

CITY OF KIRKLAND, WASHINGTON

ORDINANCE NO. 2403

AN ORDINANCE providing for the issuance of \$1,818,000 par value of "Water and Sewer Revenue Refunding Bonds, 1978," for the purpose of obtaining a part of the funds with which to refund, pay and retire all outstanding water and sewer revenue bonds of the City in the aggregate principal amount of \$2,508,000 par value; fixing the date, form, denominations, maturities, interest rates, terms and covenants of such refunding bonds; creating a special fund to provide for the refunding operation; creating a special bond redemption fund to provide for the payment of the refunding bonds and any future parity bonds; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of such refunding bonds and other money of the City and for the use and application of the money to be derived from such investment; providing for the payment of the outstanding bonds to be refunded; authorizing the execution of an agreement with Rainier National Bank, Seattle, Washington, as Refunding Trustee; and confirming the sale and providing for the delivery of the refunding bonds to Seattle-Northwest Securities Corporation of Seattle, Washington.

WHEREAS, the City of Kirkland, Washington (hereinafter called "the City"), heretofore combined its municipal water system and system of sewerage, including all additions thereto and betterments and extensions thereof at any time made, pursuant to RCW 35.67.320, by Ordinance No. 576 of the City, passed and approved July 18, 1949, and such combined systems, including the separate waterworks system and separate system of sewerage of the former City of Houghton, Washington, which has now been consolidated with the City, if the same shall hereafter be combined with and made a part of the waterworks utility of the City, shall hereinafter be referred to as the "Waterworks Utility of the City"; and

WHEREAS, the City now has outstanding water and sewer revenue bonds issued on various dates in the aggregate principal amount of \$2,508,000 (hereinafter called the "Outstanding Bonds"), which Outstanding Bonds mature on various dates; and

WHEREAS, the City Council has determined that it will be in the best interests of the City to pay, refund and retire such Outstanding Bonds by the issuance of \$1,818,000 principal amount of "Water and Sewer Revenue Refunding Bonds, 1978," and to use the proceeds thereof together with other money available to the City to acquire certain government obligations to effect such payment, refunding and retirement, all of which will result in monetary savings to the City and changes in bond covenants for the benefit of the City and its utility users; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF KIRKLAND, WASHINGTON, DO ORDAIN, as follows:

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

(a) "Acquired Obligations" shall mean the government obligations set forth in Schedule B of Exhibit A, attached hereto and by this reference made a part hereof.

(b) "Bond Fund" shall mean that special fund of the City known as the "Kirkland Water and Sewer Revenue Refunding Bond Fund, 1978," created by this ordinance for the payment of the principal of and interest on the Refunding Bonds and Parity Bonds.

(c) "City" shall mean the City of Kirkland, Washington, a duly organized and existing non-charter optional code city under the laws of the State of Washington.

(d) "Operating and Maintenance Expenses" shall mean 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 any payments to any other municipal corporation for water furnished or sewage disposal service, but shall not include any depreciation or taxes or charges in lieu of taxes levied or imposed by the City or any expense paid from federal or state money granted or allocated to the City for specially identified programs or projects.

(e) "Outstanding Bonds" shall mean the water and sewer revenue bonds of the City (including the "Houghton Sewer Revenue Bonds") listed in Schedule A of Exhibit A, attached hereto and by this reference made a part hereof.

(f) "Outstanding Bonds Payment Schedule" shall mean that payment schedule for the payment of principal of and interest on the Outstanding Bonds set forth in Schedule A of Exhibit A.

(g) "Parity Bonds" shall mean all water and sewer revenue bonds of the City issued after the date of the issuance of the Refunding Bonds and having a charge and lien upon the Revenue of the Waterworks Utility of the City and on ULID Assessments to be paid into the Bond Fund on a parity with the charge and lien upon such Revenue and ULID Assessments for the Refunding Bonds for the payment of the principal thereof and interest thereon.

(h) "Principal and Interest Account" shall mean the account of that name created in the Bond Fund by this ordinance for the payment of the principal of and interest on the Refunding Bonds and Parity Bonds.

(i) "Refunding Bonds" shall mean the \$1,818,000 par value of "Water and Sewer Revenue Refunding Bonds, 1978," of the City authorized by and to be issued for the purposes provided in and pursuant to this ordinance.

(j) "Reserve Account" shall mean the account of that name created in the Bond Fund by this ordinance for the purpose of securing the payment of the principal of and interest on the Refunding Bonds and Parity Bonds.

(k) "Revenue of the Waterworks Utility of the City" shall mean all the earnings and revenue received by the Waterworks Utility of the City from any source whatsoever, except general ad valorem taxes, ULID Assessments, federal or state money granted or allocated to the City for specially identified programs or projects, proceeds from the sale of City property, and bond proceeds.

(l) "Term Bond Maturity Year" shall mean any calendar year in which the bonds of any one issue or series now or hereafter scheduled to mature (regardless of any reservation of prior redemption rights) is more than 1.25 times the average annual principal maturity of the bonds of such issue or series for the three maturity years immediately preceding such year.

(m) "Term Bonds" shall mean those outstanding bonds of any single issue or series scheduled to mature in any Term Bond Maturity Year.

(n) "ULID" shall mean utility local improvement district.

(o) "ULID Assessments" shall mean the assessments levied in such utility local improvement districts of the City which may have heretofore been created and pledged to the payment of Outstanding Bonds and which may hereafter be created pursuant to state law and pledged to the payment of the Refunding Bonds and Parity Bonds and shall include installments thereof and interest and any penalties thereon.

(p) "Waterworks Utility of the City" shall mean the systems of water supply and distribution and sanitary sewage disposal, as combined pursuant to RCW 35.67.320, by Ordinance No. 576 of the City, passed and approved July 18, 1949, including all additions to and betterments and extensions of such waterworks utility of the City and also including the separate waterworks system and separate system of sewerage of the former City of Houghton, Washington, if the same shall hereafter be combined with and made a part of the Waterworks Utility of the City.

Section 2. City Council Findings. After due consideration the City Council of the City finds that the Outstanding Bonds may be paid, refunded and retired by the issuance and sale of the Refunding Bonds authorized herein so that a monetary savings to and beneficial changes of bond covenants for the City and its utility users will result by the issuance of the Refunding Bonds and the payment of the principal of and interest on the Outstanding Bonds as they respectively become due, all as set forth in the Outstanding Bonds Payment Schedule.

In order to effect such refunding in the manner that will be most advantageous to the City, its taxpayers and utility users, it is hereby found necessary and advisable that the Acquired Obligations bearing interest and maturing at such time or times as necessary to pay the principal of and interest on the Outstanding Bonds in accordance with the Outstanding Bonds Payment Schedule be purchased out of the proceeds of the sale of the Refunding Bonds and money presently on hand in the bond redemption funds for the Outstanding Bonds.

Section 3. Provisions for Issuance of Refunding Bonds. For the purpose of providing the bond proceeds required, together with money presently on deposit in the bond redemption funds for the Outstanding Bonds, to pay the principal of and interest on the Outstanding Bonds in accordance with the Outstanding Bonds Payment Schedule, the City shall issue the Refunding Bonds in the aggregate principal amount of \$1,818,000.

The Refunding Bonds shall be dated August 1, 1978; shall be in the denomination of \$5,000 each, except for Bond No. 1 which shall be in the denomination of \$3,000; shall bear interest at the rates hereinafter set forth, payable on June 1, 1979, and semi-annually thereafter on each succeeding December 1 and June 1 of each year, interest to maturity being evidenced by coupons to be attached to the Refunding Bonds with full obligation on the part of the City to pay interest at the bond rate or rates from and after the bond maturity dates until the Refunding Bonds with interest are paid in full, or funds sufficient to pay the Refunding Bonds with interest in full are on deposit in the Bond Fund, and the Refunding Bonds have been duly called for redemption. Both principal of and interest on the Refunding Bonds shall be payable in lawful money of the United States of America at the office of the Director of Administration and Finance of the City, or, at the option of the holder, at either fiscal agency of the State of Washington in Seattle, Washington, or New York, New York. The Refunding Bonds shall be payable solely from the Bond Fund and shall be a valid claim of the holders thereof only as against the Bond Fund and fixed amount of the Revenue of the Waterworks Utility of the City and ULID Assessments pledged to such fund and shall not be a general obligation of the City.

The Refunding Bonds shall be numbered, bear interest and shall mature in order of their numbers on June 1 of each year in accordance with the following schedule:

<u>Bond Numbers</u> <u>(Inclusive)</u>	<u>Amounts</u> <u>(\$,000)</u>	<u>Interest</u> <u>Rates</u>	<u>Maturity</u> <u>Year</u>
1 to 22	108	6.25%	1982
23 to 49	135	6.25	1983
50 to 76	135	6.25	1984
77 to 105	145	6.25	1985
106 to 135	150	6.25	1986
136 to 169	170	6.25	1987
170 to 209	200	6.25	1988
210 to 249	200	6.25	1989
250 to 291	210	6.25	1990
292 to 334	215	6.30	1991
335 to 356	110	6.40	1992
357	5	6.50	1993
358	5	6.60	1994
359 to 360	10	6.60	1995
361 to 362	10	6.60	1996
363 to 364	10	6.60	1997

Section 4. Option for Prior Redemption. Refunding Bonds numbered 1 to 249, inclusive, maturing June 1, 1982, through June 1, 1989, are issued without the right of the City to redeem the same prior to their respective maturity dates.

The City reserves the right to redeem Refunding Bonds numbered 250 to 364, inclusive, maturing June 1, 1990, through June 1, 1997, as a whole, or in part in inverse numerical order, from money derived from any source ^{on any interest payment date on or after} at par plus accrued interest ^{June 1, 1989} to date of redemption.

Notice of any call for the redemption of any of the Refunding Bonds prior to their respective maturity dates shall be published once in the official newspaper of the City not less than 30 nor more than 45 days prior to the interest coupon due date on which the Refunding Bonds would be redeemed. Notice of such call for redemption shall also be mailed to Seattle-Northwest Securities Corporation at its principal place of business in Seattle, Washington, or its successor, not less than 30 nor more than 45 days prior to the interest coupon due date upon which the Refunding Bonds would be redeemed. In addition, such redemption notices shall also be mailed to Moody's Investors Service, Inc., and Standard & Poor's Corporation at

their offices in New York, New York, but the mailing of such notices to such New York corporations shall not be a condition precedent to any such redemption. Interest on any Refunding Bonds so called for redemption shall cease on the date fixed for such redemption upon payment of the call price into the Bond Fund.

The City further reserves the right to purchase any or all of the Refunding Bonds in the open market at any time at a price not in excess of the call price applicable at the next succeeding call date.

Section 5. Establishment of Bond Fund and Refunding Operation. There is hereby created and established in the office of the Director of Administration and Finance of the City a special fund to be known and designated as the "Kirkland Water and Sewer Revenue Refunding Bond Fund, 1978" (herein defined as the "Bond Fund"), which fund is to be drawn upon for the sole purpose of paying the principal of and interest on the Refunding Bonds and any Parity Bonds from and after the date thereof. Such fund is hereby divided into two accounts, namely, a "Principal and Interest Account" and a "Reserve Account." There is hereby also created and established in the office of the Director of Administration and Finance of the City an additional fund to be known and designated as the "1978 Refunding Fund" and an amount equal to the accrued interest on the Outstanding Bonds from the last principal and interest payment dates of such Outstanding Bonds to the date of delivery of the Refunding Bonds to the purchaser thereof, being \$23,793.69, shall be transferred from the principal and interest accounts in the respective

bond funds for the Outstanding Bonds and money in the reserve accounts in the respective bond funds for the Outstanding Bonds in the amount of \$356,206.31 shall be transferred from such reserve accounts, being a total of \$380,000.00, and deposited in the "1978 Refunding Fund." Such amounts to be so transferred may be increased or decreased as required when the exact purchase price of the Acquired Obligations hereinafter referred to is ascertained. The money in the "1978 Refunding Fund" shall be used immediately upon the receipt thereof to discharge the obligations of the City under the various bond ordinances authorizing the Outstanding Bonds by providing for the payment of the principal of and interest on the Outstanding Bonds in accordance with the Outstanding Bonds Payment Schedule. To the extent practicable the City shall discharge such obligations by the deposit of a beginning cash balance of \$3,390.16 with the Refunding Trustee and by the purchase of and deposit with the Refunding Trustee the Acquired Obligations set forth in Schedule B of Exhibit A, bearing such interest and maturing as to principal and interest in such amounts and at such times so as to provide for the payment of the principal of and interest on the Outstanding Bonds in accordance with the Outstanding Bonds Payment Schedule. Such beginning cash balance and the Acquired Obligations and the prices to be paid for the same are more particularly described in Schedule B attached to Exhibit A attached hereto and hereafter referred to in Section 6 hereof.

Such beginning cash balance and Acquired Obligations shall be irrevocably deposited with the Refunding Trustee, under an irrevocable trust agreement. Any amounts described in this section which are not provided for in full by the purchase and deposit of the Acquired Obligations described in this section shall be provided for by the irrevocable deposit of a portion of the proceeds of sale of the Refunding Bonds or other money of the City with the Refunding Trustee. The City reserves the right to substitute other direct United States obligations for any of the Acquired Obligations in the event that it may do so pursuant to Section 103(c)(2) of the Internal Revenue Code of 1954, as amended, and applicable regulations thereunder, as long as such substitution shall not impair the timely payment of or interest on the Outstanding Bonds.

Section 6. Refunding Trustee's Duties and Agreement.

The Refunding Trustee is hereby authorized and directed to pay the principal of and interest on the Outstanding Bonds in accordance with the Outstanding Bonds Payment Schedule from the Acquired Obligations and money deposited with the Refunding Trustee pursuant to Section 5 of this ordinance. All Acquired Obligations and the money deposited with the Refunding Trustee and any income therefrom shall be held, invested and applied in accordance with the provisions of this ordinance and with the statutes of the State of Washington.

All necessary and proper fees, compensation and expenses of the Refunding Trustee for the Refunding Bonds and all other costs incidental to setting up the escrow to accomplish the payment, refunding and retiring of the Outstanding Bonds as herein provided, including, but not limited to, an allocable portion (60%) of bond counsel's fees chargeable to such escrow, and an escrow computation fee to Seattle-Northwest Securities Corporation, shall be paid out of the proceeds of the Refunding Bonds and allocated to the Acquired Obligations for purposes of calculating their yield. Costs relating to bond printing, rating service fees, the fee for preparation, printing and distribution of the Official Statement, the cost of delivering the bonds to the underwriters, and an allocable portion (40%) of bond counsel's fees chargeable to the legal proceedings and furnishing an approving legal opinion covering the Refunding Bonds shall be paid by Seattle-Northwest Securities Corporation as purchasers of the Refunding Bonds.

The proper officers and agents of the City are directed to obtain from the Refunding Trustee a refunding trust agreement setting forth the duties, obligations and responsibilities of the Refunding Trustee in connection with the redemption and retirement of the Outstanding Bonds as provided herein and stating that such provisions for the payment of the fees, compensation and expenses of such Refunding Trustee are satisfactory to it.

In order to carry out the purposes of Section 5 and 6 of this ordinance, the Mayor and Director of Administration and Finance, ex officio City Clerk, of the City are authorized and directed to execute and deliver to the Refunding Trustee a refunding trust agreement substantially in the form attached hereto, marked Exhibit A and by this reference thereto made a part of this ordinance.

Section 7. Deposits to Bond Fund and Bond Fund Considerations. So long as Refunding Bonds are outstanding against the Bond Fund, the Director of Administration and Finance of the City shall set aside and pay into the Bond Fund all ULID Assessments hereafter paid and collected and out of the Revenue of the Waterworks Utility of the City a fixed amount, without regard to any fixed proportion, namely:

(a) Into the Principal and Interest Account, any money remaining in the principal and interest accounts in the bond redemption funds for the Outstanding Bonds after the transfer of the money therefrom as set forth in Section 5 of this ordinance, and at least 20 days prior to each principal payment date and each interest payment date, an amount sufficient, together with ULID Assessment collections deposited therein, to pay the principal amount maturing on each maturity date of the Refunding Bonds and an amount sufficient to pay the interest payable on the Refunding Bonds on such interest payment date; and

(b) Into the Reserve Account, by transfer from the reserve accounts in the bond redemption funds for the Outstanding Bonds all money remaining therein after the transfer of money therefrom as set forth in Section 5 of this ordinance, and such additional amounts in substantially equal annual payments so that by no later than August 1, 1983, there shall be on deposit in such Reserve Account a total reserve at least equal to the average annual debt service requirements, both principal and interest, of the Refunding Bonds.

The Reserve Account shall be maintained in such total average annual debt service required reserve amount, except for withdrawals therefrom as authorized herein, at all times so long as any of the Refunding Bonds is outstanding, PROVIDED, that when the total amount in the Bond Fund shall equal the total amount of principal and interest for all outstanding bonds payable out of the Bond Fund to the last maturity thereof, no further payment need be made into the Bond Fund, and PROVIDED, FURTHER, that the amount in such Reserve Account may be reduced at any time to an amount not less than the average annual debt service requirements for all bonds payable out of the Bond Fund then outstanding.

In the event that there shall be 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, such deficiency shall be made up from the Reserve Account by the withdrawal of cash therefrom for that purpose. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up from the money from the Revenue of the Waterworks Utility of the City and/or ULID Assessments, if any, payable into the Bond Fund first available after making necessary provision for the required payments into the Principal and Interest Account. The money in the Reserve Account shall otherwise be held intact and may be applied against the last outstanding bonds payable out of the Bond Fund.

All money in the Bond Fund not needed to meet the payments of principal and interest when due may be kept on deposit in the official bank depository of the City or in any bank or may be invested in any legal investment. Interest on any such investment shall be deposited in and become a part of the Bond Fund. In no event shall any money in the Bond Fund or any other money reasonably expected to be used to pay principal and/or interest on the Refunding Bonds be invested at a yield which would cause the Refunding Bonds to be arbitrage bonds within the meaning of Section 103(c) of the United States Internal Revenue Code of 1954, as amended, and applicable regulations thereunder.

The City Council and corporate authorities of the City hereby declare that in fixing the amounts to be paid into the Bond Fund they have considered and had due regard for the Operating and Maintenance Expenses and have not set aside into the Bond Fund a greater amount or proportion of the Revenue of the Waterworks Utility of the City than in their judgment will be available over and above the Operating and Maintenance Expenses of the Waterworks Utility of the City, and that no portion of the Revenue of the Waterworks Utility of the City has been previously pledged for any other indebtedness except for payment of the Outstanding Bonds, provision for the retirement and payment of which is herein made.

Section 8. Lien Position of Refunding Bonds. All

Revenue of the Waterworks Utility of the City and ULID Assessments hereafter paid and collected are hereby pledged to the payments required to be made into the Bond Fund, and the Refunding Bonds shall constitute a charge and lien upon such Revenue and ULID Assessments prior and superior to all other charges and liens whatsoever, excluding Operating and Maintenance Expenses, except that the charge and lien upon such Revenue and ULID Assessments for the Refunding Bonds shall be on a parity with the charge and lien upon the same and upon any ULID Assessments hereafter pledged to be paid into the Bond Fund for any Parity Bonds, the charge and lien upon such Revenue and ULID Assessments for the "Water and Sewer Revenue Bonds, 1955," "Water and Sewer Revenue Bonds, 1960," and "Sewer Revenue Bonds, 1967" of the former City of Houghton, being part of the Outstanding Bonds, being defeased as a matter of law by the allocation and pledge which is hereby made of the book entry obligations of the Acquired Obligations (being direct obligations of the United States of America and equivalent to cash) first to the refunding of such bonds and thereafter to the remaining Outstanding Bonds, the non-direct obligations being allocated and pledged first to such remaining Outstanding Bonds, and for the "Water and Sewer Revenue Refunding Bonds, 1972" and "Water and Sewer Revenue Refunding Bonds, 1974," being the remaining Outstanding Bonds, pursuant to the provisions of the applicable bond ordinances pertaining to such remaining Outstanding Bonds immediately upon deposit with the Refunding Trustee of the money and Acquired Obligations, all as provided herein.

Section 9. Covenants. The City hereby covenants and agrees with the owner and holder of each Refunding Bond at any time outstanding as follows:

(a) It will establish, maintain and collect such rates and charges for water and sanitary sewage disposal service so long as any Refunding Bonds and any Parity Bonds are outstanding which, together with other miscellaneous Revenue of the Waterworks Utility of the City, will provide amounts annually at least equal to 1.25 times the portion of annual debt service, excluding the principal of any Term Bonds on the Refunding Bonds and Parity Bonds actually paid from such Revenue of the Waterworks Utility of the City, and not from ULID Assessments, after payment of Operating and Maintenance Expenses (herein called the "Coverage Requirement"). In determining the amount of debt service subject to coverage, there shall be deducted from the annual principal and interest required to be paid each year, an amount equal to the percentage of the debt service for each year on each issue of outstanding Parity Bonds and the Refunding Bonds equal to the percentage arrived at by dividing the original total amount of the ULID Assessments specifically pledged to the Bond Fund in that issue by the original total principal amount of such issue. To simplify, where ULIDs are involved, only the debt service on that portion of any Parity Bond issue not covered by ULID Assessments must be subject to the 25% Coverage Requirement.

(b) It will at all times maintain and keep the Waterworks Utility of the City in good repair, working order and condition, and also will at all times operate such Utility and the business in connection therewith in an efficient manner and at a reasonable cost.

(c) It will not sell, lease, mortgage or in any manner encumber or dispose of all the property of the Waterworks Utility of the City unless provision is made for payment into the Bond Fund of a sum sufficient to pay the principal of and interest on all bonds payable out of the Bond Fund at any time outstanding, and that it will not sell, lease, mortgage, or in any manner encumber or dispose of any part of the property of said Waterworks Utility of the City that is used, useful and material to the operation thereof, unless provision is made for replacement thereof, or for payment into the Bond Fund of the total amount of Revenue received which shall not be less than an amount which shall bear the same ratio to the amount of outstanding bonds payable out of the Bond Fund as the Revenue available for debt service for such outstanding bonds for the twelve months preceding such sale, lease, encumbrance or disposal from the portion of the Utility sold, leased, encumbered or disposed of bears to the Revenue available for debt service for such bonds from the entire Utility for the same period. Any such money so paid into the Bond Fund shall be used to retire such outstanding bonds at the earliest possible date.

(d) It will, while any of the Refunding Bonds remains outstanding, keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to its Waterworks Utility, and it will furnish any subsequent holder or holders of the Refunding Bonds if the Refunding Bonds shall be owned by other than a Fund of the City, at the written request of such holder or holders, complete operating and income statements of said Utility in reasonable detail covering any calendar year, showing the financial condition of the water and sewer departments and compliance with the terms and conditions of this ordinance, not more than 120 days after the close of such calendar year, and it will grant any holder or holders of at least 25% of the outstanding Refunding Bonds the right at all reasonable times to inspect the entire Waterworks Utility of the City and all records, accounts and data of the City relating thereto. Upon request of any holder of any of said Refunding Bonds, it will also furnish to such holder a copy of the most recently completed audit of the City's accounts by the State Auditor of Washington or such other audit as is authorized by law in lieu thereof.

(e) It will not furnish water or sanitary sewage disposal service to any customer whatsoever free of charge and will promptly take legal action to enforce collection of all delinquent accounts.

(f) It will carry the types of insurance on its Waterworks Utility properties in the amounts normally carried by private water and sewer companies engaged in the operation of water and sewerage systems, and the cost of such insurance shall be considered a part of Operating and Maintenance Expenses. If, as, and when, the United States of America or some agency thereof shall provide for War Risk Insurance, the City further agrees to take out and maintain such insurance on all or such portions of said Utility on which such War Risk Insurance may be written in an amount or amounts to cover adequately the value thereof. In lieu of carrying such insurance, the City may implement a self insurance program with reserves adequate, in the judgment of the City Council to protect the City and Refunding Bonds holders against loss.

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

(h) It will not make any use of the proceeds of of the Refunding Bonds or any other funds of the City which may be deemed to be proceeds of such Refunding Bonds pursuant to Section 103(c)(2) of the Internal Revenue Code, as amended, and the applicable regulations thereunder which, if such use had been reasonably expected on the date of delivery of the Refunding Bonds to the initial purchaser thereof, would have caused the Refunding Bonds to be "Arbitrage Bonds" within the meaning of said section and said regulations.

(i) It will use, pay out and distribute the Revenue of the Waterworks Utility of the City, other than money deposited in bond redemption funds, in the following order of priority:

- (1) To pay Operating and Maintenance Expenses.
- (2) To meet the required debt service payments on the Refunding Bonds and any Parity Bonds hereafter issued.

(3) To meet the required debt service on any water and sewer revenue bonds issued having a charge and lien on the Revenue of the Waterworks Utility junior to the Refunding Bonds; to redeem and retire any then outstanding water and sewer revenue bonds or to purchase any or all of those bonds in the open market as provided in this ordinance; to make necessary betterments and replacements of or repairs, additions or extensions to the Waterworks Utility of the City; or for any other lawful purpose.

Section 10. Refunding Bonds Form and Execution.

The Refunding Bonds shall be printed or lithographed on good bond paper, in a bond and coupon form consistent with this ordinance, and shall be signed by the facsimile signature of the Mayor and attested by the manual signature of the Director of Administration and Finance, ex officio City Clerk, under the facsimile seal of the City, and the interest coupons attached to the Refunding Bonds shall bear the facsimile signatures of such officials.

Section 11. Defeasance Clause. In the event the City shall issue advance refunding bonds pursuant to the laws of the State of Washington, or have money available from any other lawful source, to pay the principal of and interest on the Refunding Bonds or such portion thereof included in the refunding plan as the same become due and payable and to refund all such then outstanding Refunding Bonds and to pay the costs of refunding, and shall have irrevocably set aside for and pledged to such payment and refunding, money and/or direct obligations of the United States of America or other legal investments sufficient in amount, together with known earned income from the investments thereof, to make such payments and to accomplish the refunding

as scheduled (hereinafter called the "trust account") and shall irrevocably make provisions for redemption of such Refunding Bonds, then in that case all right and interest of the owners or holders of the Refunding Bonds to be so retired or refunded and the appurtenant coupons (hereinafter collectively called the "defeased Refunding Bonds") in the covenants of this ordinance, in the Revenue of the Waterworks Utility of the City, funds and accounts, including ULID Assessments, obligated to the payment of such Refunding Bonds shall thereafter cease and become void, except such owners and holders shall have the right to receive payment of the principal of and interest on the defeased Refunding Bonds from the trust account and, in the event the funds in the trust account are not available for such payment, shall have the residual right to receive payment of the principal of and interest on the defeased Refunding Bonds from the Revenue of the Waterworks Utility of the City and ULID Assessments without any priority of lien or charge against that Revenue and Assessments or covenants with respect thereto except to be paid therefrom. After the establishing and full funding of such trust account, the City may then apply any money in any other fund or account established for the payment or redemption of the defeased Refunding Bonds to any lawful purposes as it shall determine, subject only to the rights of the holders of any other bonds then outstanding.

In the event that the refunding plan provides that the Refunding Bonds being refunded or the refunding bonds to be issued be secured by cash and/or direct obligations of the United States of America or other legal investments pending the prior redemption of those Refunding Bonds being refunded and if such refunding plan also provides that certain cash and/or direct obligations of the United States of America or other legal investments are irrevocably pledged for the prior redemption of those Refunding Bonds included in the refunding plan, then only the debt service on the Refunding Bonds which are not defeased Refunding Bonds and the refunding bonds, the payment of which is not so secured by the refunding plan, shall be included in the computation of coverage for issuance of Parity Bonds and the annual computation of coverage for determining compliance with the rate covenants.

Section 12. Provision for Additional Parity Bonds. The City reserves the right to issue Parity Bonds which will constitute a charge and lien upon the Revenue of the Waterworks Utility of the City and ULID Assessments heretofore and hereafter pledged to be paid into the Bond Fund on a parity with the Refunding Bonds if the following conditions should be met and complied with at the time of the issuance of such Parity Bonds to wit:

- (1) At the time of issuance of such Parity Bonds, there shall not be any deficiency in the Bond Fund or the Reserve Account therein.

(2) Each ordinance providing for the issuance of such Parity Bonds shall require that all Assessments levied in any ULID created in connection with the Parity Bonds then being issued will be paid directly into the Bond Fund.

(3) Each ordinance providing for the issuance of such Parity Bonds shall provide for the payment of the principal thereof and interest thereon out of the Bond Fund.

(4) The ordinance authorizing any Parity Bonds shall require that the Reserve Account be increased within a period of five years after the date of issuance of the Parity Bonds to an amount equal to the average annual principal and interest requirements on all Parity Bonds, including the Refunding Bonds and the proposed Parity Bonds to be issued, excluding from such amount the principal amount of any Term Bonds included in the Parity Bonds issue.

(5) At the time of the issuance of such Parity Bonds, the City shall have on file a certificate from an independent licensed professional engineer experienced in the design, construction and operation of municipal utilities, showing that in his professional opinion, the annual income available for debt service on the Refunding Bonds, Parity Bonds then outstanding and the Parity Bonds proposed to be issued for each year shall be at least equal to the Coverage Requirement (1.25 times that amount of debt service to be paid from operating Revenue and not Assessments).

In determining whether the City is able to comply with the parity conditions, the Revenue of the Waterworks Utility of the City, less Operation and Maintenance Expenses, for any twelve consecutive calendar months out of the immediately preceding twenty-four consecutive months shall be used. The following adjustments may be made to the historical net operating Revenue of the Waterworks Utility of the City:

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

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

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

(4) Revenue may be added from customers reasonably anticipated to be added to the Utility where service is available, provided that the annual income thus determined shall only be increased annually for three calendar years following the issuance of the Parity Bonds, and provided that the aggregate of such estimate of additional customers may not exceed the actual aggregate of new customers during the three calendar years immediately preceding the issuance of such Parity Bonds.

Nothing contained in the provisions for parity shall prevent the City from issuing revenue bonds having a junior lien on the Revenue of the Waterworks Utility of the City or from pledging the payment of ULID Assessments into a bond redemption fund or account created to pay and secure the payment of the principal and interest on such junior lien bonds as long as such ULID Assessments are levied to pay part or all of the cost of improvements being constructed out of the proceeds of the sale of such junior lien bonds. Neither shall anything contained in this ordinance prevent the City from issuing revenue bonds to refund maturing revenue bonds of the City for the payment of which money is not otherwise available.

Section 13. Temporary Bond. Pending the printing, execution and delivery to the purchaser of the definitive Refunding Bonds, the City may cause to be executed and delivered to such purchaser a single temporary Refunding Bond in the principal amount of \$1,818,000. Such temporary Refunding Bond shall bear the same

date of issuance, interest rates, principal payment dates and terms and covenants as the definitive Refunding Bonds, and shall be issued as a fully registered bond in the name of such purchaser, and shall be in such form as acceptable to such purchaser. Such temporary Refunding Bond shall be exchanged for the definitive Refunding Bonds as soon as the same are printed, executed and available for delivery.

Section 14. Sale and Delivery of Refunding Bonds.

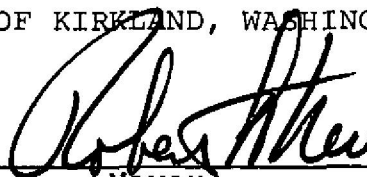
Seattle-Northwest Securities Corporation of Seattle, Washington, has offered to purchase the Refunding Bonds at a price of \$98.00 per each \$100.00 of par plus accrued interest to the date of delivery of the Refunding Bonds, the City to furnish the printed Refunding Bonds and the unqualified approving legal opinion of Messrs. Roberts, Shefelman, Lawrence, Gay & Moch, municipal bond counsel of Seattle, Washington, and the purchaser to pay the cost of printing such Refunding Bonds, bond rating service charges, an allocable portion of the cost of such legal opinion as set forth in Section 6 above and the cost of delivery the Refunding Bonds to such purchaser. Bond Counsel's opinion shall state that bond counsel has not reviewed, and thus expresses no opinion concerning, the completeness or accuracy of any official statement, offering circular or other sales material relating to the issuance of the Refunding Bonds or otherwise used in connection with the Refunding Bonds. The City Council, being of the opinion that it is in the best interests of the City to accept such offer, hereby accepts the same. The Refunding Bonds shall, therefore, immediately upon their execution be delivered to the purchaser upon payment for the Refunding Bonds in accordance with such offer.

Section 15. Effective Date. This ordinance shall take effect and be in force five days after its passage, approval and legal publication.

PASSED by the City Council of the City of Kirkland, Washington, at a regular open public meeting thereof and APPROVED by the Mayor this 21st day of August, 1978.

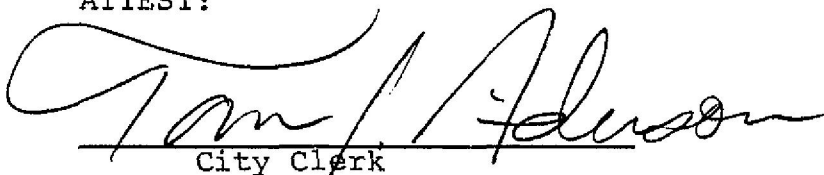
CITY OF KIRKLAND, WASHINGTON

By



Mayor

ATTEST:


City Clerk

FORM APPROVED:


City Attorney

REFUNDING TRUST AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of August, 1978, by and between the CITY OF KIRKLAND, WASHINGTON, a municipal corporation of the State of Washington (the "City"), and RAINIER NATIONAL BANK, Seattle, Washington (the "Refunding Trustee").

1. Recitals. The City now has outstanding water and sewer revenue bonds of the City and sewer revenue bonds of the former City of Houghton issued on various dates in the aggregate principal amount of \$2,508,000 (hereinafter called the "Outstanding Bonds"), which Outstanding Bonds mature on various dates as listed in Schedule A attached hereto and by this reference made a part hereof. Pursuant to Ordinance No. _____ (hereinafter called the "Bond Ordinance"), passed by the City Council and approved by the Mayor on August 21, 1978, the City has determined to pay, refund and retire the Outstanding Bonds in accordance with the Outstanding Bonds Payment Schedule set forth in Schedule A attached hereto and by this reference made a part hereof, out of the proceeds of the sale of its "Water and Sewer Revenue Refunding Bonds, 1978" (the "Refunding Bonds"), and money presently on hand in the bond redemption funds for such Outstanding Bonds.

EXHIBIT A

2. Provisions for Refunding. To accomplish the refunding of the Outstanding Bonds as aforesaid, the City, simultaneously with the delivery of the Refunding Bonds issued pursuant to the Bond Ordinance, does hereby agree to deposit irrevocably with the Refunding Trustee in trust for the security and benefit of the holders and owners of the Outstanding Bonds and the Refunding Bonds, the sum of \$3,390.16 in cash and certain securities, which securities are hereinafter referred to as "Acquired Obligations," of the types and with amounts, interest rates and maturities as more particularly described in Schedule B attached hereto and by this reference incorporated herein. Such cash and Acquired Obligations, with the investment income therefrom, will be sufficient to provide for the payment of the principal of and interest on the Outstanding Bonds in accordance with the Outstanding Bonds Payment Schedule.

On or before the delivery of the Refunding Bonds, the City agrees that it will cause to be delivered to the Refunding Trustee a statement setting forth the amount of interest and the amount of principal to be paid on each semiannual interest payment on the Outstanding Bonds up through the respective final maturity dates of each issue of Outstanding Bonds.

3. Disbursements by Refunding Trustee. The Refunding Trustee shall present for payment on the due date thereof the Acquired Obligations so deposited and shall apply the proceeds derived therefrom in accordance with the provisions of this paragraph.

Money shall be transferred by the Refunding Trustee to the Director of Administration and Finance of the City in amounts sufficient to pay the principal of and interest on each issue of the Outstanding Bonds in accordance with the Outstanding Bonds Payment Schedule.

4. Nonreinvestment of Funds; Custody and Safekeeping of Acquired Obligations. All money deposited with the Refunding Trustee or received by the Refunding Trustee as maturing principal or interest on Acquired Obligations prior to the time required to make the payments hereinbefore set forth shall be held by the Refunding Trustee and shall not be reinvested.

All income derived from the Acquired Obligations and any money deposited with the Refunding Trustee pursuant to paragraph 2 hereof in the hands of the Refunding Trustee (which money is not required to make the payments hereinbefore required to be made) shall be paid to the Director of Administration and Finance of the City for the credit of the "Kirkland Water and Sewer Revenue Bond Fund, 1978," hereinafter called the "Bond Fund") of the City, as and when collected for use and application as other money deposited in the Bond Fund.

For as long as any of the Outstanding Bonds are outstanding, on or before the 10th day of each month, commencing with the month of October, 1978, the Refunding Trustee shall render a statement as of the last day of the preceeding month to the Director of Administration and Finance of the City,

which statement shall set forth the Acquired Obligations which have matured and the amounts received by the Refunding Trustee by reason of such maturity, the investment income received from such Acquired Obligations, the amounts paid to such Director for credit to the Bond Fund, and the dates of such payment, for the payment of the principal of and interest on the Outstanding Bonds in accordance with the Outstanding Bonds Payment Schedule, and any other transactions of the Refunding Trustee pertaining to its duties and obligations as set forth herein.

All Acquired Obligations, money and investment income deposited with or received by the Refunding Trustee pursuant to this Agreement shall be subject to the trust created by this Agreement and the Refunding Trustee shall be liable for the preservation and safekeeping thereof.

5. Duties and Obligations of Refunding Trustee.

The duties and obligations of the Refunding Trustee shall be as prescribed by the provisions of this Agreement, and the Refunding Trustee shall not be liable except for the performance of its duties and obligations as specifically set forth herein and to act in good faith in the performance thereof and no implied duties or obligations shall be incurred by such Refunding Trustee other than those specified herein.


The Refunding Trustee may consult with counsel of its choice and the opinion of such counsel shall be full and

complete authorization and protection in respect of any action taken or not taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

Provisions for the fees, compensation and expenses of the Refunding Trustee satisfactory to it have been made.

CITY OF KIRKLAND, WASHINGTON

By



Mayor

By



Director of Administration
and Finance, ex-officio
City Clerk

RAINIER NATIONAL BANK

By

Trust Officer

CITY OF KIRKLAND

SCHEDULE A

<u>Outstanding Bonds</u>	<u>Amount Outstanding</u>	<u>Outstanding Bonds Payment Schedule</u>
Water and Sewer Revenue Bonds, 1955, dated July 1, 1955 Ordinance No. 675	\$ 68,000	Pay interest semiannually through July 1, 1980; pay principal annually through July 1, 1980
Water and Sewer Revenue Bonds, 1960, dated April 1, 1960 Ordinance No. 797	160,000	Pay interest semiannually through April 1, 1982; pay principal annually through April 1, 1982
Sewer Revenue Bonds, 1967, City of Houghton, Washington, dated August 1, 1967 Ordinances Nos. 213 and 218	110,000	Pay interest semiannually through August 1, 1997; pay principal annually through August 1, 1997
Water and Sewer Revenue Refunding Bonds, 1972, dated June 1, 1972 Ordinance No. 2191	610,000	Pay interest semiannually through June 1, 1992; pay principal annually through June 1, 1992
Water and Sewer Revenue Refunding Bonds, 1974, dated May 1, 1974 Ordinance No. 2257	1,560,000	Pay interest semiannually through June 1, 1991; pay principal annually through June 1, 1991

CITY OF KIRKLAND
SCHEDULE B

<u>SECURITY DESCRIPTION</u>	<u>PAR AMOUNT</u>	<u>COUPON</u>	<u>MATURITY DATE</u>
BE	9,000	8.000000	8/01/97
BE	10,000	8.000000	8/01/96
BE	8,000	8.000000	8/01/95
BE	8,000	8.000000	8/01/94
BE	7,000	8.000000	8/01/93
BE	8,000	8.000000	8/01/92
BE	102,000	8.000000	6/01/92
*FLB	210,000	7.950000	4/22/91
BE	7,000	5.100000	8/01/90
BE	23,000	8.000000	6/01/90
*BONDS	171,000	8.250000	5/15/90
BE	7,000	5.100000	8/01/89
BE	185,000	8.000000	6/01/89
BE	6,000	5.100000	8/01/88
BE	183,000	8.000000	6/01/88
BE	6,000	5.100000	8/01/87
BE	133,000	8.000000	6/01/87
BE	7,000	5.100000	8/01/86
BE	127,000	8.000000	6/01/86
BE	7,000	5.100000	8/01/85
BE	122,000	8.000000	6/01/85
BE	6,000	5.100000	8/01/84
BE	114,000	8.000000	6/01/84
BE	5,000	5.100000	8/01/83
BE	114,000	8.000000	6/01/83
BE	77,000	5.000000	6/01/82
BE	37,000	0.000000	4/01/82
BE	1,000	0.000000	10/01/81
BE	90,000	0.000000	6/01/81
BE	42,000	0.000000	4/01/81
BE	1,000	0.000000	10/01/80
BE	36,000	0.000000	7/01/80
BE	83,000	0.000000	6/01/80
BE	5,000	0.000000	4/01/80
BE	3,000	0.000000	10/01/79
BE	34,000	0.000000	7/01/79
BE	70,000	0.000000	6/01/79
BE	24,000	0.000000	4/01/79
BE	1,000	0.000000	1/01/79
BE	8,000	0.000000	12/01/78