

CITY OF KIRKLAND, WASHINGTON

ORDINANCE NO. 3026

AN ORDINANCE of the City of Kirkland, Washington, relating to the water supply and distribution system of the City; specifying, adopting and ordering the carrying out of a system or plan of additions to and betterments and extensions of that system; estimating the cost thereof and providing the method of financing; providing for the issuance of \$1,500,000 principal amount of Water and Sewer Revenue Bonds, 1987, of the City for the purpose of paying the cost of carrying out such system or plan; fixing the date, form, terms, interest rates, maturities and covenants of such bonds; establishing a construction fund; and providing for the sale and delivery of such bonds to Boettcher & Company Inc., of Seattle, Washington.

WHEREAS, the City of Kirkland, Washington (the "City"), by Ordinance No. 576 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, 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 hereafter shall be combined with and made a part of the waterworks utility of the City, shall hereinafter be referred to as the Waterworks Utility; and

WHEREAS, pursuant to Ordinance No. 2869, the City heretofore issued its \$1,235,000 par value of Water and Sewer Revenue Refunding Bonds, 1985 (the "1985 Bonds"), for the purpose of

obtaining part of the funds with which to accomplish the refunding, payment and retirement of the outstanding Water and Sewer Revenue Refunding Bonds, 1978, of the City and, by Section 12 of that ordinance, reserved the right to issue additional water and sewer revenue bonds which would constitute a charge and lien upon the revenue of the Waterworks Utility of the City on a parity with the 1985 Bonds upon compliance with the following conditions at the time of the issuance of such additional Bonds:

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

"(b) The ordinance providing for the issuance of such Parity Bonds shall provide that all assessments and interest thereon which may be levied in any ULID created for the purpose of paying in whole or in part the principal of and interest on such Parity Bonds shall be paid directly into the Bond Fund;

"(c) 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.

"(d) 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 Debt Service on all bonds payable from the Bond Fund, including the Parity Bonds proposed to be issued.

"(e) 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/her/its professional opinion, the annual Revenue of the Waterworks Utility available for debt service on the 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.

"In determining whether the City is able to comply with the terms of the parity conditions, the following adjustments may be made to the historical Revenue of the Waterworks Utility for any twelve consecutive months out of the immediately preceding 24-month period:

"(i) Any rate change that has taken place or been adopted may be reflected;

"(ii) Revenue may be added from customers actually added to the Waterworks Utility subsequent to the twelve-month period;

"(iii) 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

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

and

WHEREAS, the City Council has determined that it is necessary and in the best interest of the City and its inhabitants that certain improvements be made to the Waterworks Utility and that a system or plan of additions to and betterments and extensions of the Waterworks Utility be adopted; and

WHEREAS, the City Council has determined that it is necessary to issue and sell \$1,500,000 par value of Water and Sewer Revenue Bonds to provide the funds necessary to carry out the system or plan of additions to and betterments and extensions of

the Waterworks Utility adopted herein and to pay the cost of issuance and sale of such bonds; NOW, THEREFORE,

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

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

(a) "Annual Debt Service" shall mean, in any year, that year's total of principal and interest requirements for the then outstanding bonds (except the principal maturity of Term Bonds) to which the term Annual Debt Service refers, plus any mandatory sinking fund or mandatory bond redemption requirement for that year, less all capitalized interest payable that year from such bonds.

(b) "Average Annual Debt Service" shall mean, in any year, the sum of the remaining Annual Debt Service of the then outstanding bonds to which the term Average Annual Debt Service refers divided by the number of years such bonds are scheduled to remain outstanding.

(c) "Bond Fund" shall mean the Water and Sewer Revenue Refunding Bond Fund, 1985, created by Ordinance No. 2869 for the purpose of paying and securing the principal of and interest on the 1985 Bonds, the Bonds and any Parity Bonds.

(d) "Bonds" shall mean the \$1,500,000 par value of Water and Sewer Revenue Bonds, 1987, authorized to be issued by this ordinance.

(e) "1985 Bonds" shall mean the outstanding Water and Sewer Revenue Refunding Bonds, 1985, of the City issued under date of May 15, 1985, pursuant to Ordinance No. 2869.

(f) "Bond Registrar" shall mean the fiscal agencies of the State of Washington in Seattle, Washington, and New York, New York, as the same may be designated from time to time.

(g) "City" shall mean the City of Kirkland, Washington, a noncharter code city of the State of Washington.

(h) "Government Obligations" shall mean those government obligations defined by RCW 39.53.010 as it now reads or hereafter may be amended and which are otherwise lawful investments of the City at the time of such investment.

(i) "Maximum Annual Debt Service" shall mean the maximum amount of Annual Debt Service which shall become due in any future year on any outstanding 1985 Bonds, Bonds and Parity Bonds.

(j) "Operating and Maintenance Expense" shall mean all reasonable expenses incurred by the City in causing the Waterworks Utility to be operated and maintained in good repair, working order and condition and all payments made to another agency for treatment or disposal of sewage or acquisition of water, but excluding depreciation and any City-imposed utility taxes or payments in lieu of taxes.

(k) "Parity Bonds" shall mean any and all revenue bonds of the City issued after the date of the issuance of the 1985 Bonds and the Bonds pursuant to the provisions of Section 12 of

Ordinance No. 2869 and Section 12 of this ordinance, the payment of the principal of and interest on which constitutes a lien and charge upon the Revenue of the Waterworks Utility and ULID Assessments on a parity with the lien and charge upon such Revenue and ULID Assessments for the 1985 Bonds and the Bonds.

(l) "Plan and System" shall mean the plan or system of additions to and betterments and extensions of the Waterworks Utility specified, adopted and ordered to be carried out by this ordinance.

(m) "Principal and Interest Account" shall mean the account of that name created in the Bond Fund by Ordinance No. 2869 for the payment of the principal of and interest on the 1985 Bonds, the Bonds and any Parity Bonds.

(n) "Reserve Account" shall mean the account of that name created in the Bond Fund by Ordinance No. 2869 for the purpose of securing the payment of the principal of and interest on the 1985 Bonds, the Bonds and any Parity Bonds.

(o) "Reserve Requirement" shall mean the amount equal to the Average Annual Debt Service of all bonds payable from the Bond Fund.

(p) "Revenue of the Waterworks Utility" shall mean all the earnings and revenue received by the Waterworks Utility from any source whatsoever, except assessments in any ULID of the City, general ad valorem taxes, grants from the state or federal governments, proceeds from the sale of City property, bond

proceeds and earnings subject to a federal tax or rebate requirement.

(q) "Sinking Fund Installments" or "Sinking Fund Installment" shall mean, in any one year, the principal of 1985 Bonds, Bonds or Parity Bonds designated in the ordinances authorizing their respective issuance and sale as Sinking Fund Installments for that year.

(r) "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.

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

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

(u) "ULID Assessments" shall mean all ULID assessments and installments thereof, plus interest and penalties thereon, originally payable into the 1978 Bond Fund and now payable into the Bond Fund pursuant to Ordinance No. 2869 and those levied in any ULID created to secure the payment of any Parity Bonds and pledged to be paid into the Bond Fund.

(v) "Waterworks Utility" shall mean the combined water supply and distribution system and sanitary sewage disposal

system of the City, together with all additions thereto and betterments and extensions thereof heretofore or hereafter made.

Section 2. The following plan or system of additions to and betterments and extensions of the Waterworks Utility is specified, adopted and ordered to be carried out.

The City shall:

Extend sanitary sewage facilities along NE 90th and NE 85th, together with south and east of Lake Washington High School to serve unsewered areas on Rose Hill, and upgrade and reroute sanitary sewage with sewer improvements from the Rose Point Lift Station west of Market Street and in the Norkirk area.

Install and/or replace water mains as necessary west of Market Street and in the vicinity of Lake Washington Blvd., and install improvements in the Norkirk area on NE 116th, the Totem Valley area on 106th, 108th and 111th NE, and upgrade the water system in the central business district.

There shall be included in the foregoing Plan and System the acquisition and installation of all necessary valves, pumps, fittings, couplings, connections, equipment and appurtenances, the acquisition of any easements, rights-of-way and land that may be required and the performance of such work as may be incidental and necessary.

All of the foregoing shall be in accordance with the plans and specifications therefor prepared by the City's engineers or consulting engineers.

The City Council may modify the details of the foregoing Plan and System where, in its judgment, it appears advisable and if such modifications do not substantially alter the purpose of that Plan and System.

The life of the improvements comprising the foregoing Plan and System is declared to be at least 20 years. The estimated cost of the acquisition, construction, installation and financing of the above-described improvements, including the costs of issuance and sale of the Bonds, is declared to be approximately \$1,500,000. Such costs shall be paid from the proceeds of the Bonds authorized in this ordinance.

Section 3. The City Council finds that (1) the purpose for the issuance of the Bonds qualifies as a purpose for the issuance of Parity Bonds as defined in Section 12 of Ordinance No. 2869; (2) all payments required by Ordinance No. 2869 for the 1985 Bonds have been made into the Bond Fund; (3) there is no ULID created for the purpose of paying in whole or in part the principal of and interest on the Bonds; (4) provision is made in Section 5 hereof for the payment of the principal of and interest on the Bonds out of the Bond Fund; (5) provision is hereinafter made for the accumulation of the amounts required in the Reserve Account of the Bond Fund; and (6) there will be on file prior to the issuance and delivery of the Bonds a certificate of an independent licensed professional engineer experienced in the design, construction and operation of municipal utilities that the Revenue of the Waterworks Utility is at least equal to the Coverage Requirement (as defined herein).

Section 4. For the purpose of providing the money required to carry out the Plan and System, the City shall issue the Bonds in the aggregate principal amount of \$1,500,000. The Bonds

shall be dated July 1, 1987; shall be in the denomination of \$5,000 or any integral multiple thereof within a single maturity; shall be numbered separately in the manner and with any additional designation as the Bond Registrar deems necessary for purpose of identification; shall bear interest at the rates set forth below, payable on December 1, 1987, and semiannually thereafter on each succeeding June 1 and December 1; and shall bear interest at the rates and mature on June 1 in years and amounts as follows:

<u>Maturity Years</u>	<u>Amounts</u>	<u>Interest Rates</u>
1993	\$105,000	6.00%
1994	110,000	6.20
1995	120,000	6.40
1996	130,000	6.60
1997	140,000	6.75
1998	145,000	6.90
1999	165,000	7.00
2000	180,000	7.20
2001	195,000	7.30
2002	210,000	7.40

If any Bond is not redeemed upon proper presentment at its maturity or call date, the City shall be obligated to pay interest at the same rate for each such Bond from and after its maturity or call date until such Bond, both principal and interest, is paid in full or until sufficient money for such payment in full is on deposit in the Bond Fund and such Bond has been duly called for payment.

The Bonds shall be issued only in registered form as to both principal and interest and recorded in the books and records maintained by the Bond Registrar (the "Bond Register").

The Bond Register shall contain the name and mailing address of the owner of each Bond and the principal amount and number of Bonds held by each owner.

Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be paid by check or draft mailed to the registered owners at the addresses appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date or, when requested in writing by a registered owner at least fifteen days prior to the interest payment date, by wire transfer on the interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the registered owners at either of the principal offices of the Bond Registrar in Seattle, Washington, or New York, New York, at the option of such owners. The Bonds shall be payable solely out of the Bond Fund and shall not be general obligations of the City.

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

Bonds maturing in the years 1993 through 1997, inclusive, shall be issued without the right or option of the City to redeem the same prior to their stated maturity dates. The City reserves the right and option to redeem the Bonds maturing on or after June 1, 1998, prior to their stated maturity dates, as a whole, or in part in inverse order of maturity (and by lot within a maturity in such manner as the Bond Registrar shall determine), on June 1, 1997, and on any interest payment date thereafter, at par plus accrued interest to the date fixed for redemption. Portions of the principal amount of any Bond, in installments of \$5,000 or any integral multiple of \$5,000, may be redeemed. If less than all of the principal amount of any Bond is redeemed, upon surrender of such Bond at the principal office of the Bond Registrar, there shall be issued to the registered owner, without charge therefor, a new Bond (or Bonds at the option of the registered owner) of like maturity and interest rate in any of the denominations authorized by this ordinance.

Notice of any such intended redemption shall be given not less than 30 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the registered owner of any Bond to be redeemed at the address appearing on the Bond Register. The requirements of this section shall be deemed to be complied with when notice is mailed as herein provided, whether or not it is actually received by the owner of any Bond. The interest on the Bonds so called for redemption

shall cease on the date fixed for redemption unless such Bond or Bonds so called are not redeemed upon presentation made pursuant to such call. In addition, such redemption notice shall be mailed within the same period, postage prepaid, to Moody's Investors Service, Inc., and Standard & Poor's Corporation at their offices in New York, New York, or their successors, to Boettcher & Company, Inc., at its office in Seattle, Washington, or its successor, and to such other persons and with such additional information as the Director of Administration and Finance shall determine, but such mailings shall not be a condition precedent to the redemption of such Bonds.

The City further reserves the right and option to purchase any or all of the Bonds in the open market at any time at a price not in excess of par plus accrued interest to the date of such purchase.

Section 5. The Bond Fund previously has been created in the office of the Director of Administration and Finance as a special fund of the City to be known as the Water and Sewer Revenue Refunding Bond Fund, 1985, which fund has been divided into two accounts, a Principal and Interest Account and a Reserve Account. So long as any of the Bonds are outstanding against the Bond Fund, the City obligates and binds itself to set aside and pay into the Bond Fund, in addition to the amounts covenanted to be paid therein by the ordinance authorizing the issuance of the 1985 Bonds and the ordinances authorizing the issuance of any Parity Bonds, if any, out of the Revenue of the

Waterworks Utility certain fixed amounts without regard to any fixed proportion, namely:

(a) Into the Principal and Interest Account, on or before the 20th day of each month, commencing with the month of July, 1987, an amount which, together with ULID Assessments collected and other money on deposit therein, equals one-fifth the interest to become due and payable on the Bonds on December 1, 1987, and thereafter on or before the 20th day of each month, beginning with the month of December, 1987, an amount which, together with ULID Assessments collected and other money on deposit therein, equals one-sixth of the interest to become due and payable on the Bonds on the next interest payment date, and, beginning with the month of June, 1992, an amount which, together with ULID Assessments collected and other money on deposit therein, equals one-twelfth of the principal to become due and payable on the Bonds on the next principal payment date; and

(b) Into the Reserve Account, by July 1, 1992, an amount which, together with money on deposit therein, is equal to the Reserve Requirement.

The City covenants and agrees that it will at all times maintain in the Reserve Account an amount equal to the Reserve Requirement, except for withdrawals therefrom as authorized herein, until there is a sufficient amount in the Principal and Interest Account and Reserve Account to pay the principal of and interest on all outstanding bonds payable from the Bond Fund, at

which time the money in the Reserve Account may be used to pay any such principal and interest so long as the money left remaining on deposit in the Reserve Account is no less than the Reserve Requirement of the remaining outstanding bonds payable from the Bond Fund.

In the event there shall be a deficiency in the Principal and Interest Account to meet maturing installments of either principal of or interest on any of the 1985 Bonds, the Bonds or any Future Parity Bonds, such deficiency shall be made up from the Reserve Account by the withdrawal of cash therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal will then be made up from the Revenue of the Waterworks Utility and from ULID Assessment payments which shall be first available after making necessary provisions for the required payments into the Principal and Interest Account.

All money in the Bond Fund may be kept in cash or deposited in institutions permitted by law in an amount in each institution not greater than the amount insured by any department or agency of the United States Government, or may be invested in Government Obligations or other legal investments permitted to the City maturing not later than the date when needed (for investments in the Principal and Interest Account) or the last maturity of any outstanding bonds payable from the Bond Fund (for investments in the Reserve Account). Income 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 Requirements of all bonds payable from the Bond Fund, and thereafter shall be deposited in the Principal and Interest Account.

Notwithstanding the provisions for the deposit or maintenance of earnings in accounts of the Bond Fund, any earnings which are subject to a federal tax or rebate requirement may be withdrawn from the Bond Fund for deposit into a separate fund or account for that purpose.

It is declared that in creating the Bond Fund and in fixing the amounts to be paid into it as aforesaid, the City Council has had due regard for Operating and Maintenance Expense and the debt service requirements of the 1985 Bonds, and declares that the City Council is not setting aside into the Bond Fund a greater amount than in its judgment will be available over and above such Operating and Maintenance Expense and debt service requirements of the 1985 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 bonds payable out of the Bond Fund may bring action against the City and compel the setting aside and payment.

Section 6. The provisions of Section 12 of Ordinance No. 2869 having been met and complied with, or will have been met and complied with on the date of issuance of the Bonds, the Revenue of the Waterworks Utility and all ULID Assessments are

pledged for the payment of the Bonds. This pledge shall constitute a lien and charge upon such Revenue of the Waterworks Utility and ULID Assessments prior and superior to any other liens and charges whatsoever, subject only to Operating and Maintenance Expense, except that the lien and charge upon such revenue and ULID Assessments for the Bonds shall be on a parity with the lien and charge thereon of the 1985 Bonds and any Parity Bonds hereafter issued.

Section 7. The Bonds shall be printed on lithographed or good bond paper in a form consistent with the provisions of this ordinance and state law, shall be signed by the Mayor and Director of Administration and Finance, both of whose signatures shall be in facsimile, and a facsimile reproduction of the seal of the City shall be printed thereon.

Only such Bonds as shall bear thereon a Certificate of Authentication in the following form, manually executed 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 Kirkland, Washington, Water and Sewer Revenue Bonds, 1987, described in the Bond Ordinance.

WASHINGTON STATE FISCAL AGENCY
Bond Registrar

By _____
Authorized Officer

The authorized execution of such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated

have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this ordinance.

In case either or both of the officers who shall have executed the Bonds shall cease to be such officer or officers of the City before the Bonds so signed shall have been authenticated or delivered by the Bond Registrar or issued by the City, such Bonds nevertheless may be authenticated, delivered and issued and upon such authentication, delivery and issue, shall be as binding upon the City as though those whose facsimile signatures appear on the Bonds had continued to be such officers of the City. Any Bond also may be signed on behalf of the City by such persons as at the actual date of execution of such Bond shall be proper officers of the City authorized to execute Bonds although on the original date of such Bond such persons were not such officers of the City.

Section 8. The Bond Registrar shall keep, or cause to be kept, at its principal corporate trust office, sufficient books for the registration and transfer of the Bonds which shall at all times be open to inspection by the City.

The Bond Registrar shall be responsible for its representations contained in the Registrar's Certificate of Authentication on the Bonds. The Bond Registrar may become the owner of Bonds with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depositary for and permit any of its officers or directors to

act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Bond owners.

Section 9. The Bonds shall be negotiable instruments to the extent provided by RCW 62A.8-102 and 62A.8-105.

Section 10. The City covenants and agrees with the owner of each of the Bonds as follows:

(a) It will establish, maintain, revise as necessary and collect such rates and charges for water and sanitary sewage disposal service furnished which, together with ULID Assessments which will be collected in any such year and other revenue available therefor, will produce Revenue of the Waterworks Utility available for debt service each calendar year, after payment of Operating and Maintenance Expense, at least equal to 1.25 times the Annual Debt Service in any year thereafter on all outstanding 1985 Bonds, Bonds and Parity Bonds actually payable from the Revenue of the Waterworks Utility (the "Coverage Requirement").

(b) It will at all times maintain and keep the Waterworks Utility 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 collect promptly all ULID Assessments. Such assessments may be used to pay the principal of or interest on any bonds payable out of the Bond Fund without those assessments being particularly allocated to the payment of principal of or interest on any particular series of 1985 Bonds, Bonds or Parity Bonds.

(d) It will not sell, lease, mortgage or in any manner encumber or dispose of all the property of the Waterworks Utility unless provision is made for payment into the Bond Fund of a sum sufficient to pay the principal of and interest on all Bonds 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 the Waterworks Utility 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 from the Bond Fund as the Revenue of the Waterworks Utility available for debt service for such outstanding bonds for the twelve months preceding such sale, lease, encumbrance or disposal from the portion of the Waterworks Utility sold, leased, encumbered or disposed of bears to the Revenue of the Waterworks Utility available for debt service for such bonds for the same period. Any such money so paid into the Bond Fund shall be used to retire outstanding bonds payable therefrom at the earliest possible date and until being so used may be invested to the same extent and in the same manner as provided for the investment of money in the Reserve Account in the Bond Fund.

(e) It will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the Waterworks Utility, and it will furnish the owner or owners of the Bonds or any subsequent owner or owners thereof, at the written request of such owner or owners, complete operating and income statements of the Waterworks Utility in reasonable detail covering any calendar year not more than 120 days after the close of such calendar year and it will grant any owner or owners of at least twenty-five percent of the outstanding Bonds the right at all reasonable times to inspect the entire Waterworks Utility and all records, accounts and data of the City relating thereto. Upon request of any owner of any of the Bonds, it also will furnish to such owner a copy of the most recently completed audit of the City's accounts by the State Auditor of Washington.

(f) It will not furnish any service of the Waterworks Utility to any customer whatsoever free of charge and will take prompt legal action to enforce collection of all delinquent accounts.

(g) It will at all times carry fire and such other forms of insurance on such of the buildings, equipment, facilities and properties of the City as under good practice are ordinarily carried on such buildings, equipment, facilities, and properties by utilities engaged in the operation of water and sewer systems to the full insurable value thereof, and also will carry adequate public liability insurance (and

war risk insurance if available at reasonable rates) at all times. The premiums on such insurance policies are declared to be a normal part of Operating and Maintenance Expense.

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

(i) It will take all actions necessary to prevent the 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 at any time during the term of the Bonds which will cause the interest on the Bonds to be included in gross income for federal income tax purposes.

It has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

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

(1) To pay Operating and Maintenance Expense;

(2) To meet the required debt service payments on the 1985 Bonds, the Bonds and any Parity Bonds hereafter issued by making payments into the Principal and Interest Account;

(3) To make required payments into the Reserve Account; and

(4) 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 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; or for any other lawful purpose.

Section 11. The City finds and declares that (a) it is a duly organized and existing governmental unit of the State of Washington and has general taxing power; (b) no Bond which is part of this issue of Bonds is a "private activity bond" within the meaning of Section 141 of the Internal Revenue Code of 1986 (the "1986 Code"); (c) at least 95% of the net proceeds of the Bonds will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City); (d) the aggregate face amount of all tax-exempt obligations (other than private activity bonds) issued by the City and all entities subordinate to the City (including any entity which the City controls or which derives its authority to issue tax-exempt obligations from the City) during the current calendar year is not reasonably expected to exceed \$5,000,000; and (e) the amount of tax-exempt obligations, including the Bonds, designated as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the 1986 Code or any predecessor provision of federal law by the City during the calendar year in which the Bonds are issued does not exceed \$10,000,000. The City therefore certifies that it is an issuer which qualifies for the small governmental issuer arbitrage rebate exemption under Section 148(f)(4)(C) of the 1986 Code and designates the Bonds as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the 1986 Code.

Section 12. The City further covenants with the owner of each of the Bonds for as long as any of the same are outstanding that it will not create any special fund or funds for the payment of the principal of and interest on any other revenue bonds which will have any priority over or which will rank on a parity with the payments required by this ordinance to be made out of the Revenue of the Waterworks Utility and ULID Assessments, nor will it issue Parity Bonds, except that it reserves the right for

First, the purpose of acquiring, constructing and installing additions, betterments and improvements to and extensions of, acquiring necessary equipment for, or making necessary replacements of or repairs or capital improvements to the Waterworks Utility pursuant to a plan or plans of additions and betterments thereto hereafter adopted, or

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

to issue additional and/or refunding revenue bonds therefor, and to make payments into the Bond Fund from the Revenue of the Waterworks Utility and ULID Assessments sufficient to pay the principal of and interest on such Parity Bonds and to accumulate and maintain a reserve therefor as hereinafter required, which payments may rank equally with the payments out of the Revenue of the Waterworks Utility and ULID Assessments required to be made into the Bond Fund by this ordinance, if the conditions and requirements set forth in Section 12 of Ordinance No. 2869 are met and complied with at the time of the issuance of such Parity

Bonds, which section by this reference is incorporated herein and made a part hereof.

Nothing contained in the provisions for Parity Bonds shall prevent the City from issuing revenue bonds or other obligations having a junior lien on the Revenue of the Waterworks Utility or from pledging the payment of assessments in any ULID into a bond, note, or warrant redemption fund or account created to pay and secure the payment of the principal of and interest on such junior lien obligations as long as such 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 obligations. Neither shall anything contained in this ordinance prevent the City from issuing revenue bonds to refund maturing revenue obligations of the City for the payment of which money is not otherwise available.

Section 13. 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 Bonds or such portion thereof included in the refunding or defeasance plan as the same become due and payable and to refund or defease such then outstanding Bonds and to pay the costs of refunding or defeasance, and shall have set aside irrevocably in a special fund for and pledged to such payment, refunding or defeasance, money and/or Government Obligations sufficient in amount, together with known earned income from the investments thereof, to make such payments and

to accomplish the refunding as scheduled (hereinafter called the "trust account"), and shall make irrevocable provisions for redemption of such Bonds, then in that case all right and interest of the owners of the Bonds to be so retired, refunded or defeased (hereinafter collectively called the "defeased Bonds") in the covenants of this ordinance, in the Revenue of the Waterworks Utility, ULID Assessments and funds and accounts obligated to the payment of such Bonds, other than the right to receive the funds so set aside and pledged, thereupon shall cease and become void, except such owners shall have the right to receive payment of the principal of and interest on the defeased Bonds from the trust account. After the establishing and full funding of such trust account, the City then may apply any money in any other fund or account established for the payment or redemption of the defeased Bonds to any lawful purposes as it shall determine, subject only to the rights of the owners of any other bonds then outstanding.

In the event that the refunding plan provides that the Bonds being refunded or the refunding bonds to be issued be secured by cash and/or Government Obligations or other legal investments pending the prior redemption of those Bonds being refunded and if such refunding plan also provides that certain cash and/or Government Obligations or other legal investments are pledged irrevocably for the prior redemption of those Bonds included in the refunding plan, then only the debt service on the Bonds which are not defeased Bonds and the refunding bonds,

the payment of which is not so secured by the refunding 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 14. There is created in the office of the Director of Administration and Finance a special fund to be known and designated as the Waterworks Utility Construction Fund, 1987 (the "Construction Fund"), into which fund shall be deposited the principal proceeds received from the issuance and sale of the Bonds to be used to pay the costs of carrying out the Plan and System and the expenses incurred in the issuance of the Bonds. Pending the expenditure of such principal proceeds out of the Construction Fund, the money in such fund may be invested in any legal investment and the investment income may be retained in such fund and used for the purposes of such fund, except that earnings subject to a federal tax or rebate requirements may be withdrawn from the Construction Fund for such tax or rebate purposes. The accrued interest, if any, on the Bonds received at the time the Bonds are delivered to the initial purchaser thereof shall be deposited in the Principal and Interest Account.

Section 15. Boettcher & Company, Inc., of Seattle, Washington, has presented a Bond Purchase Agreement (the "Purchase Contract") to the City whereunder Boettcher & Company, Inc., has offered to purchase the Bonds under the terms and

conditions provided in the Purchase Contract, which written Purchase Contract is on file with the Director of Administration and Finance, and is incorporated herein by this reference. The City Council finds that entering into the Purchase Contract is in the City's best interest and therefore accepts the offer contained in the Purchase Contract and authorizes the execution of the Purchase Contract by City officials.

The Bonds will be printed at City expense and will be delivered to the purchaser in accordance with the Purchase Contract offer with the approving legal opinion of Roberts & Shefelman, municipal bond counsel of Seattle, Washington, relative to the issuance of the bonds, printed on each bond. Bond counsel has not been engaged and shall not be required to review or express any opinion concerning the completeness or accuracy of any official statement, offering circular or other sales material issued or used in connection with the Bonds and bond counsel's opinion shall so state.

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

Section 16. This ordinance shall take effect from and after its passage and five (5) days after its publication as required by law.

PASSED by the City Council and SIGNED by the Mayor of the

City of Kirkland, Washington, at a regular open public meeting thereof, this 22nd day of June, 1987.

CITY OF KIRKLAND, WASHINGTON

Loris Cooper
MAYOR

ATTEST:

Janice Perry
City Clerk

FORM APPROVED:

By *Ray E. ...*
City Attorney

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