States mail to all registered owners of the Parity Bonds, to any Bond Insurer, and to the Rating Agencies if the Bonds are rated by those agencies. Such notice shall briefly set forth the nature of the proposed supplemental ordinance and shall state that a copy thereof is on file at the office of the Bond Registrar for inspection by all registered owners of the Parity Bonds.

(3) Within two years after the date of the mailing of such notice, the City may adopt such supplemental ordinance in substantially the form described in such notice, but only if there shall have first been delivered to the Bond Registrar (i) the required consents, in writing, of the registered owners of the Parity Bonds, and (ii) an opinion of Bond Counsel stating that such supplemental ordinance is authorized or permitted by this ordinance and, upon the execution and delivery 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 Parity Bonds.

(4) If registered owners of not less than the percentage of Parity Bonds required by this paragraph (c) shall have consented to and approved the execution and delivery thereof as herein provided, no owner of the Parity Bonds shall have any right to object to the passage of such supplemental ordinance, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the passage thereof, or to enjoin or restrain the City or the
Bond Registrar from passing the same or from taking any action pursuant to the provisions thereof.

(d) Upon the execution and delivery of any supplemental ordinance pursuant to the provisions of this Section 31, this ordinance shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City, the Bond Registrar and all registered owners of Parity Bonds, shall thereafter be determined, exercised and enforced under this ordinance subject in all respects to such modifications and amendments.

Section 32. Defaults and Remedies.

(a) Events of Default. The following shall constitute "Events of Default" with respect to the Parity Bonds:

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

(2) 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 any covenants, conditions or agreements on the part of the City contained in any Parity Bond Authorizing Ordinance and such default or defaults have continued for a period of six months after the City has received from the Bondowners' Trustee (as defined below) or from the registered owners of not less than 25% in principal amount of the Parity Bonds then outstanding, 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 6 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.

(3) If the City files a petition in bankruptcy or is placed in receivership under any state or federal bankruptcy or insolvency law.
(b) **Bondowners' Trustee.** So long as such Event of Default has not been remedied, a bondowners' trustee (the "Bondowners' Trustee") may be appointed by the registered owners of 25% in principal amount of the Parity Bonds then outstanding, by an instrument or concurrent instruments in writing signed and acknowledged by such registered owners of the Parity Bonds or by their attorneys-in-fact duly authorized and delivered to such Bondowners' Trustee, notification thereof being given to the City. That appointment shall become effective immediately upon acceptance thereof by the Bondowners' Trustee. Any Bondowners' Trustee appointed under the provisions of this Subsection 32(b) 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 Bondowners' Trustee may be removed at any time, and a successor Bondowners' Trustee may be appointed, by the registered owners of a majority in principal amount of the Parity Bonds then outstanding, by an instrument or concurrent instruments in writing signed and acknowledged by such registered owners or by their attorneys-in-fact duly authorized. The Bondowners' 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 any Event of Default in the sole judgment of the Bondowners' Trustee is cured and the Bondowners' Trustee furnishes to the City a certificate so stating, that Event of Default shall be conclusively deemed to be cured and the City, the Bondowners'
Trustee and the registered owners of the Parity Bonds shall be restored to the same rights and position which they would have held if no Event of Default had occurred.

The Bondowners' 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 Bonds and is empowered to exercise all the rights and powers herein conferred on the Bondowners' Trustee.

(c) Suits at Law or in Equity. Upon the happening of an Event of Default and during the continuance thereof, the Bondowners' Trustee may, and upon the written request of the registered owners of not less than 25% in principal amount of the Parity Bonds 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 Bonds, 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 in any of the Parity Bonds.

Nothing contained in this Section 32 shall, in any event or under any circumstance, be deemed to authorize the acceleration of maturity of principal on the Parity Bonds, and the remedy of acceleration is expressly denied to the registered owners of the Parity Bonds under any circumstances including, without limitation, upon the occurrence and continuance of an Event of Default.
Any action, suit or other proceedings instituted by the Bondowners' Trustee hereunder shall be brought in its name as trustee for the Bondowners and all such rights of action upon or under any of the Parity Bonds or the provisions of this ordinance may be enforced by the Bondowners' Trustee without the possession of any of those Parity Bonds 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 Bondowners' Trustee shall be brought for the ratable benefit of all of the registered owners of those Parity Bonds, subject to the provisions of this ordinance. The respective registered owners of the Parity Bonds, by taking and holding the same, shall be conclusively deemed irrevocably to appoint the Bondowners' Trustee the true and lawful trustee of the respective registered owners of those Parity Bonds, 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 Bonds; 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 Bondowners' Trustee to consent to accept or adopt, on behalf of any registered owner of the Parity Bonds, any plan of reorganization or adjustment affecting the Parity Bonds or any right of any registered owner thereof, or to authorize or empower the Bondowners' 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.

(d) **Application of Money Collected by Bondowners' Trustee.**

Any money collected by the Bondowners' Trustee at any time pursuant to this Section 32 shall be applied in the following order of priority:

First, to the payment of the charges, expenses, advances and compensation of the Bondowners' Trustee and the charges, expenses, counsel fees, disbursements and compensation of its agents and attorneys; and

Second, to the payment to the persons entitled thereto of all installments of interest then due on the Parity Bonds 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

Third, to the payment to the persons entitled thereto of the unpaid principal amounts of any Parity Bonds which shall have become due (other than Parity Bonds previously called for redemption for the payment of which money is held pursuant to the provisions hereof), 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.

(e) **Duties and Obligations of Bondowners' Trustee.** The Bondowners' Trustee shall not be liable except for the performance of such duties as are specifically set forth herein. During an Event of Default, the Bondowners' 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 Bondowners' Trustee shall have no liability for any act or omission to act hereunder except for the Bondowners' Trustee's own negligent action, its own negligent failure to act or its own willful misconduct. The duties and obligations of the Bondowners' Trustee shall be determined solely by the express provisions of this ordinance, and no implied powers, duties or obligations of the Bondowners' Trustee shall be read into this ordinance.

The Bondowners' 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 Bondowners' Trustee, except as may result from its own negligent action, its own negligent failure to act or its own willful misconduct.

The Bondowners' Trustee shall not be bound to recognize any person as a registered owner of any Parity Bond until his title thereto, if disputed, has been established to its reasonable satisfaction.

The Bondowners' 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 Bondowners' Trustee shall not be answerable for any neglect or default of any person, firm or corporation employed and selected by it with reasonable care.

(f) Suits by Individual Bondowners Restricted. Except to the extent recourse is provided by law with respect to any failure by
the City to set aside and pay into the Bond Fund the amounts required by Section 13 and as provided in Section 29(f), neither the registered owner nor the beneficial owner of any one or more of Parity Bonds shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of same unless:

(1) an Event of Default has happened and is continuing; and

(2) a Bondowners' Trustee has been appointed; and

(3) such owner previously shall have given to the Bondowners' Trustee written notice of the Event of Default on account of which such suit, action or proceeding is to be instituted; and

(4) the registered owners of twenty-five percent (25%) in principal amount of the Parity Bonds then outstanding, after the occurrence of such Event of Default, has made written request of the Bondowners' Trustee and have afforded the Bondowners' Trustee a reasonable opportunity to institute such suit, action or proceeding; and

(5) there have been offered to the Bondowners' Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby; and

(6) the Bondowners' Trustee has refused or neglected to comply with such request within a reasonable time.

No registered owner or beneficial owner of any Parity Bond shall have any right in any manner whatever by his action to affect or impair the obligation of the City to pay from the Net Revenue the principal of and interest on such Parity Bonds to the respective owners thereof when due.

(g) Payment Solely From Net Revenue and Certain Funds.

Nothing in this Section 32 shall be deemed to require payment to
Bondowners from any source other than the Net Revenue and money and investments in the funds pledged in Section 16 of this ordinance.

Section 33. Payment Agreements and Parity Payment Agreements.

(a) Calculation of Debt Service on Parity Bonds With Respect to Which a Payment Agreement Is in Force. Debt service on Parity Bonds with respect to which a Payment Agreement is in force shall be calculated based on the net economic effect on the City expected to be produced by the terms of the Parity Bonds and the terms of the Payment Agreement, including but not limited to the effects that (i) Parity Bonds that would, but for a Payment Agreement, be treated as obligations bearing interest at a Variable Interest Rate instead shall be treated as obligations bearing interest at a fixed interest rate, and (ii) Parity Bonds that would, but for a Payment Agreement, be treated as obligations bearing interest at a fixed interest rate instead shall be treated as obligations bearing interest at a Variable Interest Rate.

(b) Debt Service on Parity Payment Agreements. No additional debt service shall be taken into account with respect to a Parity Payment Agreement for any period during which Payment Agreement Payments on that Parity Payment Agreement are taken into account in determining Annual Debt Service on related Parity Bonds under Section 33(a). However, for any period during which Payment Agreement Payments are not taken into account in calculating Annual Debt Service on any outstanding Parity Bonds because the Parity Payment Agreement is not then related to any outstanding Parity Bonds, debt service on that Parity Payment Agreement shall be taken into account by assuming:
(1) City Obligated to Make Payments Based on Fixed Rate. If the City is obligated to make Payment Agreement Payments based on a fixed rate and the Qualified Counterparty is obligated to make payments based on a variable rate index, that payments by the City will be based on the fixed rate specified by the Parity Payment Agreement, and that payments by the Qualified Counterparty will be based on a rate equal to the average rate determined by the variable rate index specified by the Parity Payment Agreement during the fiscal quarter preceding the quarter in which the calculation is made, and

(2) City Obligated to Make Payments Based on Variable Rate Index. If the City is obligated to make Payment Agreement Payments based on a variable rate index and the Qualified Counterparty is obligated to make payment based on a fixed rate, that payments by the City will be based on a rate equal to the average rate determined by the variable rate index specified by the Parity Payment Agreement during the fiscal quarter preceding the quarter in which the calculation is made, and that the Qualified Counterparty will make payments based on the fixed rate specified by the Parity Payment Agreement.

Section 34. Bond Insurance. The City is authorized to purchase from the Bond Insurer the Municipal Bond Insurance Policy insuring the prompt payment of the principal of and interest on the Bonds and agrees to the conditions for obtaining that policy, including the payment of the premium therefor. Any notice required to be given to the Bond Insurer shall be sent by certified or
registered mail to AMBAC Indemnity Corporation, One State Street Plaza, New York, New York 10004.

While the Municipal Bond Insurance Policy is in effect, the City or the Bond Registrar shall furnish to the Bond Insurer (to the attention of the Surveillance Department, unless otherwise indicated):

(a) As soon as practicable after the filing thereof, copies of any financial statements, audits and annual reports of the City;

(b) copies of any notices given to the registered owners of the Bonds, including, without limitation, notices of any redemption of or defeasance of Bonds, and any certificate rendered pursuant to this ordinance relating to the security for the Bonds; and

(c) such additional information the Bond Insurer may reasonably request.

The Bond Registrar shall notify the Bond Insurer of any failure of the City to provide relevant notices and certificates.

The City will permit the Bond Insurer to discuss the affairs, finances and accounts of the City or any information the Bond Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the City. The Bond Registrar and the City will permit the Bond Insurer to have access to and make copies of all books and records relating to the Bonds at any reasonable time.

The Bond Insurer shall have the right to direct an accounting at the City's expense, and the City's failure to comply with such direction within 30 days after receipt of written notice of the direction from the Bond Insurer shall be deemed a default hereunder unless compliance cannot occur within such period. In that event and only if an extension would not materially adversely affect the
interest of any registered owner of the Bonds, that 30-day period will be extended so long as compliance is begun within that period and diligently pursued.

Section 35. Payment Procedures Under Bond Insurance. The Bond Insurer requires that the following sections be included in this ordinance:

"(a) At least one (1) day prior to all Interest Payment Dates the Trustee or Paying Agent [the Bond Registrar], if any, will determine whether there will be sufficient funds in the Funds and Accounts to pay the principal of or interest on the Bonds on such Interest Payment Date. If the Trustee or Paying Agent, if any, determines that there will be insufficient funds in such Funds or Accounts, the Trustee or Paying Agent, if any, shall so notify AMBAC Indemnity. Such notice shall specify the amount of the anticipated deficiency, the Bonds to which such deficiency is applicable and whether such Bonds will be deficient as to principal or interest, or both. If the Trustee or Paying Agent, if any, has not so notified AMBAC Indemnity at least one (1) day prior to an Interest Payment Date, AMBAC Indemnity will make payments of principal or interest due on the Bonds on or before the first (1st) day next following the date on which AMBAC Indemnity shall have received notice of nonpayment from the Trustee or Paying Agent, if any.

"(b) the Trustee or Paying Agent, if any, shall, after giving notice to AMBAC Indemnity as provided in (a) above, make available to AMBAC Indemnity and, at AMBAC Indemnity’s direction, to the United States Trust Company of New York, as insurance trustee for AMBAC Indemnity or any successor insurance trustee (the "Insurance Trustee"), the registration books of the Issuer maintained by the Trustee or Paying Agent, if any, and all records relating to the Funds and Accounts maintained under this ordinance.

"(c) the Trustee or Paying Agent, if any, shall provide AMBAC Indemnity and the Insurance Trustee with a list of registered owners of Bonds entitled to receive principal or interest payments from AMBAC Indemnity under the terms of the Municipal Bond Insurance Policy, and shall make arrangements with the Insurance Trustee (i) to mail checks or drafts to the registered owners of Bonds entitled to receive full or partial interest payments from AMBAC Indemnity and (ii) to pay principal upon Bonds surrendered to the Insurance Trustee by the registered
owners of Bonds entitled to receive full or partial principal payments from AMBAC Indemnity.

"(d) the Trustee or Paying Agent, if any, shall, at the time it provides notice to AMBAC Indemnity pursuant to (a) above, notify registered owners of Bonds entitled to receive the payment of principal or interest thereon from AMBAC Indemnity (i) as to the fact of such entitlement, (ii) that AMBAC Indemnity will remit to them all or a part of the interest payments next coming due upon proof of Bondholder entitlement to interest payments and delivery to the Insurance Trustee, in form satisfactory to the Insurance Trustee, of an appropriate assignment of the registered owner’s right to payment, (iii) that should they be entitled to receive full payment of principal from AMBAC Indemnity, they must surrender their Bonds (along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee to permit ownership of such Bonds to be registered in the name of AMBAC Indemnity) for payment to the Insurance Trustee, and not the Trustee or Paying Agent, if any, and (iv) that should they be entitled to receive partial payment of principal from AMBAC Indemnity, they must first surrender their Bonds for payment thereon first to the Trustee or Paying Agent, if any, who shall note on such Bonds the portion of the principal paid by the Trustee or Paying Agent, if any, and the, along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee, to the Insurance Trustee, which will then pay the unpaid portion of principal.

"(e) in the event that the Trustee or Paying Agent, if any, has notice that any payment of principal of or interest on a Bond which has become Due for Payment and which is made to a Bondholder by or on behalf of the Issuer has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Trustee or Paying Agent, if any, shall, at the time AMBAC Indemnity is notified pursuant to (a) above, notify all registered owners that in the event that any registered owner’s payment is so recovered, such registered owner will be entitled to payment from AMBAC Indemnity to the extent of such recovery if sufficient funds are not otherwise available, and the Trustee or Paying Agent, if any, shall furnish to AMBAC Indemnity its records evidencing the payments of principal of and interest on the Bonds which have been made by the Trustee or Paying Agent, if any, and subsequently recovered from registered owners and the dates on which such payments were made.
"(f) in addition to those rights granted AMBAC Indemnity under this ordinance, AMBAC Indemnity shall, to the extent it makes payment of principal of or interest on Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Municipal Bond Insurance Policy, and to evidence such subrogation (i) in the case of subrogation as to claims for past due interest, the Trustee or Paying Agent, if any, shall note AMBAC Indemnity's rights as subrogee on the registration books of the Issuer maintained by the Trustee or Paying Agent, if any, upon receipt from AMBAC Indemnity of proof of the payment of interest thereon to the registered owners of the Bonds, and (ii) in the case of subrogation as to claims for past due principal, the Trustee or Paying Agent, if any, shall note AMBAC Indemnity's rights as subrogee on the registration books of the Issuer maintained by the Trustee or Paying Agent, if any, upon surrender of the Bonds by the registered owners thereof together with the proof of the payment of principal thereof."

Section 36. Parties Interested Herein. To the extent that this ordinance confers upon or gives or grants to the Bond Insurer any right, remedy or claim or by reason of this ordinance, the Bond Insurer is explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder. Nothing expressed or implied in this ordinance is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Bond Insurer and the registered owners of the Bonds, any right, remedy or claim under or by reason of this ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Bond Insurer and the registered owners of the Bonds.

Notwithstanding any other provision of this ordinance, the City shall notify the Bond Insurer immediately if at any time there
are insufficient funds to make any payments of principal and/or interest as required and immediately upon the occurrence of any event of default hereunder.

Any provision of this ordinance expressly recognizing or granting rights in or to the Bond Insurer may not be amended in any manner which affects the rights of the Bond Insurer hereunder without the prior written consent of the Bond Insurer. Unless otherwise provided in this section, the Bond Insurer’s consent shall be required, in addition to Bond owner consent, when required, for the following purposes: (i) execution and delivery of any supplemental ordinance, and (ii) initiation or approval of any other action which requires Bond owner consent. Anything in this ordinance to the contrary notwithstanding, upon the occurrence and continuance of an event of default, the Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Bond owners for the benefit of the Bond owners under this ordinance.

Any reorganization or liquidation plan with respect to the City must be acceptable to the Bond Insurer. In the event of any reorganization or liquidation, the Bond Insurer shall have the right to vote on behalf of all bondholders who hold AMBAC Indemnity-insured bonds absent a default by the Bond Insurer under the applicable Municipal Bond Insurance Policy insuring such bonds.

Section 37. Ratification of Prior Acts. Any action taken consistent with the authority and prior to the effective date of this ordinance is ratified, approved and confirmed.
Section 38. Section Headings. The section headings in this ordinance are used for convenience only and shall not constitute a substantive portion of this ordinance.

Section 39. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five (5) days following publication as required by law.

By

JIM WHITE, Mayor

ATTEST:

BRENDA JACOBER, City Clerk

APPROVED AS TO FORM:

William B. Fontana
Special Counsel and Bond Counsel for the City

Passed the 13 day of December, 1995.
Approved the 13 day of December, 1995.
Published the 17 day of December, 1995.

I certify that this is a true copy of Ordinance No. 3258 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, City Clerk