

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 7/22/13

AGENDA ITEM: 2005 Revenue Bond Refunding Ordinance	
PREPARED BY: Sandy Langdon DEPARTMENT: Finance	DIRECTOR APPROVAL:
ATTACHMENTS: Proposed Bond Ordinance	
BUDGET CODE:	AMOUNT:

SUMMARY:

In 2005 the City issued bond in the amount of \$48,355,000 for major improvements to the water, sewer, and surface water infrastructure. Recent review of the this debt for debt service savings have estimated a potential saving in the 3.5% to 4.0% or approximately \$1.6 million net present value savings over the remaining 15 year term of the bond.

The estimated savings is based on an advanced refunding. The bonds are eligible for 100% call on April 1, 2015 and the proposal it to refund those bonds.

The proposed bond ordinance is structure to allow for the City to act quickly to any market change regarding the refunding of the bonds.

RECOMMENDED ACTION:
Consider approval of the Waterworks Utility Bond Ordinance authorizing the refunding of the 2005 Waterworks Utility bonds as prescribed.

CITY OF MARYSVILLE, WASHINGTON

ORDINANCE NO. [REDACTED]

AN ORDINANCE of the City of Marysville, Washington, relating to the waterworks utility of the City; providing for the issuance, sale and delivery of not to exceed \$45,500,000 aggregate principal amount of water and sewer revenue refunding bonds for the purpose of providing funds to pay the cost of advance refunding all or a portion of the City's callable Water and Sewer Revenue Bonds, 2005, and the cost of issuing such bonds; fixing or setting parameters with respect to certain terms and covenants of the bonds; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of the bonds and for the use and application of the money derived from those investments; authorizing the execution of one or more agreements with an escrow agent or trustee; providing for the call, payment and redemption of the outstanding bonds to be refunded; appointing the City's designated representative to approve the final terms of the sale of the bonds and to take certain other actions with respect to carrying out the refunding and issuance of the bonds; and providing for other related matters.

Passed July 22, 2013

This document prepared by:

*Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 447-4400*

TABLE OF CONTENTS*

Section 1 . Definitions..... 1

Section 2 . Findings and Determinations 8

Section 3 . Authorization of Bonds..... 9

Section 4 . Description of Bonds; Appointment of Designated Representative 9

Section 5 . Bond Registrar; Registration and Transfer of Bonds..... 10

Section 6 . Form and Execution of Bonds 11

Section 7 . Payment of Bonds 11

Section 8 . Redemption Provisions and Purchase of Bonds 11

Section 9 . Failure To Pay Bonds..... 13

Section 10 . Bond Fund..... 13

Section 11 . Rate Stabilization Account 15

Section 12 . Separate Utility Systems 15

Section 13 . Pledge of Net Revenue and Lien Position 16

Section 14 . Covenants..... 16

Section 15 . Flow of Funds 18

Section 16 . Provisions for Future Parity Bonds..... 19

Section 17 . Tax Covenants. 19

Section 18 . Amendatory and Supplemental Ordinances..... 20

Section 19 . Refunding or Defeasance of the Bonds 22

Section 20 . Deposit of Bond Proceeds; Refunding of the Refunded Bonds..... 22

Section 21 . Sale and Delivery of the Bonds. 25

Section 22 . Official Statement; Continuing Disclosure..... 26

Section 23 . General Authorization and Ratification 26

Section 24 . Severability 26

Section 25 . Effective Date of Ordinance 26

Exhibit A Parameters for Final Terms

Exhibit B Form of Undertaking to Provide Continuing Disclosure

Exhibit C Parity Conditions for Issuance of Future Parity Bonds

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

CITY OF MARYSVILLE, WASHINGTON

ORDINANCE NO.

AN ORDINANCE of the City of Marysville, Washington, relating to the waterworks utility of the City; providing for the issuance, sale and delivery of not to exceed \$45,500,000 aggregate principal amount of water and sewer revenue refunding bonds for the purpose of providing funds to pay the cost of advance refunding all or a portion of the City's callable Water and Sewer Revenue Bonds, 2005, and the cost of issuing such bonds; fixing or setting parameters with respect to certain terms and covenants of the bonds; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of the bonds and for the use and application of the money derived from those investments; authorizing the execution of one or more agreements with a refunding escrow agent or trustee; providing for the call, payment and redemption of the outstanding bonds to be refunded; appointing the City's designated representative to approve the final terms of the sale of the bonds and to take certain other actions with respect to carrying out the refunding and issuance of the bonds; and providing for other related matters.

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

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

- (a) “*2005 Bond Ordinance*” means Ordinance No. 2583 authorizing the issuance of the 2005 Bonds.
- (b) “*2005 Bonds*” means the Water and Sewer Revenue Bonds, 2005 issued by the City pursuant to the 2005 Bond Ordinance.
- (c) “*Acquired Obligations*” means the Government Obligations used to accomplish the Refunding Plan.
- (d) “*Alternate Security*” means any bond insurance, collateral, security, letter of credit, guaranty, surety bond or similar credit enhancement device providing for or securing the payment of all or part of the principal of and interest on the Parity Bonds, issued by an institution which has been assigned a credit rating at the time of issuance of the Parity Bonds secured by such Alternate Security equal to or better than the highest then-existing rating for any of the Parity Bonds.
- (e) “*Annual Debt Service*” for the applicable series of Parity Bonds for any calendar year means all the interest, plus all principal (except principal of Term Bonds due in any Term Bond Maturity Year), plus all mandatory redemption sinking fund installments for that year, less all bond interest payable from the proceeds of any such bonds in that year.

(f) “*Authorized Denomination*” means \$5,000 or any integral multiple thereof within a maturity of a Series.

(g) “*Average Annual Debt Service*” means the sum of the Annual Debt Service for the remaining calendar years to the last scheduled maturity of the applicable issue or issues of bonds divided by the number of those years.

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

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

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

(k) “*Bond Fund*” means that special fund of the City known as the Water and Sewer Revenue Bond Fund, 1993, created by Ordinance No. 1945 for the payment of the principal of and interest on the Parity Bonds.

(l) “*Bond Insurer*” means any provider of bond insurance for a series of Parity Bonds, which insurance is purchased by the City.

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

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

(o) “*Bond Registrar*” means the Fiscal Agent, or any successor bond registrar selected by the City.

(p) “*City*” means the City of Marysville, Washington, a code city duly organized and existing under the laws of the State.

(q) “*City Contribution*” means legally available money of the City, in addition to proceeds of the Bonds, necessary or advisable to accomplish the Refunding Plan, as determined by the Designated Representative.

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

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

(t) “Coverage Requirement” in any calendar year means an amount of Net Revenue of the Waterworks Utility equal to at least 1.20 times an amount equal to the Annual Debt Service that year on all Parity Bonds. For purposes of calculating the Coverage Requirement, ULID Assessments due in that year and not delinquent shall be subtracted from Annual Debt Service.

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

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

(w) “Final Terms” means the terms and conditions for the sale of a Series of the Bonds including the amount, date or dates, denominations, interest rate or rates (or mechanism for determining interest rate or rates), payment dates, final maturity, redemption rights, price, and other terms or covenants, including minimum savings for refunding bonds (if the refunding bonds are issued for savings purposes).

(x) “Finance Officer” means the Finance Director or such other officer of the City who succeeds to substantially all of the responsibilities of that office.

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

(z) “Future Parity Bond Authorizing Ordinance” means an ordinance of the City authorizing the issuance and sale and establishing the terms of Future Parity Bonds.

(aa) “Future Parity Bonds” means any and all Waterworks Utility revenue bonds of the City issued after the date of the issuance of the Bonds, the payment of the principal of and interest on which constitutes a charge or lien on the Gross Revenue of the Waterworks Utility and ULID Assessments equal in rank with the charge and lien upon such revenue and assessments required to be paid into the Bond Fund to pay and secure the payment of the principal of and interest on the Outstanding Parity Bonds and the Bonds.

(bb) “Government Obligations” has the meaning given in RCW 39.53.010, as now in effect or as may hereafter be amended and which are otherwise Legal Investments of the City at the time of such investment.

(cc) “Gross Revenue of the Waterworks Utility” or “Gross Revenue” means all of the earnings and revenues received by the City from the maintenance and operation of the Waterworks Utility and all earnings from the investment of money in the Bond Fund which earnings are deposited in the Principal and Interest Account, including any Tax Credit Subsidy Payment received in respect of Parity Bonds, and connection and capital improvement charges collected for the purpose of defraying the cost of capital facilities of the Waterworks Utility.

Gross Revenues excludes ULID Assessments and other improvement district assessments, deposits to the Rate Stabilization Account, revenue from any Separate Utility System, government grants, proceeds from the sale of Waterworks Utility property, City taxes collected by or through the Waterworks Utility, principal proceeds of bonds and earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund Waterworks Utility obligations (until commingled with other earnings and revenues of the Waterworks Utility) or held in a special account for the purpose of paying a rebate to the United States Government under the Code.

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

(ee) “*Legal Investments*” means any investments now or hereafter authorized for the City under the laws of the State.

(ff) “*Letter of Representations*” means the Blanket Issuer Letter of Representations between the City and DTC, dated November 14, 1997, as it may be amended from time to time, and any successor or substitute letter relating to the operational procedures of the Securities Depository.

(gg) “*Maintenance and Operation Expense*” means all reasonable expenses incurred by the City in causing the Waterworks Utility of the City to be operated and maintained in good repair, working order and condition, including payments made to any other municipal corporation or private entity for water supply or service and for sewage treatment and disposal service or other utility service in the event the City combines such service into the Waterworks Utility and enters into a contract for such service, but not including any depreciation or taxes levied or imposed by the City or payments to the City in lieu of taxes, or capital additions or capital replacements to the Waterworks Utility.

(hh) “*Maximum Annual Debt Service*” means the maximum amount of Annual Debt Service that will mature or come due in the current calendar year or any future calendar year on the Parity Bonds then outstanding.

(ii) “*Maximum Interest Rate*” means, with respect to any Variable Interest Rate Bond, a numerical rate of interest, set forth in the ordinance authorizing the Parity Bonds, that is the maximum rate of interest those Parity Bonds may bear at any time.

(jj) “*Net Revenue of the Waterworks Utility*” or “*Net Revenue*” means the Gross Revenue less Maintenance and Operation Expense.

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

(ll) “*Outstanding Parity Bonds*” means any Refunding Candidates that are not Refunded Bonds.

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

(nn) “*Parity Bond Authorizing Ordinance(s)*” means, as applicable to each series of Parity Bonds, the 2005 Bond Ordinance, this ordinance and any Future Parity Bond Authorizing Ordinance.

(oo) “*Parity Bonds*” means the Outstanding Parity Bonds, the Bonds and any Future Parity Bonds.

(pp) “*Parity Conditions*” means the conditions precedent to the issuance of Future Parity Bonds collectively set forth in Section 16 of the 2005 Bond Ordinance, and set forth in Exhibit C of this ordinance, which is incorporated by this reference.

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

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

(ss) “*Rate Stabilization Account*” means the account of that name created within the Waterworks Utility Fund pursuant to Section 11 of this ordinance.

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

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

(vv) “*Refunded Bonds*” means all or a portion of the Refunding Candidates selected by the Designated Representative to be refunded with the proceeds of a Series of the Bonds.

(ww) “*Refunding Candidates*” means the 2005 Bonds maturing in the years 2014 through 2028, inclusive.

(xx) “*Refunding Plan*” means (as further described in the applicable Refunding Trust Agreement):

- (1) the deposit with the Refunding Trustee of an amount of proceeds of a Series of the Bonds sufficient (together with the City Contribution, if necessary) to acquire the Acquired Obligations to be held by the Refunding Trustee with cash, if necessary;
- (2) the application of the principal of and interest on the Acquired Obligations (and any other cash balance) to the payment of interest on the Refunded Bonds when due up to and including April 1, 2015, and the call, payment and redemption of the specified Refunded Bonds on April 1, 2015 at a price of par; and

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

(yy) “*Refunding Trust Agreement*” means a refunding trust or escrow agreement between the City and the Refunding Trustee, dated as of the Issue Date of each Series of the Bonds, providing for the carrying out of the Refunding Plan.

(zz) “*Refunding Trustee*” means the trustee or escrow agent, or any successor trustee or escrow agent, designated by the Designated Representative to serve as refunding trustee to carry out the Refunding Plan.

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

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

(ccc) “*Reserve Requirement*” means for any Series of Bonds an amount equal to the difference between the Reserve Requirement for the Parity Bonds then outstanding and the least of (a) 10% of the issue price of the Parity Bonds then outstanding and the Bonds or the Future Parity Bonds proposed to be issued, (b) Maximum Annual Debt Service on the Parity Bonds then outstanding and the Bonds or the Future Parity Bonds proposed to be issued; and (c) 1.25 times Average Annual Debt Service on the Parity Bonds then outstanding and the Bonds or the Future Parity Bonds proposed to be issued, but in no event to exceed an amount equal to the least of 10% of the issue price of the Bonds or the proposed Future Parity Bonds, Maximum Annual Debt Service on those bonds and 1.25 times Average Annual Debt Service on the proposed bonds. For the purposes of determining Maximum Annual Debt Service and Average Annual Debt Service for calculating the Reserve Requirement, all Parity Bonds shall be treated as a single issue and the last scheduled maturity for any of those issues shall be used as the denominator. ***When the Outstanding Parity Bonds are no longer outstanding, the above paragraph shall be deleted and the Reserve Requirement shall mean, for all Parity Bonds, an amount equal to the lesser of (i) Maximum Annual Debt Service, (ii) 125% of Average Annual Debt Service, or (iii) 10% of the proceeds of the then-outstanding Parity Bonds. When calculating the Reserve Requirement, the City shall exclude from Annual Debt Service, an amount equal to the Tax Credit Subsidy Payments the City is scheduled to receive in respect of any Parity Bonds issued as Tax Credit Subsidy Bonds.***

For purposes of calculating the Reserve Requirement for Future Parity Bonds (including any Future Parity Bonds proposed to be issued), Variable Interest Rate Bonds shall be assumed to bear interest at a fixed rate equal to the higher of (1) the highest variable rate borne during the preceding 24 months by any outstanding variable rate water and sewer revenue bonds of the Waterworks Utility of the City or, (2) if no such Variable Interest Rate Bonds are outstanding at the time of calculation, the rate borne by other variable rate debt the interest rate for which is determined by reference to an index comparable to the index to be used to determine the interest rate on the Future Parity Bonds proposed to be issued.

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

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

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

(ggg) “*Separate Utility System*” means any water supply, sewage collection or treatment, stormwater or other utility service or facilities that may be created, acquired or constructed by the City as provided in Section 16 of this ordinance.

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

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

(jjj) “*System of Registration*” means the system of registration for the City’s bonds and other obligations set forth in Ordinance No. 1405 of the City.

(kkk) “*Tax Credit Subsidy Bond*” means any bond that is designated by the City as a “build America bond” or other type of tax credit bond, pursuant to the Code, and which is further designated as a “qualified bond” under Section 6431 of the Code (or under similar provisions of the Code providing for “direct-pay” tax credit bonds), and with respect to which the City expects to receive a Tax Credit Subsidy Payment.

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

(mmm) “*Term Bond*” means each Bond designated as a Term Bond and subject to mandatory redemption in the years and amounts set forth in the Bond Purchase Agreement or each Outstanding Parity Bond or Future Parity Bond designated as a Term Bond in the applicable Parity Bond Authorizing Ordinance.

(nnn) “*Term Bond Maturity Year*” means any last calendar year in which Term Bonds are scheduled to mature (regardless of any reservation of prior redemption rights or mandatory redemption requirements).

(ooo) “*ULID*” means Utility Local Improvement District.

(ppp) “*ULID Assessments*” means all assessments levied and collected in any ULID of the City created for the acquisition or construction of additions to and extensions and betterments of the Waterworks Utility if such assessments are pledged to be paid into the Bond Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID

Assessments shall include all installment payments plus all interest and penalties that may be due thereon.

(qqq) “*Undertaking*” means the undertaking to provide continuing disclosure entered into pursuant to Section 22 of this ordinance.

(rrr) “*Variable Interest Rate*” means a variable interest rate or rates to be borne by a series of Future Parity Bonds or any one or more maturities within a series of Future Parity Bonds. The method of computing such a variable interest rate shall be specified in the ordinance authorizing such Future Parity Bonds, which ordinance also shall specify either (i) 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 (ii) the time or times upon which any change in such variable interest rate shall become effective.

(sss) “*Variable Interest Rate Bonds*” means, for any period of time, Future Parity Bonds which bear a Variable Interest Rate during that period, except that Future Parity Bonds the interest rate or rates on which shall have been fixed for the remainder of the term thereof no longer shall be deemed to be Variable Interest Rate Bonds.

(ttt) “*Waterworks Utility*” means the waterworks utility of the City, including the sewerage system and surface water utility, and water distribution system as parts thereof, and all additions thereto and betterments and extensions thereof at any time made.

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

(a) *Waterworks Utility.* By Ordinance No. 385, passed on September 2, 1952, the then Town of Marysville, Washington, combined its water distribution system with its sewerage systems to create a combined water and sewer utility of the Town. By Ordinance No. 2245, passed on April 5, 1999, the City created and provided for the operation of a surface water utility and by Ordinance No. 2509, passed on March 22, 2004, the City combined its surface water utility with the water and sewer utility to create the Waterworks Utility of the City.

(b) *Issuance of the 2005 Bonds.* Pursuant to the 2005 Bond Ordinance, the City issued the 2005 Bonds for the purpose of paying costs of constructing the system or plan of additions to and betterments and extensions of the Waterworks Utility specified, adopted and ordered to be carried out by Ordinance No. 2511. The City reserved the right to redeem the 2005 Bonds maturing on or after April 1, 2016, prior to their maturity on or after April 1, 2015, at a price of par plus accrued interest to the date fixed for redemption. There are presently outstanding \$41,910,000 principal amount of 2005 Bonds maturing on April 1 of each of the years 2016 through 2028, inclusive, and bearing various interest rates from 4.00% to 5.125%.

(c) *The Refunding.* After due consideration, it appears to the City Council that all or a portion of the Refunding Candidates may be refunded by the issuance and sale of the water and sewer revenue refunding bonds authorized herein so that a savings will be effected by the difference between the principal and interest cost over the life of the applicable Series of the Bonds and the principal and interest cost over the life of the applicable Refunded Bonds but for such refunding, which refunding will be effected by carrying out the Refunding Plan.

(d) *Authority to Issue Future Parity Bonds.* Other than the Outstanding Parity Bonds, there are no other Parity Bonds outstanding. By the 2005 Bond Ordinance, the City provided for the issuance of Future Parity Bonds on a parity of lien with the 2005 Bonds if certain Parity Conditions are met at the time those Future Parity Bonds are issued. The City Council finds and declares that the amounts required to have been paid into the Bond Fund for the 2005 Bonds have been paid and maintained as required therein, and that all other Parity Conditions for the issuance of the Bonds as Future Parity Bonds will have been met and satisfied before the Bonds are delivered to the Purchaser.

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

(f) *The Bonds.* For the purpose of providing the funds necessary to carry out the Refunding Plan and to pay the costs of issuance and sale of the Bonds, the City Council finds that it is in the best interests of the City and its ratepayers to issue and sell the Bonds to the Purchaser, pursuant to the terms set forth in the Bond Purchase Agreement as approved by the City's Designated Representative consistent with this ordinance.

Section 3. Authorization of Bonds. The City is authorized to borrow money on the credit of the City and issue water and sewer revenue bonds in the amount of not to exceed \$45,500,000 to provide the funds necessary to carry out the Refunding Plan and to pay the costs of issuance and sale of the Bonds.

Section 4. Description of Bonds; Appointment of Designated Representative. The Finance Officer and the City's Financial Planning Manager are each appointed as the Designated Representative of the City, both with the individual authority to conduct the sale of the Bonds in the manner and upon the terms deemed most advantageous to the City, and to approve the Final Terms of the Bonds, with such additional terms and covenants as the Designated Representative deems advisable, within the parameters set forth in Exhibit A, which is attached to this ordinance and incorporated by this reference.

The Designated Representative is hereby authorized and directed on or prior to the Issue Date to take any action necessary to (1) ensure there is no deficiency in the Bond Fund on the Issue Date, (2) fully satisfy the Reserve Requirement for all Parity Bonds, including the Bonds, and (3) obtain a certificate of coverage described under the Parity Conditions, but only in the event the Designated Representative determines that such certificate is required in order to issue the Bonds as Future Parity Bonds.

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

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

(b) *Bond Registrar; Duties.* The Fiscal Agent is appointed as initial Bond Registrar. The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's paying agent for the Bonds and to carry out all of the Bond Registrar's powers and duties under this ordinance and the System of Registration. The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on each Bond. The Bond Registrar may become an Owner with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Owners.

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

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

Neither the City nor the Bond Registrar shall have any obligation to participants of any Securities Depository or the persons for whom they act as nominees regarding accuracy of any records maintained by the Securities Depository or its participants. Neither the City nor the Bond

Registrar shall be responsible for any notice that is permitted or required to be given to a Registered Owner except such notice as is required to be given by the Bond Registrar to the Securities Depository.

Section 6. Form and Execution of Bonds.

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

(b) *Authentication.* Only a Bond bearing a Certificate of Authentication in substantially the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance: "Certificate Of Authentication. This Bond is one of the fully registered City of Marysville, Washington, Water and Sewer Revenue Refunding Bonds, 2013." The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

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

Section 8. Redemption Provisions and Purchase of Bonds.

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

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

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

(d) *Notice of Redemption.* Notice of redemption of each Bond registered in the name of the Securities Depository shall be given in accordance with the Letter of Representations. Notice of redemption of each other Bond, unless waived by the Registered Owner, shall be given by the Bond Registrar not less than 20 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Registered Owner at the address appearing on the Bond Register on the Record Date. The requirements of the preceding sentence shall be satisfied when notice has been mailed as so provided, whether or not it is actually received by an Owner. In addition, the redemption notice shall be mailed or sent electronically within the same period to the MSRB (if required under the Undertaking), to each Rating Agency, and to such other persons and with such additional information as the Finance Officer shall determine, but these additional mailings shall not be a condition precedent to the redemption of any Bond.

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

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

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

Section 9. Failure To Pay Bonds. If the principal of any Bond is not paid when the Bond is properly presented at its maturity date or date fixed for redemption, the City shall be obligated to pay interest on that Bond at the same rate provided in the Bond from and after its maturity or date fixed for redemption until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Bond Fund, or in a trust account established to refund or defease the Bond, and the Bond has been called for payment by giving notice of that call to the Registered Owner.

Section 10. Bond Fund. The Bond Fund previously has been created in the office of the Finance Officer and is divided into two accounts: the Principal and Interest Account and the Reserve Account. So long as any Parity Bonds are outstanding against the Bond Fund, the City shall set aside and pay into the Bond Fund all ULID Assessments on their collection and, out of the Net Revenue of the Waterworks Utility, certain fixed amounts without regard to any fixed proportion, namely:

(a) Into the Principal and Interest Account, monthly, on or before the 20th day of each month:

- (1) beginning after the Issue Date, an amount, together with other money on deposit therein, that if multiplied by the number of remaining monthly payments to be made before the next interest payment date equals the next ensuing interest payment on the Parity Bonds, and beginning with the month after such interest payment date, an amount, together with other money on deposit therein, sufficient to pay 1/6 of the next ensuing interest payment on the Parity Bonds; and
- (2) beginning after the Issue Date, an amount, together with other money on deposit therein, that if multiplied by the number of remaining monthly payments to be made before the next principal payment date (including any mandatory redemption payment date) equals the next ensuing principal payment of the Parity Bonds (including any mandatory redemption requirement), and beginning with the month after such principal payment date (including any mandatory redemption requirement), an amount, together with other money on deposit therein, sufficient to pay 1/12 of the next ensuing principal payment of the Parity Bonds, including any mandatory redemption; and

(b) Into the Reserve Account, on the Issue Date, an amount of Bond proceeds, if necessary, together with other money on deposit therein, sufficient to fully fund the Reserve Requirement.

When the Outstanding Bonds are no longer outstanding paragraphs (a) and (b) above shall be deleted and the following paragraphs (a) and (b) shall be effective:

(a) Into the Principal and Interest Account:

- (1) before each interest payment date of the Parity Bonds, an amount that will be sufficient, together with other money on deposit therein, to pay the interest on the Parity Bonds on the next succeeding interest payment date; and*
- (2) before each principal payment date of the Parity Bonds (including any mandatory redemption requirement), an amount that will be sufficient, together with other money on deposit therein, to pay the principal of the Parity Bonds on the next succeeding Principal Payment Date, including mandatory redemption amounts due on that date with respect to any Term Bonds; and*

(b) Into the Reserve Account, an amount sufficient that the amount on deposit in the Reserve Account satisfies the Reserve Requirement for the Parity Bonds in the time and manner required by this ordinance.

Except for withdrawals authorized herein, the Reserve Account shall be maintained at the Reserve Requirement amount for all Parity Bonds at all times so long as any of such bonds are outstanding. When the total amount in the Bond Fund shall equal the total amount of principal and interest for all outstanding Parity Bonds to the last maturity thereof, no further payment need be made into the Bond Fund. Notwithstanding the first sentence of this paragraph, the Reserve Requirement may be decreased for the Parity Bonds when and to the extent the City has provided for an Alternate Security.

If there is a deficiency in the Principal and Interest Account in the Bond Fund to meet maturing installments of either principal or interest, as the case may be, that deficiency shall be made up by the withdrawal of amounts from the Reserve Account for that purpose. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up from ULID Assessment payments and the Net Revenue of the Waterworks Utility first available after making necessary provisions for the required payments into the Principal and Interest Account. The money in the Reserve Account otherwise shall be held intact and may be applied against the last outstanding Parity Bonds, except that if the Reserve Account is fully funded, any money in excess of the Reserve Requirement may be withdrawn and deposited in the Principal and Interest Account and spent for the purpose of retiring Parity Bonds or may be deposited in any other fund and spent for any other lawful Waterworks Utility purpose.

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

All money in the Bond Fund may be kept in cash or invested in Legal Investments maturing not later than the date when the funds are required for the payment of principal or interest on the outstanding Parity Bonds (for investments in the Principal and Interest Account) or having a guaranteed redemption price prior to maturity and, in no event, maturing later than

the last maturity of any remaining outstanding Parity Bonds (for investments in the Reserve Account). Earnings from investments in the Principal and Interest Account shall be deposited in that account. Income from investments in the Reserve Account shall be deposited in that account until the amount therein is equal to the Reserve Requirement for all Parity Bonds and thereafter shall be deposited in the Principal and Interest Account.

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

If the City fails to set aside and pay into the Bond Fund the amounts set forth above, the owner of any of the outstanding Parity Bonds may bring action against the City and compel such setting aside and payment.

When the Outstanding Parity Bonds are no longer outstanding, the following Section 11 shall become effective:

Section 11. Rate Stabilization Account. The City may at any time, as determined by the Finance Officer and consistent with Sections 14 and 15 of this ordinance, create the Rate Stabilization Account and deposit therein amounts from Gross Revenue of the Waterworks Utility and any other money received by the Waterworks Utility and available to be used for that purpose, excluding principal proceeds of any Future Parity Bonds. The Finance Officer may at any time withdraw money from the Rate Stabilization Account for inclusion in the Net Revenue for the current fiscal year of the Waterworks Utility, except that the total amount withdrawn from the Rate Stabilization Account in any calendar year may not exceed the total debt service of the Waterworks Utility in that year. Such deposits or withdrawals may be made up to and including the date 90 days after the end of the calendar year for which the deposit or withdrawal will be included as Net Revenue. Earnings from investments in the Rate Stabilization Account shall be deposited in that fund and shall not be included as Net Revenue unless and until withdrawn from that fund as provided in this section. The Finance Officer may also deposit earnings from investments in the Rate Stabilization Account into any Waterworks Utility fund as authorized by ordinance, and such deposits shall be included as Net Revenue in the year of deposit. No deposit may be made into the Rate Stabilization Account to the extent that such deposit would prevent the City from meeting the Coverage Requirement in the relevant calendar year.

Section 12. Separate Utility Systems. The City may create, acquire, construct, finance, own and operate one or more additional systems for water supply, sewer service, water, sewage or stormwater transmission, treatment or other commodity or utility service. The revenue of that Separate Utility System, and any utility local improvement district assessments payable solely with respect to improvements to a Separate Utility System, shall not be included in the Gross Revenue and may be pledged to the payment of revenue obligations issued to purchase, construct, condemn or otherwise acquire or expand the Separate Utility System. Neither the Gross Revenue nor the Net Revenue may be pledged to the payment of any obligations of a Separate Utility System except that the Net Revenue may be pledged on a basis subordinate to the lien of the Parity Bonds.

Section 13. Pledge of Net Revenue and Lien Position. The Net Revenue of the Waterworks Utility and ULID Assessments are pledged irrevocably by the City Council to be paid into the Bond Fund at the times and in the manner required by this ordinance for the payment of the Parity Bonds. This pledge shall constitute a lien and charge upon such Net Revenue and ULID Assessments prior and superior to any other charges whatsoever.

Section 14. Covenants. The City covenants and agrees with the Owner of each Bond at any time outstanding, as follows:

(a) Maintenance and Operation. The City will at all times maintain, preserve and keep the properties of the Waterworks Utility in good repair, working order and condition, will make all necessary and proper additions, betterments, renewals and repairs thereto, and improvements, replacements and extensions thereof, and will at all times operate or cause to be operated the properties of the Waterworks Utility and the business in connection therewith in an efficient manner and at a reasonable cost.

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

- (1) The Gross Revenue of the Waterworks Utility will at all times be sufficient to (i) pay all Maintenance and Operation Expense on a current basis, (ii) pay when due all amounts that the City is obligated to pay into the Bond Fund and the accounts therein, and (iii) pay all taxes, assessments or other governmental charges lawfully imposed on the Waterworks Utility or the revenue therefrom or payments in lieu thereof and any and all other amounts which the City may now or hereafter become obligated to pay from the Gross Revenue of the Waterworks Utility by law or contract.
- (2) The Net Revenue of the Waterworks Utility in each calendar year will be at least equal to the Coverage Requirement.
- (3) To the extent allowable by law, those to which service of the Waterworks Utility is available will be charged for that service at the prevailing rate within 30 days of the availability of that service. ***When the Outstanding Parity Bonds are no longer outstanding, this paragraph (3) shall be deleted.***

(c) Sale or Disposition of the Waterworks Utility. The City will not sell or otherwise dispose of the Waterworks Utility in its entirety unless, simultaneously with such sale or other disposition, all Parity Bonds are defeased under Section 19 of this ordinance.

The City will not sell, lease, mortgage or in any manner encumber or otherwise dispose of any part of the Waterworks Utility, including all additions and improvements thereto and extensions thereof at any time made, that are used, useful or material in the operation of the Waterworks Utility, unless provision is made for the replacement thereof or for payment into the Bond Fund of the greatest of the following:

- (1) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and accounts therein) that the Gross Revenue of the Waterworks Utility from the portion of the Waterworks Utility sold or disposed of for the preceding year bears to the total Gross Revenue of the Waterworks Utility for that period; or
- (2) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined above) that the Net Revenue from the portion of the Waterworks Utility sold or disposed of for the preceding year bears to the total Net Revenue of the Waterworks Utility for such period; or
- (3) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined above) that the depreciated cost value of the facilities sold or disposed of bears to the depreciated cost value of the entire Waterworks Utility immediately prior to such sale or disposition.

Notwithstanding any other provision of this subsection, the City in its discretion may sell or otherwise dispose of any of the works, plant, properties or facilities of the Waterworks Utility or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the Waterworks Utility, or no longer necessary, material to or useful to the operation of the Waterworks Utility, without making any deposit into the Bond Fund. In no event shall such proceeds be treated as Gross Revenue of the Waterworks Utility for purposes of this ordinance.

(d) Liens Upon the Waterworks Utility. The City will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the Gross Revenue of the Waterworks Utility, or any part thereof, prior or superior to the lien thereon for the payment of the Parity Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Gross Revenue of the Waterworks Utility, or any part thereof, prior to or superior to the lien of the Parity Bonds, or which might impair the security of the Parity Bonds.

(e) Books and Accounts. The City will keep proper books, records and accounts with respect to the operations, income and expenditures of the Waterworks Utility in accordance with proper accounting procedures and any applicable rules and regulations prescribed by the State of Washington. It will prepare annual financial and operating statements within 90 days of the close of each fiscal year showing in reasonable detail the financial condition of the Waterworks Utility as of the close of the previous year, and the income and expenses for such year, including the amounts paid into the Bond Fund and into any and all special funds or accounts created pursuant to the provisions of this ordinance, the status of all funds and accounts as of the end of such year, and the amounts expended for maintenance, renewals, replacements and capital additions to the Waterworks Utility. Such statements shall be sent to the owner of any Parity Bonds upon written request therefor being made to the City. ***When the Outstanding Parity Bonds are no longer outstanding, this paragraph (e) shall be deleted and the following paragraph (e) shall be effective: Books and Records. The City will maintain complete books and records relating to the operation of the Waterworks Utility and its financial affairs, and will***

cause such books and records to be audited annually, and cause to be prepared an annual financial and operating statement within 120 days of the close of each fiscal year, which shall be provided to any owner of Parity Bonds upon request.

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

(g) Collection of Delinquent Accounts. On at least an annual basis, the City will determine all accounts that are delinquent and will take all necessary action to enforce payment of such accounts against those property owners whose accounts are delinquent.

(h) Fire and Extended Coverage Insurance. The City at all times will carry fire and extended coverage and such other forms of insurance with responsible insurers and with policies payable to the City on such of the buildings, equipment, works, plants, facilities and properties of the Waterworks Utility as are ordinarily carried by municipal or privately owned utilities engaged in the operation of like systems, or will implement and maintain a self-insurance or an insurance pool program with reserves adequate, in the reasonable judgment of the City, to protect the Waterworks Utility and the owners of the Parity Bonds against loss.

(i) Public Liability and Property Damage Insurance. The City at all times will keep or arrange to keep in full force and effect such policies of public liability and property damage insurance with responsible insurers and with policies payable to the City against such claims for damages as are ordinarily carried by municipal or privately owned utilities engaged in the operation of like systems, or will implement and maintain a self-insurance or an insurance pool program with reserves adequate, in the reasonable judgment of the City Council, to protect the Waterworks Utility and the owners of the Parity Bonds against loss.

When the Outstanding Parity Bonds are no longer outstanding, paragraphs (h) and (i) above will be deleted and the following paragraph (h) will be effective: Insurance. The City will at all times carry fire and such other forms of insurance on such of the buildings, equipment, facilities and properties of the Waterworks Utility as are ordinarily carried on such buildings, equipment, facilities, and properties by utilities engaged in the operation of similar utility systems to the full insurable value thereof, and also will carry adequate public liability insurance at all times. The City may self insure or participate in a joint intergovernmental insurance pool or similar plan, and the cost of that insurance or self insurance shall be considered a part of Maintenance and Operating Expense.

Section 15. Flow of Funds. All ULID Assessments shall be paid into the Bond Fund as provided by Section 10. The Gross Revenue of the Waterworks Utility shall be used for the following purposes only and shall be applied in the following order of priority:

- (a) To pay the Maintenance and Operation Expense;
- (b) To pay the principal of and interest on the Parity Bonds as they come due or as the principal is required to be paid and to make all payments required to be made into any

mandatory redemption or sinking fund account created to provide for the payment of the principal of Term Bonds;

(c) To make all payments required to be made into the Reserve Account;

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

(e) To retire by redemption or purchase in the open market any outstanding revenue bonds or other revenue obligations of the Waterworks Utility, to make necessary additional betterments, improvements and repairs to or extensions and replacements of the Waterworks Utility, to make deposits into the Rate Stabilization Account or for any other lawful Waterworks Utility purposes.

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

Section 16. Provisions for Future Parity Bonds. The City reserves the right to issue Future Parity Bonds if the Parity Conditions are met and complied with at the time of the issuance of those Future Parity Bonds.

Nothing contained herein shall prevent the City from issuing revenue bonds that are a charge upon the Gross Revenue of the Waterworks Utility of the City subordinate to the lien and charge for the payment of Parity Bonds or from pledging the payment of utility local improvement district assessments into a bond redemption fund created for the payment of the principal of and interest on those junior lien bonds as long as such utility local improvement district assessments are levied for improvements constructed from the proceeds of those junior lien bonds.

Section 17. Tax Covenants.

(a) *Preservation of Tax Exemption for Interest on Bonds.* The City covenants that it will take all actions necessary to prevent interest on the Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bonds or other funds of the City treated as proceeds of the Bonds that will cause interest on the Bonds to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirements of Section 148 of the Code are applicable to the Bonds, take all actions necessary to comply (or to be treated as having complied) with those requirements in connection with the Bonds.

(b) *Post-Issuance Compliance.* The Finance Officer is authorized and directed to review and update the City's written procedures to facilitate compliance by the City with the covenants in this ordinance and the applicable requirements of the Code that must be satisfied

after the Issue Date to prevent interest on the Bonds from being included in gross income for federal tax purposes.

Section 18. Amendatory and Supplemental Ordinances.

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

(b) The City, from time to time, and at any time, without the consent of or notice to the registered owners of the Parity Bonds, may pass supplemental or amendatory ordinances as follows:

- (1) To cure any formal defect, omission, inconsistency or ambiguity in this ordinance in a manner not adverse to the owner of any Parity Bonds;
- (2) To impose upon the Bond Registrar (with its consent) for the benefit of the Registered Owners of the Bonds any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with this ordinance as theretofore in effect;
- (3) To add to the covenants and agreements of, and limitations and restrictions upon, the City in this ordinance, other covenants, agreements, limitations and restrictions to be observed by the City which are not contrary or inconsistent with this ordinance as theretofore in effect;
- (4) To confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by this ordinance of any other money, securities or funds;
- (5) To 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;
- (6) To modify, alter, amend or supplement this ordinance in any other respect which is not materially adverse to the registered owners of the Parity Bonds and which does not involve a change described in Subsection (c) of this section; and
- (7) Because of change in federal law or rulings, to maintain the exclusion from gross income of the interest on the Bonds from federal income taxation.

Before the City shall adopt any such supplemental ordinance pursuant to this subsection, there shall have been delivered to the City and the Bond Registrar an opinion of Bond Counsel stating that such supplemental ordinance is authorized or permitted by this ordinance and, upon the execution and delivery thereof, will be valid and binding upon the City in accordance with its

terms and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(c) (1) Except for any supplemental ordinance entered into pursuant to 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 60% in aggregate principal amount of the Parity 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 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 Parity 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 of redemption price of any outstanding Bond or a change in the redemption price of any outstanding Bond or a change in the method of determining the rate of interest thereon, or

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

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

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

(3) Within two years after the date of the mailing of such notice, the City may adopt such supplemental ordinance in substantially the form described in such notice, but only if there shall have first been delivered to the Bond Registrar (i) the required consents, in writing, of the registered owners of the Parity Bonds, and (ii) an opinion of bond counsel stating that such supplemental ordinance is authorized or permitted by this ordinance and, upon the execution and delivery thereof, will be valid and binding upon the City in accordance with its terms and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

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

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

Section 19. Refunding or Defeasance of the Bonds. The City may issue refunding bonds pursuant to State law or use money available from any other lawful source to carry out a refunding or defeasance plan, which may include (a) paying when due the principal of and interest on any or all of the Bonds (the “defeased Bonds”); (b) redeeming the defeased Bonds prior to their maturity; and (c) paying the costs of the refunding or defeasance. If the City sets aside in a special trust fund or escrow account irrevocably pledged to that redemption or defeasance (the “trust account”), money and/or Government Obligations maturing at a time or times and bearing interest in amounts sufficient to redeem, refund or defease the defeased Bonds in accordance with their terms, then all right and interest of the Owners of the defeased Bonds in the covenants of this ordinance and in the funds and accounts obligated to the payment of the defeased Bonds shall cease and become void. Thereafter, the Owners of defeased Bonds shall have the right to receive payment of the principal of and interest on the defeased Bonds solely from the trust account and the defeased Bonds shall be deemed no longer outstanding. In that event, the City may apply money remaining in any fund or account (other than the trust account) established for the payment or redemption of the defeased Bonds to any lawful purpose, subject only to the rights of the owners of any other Parity Bonds then outstanding.

Unless otherwise specified by the City in a refunding or defeasance plan, notice of refunding or defeasance shall be given, and selection of Bonds for any partial refunding or defeasance shall be conducted, in the manner prescribed in this ordinance for the redemption of Bonds.

Section 20. Deposit of Bond Proceeds; Refunding of the Refunded Bonds.

(a) *Appointment of the Refunding Trustee; Selection of Refunded Bonds.* The Designated Representative is authorized to appoint the Refunding Trustee and to select the Refunding Candidates to be refunded by each Series of the Bonds. The Designated Representative may choose to refund fewer than all of the Refunding Candidates. The Refunded Bonds, as selected by the Designated Representative, shall be identified in the applicable Bond Purchase Agreement and/or the applicable Refunding Trust Agreement.

(b) *Deposit of Bond Proceeds; Purchase of Acquired Obligations.* Proceeds from the sale of each Series of the Bonds in the amount sufficient to carrying out the Refunding Plan and pay the costs of issuance of the Bonds shall be deposited immediately upon the receipt thereof with the Refunding Trustee and used to discharge the obligations of the City relating to the Refunded Bonds under the 2005 Bond Ordinance by providing for the payment of the amounts required to be paid by the Refunding Plan. Such obligations shall be discharged fully by the Refunding Trustee's simultaneous purchase of 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 amounts required to be paid by the Refunding Plan. The Acquired Obligations shall be listed and more particularly described in the Refunding Trust Agreement, but are subject to substitution as set forth below. The Designated Representative is authorized and directed to approve the Acquired Obligations to be purchased. The Finance Officer is authorized to cause the City to transfer to the Refunding Trustee the City Contribution, if any, immediately preceding the Issue Date. Any Bond proceeds or other money deposited with the Refunding Trustee not needed to carry out the Refunding Plan or pay the costs of issuance of the Bonds shall be returned to the City as soon as reasonably practicable following the Issue Date. Any Bond proceeds not needed to carry out the Refunding Plan and pay the costs of issuance of the Bonds shall be deposited in the Bond Fund and used to pay interest on the applicable Series of the Bonds on the first interest payment date.

(c) *Substitution of Acquired Obligations.* Prior to the purchase of any Acquired Obligations, the City reserves the right to substitute other noncallable, nonprepayable Government Obligations ("Substitute Obligations") for any of such Acquired Obligations if, (i) in the opinion of Bond Counsel the interest on the Bonds and the Refunded Bonds will remain excluded from gross income for federal income tax purposes under Sections 103, 148 and 149(d) of the Code, and (ii) such substitution will not impair the timely payment of the amounts required to be paid by the Refunding Plan, as verified by a nationally recognized independent certified public accounting firm. The City may use any savings created by the foregoing substitution to pay interest on the Bonds on the first interest payment date.

After the purchase of Acquired Obligations by the Refunding Trustee, the City reserves the right to substitute therefor money and/or Substitute Obligations subject to the conditions that such money or Substitute Obligations held by the Refunding Trustee will be sufficient to carry out the Refunding Plan, that such substitution will not cause the Bonds and the Refunded Bonds to be arbitrage bonds within the meaning of Section 148 of the Code and regulations thereunder in effect on the date of such substitution and applicable to obligations issued on the Issue Date, and that the City obtains, at its expense: (i) a verification by a nationally recognized independent certified public accounting firm confirming that the payments of principal of and interest on the Substitute Obligations, if paid when due, and any other money held by the Refunding Trustee will be sufficient to carry out the Refunding Plan; and (ii) an opinion from Bond Counsel to the effect that the disposition and substitution or purchase of such Substitute Obligations, under the statutes, rules and regulations then in force and applicable to the Bonds or the Refunded Bonds, will not cause the interest on the Bonds or the Refunded Bonds to be included in gross income for federal income tax purposes and that such disposition and substitution or purchase is in compliance with the statutes and regulations applicable to the Bonds or the Refunded Bonds. Any surplus money resulting from the sale, transfer, other disposition or redemption of the

Acquired Obligations and the substitutions therefor shall be released from the trust estate and transferred to the City to be used to pay debt service on the Bonds.

(d) *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 pursuant to the Refunding Plan from the Acquired Obligations (or Substitute Obligations) and money deposited with the Refunding Trustee pursuant to this ordinance and the Refunding Plan. All Acquired Obligations (or Substitute Obligations) and money deposited with the Refunding Trustee and any income therefrom shall be held irrevocably, invested and applied in accordance with the provisions of the 2005 Bond Ordinance, this ordinance, chapter 39.53 RCW and other applicable laws of the State 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 Plan and costs related to the issuance, sale and delivery of the Bonds, including bond printing, rating service fees, verification fees, Bond Counsel's fees and other related expenses, shall be paid out of the proceeds of the Bonds.

(e) *Authorization for Refunding Trust Agreement.* To carry out the Refunding Plan, the Designated Representative is authorized and directed to execute and deliver to the Refunding Trustee the Refunding Trust Agreement setting forth the duties, obligations and responsibilities of the Refunding Trustee in connection with the payment, redemption and retirement of the Refunded Bonds as provided herein and stating that the provisions for payment of the fees, compensation and expenses of the Refunding Trustee set forth therein are satisfactory to it.

(f) *Call for Redemption of the Refunded Bonds.* Effective upon the Issue Date, the City calls for redemption all of the Refunded Bonds on April 1, 2015, at par plus accrued interest. Such calls for redemption shall be irrevocable after the delivery of the Bonds to the Purchaser. The date on which the Refunded Bonds are herein called for redemption is the first date on which the Refunded Bonds may be called. The Refunding Trustee is 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 2005 Bond Ordinance and the Refunding Trust Agreement in order to effect the redemption of the Refunded Bonds prior to their stated maturity dates.

(g) *Additional Findings.* Prior to the execution of any Bond Purchase Agreement, the Designated Representative must determine, on behalf of the City, that the issuance, sale and delivery of that particular Series of the Bonds will effect a net present value savings to the City and its taxpayers as set forth in paragraph (i)(2) of Exhibit A attached hereto. The City Council finds and determines that such net present value savings is a substantial savings and that achieving such net present value savings by issuing Bonds is in the best interest of the City and in the public interest. In making the finding and determination that the issuance, sale and delivery of a Series of the Bonds will effect the foregoing net present value savings, the Designated Representative shall give consideration to the fixed maturities of the Bonds of that Series and the Refunded Bonds to be refunded by such Series, the costs related to the issuance, sale and delivery of such Series and the known earned income from the investment of the proceeds of the issuance and sale of such Series and the City Contribution, if any, used in the Refunding Plan pending payment and redemption of the Refunded Bonds to be redeemed.

The Designated Representative further must find and determine that the money to be deposited with the Refunding Trustee to carry out the Refunding Plan will discharge and satisfy the obligations of the City under the 2005 Bond Ordinance with respect to the Refunded Bonds, and the pledges, charges, trusts, covenants and agreements of the City therein made or provided for as to the Refunded Bonds, and that the Refunded Bonds shall no longer be deemed to be outstanding under the 2005 Bond Ordinance immediately upon the deposit of such money with the Refunding Trustee.

Section 21. Sale and Delivery of the Bonds.

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

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

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

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

Section 22. Official Statement; Continuing Disclosure.

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

(b) *Approval of Final Official Statement.* The City approves the preparation of a final official statement for each Series of the Bonds to be sold to the public in the form of the preliminary official statement, with such modifications and amendments as the Designated Representative deems necessary or desirable, and further authorizes the Designated Representative to execute and deliver such final official statement to the Purchaser. The City authorizes and approves the distribution by the Purchaser of that final official statement to purchasers and potential purchasers of the Bonds.

(c) *Undertaking to Provide Continuing Disclosure.* To meet the requirements of paragraph (b)(5) of Rule 15c2-12, as applicable to a participating underwriter for the Bonds, the Designated Representative is authorized to execute a written undertaking to provide continuing disclosure for the benefit of holders of the Bonds in substantially the form attached as Exhibit B.

Section 23. General Authorization and Ratification. The Designated Representative and other appropriate officers of the City are severally authorized to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this ordinance, and to do everything necessary for the prompt delivery of the Bonds to the Purchaser and for the proper application, use and investment of the proceeds of the Bonds. All actions taken prior to the effective date of this ordinance in furtherance of the purposes described in this ordinance and not inconsistent with the terms of this ordinance are ratified and confirmed in all respects.

Section 24. 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 25. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Marysville, Washington, at an open public meeting thereof, this 22nd day of July, 2013.

Mayor

ATTEST:

Deputy City Clerk

APPROVED AS TO FORM:

Bond Counsel

PARAMETERS FOR FINAL TERMS OF THE BONDS

- (a) Principal Amount. The Bonds may be issued in one or more Series and shall not exceed the aggregate principal amount of \$45,500,000.
- (b) Date or Dates. Each Bond shall be dated the Issue Date, which date may not be later than July 1, 2014.
- (c) Denominations, Name, etc. The Bonds shall be issued in Authorized Denominations and shall be numbered separately in the manner and shall bear any name and additional designation as deemed necessary or appropriate by the Designated Representative.
- (d) Interest Rate(s). Each Bond shall bear interest at a fixed rate per annum (computed on the basis of a 360-day year of twelve 30-day months) from the Issue Date or from the most recent date for which interest has been paid or duly provided for, whichever is later. One or more rates of interest may be fixed for the Bonds. No rate of interest for any Bond may exceed 5.5%, and the true interest cost to the City for each Series of the Bonds may not exceed 4.90%.
- (e) Payment Dates. Interest shall be payable at fixed rates semiannually on dates acceptable to the Designated Representative, commencing no later than one year following the Issue Date. Principal payments shall commence on a date acceptable to the Designated Representative and shall be payable at maturity or in mandatory redemption installments, on dates acceptable to the Designated Representative.
- (f) Final Maturity. The Bonds shall mature no later than April 1, 2028.
- (g) Redemption Rights. The Designated Representative may approve in the Bond Purchase Agreement provisions for the optional and mandatory redemption of Bonds, subject to the following:
- (1) Optional Redemption. Any Bond may be designated as being (A) subject to redemption at the option of the City prior to its maturity date on the dates and at the prices set forth in the Bond Purchase Agreement; or (B) not subject to redemption prior to its maturity date. If a Bond is subject to optional redemption prior to its maturity, it must be subject to such redemption on one or more dates occurring not more than 10½ years after the Issue Date.

(2) Mandatory Redemption. Any Bond may be designated as a Term Bond, subject to mandatory redemption prior to its maturity on the dates and in the amounts set forth in the Bond Purchase Agreement.

(h) Price.

The purchase price for each Series of the Bonds may not be less than 98% or more than 130% of the stated principal amount of that Series, and the underwriters' discount may not exceed 2% of the stated principal amount of that Series.

(i) Other Terms and Conditions.

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

(2) Each Series of the Bonds shall produce a minimum net present value savings to the City and its ratepayers of 3% (as a percentage of the Refunded Bonds refunded by such Series). Net present value savings means the aggregate difference between (i) annual debt service on the Refunded Bonds to be refunded, less (ii) annual debt service on the corresponding Series of the Bonds (including expenses related to costs of issuance of that Series of the Bonds) discounted to the Issue Date using the yield on that Series of the Bonds as the discount rate, plus (iii) excess cash, if any, distributed to the City on the Issue Date, and less (iv) the amount of the City Contribution, if any, made on such Issue Date.

[Form of]
UNDERTAKING TO PROVIDE CONTINUING DISCLOSURE

City of Marysville, Washington
Water and Sewer Revenue Refunding Bonds, 2013

To meet the requirements of paragraph (b)(5) of Rule 15c2-12, as applicable to a participating underwriter for the above-referenced bonds (the “Bonds”), the City makes the following written Undertaking for the benefit of holders of the Bonds:

(a) Undertaking to Provide Annual Financial Information and Notice of Listed Events. The City undertakes to provide or cause to be provided, either directly or through a designated agent, to the MSRB, in an electronic format as prescribed by the MSRB, accompanied by identifying information as prescribed by the MSRB:

- (i) Annual financial information and operating data of the type included in the final official statement for the Bonds and described in paragraph (b) (“annual financial information”);
- (ii) Timely notice (not in excess of 10 business days after the occurrence of the event) of the occurrence of any of the following events with respect to the Bonds: (1) principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701 – TEB) or other material notices or determinations with respect to the tax status of the Bonds; (7) modifications to rights of holders of the Bonds, if material; (8) bond calls (other than scheduled mandatory redemptions of Term Bonds), if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the City, as such “Bankruptcy Events” are defined in Rule 15c2-12; (13) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (14) appointment of a successor or additional trustee or the change of name of a trustee, if material.
- (iii) Timely notice of a failure by the City to provide required annual financial information on or before the date specified in paragraph (b).

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

- (i) Shall consist of (1) annual financial statements prepared (except as noted in the financial statements) in accordance with generally accepted accounting principles applicable to local governmental units of the State such as the City, as such principles may be changed from time to time, which statements may be unaudited, provided, that if and when audited financial statements are prepared and available they will be provided; (2) a statement of authorized, issued and outstanding bonded debt secured by the Gross Revenue of the Waterworks Utility; (3) debt service coverage ratios; and (4) [references to the specific sections of the Official Statement to be inserted upon publication of the Official Statement];
- (ii) Shall be provided not later than the last day of the ninth month after the end of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the City's fiscal year ending December 31, 2013; and
- (iii) May be provided in a single or multiple documents, and may be incorporated by specific reference to documents available to the public on the Internet website of the MSRB or filed with the SEC.

(c) Amendment of Undertaking. This Undertaking is subject to amendment after the primary offering of the Bonds without the consent of any holder of any Bond, or of any broker, dealer, municipal securities dealer, participating underwriter, Rating Agency or the MSRB, under the circumstances and in the manner permitted by Rule 15c2-12. The City will give notice to the MSRB of the substance (or provide a copy) of any amendment to the Undertaking and a brief statement of the reasons for the amendment. If the amendment changes the type of annual financial information to be provided, the annual financial information containing the amended financial information will include a narrative explanation of the effect of that change on the type of information to be provided.

(d) Beneficiaries. This Undertaking shall inure to the benefit of the City and the holder of each Bond, and shall not inure to the benefit of or create any rights in any other person.

(e) Termination of Undertaking. The City's obligations under this Undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the City's obligations under this Undertaking shall terminate if the provisions of Rule 15c2-12 that require the City to comply with this Undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of Bond Counsel delivered to the City, and the City provides timely notice of such termination to the MSRB.

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

(g) Designation of Official Responsible to Administer Undertaking. The Finance Officer or his or her designee is authorized to take such further actions as may be necessary, appropriate or convenient to carry out this Undertaking in accordance with Rule 15c2-12, including the following actions:

- (i) Preparing and filing the annual financial information undertaken to be provided;
- (ii) Determining whether any event specified in paragraph (a) has occurred, assessing its materiality, where necessary, with respect to the Bonds, and preparing and disseminating any required notice of its occurrence;
- (iii) Determining whether any person other than the City is an “obligated person” within the meaning of Rule 15c2-12 with respect to the Bonds, and obtaining from such person an undertaking to provide any annual financial information and notice of listed events for that person required under Rule 15c2-12;
- (iv) Selecting, engaging and compensating designated agents and consultants, including financial advisors and legal counsel, to assist and advise the City in carrying out this Undertaking; and
- (v) Effecting any necessary amendment of this Undertaking.

PARITY CONDITIONS FOR ISSUANCE OF FUTURE PARITY BONDS

The City may issue Future Parity Bonds on a parity with the Bonds if and only if the following conditions are met and complied with at the time of issuance of those proposed Future Parity Bonds:

- (a) There shall be no deficiency in the Bond Fund.
- (b) The Future Parity Bond Authorizing Ordinance shall provide that all assessments and interest thereon that may be levied in any ULID created for the purpose of paying, in whole or in part, the principal of and interest on those Future Parity Bonds, shall be paid directly into the Bond Fund, except for any prepaid assessments permitted by law to be paid into a construction fund or account.
- (c) The Future Parity Bond Authorizing Ordinance shall provide for the payment of the principal thereof and interest thereon out of the Bond Fund.
- (d) The Future Parity Bond Authorizing Ordinance shall provide for the deposit into the Reserve Account of (i) an amount equal to the Reserve Requirement for those Future Parity Bonds from the Future Parity Bond proceeds or other money legally available, or (ii) Alternate Security or an amount plus Alternate Security equal to the Reserve Requirement for those Future Parity Bonds, or (iii) to the extent that the Reserve Requirement is not funded from Future Parity Bond proceeds, other legally available money or Alternate Security at the time of issuance of those Future Parity Bonds, within five years from the date of issue of the Future Parity Bonds from ULID Assessments, if any, levied and first collected for the payment of the principal of and interest on those Future Parity Bonds and, to the extent that ULID Assessments are insufficient, then from the Net Revenue of the Waterworks Utility in five approximately equal annual payments. No Alternate Security may be used to satisfy the Reserve Requirement for Future Parity Bonds unless (1) the Alternate Security is non-cancelable and (2) the provider of the Alternate Security as of the time of issuance of such Alternate Security is rated in the highest rating categories by both Moody's Investors Service, Inc., and Standard & Poor's Corporation. ***When the Outstanding Parity Bonds are no longer outstanding, subsection (d)(2) shall be deleted.***
- (e) The Future Parity Bond Authorizing Ordinance shall provide for the payment of mandatory redemption or sinking fund requirements into the Bond Fund for any Term Bonds to be issued and for regular payments to be made for the payment of the principal of such Term Bonds on or before their maturity, or, as an alternative, the mandatory redemption of those Term Bonds prior to their maturity date from money in the Principal and Interest Account.
- (f) There shall be on file from a licensed professional engineer experienced in the design, construction and operation of municipal utilities, or from an independent certified public accountant, a certificate showing that in his or her professional opinion the Net Revenue of the Waterworks Utility for any 12 consecutive calendar months out of the immediately preceding 24 calendar months shall be equal to the Coverage Requirement for each year thereafter. The certificate, in estimating the Net Revenue of the Waterworks Utility available for debt service, may adjust Net Revenue of the Waterworks Utility to reflect:

(1) Any changes in rates in effect and being charged or expressly committed by ordinance to be made in the future;

(2) Income derived from customers of the Waterworks Utility who have become customers during the 12 consecutive month period or thereafter adjusted to reflect one year's net revenue from those customers;

(3) Income from any customers to be connected to the Waterworks Utility who have paid the required connection charges;

(4) The engineer's or accountant's estimate of the Net Revenue of the Waterworks Utility to be derived from customers anticipated to connect for whom building permits have been issued;

(5) Income received or to be received which is derived from any person, firm, corporation or municipal corporation under any executed contract for water, sewage disposal or other utility service, which revenue was not included in the historical Net Revenue of the Waterworks Utility;

(6) The engineer's or accountant's estimate of the Net Revenue of the Waterworks Utility to be derived from customers with existing homes or buildings which will be required to connect to any additions to and improvements and extensions of the Waterworks Utility constructed and 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 Waterworks Utility then under construction and not fully connected to the facilities of the Waterworks Utility when such additions, improvements and extensions are completed; and

(7) Any increases or decreases in Net Revenue as a result of any actual or reasonably anticipated changes in Maintenance and Operation Expense subsequent to the 12-month period.

When the Outstanding Parity Bonds are no longer outstanding, as an alternative to a certificate from a licensed professional engineer experienced in the design, construction and operation of municipal utilities, or from an independent certified public accountant, the City may have on file a certificate of the Finance Officer showing that, in his or her professional opinion, the Net Revenue of the Waterworks Utility for any 12 consecutive calendar months out of the immediately preceding 24 calendar months shall, for each year, shall be at least equal to the Coverage Requirement for each year thereafter. The Finance Officer shall not make any of the adjustments referred to above.

If Future Parity Bonds proposed to be so issued are for the sole purpose of refunding outstanding bonds payable from the Bond Fund, such certification of coverage shall not be required if the amount required for the payment of the principal and interest in each year for the refunding bonds is not increased more than \$5,000 over the amount for that same year required for the bonds or the portion of that bond issue to be refunded thereby and if the maturities of

such refunding bonds are not extended beyond the maturities of the bonds to be refunded thereby.

For purposes of preparing the certificate, Future Parity Bonds (including the Future Parity Bonds proposed to be issued) that are Variable Interest Rate Bonds shall be assumed to bear interest at a fixed rate equal to the higher of (1) the highest variable rate borne during the preceding 24 months by any outstanding variable rate water and sewer revenue bonds of the Waterworks Utility of the City or, (2) if no such Variable Interest Rate Bonds are outstanding at the time of calculation, the rate borne by other variable rate debt the interest rate for which is determined by reference to an index comparable to the index to be used to determine the interest rate on the Future Parity Bonds proposed to be issued.

CERTIFICATION

I, the undersigned, Deputy City Clerk of the City of Marysville, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. [REDACTED] (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on July 22, 2013, as that ordinance appears on the minute book of the City.

2. The Ordinance will be in full force and effect five days after publication in the City's official newspaper, which publication date is [REDACTED], 2013.

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

Dated: July 22, 2013.

CITY OF MARYSVILLE, WASHINGTON

April O'Brien, Deputy City Clerk