Ordinance No. 121938

Council Bill No. 115381

AN ORDINANCE relating to the drainage and wastewater system of The City of Seattle; authorizing the issuance and sale of drainage and wastewater system revenue bonds, in one or more series, for the purpose of paying all or part of the costs of refunding certain of the City's drainage and wastewater system revenue bonds and issuing and selling the bonds; providing for terms, covenants and manner of sale of the bonds; describing the lien of the bonds; and providing for agreements and activities in connection with the disposition of the proceeds of the bonds.

CF No. _____

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Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
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The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Richard J. McIver
Councilmember

Committee Action:

9/21/05 RJM, NL moved + passed 2-0

9-26-05 Passed 9-0

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

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ORDINANCE 121938

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Passed _____, 2005

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ORDINANCE 121938

AN ORDINANCE relating to the drainage and wastewater system of The City of Seattle; authorizing the issuance and sale of drainage and wastewater system revenue bonds, in one or more series, for the purpose of paying all or part of the costs of refunding certain of the City's drainage and wastewater system revenue bonds and issuing and selling the bonds; providing for terms, covenants and manner of sale of the bonds; describing the lien of the bonds; and providing for agreements and activities in connection with the disposition of the proceeds of the bonds.

WHEREAS, The City of Seattle (the "City") owns, maintains and operates a system of sanitary sewerage and storm and surface water drainage as part of Seattle Public Utilities (the "Drainage and Wastewater System"); and

WHEREAS, the City issued drainage and wastewater system revenue bonds pursuant to the ordinances and resolutions set forth in Exhibit A to this ordinance (the "Outstanding Parity Bonds"); and

WHEREAS, the City has determined that it is in the best interest of the City to authorize the issuance and sale, subject to the provisions of this ordinance, of drainage and wastewater system refunding revenue bonds (collectively, the "Bonds"), in one or more series, for the purpose of paying all or part of the cost of refunding all or a portion of the Outstanding Parity Bonds, the Bonds and certain drainage and wastewater system revenue bonds hereafter issued (collectively, the "Refundable Bonds") and of paying all or part of the costs of issuance and sale of the Bonds; and

WHEREAS, the City from time to time will receive, review and adopt a plan to refund selected maturities of those Refundable Bonds, which selected maturities will be identified in the Bond Resolutions (hereinafter defined); and

WHEREAS, this ordinance will allow the refunding of any Refundable Bonds only if the refunding is (a) consistent with City financial policies in effect at the time of the proposed refunding and (b) approved by resolution of the City Council; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. <u>Definitions</u>. As used in this ordinance the words hereinafter defined shall have the meanings set forth in this section.

"Accreted Value" means (a) with respect to any Capital Appreciation Bonds, as of the time of calculation, the sum of the amount set forth in the ordinance or Bond Resolution authorizing the Capital Appreciation Bonds as the amount representing the initial principal amount of such Capital Appreciation Bonds plus the interest accumulated, compounded and

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unpaid thereon as of the most recent compounding date, or (b) with respect to Original Issue Discount Bonds, as of the date 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; in each case the Accreted Value shall be determined in accordance with the provisions of the ordinance or Bond Resolution authorizing the issuance of such bonds.

"Acquired Obligations" means those Government Obligations purchased to accomplish the refunding of the Refunded Bonds, consistent with the Refunded Bond Legislation and any applicable agreements with providers of Qualified Insurance or Alternate Security.

"Adjusted Gross Revenue" means, for any period, Gross Revenue plus withdrawals from the Rate Stabilization Account made during that period, and less deposits into the Rate Stabilization Account made during that period.

"Adjusted Net Revenue" means Adjusted Gross Revenue less Operating and Maintenance Expense.

"Alternate Security" means any insurance policy, collateral, security, letter of credit, standby bond purchase agreement, guaranty, surety bond, line of credit or similar credit enhancement device providing for or securing the payment of the principal of and interest on Parity Bonds, regarding the use of which the City receives (a) the approval of any Bond Insurer, and (b) written confirmation from Moody's and S&P to the effect that the use of such Alternate Security will not cause a reduction in any then-existing ratings for any of the Parity Bonds.

"Annual Debt Service" for any calendar year means the sum of the amounts required in such calendar year to pay:

(a) the interest due in such calendar year on all Parity Bonds outstanding, excluding interest to be paid from the proceeds of the sale of Parity Bonds or other bonds; and

(b) the principal of all outstanding Serial Bonds due in such calendar year; and

(c) the Sinking Fund Requirement, if any, for such calendar year.

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For purposes of this definition, the principal and interest portions of the Accreted Value of Capital Appreciation Bonds becoming due at maturity or by virtue of a Sinking Fund Requirement shall be included in the calculations of accrued and unpaid and accruing interest or principal in such manner and during such period of time as is specified in any Parity Bond Ordinance authorizing such Capital Appreciation Bonds.

For purposes of calculating and determining compliance with the Reserve Requirement and conditions for the issuance of Future Parity Bonds and/or entering into Parity Payment Agreements the following shall apply:

1. Generally. Except as otherwise provided by subparagraph 2 with respect to Variable Interest Rate Bonds and by subparagraph 3 below with respect to Parity Bonds with respect to which a Payment Agreement is in force, interest on any issue of Parity Bonds shall be calculated based on the actual amount of accrued, accreted or otherwise accumulated interest that is payable in respect of that issue taken as a whole, at the rate or rates set forth in the applicable Parity Bond 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 that is ninety percent (90%) of the average RBI during the four calendar quarters preceding the quarter in which the calculation is made.

3. Interest 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 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 produced by the following: (a) 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 (b) Parity Bonds that would, but for a Payment Agreement, be treated as obligations bearing interest at a fixed interest rate instead

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shall be treated as obligations bearing interest at a Variable Interest Rate. Accordingly, the amount of interest deemed to be payable on any Parity Bonds with respect to which a Payment Agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in those Parity Bonds plus Payment Agreement Payments minus Payment Agreement Receipts. For the purposes of calculating as nearly as practicable Payment Agreement Receipts and Payment Agreement Payments under a Payment Agreement that includes a variable rate component determined by reference to a pricing mechanism or index that is not the same as the pricing mechanism or index used to determine the variable rate interest component on the Parity Bonds to which the Payment Agreement is related, it shall be assumed that the fixed rate used in calculating Payment Agreement Payments will be equal to 105% of the fixed rate specified by the Payment Agreement and that the pricing mechanism or index specified by the Payment Agreement is the same as the pricing mechanism or index specified by the Parity Bonds. Notwithstanding the other provisions of this subparagraph 3, the City shall not be required to (but may in its discretion) take into account in determining Annual Debt Service the effects of any Payment Agreement that has a term of ten (10) years or less.

4. 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 subparagraph 3 of this definition. 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, payments on that Parity Payment Agreement shall be taken into account by assuming:

(A) 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 assumed fixed payor rate, and that payments by the Qualified

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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 four calendar quarters preceding the quarter in which the calculation is made, and

(B) 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 four calendar quarters 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.

"Average Annual Debt Service" means, at the time of calculation, the sum of the Annual Debt Service remaining to be paid to the last scheduled maturity of the applicable issue or series of Parity Bonds divided by the number of years such bonds are scheduled to remain outstanding.

"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 Insurance Policy" means a municipal bond new issue insurance policy issued by the Bond Insurer and approved by the City Council by the Bond Resolution or by ordinance, and guaranteeing the timely payment of principal of and interest on any issue of Parity Bonds in accordance with the terms of that policy.

"Bond Insurer" means an insurance company or other financial institution that provides a Bond Insurance Policy.

"Bond Register" means the books or records maintained by the Bond Registrar for the purpose of registration of the Bonds.

"Bond Registrar" or "Registrar" means the fiscal agency of the State of Washington, or any successor bond registrar selected by the City, whose duties include the registration and

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

"Bond Resolution" means the resolution or resolutions of the City Council adopted pursuant to this ordinance to specify certain additional provisions of each series of the Bonds and their sale.

"Bonds" means the refunding bonds issued in one or more series from time to time pursuant to, under the authority of and for the purposes provided in this ordinance.

"Capital Appreciation Bonds" means any revenue obligations of the Drainage and Wastewater System all or a portion of the interest on which is compounded and accumulated at the rates and on the dates set forth in the ordinance or Bond Resolution authorizing those obligations and is payable only upon redemption or on the maturity date of such obligations. Obligations which 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 Seattle, Washington.

"City Council" means the City Council of the City.

"Code" means the Internal Revenue Code of 1986, or any successor thereto, as it has been and may be amended from time to time, and regulations thereunder.

"Closing Date" means the date on which a series of Bonds is delivered to the initial purchaser or purchasers thereof upon payment in full therefor.

"Contract Resource Obligation" means an obligation of the City, designated as a Contract Resource Obligation and entered into pursuant to Section 23 of this ordinance.

"Coverage Requirement" means, with respect to the Parity Bonds, Net Revenue and money from any other lawful source at least equal to 1.25 times the Average Annual Debt Service. *Upon the redemption or defeasance of all of the then outstanding 1995 Bonds,*

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"Coverage Requirement" shall be defined as follows: "Coverage Requirement" means Adjusted Net Revenue at least equal to 1.25 times Average Annual Debt Service.

"DTC" means The Depository Trust Company, New York, New York, as initial Securities Depository for the Bonds.

"Drainage and Wastewater Fund" means the fund created by Ordinance 84390 and later renamed by Ordinance 114155.

"Drainage and Wastewater System" means the drainage and wastewater system of the City, including the sanitary sewerage and storm drainage systems (except properties, interests, and rights under the jurisdiction of the City's Parks and Recreation Department, Seattle Center Department, Seattle Public Utilities Water System, City Light Department and Fleets and Facilities Department), as the same may be added to, improved and extended for as long as any Parity Bonds are outstanding. U*pon the redemption or defeasance of all of the then outstanding 1995 Bonds, "Drainage and Wastewater System" shall include any utility systems of the City hereinafter combined with the Drainage and Wastewater System, but not any separate utility system that may be created, acquired or constructed by the City as provided in Section 22 of this ordinance.*

"Director of Finance" means the Director of the Finance of the City, or any successor thereto.

"Future Parity Bonds" means any and all revenue bonds and obligations of the Drainage and Wastewater System (other than the Bonds) issued hereafter the payment of the principal of and interest on which constitutes a lien and charge upon the Gross Revenue on a parity with the lien and charge upon such Gross Revenue for the Outstanding Parity Bonds and the Bonds. Future Parity Bonds may include Parity Payment Agreements and any other obligations issued in compliance with Section 17.

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

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"Gross Revenue" means (a) all income, revenues, receipts and profits derived by the City through the ownership and operation of the Drainage and Wastewater System; (b) the proceeds received by the City directly or indirectly from the sale, lease or other disposition of any of the properties, rights or facilities of the Drainage and Wastewater System; (c) Payment Agreement Receipts, to the extent that such receipts are not offset by Payment Agreement Payments; and (d) the investment income earned on money held in any fund or account of the City, including any bond redemption funds and the accounts therein, in connection with the ownership and operation of the Drainage and Wastewater System. Gross Revenue does not include: (a) insurance proceeds compensating the City for the loss of a capital asset; (b) income derived from investments irrevocably pledged to the payment of any defeased bonds payable from Gross Revenue; (c) investment income set aside for or earned on money in any fund or account created or maintained solely for the purpose of complying with the arbitrage rebate provisions of the Code; (d) any gifts, grants, donations or other funds received by the City from any State or federal agency or other person if such gifts, grants, donations or other funds are the subject of any limitation or reservation imposed by the donor or grantor or imposed by law or administrative regulation to which the donor or grantor is subject, limiting the application of such funds in a manner inconsistent with the application of Gross Revenue hereunder; (e) the proceeds of any borrowing for capital improvements (or the refinancing thereof); (f) the proceeds of any liability or other insurance (excluding business interruption insurance or other insurance of like nature insuring against the loss of revenues); and (g) general ad valorem taxes, excise taxes and special assessments, including interest and penalties thereon. U*pon the redemption or defeasance of all of the then outstanding 1995 Bonds, Gross Revenue also shall not include earnings of any separate utility system that may be created, acquired, or constructed by the City pursuant to Section 22 of this ordinance.*

"Independent Consulting Engineer" means the independent person(s) or firm(s) selected by the City having a favorable reputation for skill and experience with drainage and wastewater

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systems of comparable size and character to the Drainage and Wastewater System in such areas as and relevant to the purposes for which they were retained.

"Letter of Representations" means, for each series of Bonds, the Letter of Representations relating to the Bonds to be delivered by the City to DTC.

"Maximum Annual Debt Service" means, at the time of calculation, the maximum amount of Annual Debt Service which shall become due in the current calendar year or in any future calendar year on any outstanding Parity Bonds.

"Moody's" means Moody's Investors Service, Inc.

"Net Revenue of the Drainage and Wastewater System" or "Net Revenue" means the Gross Revenue less Operating and Maintenance Expense paid from Gross Revenue.

"Operating and Maintenance Expense" means all reasonable expenses incurred by the City in causing the Drainage and Wastewater System to be operated and maintained in good repair, working order and condition, including without limitation payments (other than payments out of proceeds of Parity Bonds or other obligations not issued to pay current expenses of the Drainage and Wastewater System) into reasonable reserves for items of operating or maintenance expense the payment of which is not immediately required, payments of premiums for insurance, if any, on the Drainage and Wastewater System, and any State-imposed taxes, and also including all payments made to another municipal corporation or other agency for treatment or disposal of sewage, but excluding depreciation and amortization, and any City taxes imposed or levied on the Drainage and Wastewater System or Gross Revenue or payments in lieu of taxes payable from the Gross Revenue of the Drainage and Wastewater System, and payments of claims or judgments. Accounting for those expenses shall be in accordance with generally accepted accounting principles. U*pon the redemption or defeasance of all of the then outstanding 1995 Bonds, Operating and Maintenance Expense also shall include amounts due under any Contract Resource Obligation under the conditions described in Section 23 of this ordinance.*

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"Original Issue Discount Bonds" means revenue obligations of the Drainage and Wastewater System which are sold at an initial public offering price of less than ninety-five percent (95%) of their face value and which are specifically designated as Original Issue Discount Bonds by the ordinance or Bond Resolution under which such obligations are issued.

"Outstanding Parity Bonds" means the then outstanding 1995 Bonds, 1998 Bonds, 1999 Bonds, 2001 Bonds, 2002 Bonds and 2004 Bonds, as described in Exhibit A.

"Parity Bond Account" means the "Drainage and Wastewater Revenue Bond Account, 1990" created by Ordinance 115098 in the Drainage and Wastewater Fund for the purpose of paying and securing the principal of and interest on Parity Bonds.

"Parity Bond Ordinance" means any ordinance or Bond Resolution passed or adopted by the City Council providing for the issuance of Parity Bonds, and any other ordinance or Bond Resolution amending or supplementing the provisions of any Parity Bond Ordinance as originally passed or adopted or as theretofore amended or supplemented.

"Parity Bonds" means the Outstanding Parity Bonds, the Bonds and any outstanding Future Parity Bonds.

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

"Payment Agreement" means a written contract entered into, for the purpose of managing or reducing the City's exposure to fluctuations or levels of interest rates or for other interest rate, investment, asset or liability management purposes, by the City and a Qualified Counterparty on either a current or forward basis as authorized by any applicable laws of the State in connection with, or incidental to, the issuance, incurring or carrying of particular bonds, notes, bond anticipation notes, commercial paper or other obligations for borrowed money, or lease, installment purchase or other similar financing agreements or certificates of participation therein,

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that provides for an exchange of payments based on interest rates, ceilings or floors on such payments, options on such payments, or any combination thereof or any similar device.

"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 Investments" means any legal investment permitted for money of the City.

"Principal Amount" means, at the time of calculation, (a) with respect to any Capital Appreciation Bond, the Accreted Value thereof (the difference between the stated amount to be paid at maturity and the Accreted Value being deemed unearned interest), and (b) with respect to any Original Issue Discount Bond, the Accreted Value thereof, unless the ordinance or Bond Resolution under which such obligation was issued shall specify a different amount, in which case, the terms of the ordinance or Bond Resolution shall control.

"Principal and Interest Subaccount" means the subaccount of that name created in the Parity Bond Account by Ordinance 115098 for the payment of the principal of and interest on Parity Bonds.

"Qualified Counterparty" means a party (other than the City or a person related to the City) who is the other party to a Payment Agreement and who is qualified to act as the other party to a Payment Agreement under any applicable laws of the State.

"Qualified Insurance" means any municipal bond insurance policy or surety bond issued by any insurance company licensed to conduct an insurance business in any state of the United States (or by a service corporation acting on behalf of one or more such insurance companies) which insurance company or companies, as of the time of issuance of such policy or surety bond, are rated in one of the two highest rating categories by Moody's and S&P or their comparably recognized business successors.

"Rate Stabilization Account" means the account of that name previously established by Section 26 of Ordinance 118974.

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

"RBI" means *The Bond Buyer* Revenue Bond Index or comparable index, or, if no comparable index can be obtained, eighty percent (80%) of the interest rate for actively traded thirty (30) year United States Treasury obligations.

"Refundable Bonds" means, collectively, all or a portion of any Outstanding Parity Bonds and the Bonds, and all or a portion of those Future Parity Bonds that have been designated as Refundable Bonds in the applicable Parity Bond Ordinance.

"Refunded Bonds" means those Refundable Bonds included in a Refunding Plan.

"Refunded Bond Legislation" means the respective ordinances and resolutions pursuant to which the Refunded Bonds were issued.

"Refunding Plan" means, with respect to the issuance of each series of Bonds, the refunding of all or a portion of the Refundable Bonds through the issuance of such series, as more particularly described in the Bond Resolution.

"Refunding Trust Agreement" means, with respect to each series of Bonds, a refunding trust or escrow agreement between the City and a Refunding Trustee, dated as of the Closing Date of such series, providing for the safekeeping of certain Bond proceeds and the refunding of all or a portion of the Refundable Bonds.

"Refunding Trustee" means for each series of Bonds, the Director of Finance, or the trustee or escrow agent designated by the Director of Finance, consistent with the Refunded Bond Legislation and any applicable agreements with providers of Qualified Insurance or Alternate Security.

"Registered Owner" means the person shown on the Bond Register as the owner of one or more Bonds.

"Reserve Requirement" means an amount equal to the least of the Maximum Annual Debt Service at the time of calculation, 1.25 times Average Annual Debt Service at the time of

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calculation or ten percent (10%) of the proceeds of Parity Bonds at the time of the dates of their respective issuances and payments therefor by the initial purchasers. The Reserve Requirement may be satisfied to the extent of the amount payable under an Alternate Security which contains a contract to provide money to pay debt service on Parity Bonds. The Reserve Requirement shall be provided by cash, Permitted Investments or Alternate Security or any combination thereof, and shall be subject to the provisions of Section 14(d) of this ordinance. For any issue of Parity Bonds, the Reserve Requirement may be provided within five (5) years after the issuance of such Parity Bonds in accordance with Section 17 of this ordinance.

"Reserve Subaccount" means the subaccount of that name created in the Parity Bond Account by Ordinance 115098 for the purpose of securing the payment of the principal of and interest on Parity Bonds.

"Securities Depository" means any one of the following registered securities depositories which has been designated by the City: (i) DTC; (ii) Midwest Securities Trust Company, Chicago, Illinois; (iii) Philadelphia Depository Trust Company, Philadelphia, Pennsylvania; or (iv) such other securities depositories as the City may designate in a certificate of the City delivered to the Bond Registrar.

"Serial Bonds" means Parity Bonds maturing in specified years, for which no Sinking Fund Requirements are mandated.

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

"Sinking Fund Requirement" means, for any calendar year, the principal amount and premium, if any, of Term Bonds required to be purchased, redeemed, paid at maturity or paid into any Sinking Fund Account for such calendar year as established by the Parity Bond Ordinance authorizing the issuance of such Term Bonds.

"S&P" means Standard and Poor's Ratings Services, a Division of the McGraw-Hill Companies, Inc.

"State" means the State of Washington.

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"Term Bonds" means any bonds of any single issue or series designated as Term Bonds in the ordinance or resolution authorizing the issuance of such bonds.

"ULID Assessments" means all assessments levied and collected in a utility local improvement district of the City created for the acquisition or construction of additions to and betterments and extensions of the Drainage and Wastewater System if (and only if) those assessments are pledged to be paid into the Parity Bond Account. ULID Assessments shall not include any prepaid assessments paid into a construction fund or account. ULID Assessments shall include installments thereof and any interest or penalties thereon.

"Undertaking" means the City's undertaking in the Bond Resolution to provide certain continuing disclosure as provided by Section 18 of this 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 Parity Bond Ordinance authorizing or specifying the terms of such Parity Bonds, which Parity Bond 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.

"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 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.

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Section 2. Authorization and Description of Bonds. The City is authorized to issue Bonds for the purpose of providing all or a part of the funds with which to pay the cost of refunding, defeasing, or refunding and defeasing, the Refunded Bonds and to pay all or part of the costs of issuing and selling the Bonds. The Bonds may be issued in one or more series at any time on or before December 31, 2015, and may be combined with other Parity Bonds authorized separately. The maximum principal amount of any series of the Bonds shall not exceed 125% of the then-outstanding principal amount of the Refundable Bonds refunded by that series of Bonds.

The Bonds shall be dated and have such year and series or other designation as determined by the Director of Finance or as specified by the Bond Resolution; shall be in the denomination of $5,000 or any integral multiple thereof within a single maturity or such other denomination specified in the Bond Resolution; and shall be numbered separately, in the manner and with any additional designation as the Bond Registrar deems necessary for the purpose of identification. The Bonds shall mature on the dates and in the amounts and bear interest payable on the dates and at the rates specified in the Bond Resolution, except that the net interest cost shall not exceed a weighted average rate of ten percent per annum. All or some of the Bonds may be Term Bonds, as specified by the Bond Resolution. The final maturity of any series of Bonds shall not exceed 40 years from the issue date for that series.

Section 3. Bond Resolution. With respect to each series of Bonds, the City Council may adopt the Bond Resolution and in that resolution may provide for the matters described in this ordinance, including the manner of sale and delivery of and payment for the Bonds, the refunding of the Refunded Bonds, and such other matters that the City Council deems necessary and appropriate to carry out the purposes of this ordinance. Once adopted, the Bond Resolution shall be deemed a part of this ordinance as if set forth herein.

For each series of Bonds, the Bond Resolution may provide for Qualified Insurance or Alternate Security, and conditions or covenants relating thereto, including additional terms, conditions and covenants relating to the Bonds that are required by the bond insurer or letter of credit provider and are consistent with the provisions of this ordinance, including but not limited

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to restrictions on investments and requirements of notice to and consent of the bond insurer or letter of credit provider.

For each series of Bonds, the Bond Resolution may approve and authorize the execution and delivery on behalf of the City of any contracts consistent with the provisions of this ordinance for which the City's approval is necessary or to which the City is a party and that are related or incidental to the initial issuance and sale of the Bonds, the initial establishment of the interest rate or rates on the Bonds and any redemption of the Bonds, including but not limited to Payment Agreements and similar contracts for such purposes.

The Bond Resolution for each series of Bonds shall identify the Refunded Bonds to be refunded by that series, shall establish the terms and conditions upon which the Refunded Bonds are to be refunded, and shall confirm the Director of Finance as, or the Director of Finance's appointment of, the Refunding Trustee. The City Council may specify in the Bond Resolution the amount, if any, from the proceeds of or accrued interest on the Bonds to be deposited into specified funds, subfunds, accounts and subaccounts. In the absence of such a determination and specification in the Bond Resolution, the Director of Finance may make such determination and specification.

Section 4. <u>Allocation of the Bonds to the Refunded Bonds</u>. With respect to each series of Bonds, the City Council shall, by the Bond Resolution, provide for the allocation of that series of Bonds to the various series of the Refunded Bonds in a manner consistent with the Code. Such allocation shall be reflected in schedules attached to the Bond Resolution.

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

Bonds surrendered to the Bond Registrar may be exchanged for Bonds in any authorized denomination of an equal aggregate principal amount and of the same series, interest rate and

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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 Registered Owner or transferee. The Bond Registrar shall not be obligated to exchange or transfer any Bond during the 15 days preceding any principal or interest payment or redemption date (or other record date established by the Bond Resolution).

The City appoints DTC as initial Securities Depository for the Bonds. For so long as DTC is the Securities Depository for the Bonds, DTC or its nominee shall be deemed to be the Registered Owner of the Bonds for all purposes hereunder, and all references in this ordinance or the Bond Resolution to the Registered Owners of the Bonds shall mean DTC or its nominee and shall not mean the owners of any beneficial interests in the Bonds. Payments of principal of, premium, if any, and interest on all outstanding Bonds registered in the name of the nominee of DTC, or its registered assign, shall be made as provided in the Letter of Representations.

Bonds executed and delivered in fully immobilized form shall be executed and delivered in the form of one fully-registered immobilized certificate for each series and maturity of the Bonds representing the aggregate principal amount of the Bonds of that series and maturity, which Bonds shall (except as provided below for the discontinuation or substitution of Securities Depository) be registered in the name of the Securities Depository or its nominee. For so long as DTC serves as Securities Depository for the Bonds, the Bonds shall be registered in the name of Cede & Co., as nominee of DTC; however, if DTC shall request that the Bonds be registered in the name of a different nominee, the Bond Registrar shall exchange all or any portion of the Bonds for an equal aggregate principal amount of Bonds registered in the name of such other nominee or nominees of DTC. No person other than DTC or its nominee shall be entitled to receive from the City or the Bond Registrar any Bond or any other evidence of ownership of the Bonds, or any right to receive any payment in respect thereof, unless DTC or its nominee shall transfer record ownership of all or any portion of the Bonds on the Bond Register, in connection with discontinuing the book entry system as provided below or otherwise.

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For so long as the Bonds are registered in the name of DTC or any nominee thereof, all payments of the principal of, or premium, if any, or interest with respect to the Bonds shall be made to DTC or its nominee in immediately available funds on the dates provided for such payments under this ordinance and the Bond Resolution and at such times and in the manner provided in the Letter of Representations. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the City or the Bond Registrar with respect to the principal of, premium, if any, or interest with respect to the Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Bonds of any series and maturity, the Bond Registrar shall not require surrender by DTC or its nominee of the Bonds so redeemed, and DTC or its nominee may retain such Bonds and make an appropriate notation thereon as to the amount of such partial redemption. DTC shall deliver to the Bond Registrar, upon request, a written confirmation of such partial redemption. The records maintained by the Bond Registrar shall be conclusive as to the amount of the Bonds of such series and maturity that have been redeemed.

All transfers of beneficial ownership interests in Bonds registered in the name of DTC or its nominee shall be effected by the procedures of DTC's participants and/or indirect participants for recording and transferring the ownership of beneficial interests in bonds.

The City and the Bond Registrar may treat DTC (or its nominee) as the sole and exclusive Registered Owner of the Bonds registered in its name for the purposes of payment of the principal of, premium, if any, or interest with respect to those Bonds, selecting Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Registered Owners under this ordinance or the Bond Resolution, registering the transfer of Bonds, obtaining any consent or other action to be taken by Registered Owners of Bonds and for all other purposes whatsoever; and the City and the Bond Registrar shall not be affected by any notice to the contrary. The City and the Bond Registrar shall not have any responsibility or obligation to any direct or indirect DTC participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any such participant, or any other person which is

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not shown on the Bond Register as being a Registered Owner of Bonds, with respect to: (i) the Bonds; (ii) any records maintained by DTC or any such participant; (iii) the payment by DTC or any such direct or indirect participant of any amount in respect of the principal of, premium, if any, or interest with respect to the Bonds; (iv) any notice which is permitted or required to be given to Registered Owners of Bonds under this ordinance or the Bond Resolution; (v) the selection by DTC or any such direct or indirect participant of any person to receive payment in the event of a partial redemption of the Bonds; or (vi) any consent given or other action taken by DTC as Registered Owner of the Bonds.

For so long as the Bonds are registered in the name of DTC or any nominee thereof, all notices required or permitted to be given to the Registered Owners of such Bonds under this ordinance or the Bond Resolution shall be given to DTC as provided in the Letter of Representations.

In connection with any notice or other communication to be provided to Registered Owners pursuant to this ordinance or the Bond Resolution by the City or the Bond Registrar with respect to any consent or other action to be taken by Registered Owners of the Bonds, DTC shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action; however, the City or the Bond Registrar may establish a special record date for such consent or other action and shall give DTC notice of such special record date not less than 15 calendar days in advance of such special record date to the extent practical.

Any successor Bond Registrar, in its written acceptance of its duties under this ordinance and the Bond Resolution, shall agree to take any actions necessary from time to time to comply with the requirements of any applicable Letter of Representations.

The book-entry system for registration of the ownership of the Bonds delivered in fully immobilized form may be discontinued at any time if: (i) after notice to the City and the Bond Registrar, DTC determines to resign as Securities Depository for the Bonds; or (ii) after notice to DTC and the Bond Registrar, the City determines that a continuation of the system of book-entry transfers through DTC (or through a successor Securities Depository) is not in the best interests

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of the City. In each of such events (unless, in the case described in clause (i) above, the City appoints a successor Securities Depository), the Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the City or the Bond Registrar for the accuracy of such designation. Whenever DTC requests the City and the Bond Registrar to do so, or whenever the City requests DTC and the Bond Registrar to do so after the determination by the City to replace DTC with a successor Securities Depository, the City and the Bond Registrar shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another Securities Depository to maintain custody of certificates evidencing the Bonds.

Section 6. <u>Mutilated, Lost, Stolen and Destroyed Bonds</u>. In case any Bonds issued hereunder shall become mutilated or be destroyed, stolen or lost, the City may, if not then prohibited or otherwise required by law, cause to be executed and delivered a new Bond of like amount, series, interest rate, maturity date 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 Registered 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 the City 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 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 6 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 7. <u>Payment of Bond Principal and Interest</u>. Principal of, premium, if any, 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 mailed by the Bond Registrar on the interest

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payment date to the Registered Owners at the addresses appearing on the Bond Register on the 15th day of the month preceding the interest payment date (or other record date established by the Bond Resolution) (the "Record Date") or, at the request of a Registered Owner of $1,000,000 or more in aggregate principal amount of Bonds, by wire transfer to an account in the United States designated in writing by such Registered Owner prior to the Record Date. Principal of and premium, if any, on the Bonds shall be payable upon presentation and surrender of the Bonds by the Registered Owners at either of the principal corporate trust office or offices of the Bond Registrar at the option of the Registered Owners. Notwithstanding the foregoing, payment of any Bonds registered in the name of DTC or its nominee shall be made in accordance with the Letter of Representations.

The Bonds shall be payable solely out of the Parity Bond Account. The Bonds shall not be general obligations of the City.

Section 8. <u>Redemption and Open Market Purchase of Bonds</u>.

(a) <u>Optional Redemption</u>. All or some of the Bonds may be subject to redemption at the option of the City at the times and on the terms set forth in the Bond Resolution.

(b) <u>Mandatory Redemption</u>. The City shall redeem any Term Bonds, if not redeemed under the optional redemption provisions set forth in the Bond Resolution or purchased in the open market under the provisions set forth below, by lot (or in such other manner as the Bond Registrar shall determine) at par plus accrued interest on the dates and in the years and principal amounts as set forth in the Bond Resolution.

If the City redeems Term Bonds under the optional redemption provisions set forth in the Bond Resolution or purchases Term Bonds in the open market as set forth below, the Term Bonds so redeemed or purchased (irrespective of their redemption or purchase price) shall be credited at the par amount thereof against the remaining mandatory redemption requirements in a manner to be determined by the Director of Finance or, if no such determination is made, on a pro-rata basis.

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(c) Partial Redemption. Whenever less than all of the Bonds of a single series and maturity are to be redeemed, the Bond Registrar shall select the Bonds or portions thereof to be redeemed from the Bonds of that series and maturity by lot, or in such other manner as the Bond Registrar shall determine, except that, so long as the Bonds are registered in the name of DTC or its nominee, DTC shall select the Bonds or portions thereof to be redeemed in accordance with the Letter of Representations. In no event shall any Bond be outstanding in a principal amount that is not an authorized denomination.

Portions of the principal amount of any Bond, in integral multiples of $5,000, may be redeemed unless otherwise provided in the Bond Resolution. If less than all of the principal amount of any Bond is redeemed, upon surrender of that Bond at either of the principal offices of the Bond Registrar, there shall be issued to the Registered Owner, without charge therefor, a new Bond (or Bonds, at the option of the Registered Owner) of the same series, maturity and interest rate in any of the denominations authorized by the Bond Resolution in the aggregate total principal amount remaining unredeemed.

(d) Open Market Purchase. 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 acceptable to the City plus accrued interest to the date of purchase. The principal amount of Term Bonds purchased pursuant to this Section 8 shall be credited at the par amount thereof against the next mandatory redemption requirement that is at least 60 days after the date of purchase, or as otherwise directed by the Director of Finance.

(e) Bonds to be Canceled. All Bonds purchased or redeemed under this Section 8 shall be canceled.

Section 9. Notice of Redemption. The City shall cause notice of any intended redemption of Bonds to be given not less than 30 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Registered Owner of any Bond to be redeemed at the address appearing on the Bond Register at the time the Bond Registrar prepares the notice, and the requirements of this sentence shall be deemed to have been fulfilled when

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notice has been mailed as so provided, whether or not it is actually received by the Registered Owner of any Bond. Interest on Bonds called for redemption shall cease to accrue on the date fixed for redemption unless the Bond or Bonds called are not redeemed when presented pursuant to the call. In addition, the redemption notice shall be mailed by the Bond Registrar within the same period, postage prepaid, to the Rating Agencies, at their offices in New York, New York, or their successors, to any provider of Qualified Insurance or Alternate Security for the Bonds, and to such other persons and with such additional information as the Director of Finance shall determine or as specified in the Bond Resolution, but none of these additional mailings shall be a condition precedent to the redemption of Bonds.

Section 10. **Failure to Redeem Bonds.** If any Bond is not redeemed when properly presented at its maturity or call date, the City shall be obligated to pay interest on that Bond at the same rate provided in the Bond from and after its maturity or call date until that Bond, principal, premium, if any, and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Parity Bond 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 11. **Form and Execution of Bonds.** The Bonds shall be typed, photocopied, printed or lithographed on good bond paper in a form consistent with the provisions of this ordinance, the Bond Resolution and State law, shall be signed by the Mayor of The City of Seattle and Director of Finance, 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 substantially the following form (with the designation, year, and series of the Bonds completed consistent with this ordinance), manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance:

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CERTIFICATE OF AUTHENTICATION

This Bond is one of the fully registered The City of Seattle, Washington, Drainage and Wastewater Refunding Revenue Bonds, [YEAR], [SERIES], described in the Bond Ordinance.

Bond Registrar

By _____
Authorized Signer

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

If any officer whose 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, delivered and issued 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 12. **Bond Registrar; Appointment of Other Agents.** 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 SMC Chapter 5.10 establishing a system of registration for the City's bonds and obligations, as that chapter now exists or may be amended.

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

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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 fifteen (15) days prior to a maturity date of the principal 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 Registered 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 the Registered Owners of the Bonds.

Section 13. **Finding of Sufficiency of Revenues.** A series of Bonds will be issued only if the City finds and determines in the Bond Resolution that (a) the issuance and sale of the Bonds is in the best interest of the City and in the public interest, and (b) the Gross Revenues, at the rates established from time to time consistent with Section 15(a) of this ordinance, will be sufficient, in the judgment of the City, to meet all expenses of operation and maintenance of the Drainage and Wastewater System and to provide the amounts previously pledged for the payment of all outstanding obligations payable out of the Gross Revenue (including Outstanding Parity Bonds) and pledged herein for the payment of the Bonds. In making such findings and determinations, the City shall have had due regard to the cost of operation and maintenance of the Drainage and Wastewater System and to any portion of the Gross Revenues pledged for the payment of any bonds, warrants or other indebtedness.

Section 14. **Security for Parity Bonds; Flow of Funds.**

(a) **Pledge; Lien and Charge of Parity Bonds.** The Net Revenue is pledged for the payment of the Parity Bonds. This pledge shall constitute a lien and charge upon such Net Revenue prior and superior to any other liens and charges whatsoever. *Upon the redemption or*

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defeasance of all outstanding 1995 Bonds, all ULID Assessments shall be pledged to the payment of the Parity Bonds.

(b) <u>Priority Expenditure of Gross Revenue</u>. So long as any Parity Bonds are outstanding, all Gross Revenue, except for earnings on investments in the Parity Bond Account or other bond redemption fund, arbitrage rebate account, refunding escrow account or other trust account, unless those earnings are transferred from those accounts or funds to the Drainage and Wastewater Fund, shall be deposited as received in the Drainage and Wastewater Fund and shall be used, paid out and distributed in the following order of priority (by paragraphs):

(i) To pay, together with any other money made available for such purpose, the Operating and Maintenance Expense;

(ii) To make the required payments into the Principal and Interest Subaccount for all Parity Bonds;

(iii) To make the required payments into the Reserve Subaccount for all Parity Bonds;

(iv) To make all required payments into any revenue bond redemption fund created to pay and secure the payment of the principal of and interest on any revenue bonds or short-term obligations of the City having a lien and charge upon the Net Revenue of the Drainage and Wastewater System subordinate to the lien thereon for the payment of the principal of and interest on Parity Bonds; and

(v) To redeem and retire any sewer revenue bonds of the City then outstanding or to purchase any or all of those bonds in the open market at a price not in excess of the price at which those bonds could be redeemed at the next call date; to make necessary additions, betterments, repairs, extensions and replacements of the Drainage and Wastewater System or other purposes proper to its maintenance and operation, including the payment of any City taxes or payments in lieu of taxes payable from Gross Revenue of the Drainage and Wastewater System, or for any other lawful Drainage and

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Wastewater System purpose, *including, upon the redemption or defeasance of all then outstanding 1995 Bonds, to make deposits to the Rate Stabilization Account.*

The City may transfer from any funds or accounts of the City legally available therefor, except bond redemption funds, any money therein to meet the required payments to be made into the Parity Bond Account.

(c) <u>Parity Bond Account; Deposit of Net Revenue</u>. The Parity Bond Account has been created in the Drainage and Wastewater Fund as a special fund of the City, which account is divided into two subaccounts, a Principal and Interest Subaccount and a Reserve Subaccount. So long as any Parity Bonds are outstanding against the Parity Bond Account, the City obligates and binds itself to set aside and pay into the Parity Bond Account from the Drainage and Wastewater Fund out of the Net Revenue certain fixed amounts without regard to any fixed proportion, namely:

(i) Into the Principal and Interest Subaccount, on or before each interest or principal and interest payment date, money which, together with the money already deposited in that account, is sufficient to pay the interest or principal and interest (as the case may be) due that date (including any mandatory redemption, mandatory sinking fund or optional redemption payments) on the Parity Bonds; and

(ii) Into the Reserve Subaccount an amount necessary to provide for the Reserve Requirement for the Parity Bonds within the time and in the manner required by this ordinance. The amount necessary to satisfy the Reserve Requirement upon the issuance of the Bonds may be funded (i) on the date of issue of the Bonds, by a deposit from the proceeds of the Bonds or by an Alternate Security or (ii) in annual installments from Net Revenue so that the Reserve Requirement is fully funded by the fifth anniversary of the date of issue of the Bonds. The manner of funding the Reserve Requirement for the Bonds shall be specified in the Bond Resolution.

Upon the redemption or defeasance of all then outstanding 1995 Bonds, the City shall pay into the Parity Bond Account all ULID Assessments on their collection.

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(d) Reserve Subaccount. The City covenants and agrees that it will at all times maintain in the Reserve Subaccount an amount equal to the Reserve Requirement for all Parity Bonds, except for withdrawals therefrom as authorized herein, until there is a sufficient amount in the Principal and Interest Subaccount and Reserve Subaccount to pay the principal of and interest on all outstanding Parity Bonds, at which time the money in the Reserve Subaccount may be used to pay any such principal and interest so long as the money remaining on deposit in the Reserve Subaccount is no less than the Reserve Requirement of the remaining outstanding Parity Bonds.

If there shall be a deficiency in the Principal and Interest Subaccount to meet maturing installments of either principal of or interest on any of the Parity Bonds, such deficiency shall be made up from the Reserve Subaccount by the withdrawal of cash therefrom. Any deficiency created in the Reserve Subaccount by reason of any such withdrawal will then be made up from the Net Revenue of the Drainage and Wastewater System which shall be first available after making necessary provisions for the required payments into the Principal and Interest Subaccount.

(e) Investment of Money in Parity Bond Account. All money in the Parity 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 Subaccount) or the last maturity of any outstanding Parity Bonds (for investments in the Reserve Subaccount). In no event shall any money in the Parity Bond Account or any other money reasonably expected to be used to pay principal and/or interest on the Parity Bonds be invested at a yield which would cause the Bonds to be arbitrage bonds within the meaning of Section 148 of the Code. Income from investments in the Principal and Interest Subaccount shall be deposited in that subaccount. Income from investments in the Reserve Subaccount shall be deposited in that subaccount until the amount therein is equal to the Reserve Requirement for all Parity Bonds, and thereafter shall be deposited in the Principal and Interest Subaccount.

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

Notwithstanding the provisions for deposit or retention of earnings in the Parity Bond Account, any earnings which are subject to a federal tax or rebate requirement may be withdrawn from the Parity Bond Account for deposit in a separate fund or account for that purpose. If no longer required for such rebate, money in that separate fund or account shall be returned to the Parity Bond Account.

(f) Failure to Deposit Money in Parity Bond Account. If the City fails to set aside and pay into the Parity Bond Account, including the Reserve Subaccount, the amounts set forth above, the Registered Owner of any of the outstanding Parity Bonds may bring action against the City and compel such setting aside and payment. *Upon the redemption or defeasance of all of the then outstanding 1995 Bonds, a Registered Owner of Parity Bonds may bring an action against the City for failure to make the required deposits to the Parity Bond Account only in accordance with Section 25 of this ordinance.*

(g) Provision for Maintenance and Operation Expense. It is declared that in creating the Parity Bond Account and in fixing the amounts to be paid into it as provided in paragraphs (c) and (d) of this Section 14, the City Council has had due regard for Operating and Maintenance Expense (and cost of maintenance and operation as contemplated by RCW 35.67.130), and is not setting aside into the Parity Bond Account a greater amount than in the judgment of the City Council, based on the rates to be established from time to time consistent with Section 15(a), will be available over and above such Operating and Maintenance Expense (and such cost of maintenance and operation).

Section 15. Parity Bond Covenants. The City covenants and agrees with the owner of each of the Parity Bonds as follows:

(a) **Rates and Charges; Coverage Requirement.** It will establish, maintain, revise as necessary and collect such rates and charges for drainage and wastewater service furnished

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which will produce Net Revenue *(or, upon the redemption or defeasance of all then outstanding 1995 Bonds, Adjusted Net Revenue)* available for debt service each calendar year at least equal to the Coverage Requirement. It will not change any rate or charge for drainage and wastewater service as now established by the existing rate ordinance or ordinances of the City that will substantially reduce the annual Gross Revenue of the Drainage and Wastewater System below that which would have been obtained before such change unless the City shall have on file a certificate from an Independent Consulting Engineer or a certified public accountant experienced in drainage and wastewater system rates and charges, stating the rates and charges as so changed will provide Gross Revenue of the Drainage and Wastewater System sufficient to comply with all the covenants and requirements of this ordinance, including the Coverage Requirement.

Upon the redemption or defeasance of all then-outstanding 1995 Bonds, 1998 Bonds, 1999 Bonds, 2001 Bonds, 2001 Bonds and 2004 Bonds, this paragraph (a) shall be replaced in its entirety with the following:

(a) ***Rates and Charges; Coverage Requirement.*** *It will establish, maintain, revise as necessary and collect such rates and charges for services and facilities provided by the Drainage and Wastewater System so that Adjusted Net Revenue in each fiscal year will be at least equal to the Coverage Requirement. The failure of the City to comply with this paragraph (a) shall not be an Event of Default under this ordinance if the City promptly retains an Independent Consulting Engineer to recommend to the City Council adjustments in the rates of the Drainage and Wastewater System necessary to meet the requirements of this paragraph (a) and if the City Council adopts the recommended modifications within 180 days of the date the failure became known to the City Council.*

(b) Maintenance of Drainage and Wastewater System. It will at all times maintain and keep the Drainage and Wastewater System in good repair, working order and condition, including, from time to time, making or causing to be made all necessary and proper repairs,

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renewals and replacements so that at all times the operation of such system shall be properly and advantageously conducted, and will at all times operate the Drainage and Wastewater System and the business in connection therewith in an efficient manner and at a reasonable cost.

(c) **Sale of Drainage and Wastewater System.** It will not sell, lease, mortgage, or in any manner encumber or dispose of all of the property of the Drainage and Wastewater System unless provision is made for the payment into the Parity Bond Account of an amount sufficient to pay the principal of and interest on Parity Bonds then outstanding; and it will not sell, lease, mortgage, or in any manner encumber or dispose of any part of the property of the Drainage and Wastewater System that is used, useful and material to the operation thereof, except consistent with one or more of the following:

(i) if provision is made for replacement thereof, or for payment into the Parity Bond Account of the total amount of Gross Revenue received from the portion of the Drainage and Wastewater System sold, leased, mortgaged, encumbered or disposed of which shall not be less than an amount which shall bear the same ratio to the amount of Parity Bonds then outstanding as the Gross Revenue available for debt service for such outstanding bonds for the twelve (12) months preceding such sale, lease, mortgage, encumbrance or disposal from the portion of the Drainage and Wastewater System sold, leased, mortgaged, encumbered or disposed of bears to the Gross Revenue available for debt service for the then outstanding Parity Bonds from the entire Drainage and Wastewater System of the City for the same period. Any such money so paid into the Parity Bond Account shall be used to retire such Parity Bonds at the earliest possible date; or

(ii) *upon the redemption or defeasance of all then outstanding 1995 Bonds, if the aggregate depreciated cost value of the property being encumbered or disposed of under this subparagraph (ii) in any fiscal year comprises no more than five percent (5%) of the total assets of the Drainage and Wastewater System; or*

(iii) *upon the redemption or defeasance of all then outstanding Outstanding Parity Bonds, if the proceeds from such transfer are used to acquire new useful operating*

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facilities or properties of the Drainage and Wastewater System, or are used to retire outstanding Parity Bonds or other revenue obligations of the Drainage and Wastewater System, if, at the time of such transfer, the City has on file a a certificate of both the Director of Finance and the Director of Seattle Public Utilities (or any officer who succeeds to substantially all of the responsibilities of either office) demonstrating that in their opinion, upon such transfer and the use of proceeds of the transfer as proposed by the City, the remaining facilities of the Drainage and Wastewater System will retain their operational integrity and, based on the financial statements for the most recent fiscal year available, the proposed transfer would not prevent the Drainage and Wastewater System from complying with the Coverage Requirement during the five fiscal years following the fiscal year in which the transfer is to occur. The certificate shall take into account, (A) the reduction in revenue and expenses, if any, resulting from the transfer; (B) the use of any proceeds of the transfer for the redemption of Parity Bonds, (C) the estimate of revenue from customers anticipated to be served by any additions to and betterments and extensions of the Drainage and Wastewater System financed in part by the proposed portion of the proceeds of the transfer, and (D) any other adjustment permitted in the preparation of a certificate under Section 17(d) of this ordinance. Before such a transfer, the City also must obtain confirmation from each of the Rating Agencies to the effect that the rating then in effect will not be reduced or withdrawn upon such transfer.

(d) <u>Books and Records</u>. It will, while any of the Bonds remain outstanding, keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the Drainage and Wastewater System, and it will furnish the Registered Owner(s) of the Bonds or any subsequent Registered Owner(s) thereof, at the written request of such Registered Owner(s), complete operating and income statements of the Drainage and Wastewater System in reasonable detail covering any fiscal year not more than six months after the close of such fiscal year and it will grant any Registered Owner(s) of at least twenty-five (25) percent of the outstanding Bonds the right at all reasonable times to inspect the entire Drainage and Wastewater System and all records, accounts and data of the City relating thereto. Upon

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request of any Registered Owner of any of the Bonds, it also will furnish to such Registered Owner a copy of the most recently completed audit of the City's accounts by the State Auditor of Washington.

(e) **Operating and Maintenance Expense.** It will pay all Operating and Maintenance Expense and otherwise meet the obligations of the City as herein set forth.

Section 16. Preservation of Tax Exemption for Interest on Bonds. The City covenants that it will take all actions consistent with the terms of the Bonds, this ordinance and the Bond Resolution reasonably within its power and 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 the 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 has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the City is a bond issuer whose arbitrage certifications may not be relied upon.

Section 17. Future Parity Bond Conditions. The City further covenants with the owner of each of the Bonds for as long as any of the Bonds are outstanding that it will not create any special account or fund or accounts or funds for the payment of the principal of and interest on any other revenue obligations or issue any other revenue obligations which will have any priority over or which will rank on a parity with the payments required by this ordinance to be made out of the Net Revenue of the Drainage and Wastewater System nor will it issue Future Parity Bonds, except that it reserves the right for

First, the purpose of acquiring, constructing and installing additions to, and betterments and improvements and extensions of, acquiring necessary equipment for, or making necessary replacements of or repairs or capital improvements to the Drainage and Wastewater System pursuant to an adopted system or plan of additions thereto and betterments and improvements thereof, or

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Second, the purpose of refunding by exchange or purchasing and retiring or advance refunding by call and payment at or prior to their maturity any part or all of the outstanding Parity Bonds, or

Third, other purposes then permitted by law,

to issue Future Parity Bonds therefor, and to make payments into the Parity Bond Account from the Net Revenue sufficient to pay the principal of and interest on such Future Parity Bonds and to maintain a reserve therefor as hereinafter required, which payments may rank equally with the payments out of the Net Revenue required to be made into the Parity Bond Account by this ordinance, if the following conditions and requirements are met and complied with at the time of the issuance of such Future Parity Bonds:

(a) At the time of issuance of such Future Parity Bonds, there shall not be a deficiency in either the Principal and Interest Subaccount or the Reserve Subaccount in the Parity Bond Account.

(b) The Parity Bond Ordinance authorizing Future Parity Bonds shall provide for the creation of a sinking fund account in the Parity Bond Account for any Term Bonds to be issued and for regular payments to be made into such account for the payment of the principal of such Term Bonds on or before their maturity, or, as an alternative, the mandatory redemption of such Term Bonds prior to their maturity date (except for a portion of such Term Bonds scheduled for redemption on their maturity date) from money in the Principal and Interest Account.

(c) The Parity Bond Ordinance authorizing such Future Parity Bonds shall provide for the payment of the principal thereof and interest thereon out of the Parity Bond Account and shall further provide for the payment from the Net Revenue *(and, after the redemption or defeasance of all outstanding 1995 Bonds, from ULID Assessments)* or from proceeds of those Future Parity Bonds or from an Alternate Security, or by more than one, the Reserve Requirement of such Future Parity Bonds, except if such Future Parity Bonds are issued for the purpose of refunding any outstanding Parity Bonds, the amount of such reserve allocated to such bonds being so refunded shall be retained or used as a reserve for such refunding Future Parity

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Bonds or used to retire outstanding Bonds or outstanding Future Parity Bonds pursuant to the refunding plan, which reserve amount shall be replaced in the same manner and within the same time as required for additional Future Parity Bonds, or such reserve may remain in the Reserve Subaccount to be used as the reserve for remaining Parity Bonds. To the extent that the Reserve Requirement is not funded with proceeds of such Future Parity Bonds or by an Alternate Security, it shall be funded by equal annual deposits from Net Revenue *(and, after the redemption or defeasance of all then outstanding 1995 Bonds, from ULID Assessments)* so that it is fully deposited in the Reserve Subaccount by the fifth anniversary date of the date of the Future Parity Bonds.

Immediately prior to the issuance of Future Parity Bonds, amounts then deposited in the Reserve Subaccount shall be valued as determined on the most recent annual financial report of the City applicable to the Drainage and Wastewater System, and the additional amounts, if any, needed to be deposited into the Reserve Subaccount to satisfy the Reserve Requirement shall be based on that valuation.

(d) At the time of the issuance of such Future Parity Bonds, the City shall have on file a certificate of the Director of Seattle Public Utilities or a certificate from an Independent Consulting Engineer or a certified public accountant experienced in Drainage and Wastewater System rates and charges showing that in his or her professional opinion the Net Revenue will be equal to the Coverage Requirement. However, if Future Parity Bonds proposed to be so issued are for the sole purpose of refunding outstanding Parity Bonds, such certification of coverage shall not be required if the Annual Debt Service in each year for the refunding bonds is not increased over the amount required for the bonds to be refunded thereby and the maturities of those refunding bonds are not extended beyond the maturities of the bonds to be refunded thereby.

The certificate, in estimating the Net Revenue or Adjusted Net Revenue, as applicable, shall use the historical Gross Revenue for any twelve (12) consecutive months out of the twenty-four (24) months immediately preceding the month of delivery of the Future Parity

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Bonds. The Gross Revenue may be adjusted to reflect any changes in rates in effect and being charged or expressly committed by ordinance of the City Council to be made in the future; may include income derived from customers of the Drainage and Wastewater System that have become customers during the twelve (12)-consecutive-month period or thereafter adjusted to reflect one year's net revenue from such customers; may include revenues from any customers to be connected to the Drainage and Wastewater System who have paid the required connection charges; may include the revenue to be derived from any person, firm, corporation or municipal corporation under any executed contract for Drainage or Wastewater service which revenue was not included in the historical Gross Revenue; and may include an estimate of the Gross Revenue to be derived by the City from customers with improved property available to connect to any additions to and improvements and extensions of the Drainage and Wastewater System to be paid for out of the proceeds of the sale of the additional Future Parity Bonds or other additions to and improvements and extensions of the Drainage and Wastewater System then under construction and not fully connected to the facilities of the Drainage and Wastewater System when such additions, improvements and extensions are completed.

Actual or reasonably anticipated changes in the Operating and Maintenance Expense subsequent to such twelve (12)-month period shall be added or deducted, as is applicable. The use of money other than Gross Revenue for the payment of Operating and Maintenance Expense shall not exceed per year an amount used for that purpose during the twelve (12) months immediately preceding the date of issuance of the Future Parity Bonds.

Nothing contained in the provisions for Future Parity Bonds shall prevent the City from issuing revenue bonds or other obligations having a lien on the Gross Revenue subordinate to the lien of the Bonds and any Future Parity Bonds.

Upon the redemption or defeasance of all then outstanding 1995 Bonds, all references to "Net Revenue" in this Section 17(d) shall be changed to "Adjusted Net Revenue."

Upon the redemption or defeasance of all then outstanding 1995 Bonds, as an alternative to the certificate required under this Section 17(d), the City, at its option, may provide a

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certificate of the Director of Finance or the Director of Seattle Public Utilities demonstrating that during any twelve consecutive calendar months out of the immediately preceding twenty-four (24) calendar months Adjusted Net Revenue was at least equal to the Coverage Requirement for all Parity Bonds plus the Future Parity Bonds proposed to be issued (and assuming that the debt service of the proposed Future Parity Bonds for that twelve-month period was the Average Annual Debt Service for those proposed bonds).

Upon the redemption or defeasance of all then-outstanding 1995 Bonds, 1998 Bonds, 1999 Bonds, 2001 Bonds, 2002 Bonds and 2004 Bonds, this Section 17(d) shall be replaced in its entirety with the following:

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

(1) a certificate of the Director of Finance demonstrating that during any twelve consecutive calendar months out of the immediately preceding 24 calendar months Adjusted Net Revenue was at least equal to the Coverage Requirement for all Parity Bonds plus the Future Parity Bonds proposed to be issued (and assuming that the debt service of the proposed Future Parity Bonds for that twelve-month period was the Average Annual Debt Service for those proposed bonds); or

(2) a certificate of both the Director of Finance and the Director of Seattle Public Utilities (or any officer who succeeds to substantially all of the responsibilities of either office) that in their opinion the Adjusted Net Revenue for the five fiscal years next following the earlier of (A) the end of the period during which interest on those Future Parity Bonds is to be capitalized or, if no interest is capitalized, the fiscal year in which the Future Parity Bonds are issued, or (B) the date on which substantially all new facilities financed with those Future Parity Bonds are expected to commence operations, such Adjusted Net Revenue further adjusted as provided in paragraphs (i) through (iv) below, will be

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at least equal to the Coverage Requirement. That certificate 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 Drainage and Wastewater 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 Drainage and Wastewater System who have paid the required connection charges, adjusted to reflect one year's net revenue from those customers;

(iii) Their 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 Drainage and Wastewater System.

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

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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, or revenue bonds that are a charge or lien upon the Gross Revenue subordinate to the charge or lien of the Parity Bonds, or from pledging the payment of ULID assessments into a bond redemption fund created for the payment of the principal of and interest on those junior lien bonds as long as such ULID assessments are levied for improvements constructed from the proceeds of those junior lien bonds.

(e) Upon the redemption or defeasance of all then outstanding 1995 Bonds, the Parity Bond Ordinance authorizing the Future Parity Bonds shall provide that all ULID Assessments shall be paid directly into the Parity Bond Account.

Section 18. **Continuing Disclosure.** The City shall undertake to provide for the benefit of holders of the Bonds disclosure of certain financial information and operating data of the type included in the final official statement for the Bonds, as well as disclosure of certain material events respecting the Bonds, in the manner and to the extent required by United States Securities and Exchange Commission Rule 15c2-12(b)(5). The particular terms of any such Undertaking shall be set forth in the Bond Resolution.

Section 19. **Refunding and Defeasance.** If the City shall issue refunding bonds pursuant to the laws of the State, or have money available from any other lawful source, to pay the principal of and interest on the Bonds or such portion thereof included in the refunding or defeasance plan as the same become due and payable and to refund or defease such then outstanding Bonds and to pay the costs of refunding or defeasance, and shall have set aside irrevocably in a special fund for and pledged to such payment, refunding or defeasance, money and/or Government Obligations sufficient in amount, together with known earned income from the investments thereof, to make such payments and to accomplish the refunding or defeasance as scheduled (hereinafter called the "trust account"), and shall make irrevocable provisions for redemption of such Bonds, then in that case all right and interest of the owners of the Bonds to be so retired, refunded or defeased (hereinafter collectively called the "defeased Bonds") in the

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covenants of this ordinance, in the Gross Revenue of the Drainage and Wastewater System, and funds and accounts obligated to the payment of such defeased Bonds, other than the right to receive the funds so set aside and pledged, thereupon shall cease and become void, except such owners shall have the right to receive payment of the principal of and interest on the defeased Bonds from the trust account. After the establishing and full funding of such trust account, the City then may apply any money in any other fund or account established for the payment or redemption of the defeased Bonds to any lawful purposes as it shall determine, subject only to the rights of the owners of any other Parity Bonds then outstanding.

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

Section 20. **Sale of Bonds.** At least 10 days before the City Council adopts a Bond Resolution for a series of Bonds, the Director of Finance shall notify the President of the City Council, in writing, of the Director of Finance's determination that the issuance of the series of Bonds is consistent with the then-current financial policies of the City. The notice shall set forth the reasons for the Director of Finance's determination. Upon giving such notice, the Director of Finance may provide for the sale of that series of Bonds (or any portion thereof) by public sale or by a negotiated sale with an underwriter or other financial institution chosen through a selection process acceptable to the Director of Finance. The City Council's adoption of the Bond Resolution shall be conclusive evidence that proper notice was provided to the President of the City Council. The Director of Finance is authorized to specify a date and time of sale of the

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Bonds, to give notice of that sale, to determine any bid requirements and criteria for determining the award of the bid, to provide for the use of an electronic bidding mechanism, and to specify other matters in his or her determination necessary, appropriate, or desirable to carry out the sale of the Bonds. The terms of that sale shall be consistent with this ordinance and the Bond Resolution and shall be confirmed by the Bond Resolution. The Bonds shall be delivered to the purchasers as provided in the Bond Resolution immediately upon payment to the City of the purchase price plus accrued interest, if any, to the Closing Date in immediately available federal funds in Seattle, Washington, at the City's expense or at another time or place upon which the Director of Finance and the purchaser may mutually agree at the purchaser's expense.

CUSIP numbers will be printed on the Bonds if requested by the purchasers, but neither failure to print CUSIP numbers on any Bond nor error with respect thereto shall constitute cause for a failure or refusal by the purchasers to accept delivery of and pay for the Bonds in accordance with the purchase offer. All expenses in relation to the printing of CUSIP numbers on the Bonds shall be paid by the City, but the fee of the CUSIP Service Bureau for the assignment of those numbers shall be the responsibility of and shall be paid by the purchasers.

The City will cause the Bonds to be typed, photocopied, printed or lithographed, sealed and executed and will furnish the approving legal opinion of Bond Counsel, the opinion also being printed on each Bond unless the Bond is typed or photocopied.

Section 21. <u>Supplemental or Amendatory Ordinances</u>.

(a) This ordinance shall not be supplemented 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 may from time to time and at any time, without the consent of or notice to the Registered Owners of the Bonds, pass supplemental or amendatory ordinances for the following purposes:

(1) To cure any formal defect, omission, inconsistency or ambiguity in this ordinance in a manner not adverse to the owner of any Parity Bonds;

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(2) To impose upon the Bond Registrar (with its consent) for the benefit of the 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 to 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 comply with any future federal law or interpretation to preserve the exclusion of the interest on the Bonds from gross income for federal income tax purposes;

(6) To authorize different denominations of the Bonds and to make correlative amendments and modifications to this ordinance regarding exchangeability of Bonds of different authorized denominations, redemptions of portions of Bonds of particular authorized denominations and similar amendments and modifications of a technical nature; and

(7) To modify, alter, amend or supplement this ordinance in any other respect which is not materially adverse to the owners of the Bonds and which does not involve a change described in subsection (c) of this Section.

Before the City shall adopt any such supplemental or amendatory 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 or amendatory ordinance is authorized or permitted by this ordinance and will, upon the execution and delivery thereof, 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.

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(c) (1) Except for any supplemental or amendatory ordinance entered into pursuant to subsection (b) of this Section, subject to the terms and provisions contained in this subsection (c) and not otherwise, Registered Owners of not less than sixty percent (60%) in aggregate principal amount of the Bonds then outstanding shall have the right from time to time to consent to and approve the passage by the City Council of any supplemental or amendatory 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 the Bonds then outstanding, 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 Bond, or a reduction in the principal amount or redemption price of any outstanding Bond or a change in the method of redemption or redemption price of any outstanding Bond or a change in the method of determining the rate of interest thereon, or

(ii) A preference or priority of any Bond or Bonds over any other Bond or Bonds, or

(iii) A reduction in the aggregate principal amount of Bonds, the consent of the Registered Owners of Bonds of which is required for any such supplemental or amendatory ordinance.

(2) If at any time the City shall adopt any supplemental or amendatory ordinance for any of the purposes of this subsection (c), the Bond Registrar shall cause notice of the proposed supplemental or amendatory ordinance to be given by first class United States Mail to all Registered Owners of the then outstanding Bonds and to the Rating Agencies. Such notice shall briefly set forth the nature of the proposed supplemental or amendatory 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 outstanding Bonds.

(3) Within two years after the date of the mailing of such notice, the City may adopt such supplemental or amendatory ordinance in substantially the form described

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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 Bonds, and (ii) an opinion of Bond Counsel, stating that such supplemental or amendatory 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.

(4) If Registered Owners of not less that the percentage of Bonds required by this subsection (c) shall have consented to and approved the execution and delivery thereof as herein provided, no owner of the Bonds shall have any right to object to the adoption of such supplemental or amendatory 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 adoption thereof, or to enjoin or restrain the City or the Bond Registrar from adopting the same or from taking any action pursuant to the provisions thereof.

(d) Upon the execution and delivery of any supplemental or amendatory ordinance pursuant to the provisions of this Section, 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 owners of Bonds then outstanding shall thereafter be determined, exercised and enforced under this ordinance subject in all respects to such modifications and amendments.

Section 22. **Separate Utility Systems.** *Upon the maturity, redemption or defeasance of all the 1995 Bonds*, the City may create, acquire, construct, finance, own and operate one or more additional systems for drainage and wastewater or other commodity or service relating to the Drainage and Wastewater System. The revenue of that 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 of the Drainage and Wastewater System shall be pledged by the City to the payment of any obligations of a separate utility system except (1) as a

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Contract Resource Obligation upon compliance with Section 23 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 23. <u>Contract Resource Obligations</u>. *Upon the maturity, redemption or defeasance of all the 1995 Bonds*, the City may at any time enter into one or more Contract Resource Obligations for the acquisition, from facilities to be constructed, of drainage and wastewater or other commodity or service relating to the Drainage and Wastewater System. The City may determine that, and may agree under a Contract Resource Obligation to provide that all payments under that Contract Resource Obligation (including payments prior to the time that drainage and wastewater or other commodity or service is being provided, or during a suspension or after termination of supply or service) shall be an Operating and Maintenance Expense if the following requirements are met at the time such a Contract Resource Obligation is entered into:

(a) No Event of Default as defined in Section 25 of this ordinance has occurred and is continuing.

(b) There shall be on file a certificate of an Independent Consulting Engineer stating that (i) the payments to be made by the City in connection with the Contract Resource Obligation are reasonable for the commodity or service rendered; (ii) any facilities to be constructed to provide the commodity or service are sound from a drainage and wastewater service or other commodity or service planning standpoint, are technically and economically feasible in accordance with prudent utility practice, and are likely to provide supply or transmission no later than a date set forth in the Independent Consulting Engineer's certification; and (iii) the Adjusted Net Revenue (further adjusted by the Independent Consulting Engineer'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 Adjusted Net Revenue is estimated by the Independent Consulting Engineer in accordance with the provisions of and adjustments permitted in Section 17(d) of this ordinance, 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 23 shall be deemed to prevent the City from entering into other agreements for the acquisition of drainage and wastewater services or other commodity or service from existing facilities and from treating those payments as Operating and Maintenance

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Expenses. Nothing in this Section 23 shall be deemed to prevent the City from entering into other agreements for the acquisition of drainage and wastewater services 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 the Parity Bonds.

Section 24. Rate Stabilization Account. The Rate Stabilization Account has been created as a separate account in the Drainage and Wastewater Fund. Upon the redemption or defeasance of all the 1995 Bonds, the City may at any time, as determined by the City and as consistent with Section 14(b), deposit in the Rate Stabilization Account Gross Revenue and any other money received by the Drainage and Wastewater System and available to be used therefor. The City may withdraw any or all of the money from the Rate Stabilization Account for inclusion in the Adjusted Gross Revenue for any fiscal year of the Drainage and Wastewater System. Such deposits or withdrawals may be made up to and including the date ninety (90) days after the end of the fiscal year for which the deposit or withdrawal will be included as Adjusted Gross Revenue.

No deposit of Gross Revenue shall 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 fiscal year.

Section 25. Defaults and Remedies.

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

(1) If a default is made in the payment of the principal of or interest on any of the 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 in any Parity Bond Ordinance (except as otherwise provided herein or in such Parity Bond Ordinance) and such default or defaults have continued for a period of six months after they have received

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from the Bondowners' Trustee (as defined below) or from the Registered Owners of not less than twenty-five percent (25%) in principal amount of the 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 (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 (6) months after written notice has been given to remedy the default and is diligently pursuing such remedy.

(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 twenty-five percent (25%) in principal amount of the Parity Bonds, 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 Section 25 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, by an instrument or concurrent instruments in writing signed and acknowledged by such Registered Owners of the Bonds 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.

In the event that 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

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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) <u>Suits at Law or in Equity</u>. 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 then twenty-five percent (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 25 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 Bondowners' Trustee 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

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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) <u>Application of Money Collected by Bondowners' Trustee</u>. Any money collected by the Bondowners' Trustee at any time pursuant to this Section 25 shall be applied in the following order of priority:

(i) 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

(ii) 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

(iii) 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 hereto), 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

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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 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 Bond Owners Restricted. 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:

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

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

(iii) 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

(iv) the Registered Owners of twenty-five percent (25%) in principal amount of the Parity Bonds, 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

(v) 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

(vi) 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 Registered Owners thereof when due.

(g) <u>Failure to Comply With Undertaking</u>. Notwithstanding anything in this Section 25 to the contrary, the failure of the City or any obligated person to comply with the Undertaking adopted by the Bond Resolution pursuant to Section 18 shall not constitute an Event of Default under this ordinance, the Bond Resolution or the Bonds, and the sole remedy of any holder of a Bond shall be to seek an order of specific performance from an appropriate court to compel the City to comply with the Undertaking.

Section 26. <u>Execution of Refunding Plan</u>.

(a) <u>Appointment of Refunding Trustee</u>. Consistent with the applicable requirements of the Refunded Bond Legislation and any applicable agreements with Bond Insurers, the Director

CITY CLERK

of Finance may serve as, or appoint the Refunding Trustee for each series of Bonds, which service or appointment shall be confirmed by the Bond Resolution.

(b) Use of Bond Proceeds; Acquisition and Substitution of Acquired Obligations. For each series of Bonds, sufficient proceeds of the sale of the Bonds shall be deposited immediately upon the receipt thereof with the Refunding Trustee and used to pay the amounts required by the Refunding Plan to discharge the obligations of the City with respect to the applicable Refunded Bonds. The Refunding Plan shall be carried out, and proceeds of the Bonds shall be applied, in accordance with this ordinance, the respective Refunded Bond Legislation, the Bond Resolution and the laws of the State. 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 shall be listed and more particularly described in a schedule attached to the Refunding Trust Agreement, and shall be subject to substitution as set forth therein. 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 Water Fund to be used for any lawful 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 the Refunded Bond Legislation, this ordinance, the Bond Resolution, 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

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Refunding Trustee 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 Counsel's fees and other related expenses, shall be paid out of the proceeds of the Bonds.

(d) Authorization for Refunding Trust Agreement. To carry out the Refunding Plan for each series of Bonds, the Director of Finance is authorized and directed to execute and deliver to the Refunding Trustee, in connection with each series of Bonds, a Refunding Trust Agreement substantially in the form approved by the Bond Resolution 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 in the Bond Resolution.

Section 27. Call for Redemption of the Refunded Bonds. As a part of the Refunding Plan, the City may in the Bond Resolution call the Refunded Bonds for redemption. Such call for redemption of the Refunded Bonds shall specify the Refunded Bonds, call dates and redemption prices, and shall be irrevocable after the delivery to the initial purchaser of the applicable series of Bonds. The dates on which the Refunded Bonds are called for redemption shall be, in the judgment of the Director of Finance, the earliest practical dates on which 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 applicable Refunded Bond Legislation in order to effect the redemption prior to maturity of the Refunded Bonds.

Section 28. City Finding with Respect to Refunding. With respect to each series of Bonds, the Refunding Plan shall be carried out only if the City finds and determines in the Bond Resolution that the money to be deposited with the Refunding Trustee will discharge and satisfy the obligations of the City with respect to the Refunded Bonds under the applicable Refunded Bond Legislation, and the pledges, charges, trusts, covenants and agreements of the City therein

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made or provided for as to the Refunded Bonds, and that the Refunded Bonds shall no longer be deemed to be outstanding under such legislation immediately upon the deposit of such money with the Refunding Trustee.

Section 29. **General Authorization.** The Mayor and the Director of Finance of the City and each of the other appropriate officers of the City are each authorized and directed to do everything as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this ordinance. In particular, and without limitation, the Director of Finance may, in his or her discretion and without further action by the City Council, (i) issue requests for proposals for underwriting or financing facilities and execute engagement letters with underwriters, bond insurers or other financial institutions based on responses to such requests, (ii) deem final and approve the distribution of any preliminary official statement or official statement relating to the Bonds, (iii) comply with any continuing disclosure requirements applicable to the Bonds and (iv) change the Bond Registrar or any securities depository appointed for the Bonds.

Section 30. **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 31. **Ratification of Prior Acts.** Any action taken consistent with the authority but prior to the effective date of this ordinance, including, if applicable, but not limited to issuing requests for proposals for financing or underwriting services, executing engagement letters for financing or underwriting services based on responses to such requests, giving notices

CITY CLERK

of the sale of Bonds, adopting the Bond Resolution, executing contracts, making fund transfers and paying warrants, is ratified, approved and confirmed.

Section 32. **Headings.** Section headings in this ordinance are used for convenience only and shall not constitute a substantive portion of this ordinance.

Section 33. **Effective Date.** This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 26th day of September, 2005, and signed by me in open session in authentication of its passage this 26th day of September, 2005.

President _____ of the City Council

Approved by me this 3rd day of October, 2005.

Gregory J. Nickels, Mayor

Filed by me this 3rd day of October, 2005.

City Clerk

(SEAL)

CITY CLERK

City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

August 30, 2005

Honorable Jan Drago
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Drago:

I am pleased to transmit the attached proposed Council Bill that provides authorization for the refunding of Seattle Public Utilities' Drainage and Wastewater revenue bonds. The authorization, which covers both outstanding bonds and bonds to be issued in the future, will remain in effect for ten years. The City Council approved similar legislation for general obligation bonds last year, which resulted in a $3.4 million present value savings.

Interest rates in recent years have been unusually volatile. There have been times when this has made it difficult for the City to access the bond market in the timeliest, most advantageous, manner because of the long lead time required for the passage of refunding legislation on a case-by-case basis. The proposed legislation requires the Director of Finance to notify the City Council in writing at least ten days prior to any refunding bond issue, confirming that the proposed refunding meets the requirements of applicable City financial policies. As is the case in all of the City's bond issues, the Council must pass a Resolution accepting the terms of the refunding at the time the bonds are issued.

The refunding authorization proposed in this Bill will make it possible for the City to react in a more timely manner when conditions in the bond market present refunding opportunities, thereby maximizing potential savings. Thank you for your consideration of this legislation. Should you have questions, please contact Michael van Dyck at 684-8347.

Sincerely,

for

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749
Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: mayors.office@seattle.gov
An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.

DNS CITY CLERK

EXHIBIT A

CITY OF SEATTLE
Outstanding Drainage and Wastewater Parity Bonds

Drainage & Wastewater Utility Revenue Bonds				
Issue Name	Dated Date	Original Par Amount	Outstanding Balance 6/30/05	Bond Legislation
Drainage and Wastewater Utility Improvement and Refunding Revenue Bonds, 1995	12/1/1995	$40,390,000	$33,660,000	Ordinance 117875 and Resolution 29260
Drainage and Wastewater Revenue Bonds, 1998	5/15/1998	$24,170,000	$21,150,000	Ordinance 118974 and Resolution 29765
Drainage and Wastewater Revenue Bonds, 1999	10/1/1999	$55,000,000	$50,780,000	Ordinance 119620 and Resolution 30039
Drainage and Wastewater Revenue Bonds, 2001	7/1/2001	$60,680,000	$57,585,000	Ordinance 120386 and Resolution 30347
Drainage and Wastewater Revenue and Refunding Bonds, 2002	12/1/2002	$78,550,000	$76,010,000	Ordinance 120386, Ordinance 120965 and Resolution 30548
Drainage and Wastewater Revenue Bonds, 2004	10/28/2004	$62,010,000	$62,010,000	Ordinance 121551 and Resolution 30716

ENS CITY CLERK

Form revised December 9, 2004

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
SPU/DOF	Nick Pealy/684-7646	Michael Van Dyck/684-8347

Legislation Title:
AN ORDINANCE relating to the drainage and wastewater system of The City of Seattle; authorizing the issuance and sale of drainage and wastewater system revenue bonds, in one or more series, for the purpose of paying all or part of the costs of refunding certain of the City's drainage and wastewater system revenue bonds and issuing and selling the bonds; providing for terms, covenants and manner of sale of the bonds; describing the lien of the bonds; and providing for agreements and activities in connection with the disposition of the proceeds of the bonds.

- **Summary of the Legislation:** This legislation provides authorization for the refunding of Seattle Public Utilities' outstanding and future Drainage & Wastewater System revenue bonds for a period of ten years.

- **Background:** Market interest rates in recent years have been unusually volatile. When rates fall, substantial savings may be realized if the City can act quickly to refund (refinance) its outstanding bonds. When a refunding opportunity emerges, there may not be sufficient time for the City to follow its normal process of drafting, reviewing, and adopting an authorizing ordinance. The attached legislation authorizes the City to refund any of its outstanding Drainage & Wastewater System revenue bonds. Council approved similar legislation for general obligation bonds last year which resulted in a $3.4 million present value savings. This legislation would provide the same opportunity to SPU. Having in place a continuing authorization to refund outstanding bonds will enhance the ability of the City to schedule and structure its refunding bond issues so as to maximize the potential savings.

  Refundings are guided by the Council-adopted Debt Management Policies. The City's Finance Director will notify the City Council President at least 10 days in advance of any refunding of Drainage & Wastewater revenue bonds authorized by this ordinance.

- *Please check one of the following:*

____ **This legislation does not have any financial implications.** (*Stop here and delete the remainder of this document prior to saving and printing.)*

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__X__ **This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

- **What is the financial cost of not implementing the legislation?** This legislation enables the City to act quickly despite the unpredictable nature of interest rates. There are frequently market conditions under which a two or three week delay could cost many millions of dollars in lost refunding savings.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** There are no other alternatives that would achieve the same objective.

- **Is the legislation subject to public hearing requirements:** No.

- **Other Issues:** The legislation enhances existing controls over the refunding process. At least 10 days prior to any refunding bond issue, the proposed legislation requires the Director of Finance to notify the City Council in writing issue that the proposed refunding meets the requirements of applicable City financial policies. As is the case in all of the City's bond issues, the Council must pass a resolution accepting the terms of the refunding issue at the time the bonds are issued.

CITY CLERK

STATE OF WASHINGTON – KING COUNTY

--ss.

190654 No.
CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121938 ORDINANCE

was published on

10/07/05

The amount of the fee charged for the foregoing publication is the sum of $3,556.04, which amount has been paid in full.

Subscribed and sworn to before me on

10/07/05

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

City of Seattle

ORDINANCE 121938

AN ORDINANCE relating to the drainage and wastewater system of The City of Seattle; authorizing the issuance and sale of drainage and wastewater system revenue bonds, in one or more series, for the purpose of paying all or part of the costs of refunding certain of the City's drainage and wastewater system revenue bonds and issuing and selling the bonds; providing for terms, covenants and manner of sale of the bonds; describing the lien of the bonds; and providing for agreements and activities in connection with the disposition of the proceeds of the bonds.

WHEREAS, The City of Seattle (the "City") owns, maintains and operates a system of sanitary sewerage and storm and surface water drainage as part of Seattle Public Utilities (the "Drainage and Wastewater System"); and

WHEREAS, the City issued drainage and wastewater system revenue bonds pursuant to the ordinances and resolutions set forth in Exhibit A to this ordinance (the "Outstanding Parity Bonds"); and

WHEREAS, the City has determined that it is in the best interest of the City to authorize the issuance and sale, subject to the provisions of this ordinance, of drainage and wastewater system refunding revenue bonds (collectively, the "Bonds"), in one or more series, for the purpose of paying all or part of the cost of refunding all or a portion of the Outstanding Parity Bonds, the Bonds and certain drainage and wastewater system revenue bonds hereafter issued (collectively, the "Refundable Bonds") and of paying all or part of the costs of issuance and sale of the Bonds; and

WHEREAS, the City from time to time will receive, review and adopt a plan to refund selected maturities of those Refundable Bonds, which selected maturities will be identified in the Bond Resolutions (hereinafter defined); and

WHEREAS, this ordinance will allow the refunding of any Refundable Bonds only if the refunding is (a) consistent with City financial policies in effect at the time of the proposed refunding and (b) approved by resolution of the City Council; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Definitions. As used in this ordinance the words hereinafter defined shall have the meanings set forth in this section.

"Accreted Value" means (a) with respect to any Capital Appreciation Bonds, as of the time of calculation, the sum of the amount set forth in the ordinance or Bond Resolution authorizing the Capital Appreciation Bonds as the amount representing the initial principal amount of such Capital Appreciation Bonds plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date, or (b) with respect to Original Issue Discount Bonds, as of the date 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; in each case the Accreted Value shall be determined in accordance with the provisions of the ordinance or Bond Resolution authorizing the issuance of such bonds.

"Acquired Obligations" means those Government Obligations purchased to accomplish the refunding of the Refunded Bonds, consistent with the Refunded Bond Legislation and any applicable agreements with providers of Qualified Insurance or Alternate Security.

"Adjusted Gross Revenue" means, for any period, Gross Revenue plus withdrawals from the Rate Stabilization Account made during that period, and less deposits into the Rate Stabilization Account made during that period.

"Adjusted Net Revenue" means Adjusted Gross Revenue less Operating and Maintenance Expense.

"Alternate Security" means any insurance policy, collateral, security, letter of credit, standby bond purchase agreement, guaranty, surety bond, line of credit or similar credit enhancement device providing for or securing the payment of the principal of and interest on Parity Bonds, regarding the use of which the City receives (a) the approval of any Bond Insurer, and (b) written confirmation from Moody's and S&P to the effect that the use of such Alternate Security will not cause a reduction in any then-existing ratings for any of the Parity Bonds.

"Annual Debt Service" for any calendar year means the sum of the amounts required in such calendar year to pay:

(a) the interest due in such calendar year on all Parity Bonds outstanding, excluding interest to be paid from the proceeds of the sale of Parity Bonds or other bonds; and

State of Washington, King County

(b) the principal of all outstanding Serial Bonds due in such calendar year; and

(c) the Sinking Fund Requirement, if any, for such calendar year.

For purposes of this definition, the principal and interest portions of the Accreted Value of Capital Appreciation Bonds becoming due at maturity or by virtue of a Sinking Fund Requirement shall be included in the calculations of accrued and unpaid and accruing interest or principal in such manner and during such period of time as is specified in any Parity Bond Ordinance authorizing such Capital Appreciation Bonds.

For purposes of calculating and determining compliance with the Reserve Requirement and conditions for the issuance of Future Parity Bonds and/or entering into Parity Payment Agreements the following shall apply:

1. Generally. Except as otherwise provided by subparagraph 2 with respect to Variable Interest Rate Bonds and by subparagraph 3 below with respect to Parity Bonds with respect to which a Payment Agreement is in force, interest on any issue of Parity Bonds shall be calculated based on the actual amount of accrued, accreted or otherwise accumulated interest that is payable in respect of that issue taken as a whole, at the rate or rates set forth in the applicable Parity Bond 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 that is ninety percent (90%) of the average RBI during the four calendar quarters preceding the quarter in which the calculation is made.

3. Interest 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 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 produced by the following: (a) 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 (b) 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. Accordingly, the amount of interest deemed to be payable on any Parity Bonds with respect to which a Payment Agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in those Parity Bonds plus Payment Agreement Payments minus Payment Agreement Receipts. For the purposes of calculating as nearly as practicable Payment Agreement Receipts and Payment Agreement Payments under a Payment Agreement that includes a variable rate component determined by reference to a pricing mechanism or index that is not the same as the pricing mechanism or index used to determine the variable rate interest component on the Parity Bonds to which the Payment Agreement is related, it shall be assumed that the fixed rate used in calculating Payment Agreement Payments will be equal to 105% of the fixed rate specified by the Payment Agreement and that the pricing mechanism or index specified by the Payment Agreement is the same as the pricing mechanism or index specified by the Parity Bonds. Notwithstanding the other provisions of this subparagraph 3, the City shall not be required to (but may in its discretion) take into account in determining Annual Debt Service the effects of any Payment Agreement that has a term of ten (10) years or less.

4. 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 subparagraph 3 of this definition. 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, payments on that Parity Payment Agreement shall be taken into account by assuming:

(A) 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 assumed fixed payor rate, 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 four calendar quarters preceding the quarter in which the calculation is made, and

(B) 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 four calendar quarters 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.

"Average Annual Debt Service" means, at the time of calculation, the sum of the Annual Debt Service remaining to be paid to the last scheduled maturity of the applicable issue or series of Parity Bonds divided by the number of years such bonds are scheduled to remain outstanding.

"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 Insurance Policy" means a municipal bond new issue insurance policy issued by the Bond Insurer and approved by the City Council by the Bond Resolution or by ordinance, and guaranteeing the timely payment of principal of and interest on any issue of Parity Bonds in accordance with the terms of that policy.

"Bond Insurer" means an insurance company or other financial institution that provides a Bond Insurance Policy.

"Bond Register" means the books or records maintained by the Bond Registrar for the purpose of registration of the Bonds.

"Bond Registrar" or "Registrar" means the fiscal agency of the State of Washington, or any successor bond registrar selected by the City, whose duties include the registration and authentication of the Bonds, maintenance of the Bond Register, effecting transfer of ownership of the Bonds, and paying the principal of and premium, if any, and interest on the Bonds.

"Bond Resolution" means the resolution or resolutions of the City Council adopted pursuant to this ordinance to specify certain additional provisions of each series of the Bonds and their sale.

"Bonds" means the refunding bonds issued in one or more series from time to time pursuant to, under the authority of and for the purposes provided in this ordinance.

"Capital Appreciation Bonds" means any revenue obligations of the Drainage and Wastewater System all or a portion of the interest on which is compounded and accumulated at the rates and on the dates set forth in the ordinance or Bond Resolution authorizing those obligations and is payable only upon redemption or on the maturity date of such obligations. Obligations which 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 Seattle, Washington.

"City Council" means the City Council of the City.

"Code" means the Internal Revenue Code of 1986, or any successor thereto, as it has been and may be amended from time to time, and regulations thereunder.

"Closing Date" means the date on which a series of Bonds is delivered to the initial purchaser or purchasers thereof upon payment in full therefor.

"Contract Resource Obligation" means an obligation of the City, designated as a Contract Resource Obligation and entered into pursuant to Section 23 of this ordinance.

"Coverage Requirement" means, with respect to the Parity Bonds, Net Revenue and money from any other lawful source at least equal to 1.25 times the Average Annual Debt Service. *Upon the redemption or defeasance of all of the then outstanding 1995 Bonds, "Coverage Requirement" shall be defined as follows: "Coverage Requirement" means Adjusted Net Revenue at least equal to 1.25 times Average Annual Debt Service.*

"DTC" means The Depository Trust Company, New York, New York, as initial Securities Depository for the Bonds.

"Drainage and Wastewater Fund" means the fund created by Ordinance 84390 and later renamed by Ordinance 114155.

"Drainage and Wastewater System" means the drainage and wastewater system of the City, including the sanitary sewerage and storm drainage systems (except properties, interests, and rights under the jurisdiction of the City's Parks and Recreation Department, Seattle Center Department, Seattle Public Utilities Water System, City Light Department and Fleets and Facilities Department), as the same may be added to, improved and extended for as long as any Parity Bonds are outstanding. *Upon the redemption or defeasance of all of the then outstanding 1995 Bonds, "Drainage and Wastewater System" shall include any utility systems of the City hereinafter combined with the Drainage and Wastewater System, but not any separate utility system that may be created, acquired or constructed by the City as provided in Section 22 of this ordinance.*

"Director of Finance" means the Director of the Finance of the City, or any successor thereto.

"Future Parity Bonds" means any and all revenue bonds and obligations of the Drainage and Wastewater System (other than the Bonds) issued hereafter the payment of the principal of and interest on which constitutes a lien and charge upon the Gross Revenue on a parity with the lien and charge upon such Gross Revenue for the Outstanding Parity Bonds and the Bonds. Future Parity Bonds may include Parity Payment Agreements and any other obligations issued in compliance with Section 17.

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

"Gross Revenue" means (a) all income, revenues, receipts and profits derived by the City through the ownership and operation of the Drainage and Wastewater System; (b) the proceeds received by the City directly or indirectly from the sale, lease or other disposition of any of the properties, rights or facilities of the Drainage and Wastewater System; (c) Payment Agreement Receipts, to the extent that such receipts are not offset by Payment Agreement Payments; and (d) the investment income earned on money held in any fund or account of the City, including any bond redemption funds and the accounts therein, in connection with the ownership and operation of the Drainage and Wastewater System, Gross Revenue does not include: (a) insurance proceeds compensating the City for the loss of a capital asset; (b) income derived from investments irrevocably pledged to the payment of any defeased bonds payable from Gross Revenue; (c) investment income set aside for or earned on money in any fund or account created or maintained solely for the purpose of complying with the arbitrage rebate provisions of the Code; (d) any gifts, grants, donations or other funds received by the City from any State or federal agency or other person if such gifts, grants, donations or other funds are the subject of any limitation or reservation imposed by the donor or grantor or imposed by law or administrative regulation to which the donor or grantor is subject, limiting the application of such funds in a manner inconsistent with the application of Gross Revenue hereunder; (e) the proceeds of any borrowing for capital improvements (or the refinancing thereof); (f) the proceeds of any liability or other insurance (excluding business interruption insurance or other insurance of like nature insuring against the loss of revenues); and (g) general ad valorem taxes, excise taxes and special assessments, including interest and penalties thereon. *Upon the redemption or defeasance of all of the then outstanding 1995 Bonds, Gross Revenue also shall not include earnings of any separate utility system that may be created, acquired, or constructed by the City pursuant to Section 22 of this ordinance.*

"Independent Consulting Engineer" means the independent person(s) or firm(s) selected by the City having a favorable reputation for skill and experience with drainage and wastewater systems of comparable size and character to the Drainage and Wastewater System in such areas as and relevant to the purposes for which they were retained.

"Letter of Representations" means, for each series of Bonds, the Letter of Representations relating to the Bonds to be delivered by the City to DTC.

"Maximum Annual Debt Service" means, at the time of calculation, the maximum amount of Annual Debt Service which shall become due in the current calendar year or in any future calendar year on any outstanding Parity Bonds.

"Moody's" means Moody's Investors Service, Inc.

"Net Revenue of the Drainage and Wastewater System" or "Net Revenue" means the Gross Revenue less Operating and Maintenance Expense paid from Gross Revenue.

"Operating and Maintenance Expense" means all reasonable expenses incurred by the City in causing the Drainage and Wastewater System to be operated and maintained in good repair, working order and condition, including without limitation payments (other than payments out of proceeds of Parity Bonds or other obligations not issued to pay current expenses of the Drainage and Wastewater System) into reasonable reserves for items of operating or maintenance expense the payment of which is not immediately required, payments of premiums for insurance, if any, on the Drainage and Wastewater System, and any State-imposed taxes, and also including all payments made to another municipal corporation or other agency for treatment or disposal of sewage, but excluding depreciation and amortization, and any City taxes imposed or levied on the Drainage and Wastewater System or Gross Revenue or payments in lieu of taxes payable from the Gross Revenue of the Drainage and Wastewater System, and payments of claims or judgments. Accounting for those expenses shall be in accordance with generally accepted accounting principles. *Upon the redemption or defeasance of all of the then outstanding 1995 Bonds, Operating and Maintenance Expense also shall include amounts due under any Contract Resource Obligation under the conditions described in Section 23 of this ordinance.*

"Original Issue Discount Bonds" means revenue obligations of the Drainage and Wastewater System which are sold at an initial public offering price of less than ninety-five percent (95%) of their face value and which are specifically designated as Original Issue Discount Bonds by the ordinance or Bond Resolution under which such obligations are issued.

"Outstanding Parity Bonds" means the then outstanding 1995 Bonds, 1998 Bonds, 1999 Bonds, 2001 Bonds, 2002 Bonds and 2004 Bonds, as described in Exhibit A.

"Parity Bond Account" means the "Drainage and Wastewater Revenue Bond Account, 1990" created by Ordinance 115098 in the Drainage and Wastewater Fund for the purpose of paying and securing the principal of and interest on Parity Bonds.

"Parity Bond Ordinance" means any ordinance or Bond Resolution passed or adopted by the City Council providing for the issuance of Parity Bonds, and any other ordinance or Bond Resolution amending or supplementing the provisions of any Parity Bond Ordinance as originally passed or adopted or as theretofore amended or supplemented.

"Parity Bonds" means the Outstanding Parity Bonds, the Bonds and any outstanding Future Parity Bonds.

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

"Payment Agreement" means a written contract entered into, for the purpose of managing or reducing the City's exposure to fluctuations or levels of interest rates or for other interest rate, investment, asset or liability management purposes, by the City and a Qualified Counterparty on either a current or forward basis as authorized by any applicable laws of the State in connection with, or incidental to, the issuance, incurring or carrying of particular bonds, notes, bond anticipation notes, commercial paper or other obligations for borrowed money, or lease, installment purchase or other similar financing agreements or certificates of participation therein, that provides for an exchange of payments based on interest rates, ceilings or floors on such payments, options on such payments, or any combination thereof or any similar device.

"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 Investments" means any legal investment permitted for money of the City.

"Principal Amount" means, at the time of calculation, (a) with respect to any Capital Appreciation Bond, the Accreted Value thereof (the difference between the stated amount to be paid at maturity and the Accreted Value being deemed unearned interest), and (b) with respect to any Original Issue Discount Bond, the Accreted Value thereof, unless the ordinance or Bond Resolution under which such obligation was issued shall specify a different amount, in which case, the terms of the ordinance or Bond Resolution shall control.

"Principal and Interest Subaccount" means the subaccount of that name created in the Parity Bond Account by Ordinance 115098 for the payment of the principal of and interest on Parity Bonds.

"Qualified Counterparty" means a party (other than the City or a person related to the City) who is the other party to a Payment Agreement and who is qualified to act as the other party to a Payment Agreement under any applicable laws of the State.

"Qualified Insurance" means any municipal bond insurance policy or surety bond issued by any insurance company licensed to conduct an insurance business in any state of the United States (or by a service corporation acting on behalf of one or more such insurance companies) which insurance company or companies, as of the time of issuance of such policy or surety bond, are rated in one of the two highest rating categories by Moody's and S&P or their comparably recognized business successors.

"Rate Stabilization Account" means the account of that name previously established by Section 26 of Ordinance 118974.

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

"RBI" means *The Bond Buyer* Revenue Bond Index or comparable index, or, if no

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passage by the City Council of any supplemental or amendatory 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 the Bonds then outstanding, 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 Bond, or a reduction in the principal amount or redemption price of any outstanding Bond or a change in the method of redemption or redemption price of any outstanding Bond or a change in the method of determining the rate of interest thereon, or

(ii) A preference or priority of any Bond or Bonds over any other Bond or Bonds, or

(iii) A reduction in the aggregate principal amount of Bonds, the consent of the Registered Owners of Bonds of which is required for any such supplemental or amendatory ordinance.

(2) If at any time the City shall adopt any supplemental or amendatory ordinance for any of the purposes of this subsection (c), the Bond Registrar shall cause notice of the proposed supplemental or amendatory ordinance to be given by first class United States Mail to all Registered Owners of the then outstanding Bonds and to the Rating Agencies. Such notice shall briefly set forth the nature of the proposed supplemental or amendatory 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 outstanding Bonds.

(3) Within two years after the date of the mailing of such notice, the City may adopt such supplemental or amendatory 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 Bonds, and (ii) an opinion of Bond Counsel, stating that such supplemental or amendatory 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.

(4) If Registered Owners of not less that the percentage of Bonds required by this subsection (c) shall have consented to and approved the execution and delivery thereof as herein provided, no owner of the Bonds shall have any right to object to the adoption of such supplemental or amendatory 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 adoption thereof, or to enjoin or restrain the City or the Bond Registrar from adopting the same or from taking any action pursuant to the provisions thereof.

(d) Upon the execution and delivery of any supplemental or amendatory ordinance pursuant to the provisions of this Section, 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 owners of Bonds then outstanding shall thereafter be determined, exercised and enforced under this ordinance subject in all respects to such modifications and amendments.

Section 22. Separate Utility Systems. *Upon the maturity, redemption or defeasance of all the 1995 Bonds,* the City may create, acquire, construct, finance, own and operate one or more additional systems for drainage and wastewater or other commodity or service relating to the Drainage and Wastewater System. The revenue of that 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 of the Drainage and Wastewater 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 23 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 23. Contract Resource Obligations. *Upon the maturity, redemption or defeasance of all the 1995 Bonds,* the City may at any time enter into one or more Contract Resource Obligations for the acquisition, from facilities to be constructed, of drainage and wastewater or other commodity or service relating to the Drainage and Wastewater System. The City may determine that, and may agree under a Contract Resource Obligation to provide that all payments under that Contract Resource Obligation (including payments prior to the time that drainage and wastewater or other commodity or service is being provided, or during a suspension or after termination of supply or service) shall be an Operating and Maintenance Expense if the following requirements are met at the time such a Contract Resource Obligation is entered into:

(a) No Event of Default as defined in Section 25 of this ordinance has occurred and is continuing.

(b) There shall be on file a certificate of an Independent Consulting Engineer stating that (i) the payments to be made by the City in connection with the Contract Resource Obligation are reasonable for the commodity or service rendered; (ii) any facilities to be constructed to provide the commodity or service are sound from a drainage and wastewater service or other commodity or service planning standpoint, are technically and economically feasible in accordance with prudent utility practice, and are likely to provide supply or transmission no later than a date set forth in the Independent Consulting Engineer's certification; and (iii) the Adjusted Net Revenue (further adjusted by the Independent Consulting Engineer'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 Adjusted Net Revenue is estimated by the Independent Consulting Engineer in accordance with the provisions of and adjustments permitted in Section 17(d) of this ordinance, 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 23 shall be deemed to prevent the City from entering into other agreements for the acquisition of drainage and wastewater services or other commodity or service from existing facilities and from treating those payments as Operating and Maintenance Expenses. Nothing in this Section 23 shall be deemed to prevent the City from entering into other agreements for the acquisition of drainage and wastewater services 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 the Parity Bonds.

Section 24. Rate Stabilization Account. The Rate Stabilization Account has been created as a separate account in the Drainage and Wastewater Fund. Upon the redemption or defeasance of all the 1995 Bonds, the City may at any time, as determined by the City and as consistent with Section 14(b), deposit in the Rate Stabilization Account Gross Revenue and any other money received by the Drainage and Wastewater System and available to be used therefor. The City may withdraw any or all of the money from the Rate Stabilization Account for inclusion in the Adjusted Gross Revenue for any fiscal year of the Drainage and Wastewater System. Such deposits or withdrawals may be made up to and including the date ninety (90) days after the end of the fiscal year for which the deposit or withdrawal will be included as Adjusted Gross Revenue.

No deposit of Gross Revenue shall 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 fiscal year.

Section 25. Defaults and Remedies.

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

(1) If a default is made in the payment of the principal of or interest on any of the 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 in any Parity Bond Ordinance (except as otherwise provided herein or in such Parity Bond Ordinance) and such default or defaults have continued for a period of six months after they have received from the Bondowners' Trustee (as defined below) or from the Registered Owners of not less than twenty-five percent (25%) in principal amount of the 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 (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 (6) months after written notice has been given to remedy the default and is diligently pursuing such remedy.

(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 twenty-five percent (25%) in principal amount of the Parity Bonds, 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 Section 25 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, by an instrument or concurrent instruments in writing signed and acknowledged by such Registered Owners of the Bonds 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.

In the event that 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 then twenty-five percent (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 25 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 Bondowners' Trustee 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 25 shall be applied in the following order of priority:

(i) 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

(ii) 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

(iii) 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 hereto), 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 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 Bond Owners Restricted. 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:

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

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

(iii) 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

(iv) the Registered Owners of twenty-five percent (25%) in principal amount of the Parity Bonds, 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

(v) 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

(vi) 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 Registered Owners thereof when due.

(g) **Failure to Comply With Undertaking.** Notwithstanding anything in this Section 25 to the contrary, the failure of the City or any obligated person to comply with the Undertaking adopted by the Bond Resolution pursuant to Section 18 shall not constitute an Event of Default under this ordinance, the Bond Resolution or the Bonds, and the sole remedy of any holder of a Bond shall be to seek an order of specific performance from an appropriate court to compel the City to comply with the Undertaking.

Section 26. Execution of Refunding Plan.

(a) **Appointment of Refunding Trustee.** Consistent with the applicable requirements of the Refunded Bond Legislation and any applicable agreements with Bond Insurers, the Director of Finance may serve as, or appoint the Refunding Trustee for each series of Bonds, which service or appointment shall be confirmed by the Bond Resolution.

(b) **Use of Bond Proceeds; Acquisition and Substitution of Acquired Obligations.** For each series of Bonds, sufficient proceeds of the sale of the Bonds shall be deposited immediately upon the receipt thereof with the Refunding Trustee and used to pay the amounts required by the Refunding Plan to discharge the obligations of the City with respect to the applicable Refunded Bonds. The Refunding Plan shall be carried out, and proceeds of the Bonds shall be applied, in accordance with this ordinance, the respective Refunded Bond Legislation, the Bond Resolution and the laws of the State. 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 shall be listed and more particularly described in a schedule attached to the Refunding Trust Agreement, and shall be subject to substitution as set forth therein. 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 Water Fund to be used for any lawful 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 the Refunded Bond Legislation, this ordinance, the Bond Resolution, 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 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 Counsel's fees and other related expenses, shall be paid out of the proceeds of the Bonds.

(d) **Authorization for Refunding Trust Agreement.** To carry out the Refunding Plan for each series of Bonds, the Director of Finance is authorized and directed to execute and deliver to the Refunding Trustee, in connection with each series of Bonds, a Refunding Trust Agreement substantially in the form approved by the Bond Resolution 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 in the Bond Resolution.

Section 27. Call for Redemption of the Refunded Bonds. As a part of the Refunding Plan, the City may in the Bond Resolution call the Refunded Bonds for redemption. Such call for redemption of the Refunded Bonds shall specify the Refunded Bonds, call dates and redemption prices, and shall be irrevocable after the delivery to the initial purchaser of the applicable series of Bonds. The dates on which the Refunded Bonds are called for redemption shall be, in the judgment of the Director of Finance, the earliest practical dates on which 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 applicable Refunded Bond Legislation in order to effect the redemption prior to maturity of the Refunded Bonds.

Section 28. City Finding with Respect to Refunding. With respect to each series of Bonds, the Refunding Plan shall be carried out only if the City finds and determines in the Bond Resolution that the money to be deposited with the Refunding Trustee will discharge and satisfy the obligations of the City with respect to the Refunded Bonds under the applicable Refunded Bond Legislation, 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 legislat n immediately upon the deposit of such money with the Refunding Trustee.

Section 29. General Authorization. The Mayor and the Director of Finance of the City and each of the other appropriate officers of the City are each authorized and directed to do everything as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this ordinance. In particular, and without limitation, the Director of Finance may, in his or her discretion and without further action by the City Council, (i) issue requests for proposals for underwriting or financing facilities and execute engagement letters with underwriters, bond insurers or other financial institutions based on responses to such requests, (ii) deem final and approve the distribution of any preliminary official statement or official statement relating to the Bonds, (iii) comply with any continuing disclosure requirements applicable to the Bonds and (iv) change the Bond Registrar or any securities depository appointed for the Bonds.

Section 30. 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 31. Ratification of Prior Acts. Any action taken consistent with the authority but prior to the effective date of this ordinance, including, if applicable, but not limited to issuing requests for proposals for financing or underwriting services, executing engagement letters for financing or underwriting services based on responses to such requests, giving notices of the sale of Bonds, adopting the Bond Resolution, executing contracts, making fund transfers and paying warrants, is ratified, approved and confirmed.

Section 32. Headings. Section headings in this ordinance are used for convenience only and shall not constitute a substantive portion of this ordinance.

Section 33. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 26th day of September, 2005, and signed by me in open session in authentication of its passage this 26th day of September, 2005.

JAN DRAGO,

President of the City Council.

Approved by me this 3rd day of October, 2005.

GREGORY J. NICKELS,

Mayor.

Filed by me this 3rd day of October, 2005.

(Seal) JUDITH PIPPIN,

City Clerk.

CITY OF SEATTLE
Outstanding Drainage and Wastewater Parity Bonds

Drainage & Wastewater Utility Revenue Bonds

Issue Name	Dated Date	Original Par Amount	Outstanding Balance 6/30/05	Bond Legislation
Drainage and Wastewater Utility Improvement and Refunding Revenue Bonds, 1995	12/1/1995	$40,390,000	$33,660,000	Ordinance 117873 and Resolution 29260
Drainage and Wastewater Revenue Bonds, 1998	5/15/1998	$24,170,000	$21,150,000	Ordinance 118974 and Resolution 29765
Drainage and Wastewater Revenue Bonds, 1999	10/1/1999	$55,000,000	$50,780,000	Ordinance 119620 and Resolution 30039
Drainage and Wastewater Revenue Bonds, 2001	7/1/2001	$60,680,000	$57,535,000	Ordinance 120384 and Resolution 30347
Drainage and Wastewater Revenue and Refunding Bonds, 2002	12/1/2002	$78,550,000	$76,010,000	Ordinance 120336, Ordinance 120963 and Resolution 30548
Drainage and Wastewater Revenue Bonds, 2004	10/28/2004	$62,910,000	$62,910,000	Ordinance 121551 and Resolution 30716

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of publication in the Seattle Daily Journal of Commerce, October 7, 2005.

10/7(190654)