

CITY OF LAKEWOOD, WASHINGTON

ORDINANCE NO. 748

AN ORDINANCE of the City of Lakewood, Washington, providing for the issuance, sale and delivery of not to exceed \$4,100,000 aggregate principal amount of surface water revenue bonds to provide funds to finance the utility's share of transportation and other capital projects; fixing or setting parameters with respect to certain terms and covenants of the bonds; appointing the City's designated representative to approve the final terms of the sale of the bonds; and providing for other related matters.

Passed January 19, 2021

This document prepared by:

*Foster Garvey P.C.
1111 Third Avenue, Suite 3000
Seattle, Washington 98101
(206) 447-4400*

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**The cover page, table of contents and section headings of this ordinance are for convenience of reference only, and shall not be used to resolve any question of interpretation of this ordinance.*

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THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

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

(a) “*Annual Debt Service*” means for any calendar year for the Parity Bonds (or for any series thereof, as applicable), all the interest, plus all the principal (except principal of Term Bonds), plus all the mandatory redemption and sinking fund installments for that year for Term Bonds, less all bond interest expected to be paid from the proceeds of any such Parity Bonds in that year. Annual Debt Service shall be calculated net of any Tax Credit Subsidy Payment reasonably expected to be received in that calendar year. If the interest rate on any Parity Bond is other than a fixed rate, the rate shall be 90% of the average Bond Buyer revenue bond index or comparable index during the calendar quarter preceding the quarter in which the calculation is made; except that, for purposes of determining actual compliance with the Coverage Requirement in any calendar year, the actual amount of interest paid on any issue of variable interest rate Parity Bonds shall be taken into account. For purposes of calculating the Reserve Requirement and the Coverage Requirement, calculations of Annual Debt Service include all Parity Bonds then outstanding, excluding those maturities that have been redeemed or defeased as of the date of the calculation. If the calculation is performed in connection with the issuance of Future Parity Bonds, the issue date of such Future Parity Bonds may be deemed to be the calculation date.

(b) “*Assessment Bonds*” means the principal portion of any issue of Parity Bonds allocated to the financing of improvements within a ULID. The allocation shall be determined as of the issue date of each series of Parity Bonds (and as of any date on which any Parity Bonds are redeemed, defeased or purchased), and the total amount so allocated shall be equal to the principal amount of ULID Assessments on the final assessment roll for that ULID remaining unpaid as of that date. Assessment Bonds shall be allocated pro rata to each maturity within a series of Parity Bonds. (For example, if the then-outstanding assessments equal 70% of the total principal amount of a series of bonds that financed ULID improvements, then 70% of each maturity of that series shall be deemed Assessment Bonds.) Upon redemption, defeasance or purchase of all or a portion of a series of Parity Bonds that includes an allocation of Assessment Bonds, the amount of Assessment Bonds remaining outstanding shall be reduced on a pro rata basis with bonds that are not deemed Assessment Bonds.

(c) “*Authorized Denomination*” means \$5,000 or any integral multiple thereof within a maturity of a Series for those Series of Bonds sold through a negotiated or competitive sale, and in any denomination designated by the Designated Representative for those Bonds sold by private placement.

(d) “*Average Annual Debt Service*” means, as of its date of calculation, the sum of the Annual Debt Service for the current calendar year (if any payments are remaining to be made in that year) and the calendar years remaining to the last scheduled maturity of the applicable series of Parity Bonds, divided by the number of those years.

(e) “*Beneficial Owner*” means, with respect to a Bond, the owner of any beneficial interest in that Bond.

(f) “*Bond*” means each bond issued pursuant to and for the purposes provided in this ordinance.

(g) “*Bond Counsel*” means the firm of Foster Garvey P.C., its successor, or any other attorney or firm of attorneys selected by the City with a nationally recognized standing as bond counsel in the field of municipal finance.

(h) “*Bond Account*” means the account or subaccount known as the Surface Water Bond Account of the City created for the payment of the principal of and interest on the Bonds.

(i) “*Bond Purchase Contract*” means an offer to purchase a Series of the Bonds, setting forth certain terms and conditions of the issuance, sale and delivery of those Bonds, which offer is authorized to be accepted by the Designated Representative on behalf of the City, if consistent with this ordinance. In the case of a competitive sale, the official notice of sale, the Purchaser’s bid and the award by the City shall constitute the Bond Purchase Contract for purposes of this ordinance.

(j) “*Bond Register*” means the books or records maintained by the Bond Registrar for the purpose of identifying ownership of each Bond.

(k) “*Bond Registrar*” means the Fiscal Agent, or any successor bond registrar selected by the City for any Series of Bonds sold by negotiated or competitive sale, and means the City’s Finance Director or any successor bond registrar selected for any Series of Bonds sold by private placement.

(l) “*City*” means the City of Lakewood, Washington, a municipal corporation duly organized and existing under the laws of the State.

(m) “*City Council*” means the legislative authority of the City, as duly and regularly constituted from time to time.

(n) “*Code*” means the United States Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

(o) “*Contract Resource Obligation*” means an obligation of the City, designated as a Contract Resource Obligation in accordance with Section 18, to make payments for surface water management or any other commodity or service to another person or entity (including without limitation any Separate Utility System).

(p) “*Coverage Requirement*” means, for any calendar year, an amount of Net Revenue at least equal to 1.25 times the Annual Debt Service in that year on all then-outstanding Parity Bonds that are not Assessment Bonds. If any Assessment Bonds are outstanding, the Coverage Requirement shall also mean, in any calendar year, an amount of ULID Assessments at least equal to 1.0 times the Annual Debt Service in that year on all Parity Bonds that are Assessment Bonds.

(q) “*DTC*” means The Depository Trust Company, New York, New York, or its nominee.

(r) “*Designated Representative*” means the officer of the City appointed in Section 4 of this ordinance to serve as the City’s designated representative in accordance with RCW 39.46.040(2).

(s) “*Final Terms*” means the terms and conditions for the sale of a Series of the Bonds including the amount, date or dates, denominations, interest rate or rates (or mechanism for determining interest rate or rates), payment dates, final maturity, redemption rights, price, and other terms or covenants.

(t) “*Finance Director*” means the Assistant City Manager/Chief Financial Officer or such other officer of the City who succeeds to substantially all of the responsibilities of that office.

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

(v) “*Future Parity Bond Authorizing Ordinance*” means an ordinance of the City authorizing the issuance of Future Parity Bonds.

(w) “*Future Parity Bonds*” means revenue bonds or other obligations of the Surface Water Utility issued or incurred after the Issue Date of the Bonds, the payment of the principal of and interest on which constitutes a lien and charge against the Net Revenue and ULID Assessments equal in rank with the lien and charge securing the payment of the principal of and interest on the Bonds.

(x) “*Government Obligations*” has the meaning given in RCW 39.53.010, as now in effect or as may hereafter be amended.

(y) “*Gross Revenue*” means all of the earnings and revenues received by the City from the maintenance and operation of the Surface Water Utility; all earnings from the investment of money in the Bond Account that are deposited in the principal and interest account; connection and capital improvement charges collected for the purpose of defraying the costs of capital facilities of the Surface Water Utility; and withdrawals from the Rate Stabilization Account. Gross Revenue shall not include (1) revenues from City-imposed utility or similar taxes; (2) principal proceeds of Parity Bonds or any other borrowings, or money in a defeasance or escrow fund

created to defease or refund obligations relating to the Surface Water Utility or held in a special account for the purpose of paying a rebate to the United States under the Code; (3) revenue which may not legally be pledged for revenue bond debt service; (4) improvement district assessments (including ULID Assessments); (5) federal or state grants and gifts from any source allocated to capital projects or not available for debt service; (6) payments under bond insurance or any other credit enhancement policy or device; (7) insurance or condemnation proceeds used for the replacement of capital projects or equipment; (8) deposits to the Rate Stabilization Account; or (9) revenue from any Separate Utility System.

(z) “*Independent Utility Consultant*” means an independent consultant experienced with municipal utilities of comparable size and character to the Surface Water Utility and in such areas as are relevant to the purpose for which he or she is being retained. Such a consultant shall be deemed independent if he or she is not an employee or officer of the City.

(aa) “*Issue Date*” means, with respect to a Bond, the date of initial issuance and delivery of that Bond to the Purchaser in exchange for the purchase price of that Bond.

(bb) “*Letter of Representations*” means the Blanket Issuer Letter of Representations between the City and DTC, dated December 11, 2006, as it may be amended from time to time, and any successor or substitute letter relating to the operational procedures of the Securities Depository.

(cc) “*MSRB*” means the Municipal Securities Rulemaking Board.

(dd) “*Maximum Annual Debt Service*” means, as of the date of calculation, the maximum amount of Annual Debt Service that will mature or come due in the current calendar year or any future calendar year.

(ee) “*Net Revenue*” means the Gross Revenue less Operating and Maintenance Expenses.

(ff) “*Official Statement*” means an offering document, disclosure document, private placement memorandum or substantially similar disclosure document provided to purchasers and potential purchasers in connection with the initial offering of a Series of the Bonds in conformance with Rule 15c2-12 or other applicable regulations of the SEC.

(gg) “*Operating and Maintenance Expenses*” means all reasonable expenses incurred by the City in causing the Surface Water Utility to be operated and maintained in good repair, working order and condition, including payments made pursuant to contract for such service to any other municipal corporation or private entity for surface water management, or other utility service, and including budget charges for the City’s overhead expenses allocated to the Surface Water Utility. The term Operating and Maintenance Expense does not include any depreciation or other non-cash expenses or capital additions or capital replacements to the Surface Water Utility and shall not include any utility taxes collected by the City.

(hh) “*Owner*” means, without distinction, the Registered Owner and the Beneficial Owner.

(ii) “*Parity Bond Authorizing Ordinance(s)*” means this ordinance and any Future Parity Bond Authorizing Ordinance.

(jj) “*Parity Bonds*” means the Bonds and any Future Parity Bonds.

(kk) “*Principal and Interest Account*” means the account of that name created in the Bond Account for the payment of the principal of and interest on the Parity Bonds.

(ll) “*Project*” means the City’s Surface Water Utility’s share of transportation and other capital projects, as deemed necessary and advisable by the City. Incidental costs incurred in connection with carrying out and accomplishing the Project, consistent with RCW 39.46.070, may be included as costs of the Project.

(mm) “*Project Fund*” means the fund or account of the City for the purpose of carrying out the Project.

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

(oo) “*Rate Stabilization Account*” means the account of that name created within the Surface Water Management Fund pursuant to Section 14.

(pp) “*Rating Agency*” means any nationally recognized rating agency then maintaining a rating on the Bonds at the request of the City.

(qq) “*Record Date*” means the Bond Registrar’s close of business on the 15th day of the month preceding an interest payment date. With respect to redemption of a Bond prior to its maturity, the Record Date shall mean the Bond Registrar’s close of business on the date on which the Bond Registrar sends the notice of redemption in accordance with Section 9.

(rr) “*Registered Owner*” means, with respect to a Bond, the person in whose name that Bond is registered on the Bond Register. For so long as the City utilizes the book-entry only system for the Bonds under the Letter of Representations, Registered Owner shall mean the Securities Depository.

(ss) “*Reserve Account*” means any account of that name created in the Bond Account for the purpose of securing the payment of the principal of and interest on specific Parity Bonds.

(tt) “*Reserve Requirement*” means that amount, if any, established by (1) the Designated Representative or (2) a Future Parity Bond Authorizing Ordinance for a series of Future Parity Bonds.

(uu) “*Reserve Security*” means any bond insurance, reserve insurance, reserve surety, collateral, security, letter of credit, guaranty, surety bond or similar credit enhancement device providing for or securing the payment of all or part of the principal of and interest on Parity Bonds, issued by an institution which has been assigned a credit rating by a Rating Agency, at the time

that such Reserve Security is obtained by the City, in one of the three highest rating categories without regard to gradations within those categories (i.e., Aaa, Aa or A). Investments purchased with cash deposited into the Reserve Account shall not constitute Reserve Securities.

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

(ww) “*SEC*” means the United States Securities and Exchange Commission.

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

(yy) “*Separate Utility System*” means any water supply or distribution, sewage collection or treatment or other utility service or facilities that may be created, acquired or constructed by the City as provided in Section 17.

(zz) “*Series of the Bonds*” or “*Series*” means a series of the Bonds issued pursuant to this ordinance.

(aaa) “*State*” means the State of Washington.

(bbb) “*Subordinate Debt*” means any obligations of the Surface Water Utility that are payable from Net Revenue on a basis that is junior and inferior to the lien and charge on the Net Revenue created by this ordinance in respect of the Parity Bonds.

(ccc) “*Surface Water Management Fund*” means that special fund of the City designated as the Surface Water Management Fund, and consisting of such subfunds or accounts as the Finance Director may deem appropriate, to account for the costs, expenses and revenues of the Utility.

(ddd) “*Tax Credit Subsidy Bond*” means any bond that is designated by the City as a tax credit bond, pursuant to the Code, and with respect to which the City expects to receive a Tax Credit Subsidy Payment.

(eee) “*Tax Credit Subsidy Payment*” means the amounts which the City is eligible to request as a tax credit payable by the United States Treasury to the City under the Code, in respect of any bonds issued as Tax Credit Subsidy Bonds.

(fff) “*Term Bond*” means each Bond designated as a Term Bond and subject to mandatory redemption in the years and amounts set forth in the Bond Purchase Contract.

(ggg) “*ULID*” means any utility local improvement district now existing or hereafter created for the acquisition or construction of additions, extensions or betterments of any portion of the Surface Water Utility, which additions, extensions or betterments are financed through the issuance of Parity Bonds. As used in this ordinance, the term ULID does not include any utility local improvement district created for the financing of additions, extensions or betterments either by methods other than the issuance of Parity Bonds or as part of a Separate Utility System.

(hhh) “*ULID Assessments*” means the assessments levied in any ULID, including installment payments of any assessment as well as the interest and penalties (if any) thereon, less any prepaid assessments permitted by law to be paid into a construction fund or account.

(iii) “*Undertaking*” means the undertaking to provide continuing disclosure entered into pursuant to Section 24 of this ordinance.

(jjj) “*Utility*” or “*Surface Water Utility*” means the surface water utility of the City and all additions thereto and betterments and extensions thereof at any time made, together with any water system, sewer system or garbage and refuse collection and disposal systems hereafter combined with the Utility.

Section 2. Findings and Determinations. The City takes note of the following facts and makes the following findings and determinations:

(a) *Surface Water Utility.* Pursuant to RCW 35A.80.010, the City now owns, operates and maintains the Surface Water Utility, currently consisting of its existing surface water utility, as it now exists, and including any and all additions, extensions and betterments thereto.

(b) *Outstanding Utility Revenue Debt.* The City currently has no outstanding bonds which are secured by Net Revenue.

(c) *Plan of Additions.* The City specifies, adopts and orders the carrying out of the Projects. The aggregate estimated total cost of the Projects is \$5,000,000. The cost of the Projects, including the cost of issuance of the Bonds, shall be paid from the proceeds of the Bonds and from other money available to the Surface Water Utility.

(d) *Sufficiency of Gross Revenue.* The City Council finds that the Gross Revenue and benefits to be derived from the operation and maintenance of the Surface Water Utility at the rates to be charged for services from the Surface Water Utility will be sufficient to meet all Operating and Maintenance Expenses and to permit the setting aside into the Bond Account out of the Gross Revenue of amounts sufficient to pay the principal of and interest on the Bonds when due. The City Council declares that in fixing the amounts to be paid into the Bond Account under this ordinance it has exercised due regard for Operating and Maintenance Expenses and has not obligated the City to set aside and pay into the Bond Account a greater amount of Gross Revenue of the Surface Water Utility than in its judgment will be available over and above such Operating and Maintenance Expenses.

(e) *The Bonds.* For the purpose of providing the funds necessary to carry out the Project, to fund a reserve account if necessary, and to pay the costs of issuance and sale of the Bonds, the City Council finds that it is in the best interests of the City and its taxpayers to issue and sell the Bonds to the Purchaser, pursuant to the terms set forth in the Bond Purchase Contract as approved by the City’s Designated Representative consistent with this ordinance.

Section 3. Authorization of Bonds. The City is authorized to borrow money on the credit of the City and issue negotiable surface water revenue bonds evidencing indebtedness in one or more Series in the aggregate principal amount not to exceed \$4,100,000 to provide funds necessary to carry out the Project, to fund a reserve account if necessary, and to pay the costs of

issuance and sale of the Bonds. The proceeds of the Bonds allocated to paying the cost of the Project shall be deposited as set forth in Section 8 of this ordinance and shall be used to carry out the Project, or a portion of the Project, in such order of time as the City determines is advisable and practicable.

Section 4. Description of Bonds; Appointment of Designated Representative. The City's Finance Director, or the City Manager in her or his absence, is appointed as the Designated Representative of the City and is authorized and directed to conduct the sale of the Bonds in the manner and upon the terms deemed most advantageous to the City, and to approve the Final Terms of each Series of the Bonds, with such additional terms and covenants as the Designated Representative deems advisable, within the following parameters:

- (a) The Bonds may be issued in one or more Series, and the aggregate principal amount of the Bonds shall not exceed \$4,100,000;
- (b) One or more rates of interest may be fixed for the Bonds as long as no rate of interest for any maturity of the Bonds exceeds 5.25%;
- (c) The true interest cost to the City for each Series of Bonds does not exceed 4.50%;
- (d) The aggregate purchase price for each Series of Bonds shall not be less than 95% and not more than 140% of the aggregate stated principal amount of the Bonds, excluding any original issue discount;
- (e) The Bonds may be issued subject to optional and mandatory redemption provisions;
- (f) The Bonds shall be dated as of the date of their delivery, which date and time for the issuance and delivery of the Bonds is not later than December 31, 2022; and
- (g) Each Series shall mature no later than December 31, 2042.

The Designated Representative may determine whether it is in the City's best interest to provide for bond insurance or other credit enhancement; and may accept such additional terms, conditions and covenants as she or he may determine are in the best interests of the City, consistent with this ordinance.

In determining the number of series, the series designations, final principal amounts, date of the Bonds, denominations, interest rates, payment dates, redemption provisions, tax status, and maturity dates for the Bonds, the Designated Representative, in consultation with other City officials and staff and advisors, shall take into account those factors that, in her or his judgment, will result in the lowest true interest cost on the Bonds to their maturity, including, but not limited to current financial market conditions and current interest rates for obligations comparable to the Bonds.

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

- (a) *Registration of Bonds.* Each Bond shall be issued only in registered form as to both principal and interest and the ownership of each Bond shall be recorded on the Bond Register.

(b) *Bond Registrar; Duties.* The Fiscal Agent is appointed as initial Bond Registrar for any Series of Bonds sold by negotiated or competitive sale. The City's Finance Director will be appointed as the initial Bond Registrar for any Series of Bonds sold by private placement. The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond 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. The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on each Bond. The Bond Registrar may become an Owner with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Owners.

(c) *Bond Register; Transfer and Exchange.* The Bond Register shall contain the name and mailing address of each Registered Owner and the principal amount and number of each Bond held by each Registered Owner. A Bond surrendered to the Bond Registrar may be exchanged for a Bond or Bonds in any Authorized Denomination of an equal aggregate principal amount and of the same Series, interest rate and maturity. A Bond may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall be without cost to the Owner or transferee. The Bond Registrar shall not be obligated to exchange any Bond or transfer registered ownership during the period between the applicable Record Date and the next upcoming interest payment or redemption date.

(d) *Securities Depository; Book-Entry Only Form.* If a Bond is to be issued in book-entry form, DTC shall be appointed as initial Securities Depository and each such Bond initially shall be registered in the name of Cede & Co., as the nominee of DTC. Each Bond registered in the name of the Securities Depository shall be held fully immobilized in book-entry only form by the Securities Depository in accordance with the provisions of the Letter of Representations. Registered ownership of any Bond registered in the name of the Securities Depository may not be transferred except: (i) to any successor Securities Depository; (ii) to any substitute Securities Depository appointed by the City; or (iii) to any person if the Bond is no longer to be held in book-entry only form. Upon the resignation of the Securities Depository, or upon a termination of the services of the Securities Depository by the City, the City may appoint a substitute Securities Depository. If (i) the Securities Depository resigns and the City does not appoint a substitute Securities Depository, or (ii) the City terminates the services of the Securities Depository, the Bonds no longer shall be held in book-entry only form and the registered ownership of each Bond may be transferred to any person as provided in this ordinance.

Neither the City nor the Bond Registrar shall have any obligation to participants of any Securities Depository or the persons for whom they act as nominees regarding accuracy of any records maintained by the Securities Depository or its participants. Neither the City nor the Bond Registrar shall be responsible for any notice that is permitted or required to be given to a Registered Owner except such notice as is required to be given by the Bond Registrar to the Securities Depository.

Section 6. Form and Execution of Bonds.

(a) *Form of Bonds; Signatures and Seal.* Each Bond shall be prepared in a form consistent with the provisions of this ordinance and State law. Each Bond shall be signed by the Mayor and the 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. If any officer whose manual or facsimile signature appears on a Bond ceases to be an officer of the City authorized to sign bonds before the Bond bearing his or her manual or facsimile signature is authenticated by the Bond Registrar, or issued or delivered by the City, that Bond nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. Any Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on its Issue Date.

(b) *Authentication.* Only a Bond bearing a Certificate of Authentication in substantially the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance: “Certificate of Authentication. This Bond is one of the fully registered City of Lakewood, Washington, Surface Water Revenue Bonds, 2021 [or other year of issuance], described in the Bond Ordinance.” The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

Section 7. Payment of Bonds. Principal of and interest on each Bond shall be payable in lawful money of the United States of America. Principal of and interest on each Bond registered in the name of the Securities Depository is payable in the manner set forth in the Letter of Representations. Interest on each Bond not registered in the name of the Securities Depository is payable by electronic transfer on the interest payment date, or by check or draft of the Bond Registrar mailed on the interest payment date to the Registered Owner at the address appearing on the Bond Register on the Record Date. However, the City is not required to make electronic transfers except pursuant to a request by a Registered Owner in writing received on or prior to the Record Date and at the sole expense of the Registered Owner. Principal of each Bond not registered in the name of the Securities Depository is payable upon presentation and surrender of the Bond by the Registered Owner to the Bond Registrar. The Bonds are not subject to acceleration under any circumstances.

Section 8. Funds and Accounts; Deposit of Proceeds.

(a) *Bond Account.* The Bond Account will be created as a special account of the City for the sole purpose of paying principal of and interest on the Bonds. All amounts allocated to the payment of the principal of and interest on the Bonds shall be deposited in the Bond Account as necessary for the timely payment of amounts due with respect to the Bonds. The principal of and interest on the Bonds shall be paid out of the Bond Account. Until needed for that purpose, the City may invest money in the Bond Account temporarily in any legal investment, and the investment earnings shall be retained in the Bond Account and used for the purposes of that fund.

(b) *Project Fund.* The Project Fund has been or will be created as a fund of the City for the purpose of paying the costs of the Project. Proceeds received from the sale and delivery of the Bonds, after the deposit of any amount necessary to satisfy the Reserve Requirement, shall be deposited into the Project Fund (or any subaccounts within such fund) and used to pay the costs of the Project and costs of issuance of the Bonds. Until needed to pay such costs, the City may invest those proceeds temporarily in any legal investment, and the investment earnings shall be retained in the Project Fund and used for the purposes of that fund, except that earnings subject to a federal tax or rebate requirement (if applicable) may be withdrawn from the Project Fund and used for those tax or rebate purposes.

Section 9. Redemption Provisions and Purchase of Bonds.

(a) *Optional Redemption.* The Bonds shall be subject to redemption, or prepayment, at the option of the City on terms acceptable to the Designated Representative, as set forth in the Bond Purchase Contract, consistent with the parameters set forth in Section 4.

(b) *Mandatory Redemption.* Each Bond that is designated as a Term Bond in the Bond Purchase Contract, consistent with the parameters set forth in Section 4 and except as set forth below, shall be called for redemption at a price equal to the stated principal amount to be redeemed, plus accrued interest, on the dates and in the amounts as set forth in the Bond Purchase Contract. If a Term Bond is redeemed under the optional redemption provisions, defeased or purchased by the City and surrendered for cancellation, the principal amount of the Term Bond so redeemed, defeased or purchased (irrespective of its actual redemption or purchase price) shall be credited against one or more scheduled mandatory redemption installments for that Term Bond. The City shall determine the manner in which the credit is to be allocated and shall notify the Bond Registrar in writing of its allocation prior to the earliest mandatory redemption date for that Term Bond for which notice of redemption has not already been given.

(c) *Selection of Bonds for Redemption; Partial Redemption.* If fewer than all of the outstanding Bonds are to be redeemed at the option of the City, the City shall select the Series and maturities to be redeemed. If fewer than all of the outstanding Bonds of a maturity of a Series are to be redeemed, the Securities Depository shall select Bonds registered in the name of the Securities Depository to be redeemed in accordance with the Letter of Representations, and the Bond Registrar shall select all other Bonds to be redeemed randomly in such manner as the Bond Registrar shall determine. All or a portion of the principal amount of any Bond that is to be redeemed may be redeemed in any Authorized Denomination. If less than all of the outstanding principal amount of any Bond is redeemed, upon surrender of that Bond to the Bond Registrar, there shall be issued to the Registered Owner, without charge, a new Bond (or Bonds, at the option of the Registered Owner) of the same Series, maturity and interest rate in any Authorized Denomination in the aggregate principal amount to remain outstanding.

(d) *Notice of Redemption.* Notice of redemption of each Bond registered in the name of the Securities Depository shall be given in accordance with the Letter of Representations. Notice of redemption of each other Bond, unless waived by the Registered Owner, shall be given by the Bond Registrar not less than 20 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Registered Owner at the address appearing on the Bond Register on the Record Date. The requirements of the preceding sentence shall be satisfied when

notice has been mailed as so provided, whether or not it is actually received by an Owner. In addition, the redemption notice shall be mailed or sent electronically within the same period to the MSRB (if required under the Undertaking), to each Rating Agency, and to such other persons and with such additional information as the Finance Director shall determine, but these additional mailings shall not be a condition precedent to the redemption of any Bond.

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

(f) *Effect of Redemption.* Interest on each Bond called for redemption shall cease to accrue on the date fixed for redemption, unless either the notice of optional redemption is rescinded as set forth above, or money sufficient to effect such redemption is not on deposit in the Bond Account or in a trust account established to refund or defease the Bond.

(g) *Purchase of Bonds.* The City reserves the right to purchase any or all of the Bonds offered to the City at any time at any price acceptable to the City plus accrued interest to the date of purchase.

Section 10. Failure To Pay Bonds. If the principal of any Bond is not paid when the Bond is properly presented at its maturity or date fixed for redemption, the City shall be obligated to pay interest on that Bond at the same rate provided in the Bond from and after its maturity or date fixed for redemption until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Bond Account, or in a trust account established to refund or defease the Bond, and the Bond has been called for payment by giving notice of that call to the Registered Owner.

Section 11. Pledge of Net Revenue and Lien Position. The Net Revenue and ULID Assessments are pledged irrevocably to the payment of the amounts required to be paid into the Bond Account for the payment of the Parity Bonds. This pledge shall constitute a lien and charge upon such Net Revenue and ULID Assessments prior and superior to any other charges whatsoever and on a parity with any Future Parity Bonds.

Section 12. Bond Account; Payments to Bond Account. The Bond Account is hereby created in the Surface Water Management Fund, and is divided into two accounts: the Principal and Interest Account and the Reserve Account. The Finance Director may create such accounts and subaccounts in the Bond Account as may be convenient for the payment of the Parity Bonds as long as the maintenance of such accounts does not conflict with the rights of the Owners of Parity Bonds.

(a) *Payments into Bond Account.* So long as any Parity Bonds are outstanding, the City shall set aside and pay into the Bond Account all ULID Assessments and, out of the Net Revenue, certain fixed amounts without regard to any fixed proportion, namely:

(1) Into the Principal and Interest Account, on or before each interest payment date, an amount that will be sufficient, together with other money then on deposit therein, to pay the interest on the Parity Bonds then coming due and payable; and

(2) Into the Principal and Interest Account, on or before each principal payment date (including any date on which a mandatory redemption of Term Bonds is required), an amount that will be sufficient, together with other money then on deposit therein, to pay the principal of the Parity Bonds then coming due and payable, including mandatory redemption amounts with respect to Term Bonds; and

(3) Into the Reserve Account or a separate reserve account, an amount necessary to provide for the Reserve Requirement, if any, in the time and manner required under a Future Parity Bond Authorizing Ordinance.

When the total amount in the Bond Account equals the total amount of principal and interest with respect to all outstanding Parity Bonds to the last maturity thereof, no further payment need be made into the Bond Account.

(b) *The Principal and Interest Account.* For so long as any Parity Bonds are outstanding, the City shall maintain the Principal and Interest Account for the payment of the Parity Bonds and shall make deposits therein as set forth in subsection (a). If there is a deficiency in the Principal and Interest Account to make the next upcoming payment of either principal or interest, that deficiency shall be made up from the Reserve Account, if funded, by the withdrawal of amounts necessary for that purpose.

(c) *The Reserve Account; Reserve Requirement.* The City does not expect the Bonds to be secured by the Reserve Account; however, the Designated Representative may determine that the Reserve Account will secure the Bonds and establish a Reserve Requirement for the Bonds. For so long as the Bonds are outstanding, the City shall maintain a balance in the Reserve Account (including the value of all Reserve Securities) equal to the Reserve Requirement, except for withdrawals as authorized in this subsection (c). The Reserve Requirement must be satisfied on the Issue Date of the Bonds and on the issue date of any Future Parity Bonds secured by the Reserve Account by any combination of: (i) a deposit of cash or Parity Bond proceeds; or (ii) the purchase of one or more Reserve Securities in lieu of full funding on the issue date of such Future Parity Bonds. In lieu of full funding on the issue date of such Future Parity Bonds, the City may elect to deposit Net Revenue, ULID Assessments or other legally available money in approximately equal annual installments so that the Reserve Requirement is funded no later than five years after the issue date of such Future Parity Bonds.

On any principal or interest payment date in which there is a deficiency in the Principal and Interest Account, amounts sufficient to make up that deficiency shall be withdrawn from the Reserve Account (or by drawing on a Reserve Security) and transferred to the Principal and Interest Account. If, by reason of such withdrawal, the Reserve Account balance remaining is insufficient to meet the Reserve Requirement, then such deficiency shall then be made up from the next available payments of Net Revenue and ULID Assessments after making necessary provision for the required payments into the Principal and Interest Account.

Except for withdrawals described above, the money in the Reserve Account and its subaccounts otherwise shall be held intact and may be applied against the last outstanding Parity Bonds. However, if at any time the Reserve Account (or any subaccount) is fully funded, money in excess of the Reserve Requirement shall be withdrawn and deposited, first, in any other subaccount having a deficiency in its Reserve Requirement, and second, at the option of the Finance Director, either in the Principal and Interest Account and spent for the purpose of retiring Parity Bonds or in into the Surface Water Management Fund and spent for other lawful system purposes.

(d) *Investment of Money Deposited in Bond Account.* All money in the Bond Account may be kept in cash or invested in Permitted Investments maturing not later than the date when needed (for investments in the Principal and Interest Account) or the last maturity of any outstanding Parity Bonds (for investments in the Reserve Account). Earnings from investments in the Principal and Interest Account shall be deposited in that account. Earnings from any investments in the Reserve Account shall be deposited in that account until the amount therein is equal to the Reserve Requirement, and thereafter shall be deposited in the Principal and Interest Account or used for other Surface Water Utility purposes.

Section 13. Flow of Funds. So long as any Parity Bonds are outstanding, the City covenants that all ULID Assessments (if any) shall be paid into the Bond Account, and the Gross Revenue shall be deposited into the Surface Water Management Fund to be used for the following purposes only in the following order of priority:

- (a) To pay the Operating and Maintenance Expenses;
- (b) To make when due the required payments into the Principal and Interest Account in respect of interest on the Parity Bonds;
- (c) To make when due the required payments into the Principal and Interest Account in respect of principal of (and premium on, if any) the Parity Bonds, whether at maturity or pursuant to mandatory redemption prior to maturity.
- (d) To make all payments required to be made into the Reserve Account as well as any separate reserve accounts that may be established in the Bond Account to secure a particular series of Future Parity Bonds;
- (e) To make when due all payments required to be made under any reimbursement agreement with a bond insurer;
- (f) To make when due the required payments to be made into any revenue bond, note, warrant or other revenue obligation redemption fund, debt service account or reserve account created to pay and secure the payment of any Subordinate Debt; and
- (g) For any of the following purposes without priority, to retire by redemption or to purchase in the open market any outstanding obligations of the Surface Water Utility; to make necessary betterments and replacements of or repairs, additions or extensions to the Surface Water Utility; to make deposits into the Rate Stabilization Account; or for any other lawful purpose.

Section 14. Rate Stabilization Account. The Rate Stabilization Account may be created within the Surface Water Management Fund and may be divided into such subaccounts as the Finance Director may deem appropriate. Deposits and withdrawals as described below may be made up to and including the date 90 days after the end of the calendar year for which the deposit or withdrawal will be used in calculating Gross Revenue.

(a) *Deposits to the Rate Stabilization Account.* The City may at any time, as determined by the Finance Director and consistent with Section 13, deposit therein amounts from Gross Revenue and any other money of the Surface Water Utility that is available to be used for that purpose, excluding ULID Assessments and excluding the principal proceeds of any Future Parity Bonds. No deposit of Gross Revenue may be made into the Rate Stabilization Account to the extent that such deposit would prevent the City from meeting the Coverage Requirement in the relevant calendar year.

(b) *Withdrawals from the Rate Stabilization Account.* The City may withdraw money from the Rate Stabilization Account at any time for inclusion in Gross Revenue for any calendar year of the Surface Water Utility.

(c) *Investment of Money in Rate Stabilization Account.* Earnings from investments in the Rate Stabilization Account shall be retained in that account and shall not be included as Gross Revenue unless and until withdrawn from that account. The City may at any time provide that earnings are to be deposited periodically into the Surface Water Management Fund and are to be included as Gross Revenue in the year of deposit.

Section 15. Additional Covenants. For so long as any of the Bonds are outstanding, the City covenants and agrees as follows:

(a) *Operation and Maintenance.* The City will at all times maintain, preserve and keep the properties of the Surface Water Utility 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 Surface Water Utility and the business in connection therewith in an efficient manner and at a reasonable cost.

(b) *Establishment and Collection of Rates and Charges.* The City will establish, maintain and collect fair and nondiscriminatory rates and charges for all services and facilities provided by the Surface Water Utility and will adjust those rates and charges from time to time so that:

(1) Gross Revenue will at all times be sufficient to (i) pay all Operating and Maintenance Expenses, (ii) make all payments into the Bond Account when due, and (iii) pay all taxes (or payments in lieu thereof), assessments or other governmental charges lawfully imposed on the Surface Water Utility and any and all other amounts which the City is obligated to pay from the Gross Revenue; and

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

The failure to comply with this covenant shall not constitute an Event of Default (as described in Section 21) if the City, before the date 90 days after the end of the calendar year, employs an Independent Utility Consultant to recommend changes in the City's rates and imposes rates at least as high as those recommended by such consultant. The calculation of the Coverage Requirement set forth above, and the City's compliance therewith, may be made solely with reference to this ordinance without regard to future changes in generally accepted accounting principles. If the City has changed one or more of the accounting principles used in the preparation of its financial statements, because of a change in generally accepted accounting principles or otherwise, then the failure to comply with this covenant shall not be considered an Event of Default (as described in Section 21) if the Coverage Requirement ratio would have been complied with had the City continued to use those accounting principles employed at the date of the most recent audited financial statements prior to the date of this ordinance.

(c) *No Free Service.* Except as permitted by State law, the City will not furnish or supply or permit the furnishing or supplying of any service or facility in connection with the operation of the Surface Water Utility free of charge to any person, firm or corporation, public or private, other than the City.

(d) *Sale or Disposition of the Surface Water Utility.* The City will not sell or otherwise dispose of the Surface Water Utility in its entirety unless, simultaneously with such sale or other disposition, all then-outstanding Parity Bonds are redeemed or defeased in accordance with this ordinance. The City will not sell, lease, mortgage or in any manner encumber or otherwise dispose of any part of the Surface Water Utility that exceeds 5% of the net utility plant of the Surface Water Utility, unless provision is made for its replacement or for payment into the Bond Account of 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 Account) as the Net Revenue from the portion of the Surface Water Utility to be sold or disposed of bears to the total Net Revenue for the preceding year.

Nothing in the foregoing limits the City's discretion to enter into contracts for the sale of surface water management or to sell or otherwise dispose of any of the works, plant, properties or facilities of the Surface Water Utility (or any real or personal property comprising a part of the same) that is unserviceable, inadequate, obsolete or unfit to be used, or no longer necessary, material to or useful to the operation of the Surface Water Utility without the requirement that the City retire a portion of the Parity Bonds. In no event shall proceeds of any such sale or disposal be treated as Gross Revenue for purposes of this ordinance.

(e) *Books and Accounts.* The City will maintain complete books and records relating to the operation of the Surface Water Utility and its financial affairs, and will cause such books and records to be audited annually, and cause to be prepared an annual financial and operating statement, which shall be provided to any owner of Parity Bonds upon request.

(f) *Insurance.* The City will at all times carry fire and such other forms of insurance on such of the buildings, equipment, facilities and properties of the Surface Water Utility as are ordinarily carried on such buildings, equipment, facilities and properties by utilities engaged in the operation of similar utility systems to the full insurable value thereof, and also will carry adequate public liability insurance at all times. The City may self-insure or participate in a joint

intergovernmental insurance pool or similar plan, and the cost of that insurance or self-insurance shall be considered a part of Operating and Maintenance Expense.

(g) *ULID Assessments.* The City will promptly collect all ULID Assessments and deposit such collections into the Bond Account to pay or secure the principal of and interest on any Parity Bonds without those ULID Assessments being particularly allocated to any particular series of Parity Bonds.

Section 16. Provisions for Future Parity Bonds. The City may issue Future Parity Bonds secured by a lien and charge on the Net Revenues and ULID Assessments on a parity with the Bonds if the conditions in this section are met at the time of issuance of those proposed Future Parity Bonds. Nothing contained herein shall prevent the City from issuing revenue bonds that are a charge upon the Gross Revenue of the City subordinate to the lien and charge for the payment of Parity Bonds or from 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 Subordinate Debt, as long as such utility local improvement district assessments are levied for improvements constructed from the proceeds of that Subordinate Debt. Neither shall anything contained in this ordinance prevent the City from issuing revenue obligations to refund maturing Parity Bonds for the payment of which money is not otherwise available.

(a) *Secured by Bond Account.* The Future Parity Bond Authorizing Ordinance must provide for the payment of the principal thereof and interest thereon out of the Bond Account and must require that all ULID Assessments imposed in connection with those Future Parity Bonds (if any) will be paid directly into the Bond Account.

(b) *No Bond Account Deficiencies; Reserve Requirement Met.* At the time of issuance of such Future Parity Bonds, there may not be any deficiency in the Principal and Interest Account in the Bond Account, and unless a separate reserve is provided for in accordance Section 12(c), the applicable Future Parity Bond Authorizing Ordinance must provide for the deposit into the Reserve Account (if any) of amounts necessary to fully fund the Reserve Requirement in accordance with Section 12.

(c) *Coverage Requirement Met.* At the time of the issuance of such Future Parity Bonds, the City must have on file, either:

(1) A certificate of the Finance Director showing that, in his or her professional opinion, the annual Net Revenue available for debt service on the Parity Bonds then outstanding and the Future Parity Bonds proposed to be issued will, for each year, be at least equal to the Coverage Requirement. In making such certification, the Finance Director may use the Net Revenue for any 12 consecutive calendar months out of the immediately preceding 24 consecutive months. The following adjustments may be made to the historical net operating revenue:

(A) Any rate change that has taken place or been approved may be reflected;

(B) Revenue may be added from customers actually added to the Surface Water Utility subsequent to the 12-month base period; and

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

(2) A certificate from an Independent Utility Consultant showing that, in his or her professional opinion, the annual Net Revenue available for debt service on the Parity Bonds then outstanding and the Future Parity Bonds proposed to be issued will, for each year, be at least equal to the Coverage Requirement. In making such certification, the Net Revenue for any 12 consecutive calendar months out of the immediately preceding 24 consecutive months may be used, and the following adjustments may be made to the historical net operating revenue:

(A) Any rate change that has taken place or been approved may be reflected;

(B) Revenue may be added from customers actually added to the Surface Water Utility subsequent to the 12-month base period;

(C) A full year's revenue may be included from any customer being served, but who has not been receiving service for the full period of operation used as a basis for the certificate;

(D) Revenue may be added from customers to be served by the improvements being constructed out of the proceeds of the Future Parity Bonds to be issued; and

(E) Actual or reasonably anticipated changes to the Operating and Maintenance Expenses subsequent to such 12-month period shall be added or deducted, as is applicable.

(d) *No Certificate Required for Certain Issues.* If the sole purpose of the proposed Future Parity Bonds is to refund then-outstanding Parity Bonds (and to pay costs of issuance and to provide for the Reserve Requirement), no coverage certificate is required under subsection (c) if, as result of the issuance of those Future Parity Bonds the Annual Debt Service on the Future Parity Bonds to be issued is not increased by more than \$5,000 over the Annual Debt Service for that year of the bonds being refunded. Furthermore, no coverage certificate is required in connection with the issuance of Future Parity Bonds if the amount of such bonds proposed to be issued does not exceed the ULID Assessments levied in support of such Future Parity Bond issue by more than \$5,000 plus any amount of the proceeds of such Future Parity Bonds deposited in the Reserve Account.

Section 17. Separate Utility Systems. The City may at any time create, acquire, construct, finance, own and operate one or more systems for water supply, sewer service, water, sewage or stormwater transmission, treatment or other commodity or utility service, which systems are separate from and in addition to the Surface Water Utility. The revenue of that Separate Utility System, and any utility local improvement district assessments payable solely with respect to improvements to a Separate Utility System, shall not be included in the Gross Revenue and may be pledged to the payment of revenue obligations issued to purchase, construct, condemn or otherwise acquire or expand the Separate Utility System. Neither the Gross Revenue nor the Net

Revenue may be pledged to the payment of any obligations of a Separate Utility System except that the Net Revenue may be pledged on a basis subordinate to the lien of the Parity Bonds.

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

(a) The City may agree under a contract containing a Contract Resource Obligation that all payments in respect of that Contract Resource Obligation (including payments prior to the time that surface water management services is being provided, or during a suspension or after termination of supply or service) shall be deemed an Operating and Maintenance Expense, so long as the payments required to be made under the Contract Resource Obligation are not subject to acceleration and the following additional requirements are met at the time such obligation is designated as a Contract Resource Obligation:

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

(2) The City has obtained a certificate of an Independent Utility Consultant stating that in its professional opinion: (i) the payments to be made by the City in connection with the Contract Resource Obligation are reasonable for the service rendered; (ii) the source of any new supply, and any facilities to be constructed to provide the supply or transmission, are sound from a supply or planning standpoint, are technically and economically feasible in accordance with prudent utility practice, and are likely to provide service no later than a date set forth in the certification; and (iii) the Net Revenue will be sufficient to meet the Coverage Requirement for each of the five calendar years following the calendar year in which the Contract Resource Obligation is incurred, where the calculation of Net Revenue (A) takes into account the adjustments permitted in connection with a coverage certification given under the conditions for Future Parity Bonds and (B) adjusts the Operating and Maintenance Expenses by the consultant's estimate of the payments to be made in accordance with the Contract Resource Obligation.

(b) Nothing in this section shall prevent the City from entering into agreements for surface water management or other commodity or service relating to the Surface Water Utility from then-existing facilities and from treating those payments as an Operating and Maintenance Expense. Nothing in this section shall prevent the City from entering into other agreements for the acquisition of surface water management or service from facilities to be constructed and from agreeing to make payments with respect thereto, such payments constituting Subordinate Obligations until such time as the facilities are placed in service.

Section 19. Tax Covenants.

(a) *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 that 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 requirements of Section 148 of the Code are applicable to the Bonds, take all actions necessary to comply (or to be treated as having complied) with those requirements in connection with the Bonds.

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

(c) *Designation of Bonds as "Qualified Tax-Exempt Obligations."* A Series of the Bonds may be designated as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code, if the following conditions are met:

(1) the Series does not constitute "private activity bonds" within the meaning of Section 141 of the Code;

(2) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) that the City and any entity subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) will issue during the calendar year in which the Series is issued will not exceed \$10,000,000; and

(3) the amount of tax-exempt obligations, including the Series, designated by the City as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Series is issued does not exceed \$10,000,000.

Section 20. Refunding or Defeasance of the Bonds. The City may issue refunding bonds pursuant to State law or use money available from any other lawful source to carry out a refunding or defeasance plan, which may include (a) paying when due the principal of and interest on any or all of the Bonds (the "defeased Bonds"); (b) redeeming the defeased Bonds prior to their maturity; and (c) paying the costs of the refunding or defeasance. If the City sets aside in a special trust fund or escrow account irrevocably pledged to that redemption or defeasance (the "trust account"), money and/or Government Obligations maturing at a time or times and bearing interest in amounts sufficient to redeem, refund or defease the defeased Bonds in accordance with their terms, 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. Thereafter, the Owners of defeased Bonds shall have the right to receive payment of the principal of and interest on the defeased Bonds solely from the trust account and the defeased Bonds shall be deemed no longer outstanding. In that event, the City may apply money remaining in any fund or account (other than the trust account) established for the payment or redemption of the defeased Bonds to any lawful purpose.

Unless otherwise specified by the City in a refunding or defeasance plan, notice of refunding or defeasance shall be given, and selection of Bonds for any partial refunding or

defeasance shall be conducted, in the manner prescribed in this ordinance for the redemption of Bonds.

Section 21. 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 its covenants, conditions and agreements set forth in this ordinance and such default or defaults have continued for a period of six months after the City has received from the registered owners of not less than 25% in outstanding principal amount of Parity Bonds a written notice specifying and demanding the cure of such default. However, if the default in the observance and performance of any other of the covenants, conditions and agreements is one which cannot be completely remedied within the six month period, it shall not be an Event of Default with respect to the Bonds as long as the City has taken active steps within 90 days to remedy the default and is diligently pursuing such remedy; or

(3) If the City files a petition in bankruptcy or is placed in receivership under any State or federal bankruptcy or insolvency law.

(b) *Remedies.* Upon the happening of an Event of Default and during the continuation thereof, suits, actions or other proceedings 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, are limited to those provided under State law.

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

(d) *No Impairment.* No Owner of any Parity Bond shall have any right in any manner whatever by his or her action to affect or impair the obligation of the City to pay from the Net Revenue the principal of and interest on such Parity Bonds to the respective Owners thereof when due.

Section 22. Sale and Delivery of the Bonds.

(a) *Manner of Sale of Bonds; Delivery of Bonds.* The Designated Representative is authorized to sell each Series of the Bonds by negotiated sale or private placement or by competitive sale in accordance with a notice of sale consistent with this ordinance, based on the assessment of the Designated Representative of market conditions, in consultation with appropriate City officials and staff, Bond Counsel and other advisors. In determining the method of sale of a Series and accepting the Final Terms, the Designated Representative shall take into

account those factors that, in the judgment of the Designated Representative, may be expected to result in the lowest true interest cost to the City.

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

(c) *Procedure for Competitive Sale.* If the Designated Representative determines that a Series of the Bonds is to be sold by competitive sale, the Designated Representative shall cause the preparation of an official notice of bond sale setting forth parameters for the Final Terms and any other bid parameters that the Designated Representative deems appropriate consistent with this ordinance. Bids for the purchase of each Series of the Bonds shall be received at such time or place and by such means as the Designated Representative directs. On the date and time established for the receipt of bids, the Designated Representative (or the designee of the Designated Representative) shall open bids and shall cause the bids to be mathematically verified. The Designated Representative is authorized to award, on behalf of the City, the winning bid and accept the winning bidder's offer to purchase that Series of the Bonds, with such adjustments to the aggregate principal amount and principal amount per maturity as the Designated Representative deems appropriate, consistent with the terms of this ordinance, and such award shall constitute the Bond Purchase Contract. The Designated Representative may reject any or all bids submitted and may waive any formality or irregularity in any bid or in the bidding process if the Designated Representative deems it to be in the City's best interest to do so. If all bids are rejected, that Series of the Bonds may be sold pursuant to negotiated sale or in any manner provided by law as the Designated Representative determines is in the best interest of the City, within the parameters set forth in this ordinance.

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

Section 23. Official Statement.

(a) *Preliminary Official Statement Deemed Final.* The Designated Representative shall review and, if acceptable to her or him, approve the preliminary Official Statement prepared in connection with each sale of a Series of the Bonds to the public or through a Purchaser as a placement agent. For the sole purpose of the Purchaser's compliance with paragraph (b)(1) of Rule 15c2-12, if applicable, the Designated Representative is authorized to deem that preliminary Official Statement final as of its date, except for the omission of information permitted to be omitted by Rule 15c2-12. The City approves the distribution to potential purchasers of the Bonds of a preliminary Official Statement that has been approved by the Designated Representative and been deemed final, if applicable, in accordance with this subsection.

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

Section 24. Undertaking to Provide Continuing Disclosure. If necessary to meet the requirements of paragraph (b)(5) of Rule 15c2-12, 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 Listed Events.* The City undertakes to provide or cause to be provided, either directly or through a designated agent, to the MSRB, in an electronic format as prescribed by the MSRB, accompanied by identifying information as prescribed by the MSRB:

(1) Annual financial information and operating data of the type included in the final official statement for the Bonds and described in paragraph (b) (“annual financial information”);

(2) Timely notice (not in excess of 10 business days after the occurrence of the event) of the occurrence of any of the following events with respect to the Bonds: (A) principal and interest payment delinquencies; (B) non-payment related defaults, if material; (C) unscheduled draws on debt service reserves reflecting financial difficulties; (D) unscheduled draws on credit enhancements reflecting financial difficulties; (E) substitution of credit or liquidity providers, or their failure to perform; (F) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701 – TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds; (G) modifications to rights of holders of the Bonds, if material; (H) bond calls (other than scheduled mandatory redemptions of Term Bonds), if material, and tender offers; (I) defeasances; (J) release, substitution, or sale of property securing repayment of the Bonds, if material; (K) rating changes; (L) bankruptcy, insolvency, receivership or similar event of the City, as such “Bankruptcy Events” are defined in Rule 15c2-12; (M) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; (N) appointment of a successor or additional trustee or the change of name of a trustee, if material; (O) incurrence of a financial obligation of the City or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City or obligated person, any of which affect security holders, if material; and (P) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the City or obligated person, any of which reflect financial difficulties. The term “financial obligation” means a (i) debt obligation; (ii) derivative

instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “financial obligation” shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12.

(3) Timely notice of a failure by the City to provide required annual financial information on or before the date specified in paragraph (b).

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

(1) Shall consist of (A) annual financial statements prepared (except as noted in the financial statements) in accordance with applicable generally accepted accounting principles applicable to local governmental units of the State such as the City, as such principles may be changed from time to time, which statements may be unaudited, provided, that if and when audited financial statements are prepared and available they will be provided; (B) outstanding debt secured by Net Revenue of the Utility; and (C) debt service coverage ratio for the year;

(2) Shall be provided 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 in which a Series of the Bonds are issued; and

(3) May be provided in a single or multiple documents, and may be incorporated by specific reference to documents available to the public on the Internet website of the MSRB or filed with the SEC.

(c) Amendment of Undertaking. This 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 or the MSRB, under the circumstances and in the manner permitted by Rule 15c2-12. The City will give notice to the MSRB of the substance (or provide a copy) of any amendment to the Undertaking and a brief statement of the reasons for the amendment. If the amendment changes the type of annual financial information to be provided, the annual financial information containing the amended financial information will include a narrative explanation of the effect of that change on the type of information to be provided.

(d) Beneficiaries. This Undertaking shall inure to the benefit of the City and the holder of each Bond, 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 the provisions of Rule 15c2-12 that 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 delivered to the City, and the City provides timely notice of such termination to the MSRB.

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

(g) Designation of Official Responsible to Administer Undertaking. The Finance Director or her designee is the person designated, in accordance with the Bond Ordinance, to carry out the Undertaking in accordance with Rule 15c2-12, including, without limitation, the following actions:

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

(2) Determining whether any event specified in paragraph (a) has occurred, assessing its materiality, where necessary, with respect to the Bonds, and preparing and disseminating any required notice of its occurrence;

(3) Determining whether any person other than the City is an “obligated person” within the meaning of Rule 15c2-12 with respect to the Bonds, and obtaining from such person an undertaking to provide any annual financial information and notice of listed events for that person required under Rule 15c2-12;

(4) Selecting, engaging and compensating designated agents and consultants, including financial advisors and legal counsel, to assist and advise the City in carrying out this Undertaking; and

(5) Effecting any necessary amendment of this undertaking.

Section 25. Supplemental and Amendatory Ordinances.

(a) The Council from time to time and at any time may pass an ordinance or ordinances supplemental hereto, which ordinance or ordinances thereafter shall become a part of this ordinance, for any one or more or all of the following purposes:

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

(2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this ordinance or any ordinance authorizing Future Parity Bonds in regard to matters or questions arising under such ordinances as the Council may deem necessary or desirable and not inconsistent with such ordinances and which shall not adversely affect the interest of the owners of the Parity Bonds. Any such supplemental ordinance of the City may be passed without the consent of the owners of any Parity Bonds at any time outstanding, notwithstanding any of the provisions of Subsection (b)

of this section, if the City obtains an opinion of nationally recognized bond counsel to the effect that such supplemental ordinance will not adversely effect the interests of the owners of Parity Bonds.

(b) With the consent of the owners of not less than 50% in aggregate principal amount of the Parity Bonds at the time outstanding, the Council may pass an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall:

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

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

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

(c) Upon the passage of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this ordinance and of all owners of Parity Bonds outstanding hereunder shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all the terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this ordinance for any and all purposes.

Section 26. General Authorization and Ratification. The Mayor, City Manager, City Clerk, Designated Representative and other appropriate officers of the City are severally authorized to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this ordinance, and to do everything necessary for the prompt delivery of each Series of the Bonds to the Purchaser thereof and for the proper application, use and investment of the proceeds of the Bonds. All actions taken prior to the effective date of this ordinance in furtherance of the purposes described in this ordinance and not inconsistent with the terms of this ordinance are ratified and confirmed in all respects.

Section 27. Severability. The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all

other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

Section 28. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Lakewood, Washington, at an open public meeting thereof, this 19th day of January, 2021.



Don Anderson, Mayor

ATTEST:



Briana Schumacher, City Clerk

APPROVED AS TO FORM:



Heidi Ann Wachter, City Attorney

CERTIFICATION

I, the undersigned, City Clerk of the City of Lakewood, Washington (the “City”), hereby certify as follows:

1. The attached copy of Ordinance No. 748 (the “Ordinance”) is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on January 19, 2021, as that ordinance appears on the minute book of the City.
2. That said meeting was duly convened and held in all respects in accordance with law (including Proclamation 20-28 made by the Governor of the State of Washington on March 24, 2020, as extended, and acts of the legislative leadership of the State of Washington), and to the extent required by law, due and proper notice of such meeting was given.
3. The Ordinance will be in full force and effect five days after publication in the City’s official newspaper, which publication date is expected to be January 21, 2021.
4. A quorum of the members of the City Council was present throughout the meeting and a majority of the members voted in the proper manner for the passage of the Ordinance.

Dated: January 19, 2021.

CITY OF LAKEWOOD, WASHINGTON



Briana Schumacher, City Clerk