

ORDINANCE NO. 3955

AN ORDINANCE of the City of Kirkland, Washington, specifying and adopting the certain additions to and betterments and extensions of the City's combined system of water and sewerage; approving a plan of refunding for certain outstanding water and sewer revenue bonds; authorizing the issuance of \$3,090,000 par value Water and Sewer Revenue and Refunding Bonds, 2004, of the City for the purpose of paying part of the cost of carrying out such additions, betterments and extensions and such refunding; fixing the date, form, terms, interest rates, maturities and covenants of those bonds; providing for the issuance of bonds in the future on a parity therewith; appointing an escrow agent; and providing for the sale and delivery of the bonds.

WHEREAS, the City of Kirkland, Washington (the "City"), by Ordinance No. 576, maintains a combined system of water and sewerage (the "System"); and

WHEREAS, the System is in need of certain additions, betterments and extensions (hereinafter defined as the "Project"); and

WHEREAS, the City is authorized by RCW Chs. 35.67 and 35.92 to issue water and sewer revenue bonds for purposes of financing the Project (the "Improvement Bonds"); and

WHEREAS, the City has heretofore issued and has outstanding the following series of bonds payable from the revenues of the System:

<u>Authorizing Ordinance</u>	<u>Dated Date</u>	<u>Designation</u>	<u>Outstanding Principal Amount</u>	<u>Final Maturity</u>
3482	08/01/95	Water and Sewer Revenue Bonds, 1995	\$ 2,015,000	06/01/14
3523	03/01/96	Water and Sewer Revenue Refunding Bonds, 1996	\$ 3,125,000	06/01/12

("Outstanding Parity Bonds"); and

WHEREAS, the Outstanding Parity Bonds issued under date of August 1, 1995 (the "1995 Bonds") mature in principal amounts as follows:

Maturity Years (June 1)	Principal Amounts	Interest Rates
2005	\$ 105,000	5.10%
2006	115,000	5.15
2007	120,000	5.25
2008	125,000	5.35
2014	1,550,000	5.75

; and

WHEREAS, the 1995 Bonds maturing on and after June 1, 2006 are callable in whole or in part on or after June 1, 2005, on any date, at a price of par plus accrued interest to the date of redemption; and

WHEREAS, it appears that the 1995 Bonds may now be refunded at lower interest rates, thereby yielding savings to the City's ratepayers by the issuance of refunding revenue bonds (hereinafter defined as "Refunding Bonds"); and

WHEREAS, it appears to the Council that it is in the best interest of the City that the Improvement Bonds and Refunding Bonds be sold in a single issue of water and sewer revenue and refunding bonds (hereinafter defined as the "Bonds"); and

WHEREAS, the City has reserved the right in each of the ordinances authorizing the issuance of the Outstanding Parity Bonds to issue revenue bonds in the future on a parity therewith (hereinafter defined as "Future Parity Bonds"); and

WHEREAS, the City has been assured that the conditions to the issuance of Future Parity Bonds have been met or will be met prior to the issuance of the bonds herein authorized; and

WHEREAS, the City has received the offer of D.A. Davidson & Co. to purchase the herein authorized bonds on the terms and conditions set forth herein and in their purchase offer presented to this Council, which terms and conditions this Council have found acceptable;

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

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1.1. Definitions. As used in this ordinance the following words shall have the following meanings unless the context shall clearly indicate that another meaning is intended:

Acquired Obligations means the Government Obligations acquired by the City under the terms of this ordinance and the Escrow Agreement to effect the defeasance and refunding of the 1995 Bonds.

Advance Refunding Account means the account by that name established within the Bond Fund pursuant to Section 7.1 of this ordinance.

Adjusted Net Revenues means Net Revenues as calculated pursuant to Section 4.2(H).

Annual Debt Service means, for any Fiscal Year, the sum of:

- (a) the interest due in such Fiscal Year on all outstanding Parity Bonds, excluding interest to be paid from the proceeds of Bonds,
- (b) the principal of all outstanding Serial Bonds due in such Fiscal Year, and
- (c) the Sinking Fund Requirement, if any, for such Fiscal Year (calculated as of the Sinking Fund Requirement Date for such Fiscal Year).

If the interest rate on any such Bonds is other than a fixed rate, the rate applicable at the time of computation shall be used.

Average Annual Debt Service means the amount determined by dividing (a) the sum of all interest and principal to be paid on outstanding Parity Bonds from the date of determination to the last maturity date of such Parity Bonds, by (b) the number of Fiscal Years from and including the Fiscal Year in which the determination is made to the last Fiscal Year in which the sum of (i) the principal amount of Serial Bonds maturing in such Fiscal Year plus (ii) the Sinking Fund Requirement for such Fiscal Year, exceeds 4% of the principal amount of Parity Bonds outstanding as of the date of determination.

If the interest rate on any such Bonds is other than a fixed rate, the rate applicable at the time of computation shall be used.

Bond Fund means the 2004 Water and Sewer Revenue Bond Redemption Fund, created pursuant to Section 6.2 of this ordinance for the purpose of paying and securing the principal of and interest on the Bonds.

Bond Insurance Policy means the municipal bond insurance policy issued by the Bond Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds.

Bond Insurer means MBIA Insurance Corporation, a stock insurance company incorporated under the laws of the State of New York, or any successor thereto.

Bonds means the \$3,090,000 par value of Water and Sewer Revenue and Refunding Bonds, 2004, authorized to be issued by this ordinance.

Bond Register means the books or records maintained by the Bond Registrar containing the name and mailing address of the owner of each Parity Bond or nominee of such owner and the principal amount and number of Parity Bonds held by each owner or nominee.

Bond Registrar means the fiscal agency of the State of Washington in New York, New York, as the same may be designated from time to time. A Supplemental Ordinance may appoint a different person, firm or entity to serve as Bond Registrar.

City means the City of Kirkland, Washington, a municipal corporation of the State of Washington.

Closing means the delivery of any Bonds to, and payment of the purchase price therefor by, the Underwriter.

Code means the federal Internal Revenue Code of 1986, as the same shall be amended from time to time, and all regulations promulgated or applicable thereunder.

Commission means the Securities and Exchange Commission.

Construction Fund means the City's fund designated as the Water/Sewer Construction Fund currently maintained by the City.

Council means the legislative body of the City as the same shall be duly and regularly constituted from time to time.

Coverage Requirement means Net Revenues in each calendar year at least equal to 1.25 times the Maximum Annual Debt Service with respect to all Parity Bonds actually payable from Revenues.

Director means the duly appointed and acting Director of Finance & Administration of the City or the successor to the functions of such office.

Escrow Agreement means the Escrow Deposit Agreement to be dated as of the date of closing and delivery of the Bonds substantially in the form attached hereto as Exhibit A.

Escrow Agent means U.S. Bank National Association, Seattle, Washington.

Fiscal Year means the fiscal year used by the City at any time. At the time of the passage of this ordinance, the Fiscal Year is the twelve-month period beginning January 1 of each year.

Future Parity Bonds means any water and sewer revenue bonds which the City may hereafter issue having a lien upon the Revenues equal to the lien of the Bonds and the Outstanding Parity Bonds upon the Revenues. **Future Parity Bonds** may include bonds, notes, warrants, certificates of indebtedness or any other evidence of indebtedness.

Government Obligations has the meaning given such term in RCW Ch. 39.53 as it now reads or hereafter may be amended.

Improvement Bonds means \$960,000 of the Bonds authorized to be issued herein for the purpose of financing the cost of the Projects.

Maximum Annual Debt Service means highest dollar amount of Annual Debt Service in any fiscal year for all Parity Bonds and/or for all subordinate lien evidences of indebtedness secured by Revenues, as the context requires.

MSRB means the Municipal Securities Rulemaking Board or any successor to its functions.

1995 Bond Ordinance means Ordinance No. 3482 by the City on July 18, 1995.

1995 Bonds means the Water and Sewer Revenue Bonds, 1995, of the City issued under date of August 1, 1995, and presently outstanding in the aggregate principal amount of \$2,015,000.

Net Revenue means, for any period, the excess of Revenues over Operating Expenses for such period, excluding from the computation of Revenues (a) any profit or loss derived from the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets, litigation settlements, or resulting from the early extinguishment of debt, and (b) insurance proceeds.

NRMSIR means a nationally recognized municipal securities information repository.

Operating Expense means, (i) the City's expenses for operation and maintenance of the System, and ordinary repairs, renewals, replacements and reconstruction of the System, including all payments (other than payments out of Bond proceeds) into reasonable reserves for items of Operating Expenses the payment of which is not immediately required, and shall include, without limiting the generality of the foregoing, all costs of purchased water, payments made to another agency for the treatment or disposal of sewage (regardless of whether such costs include payments with respect to debt service), rents, administrative and general expenses, engineering expenses, legal and financial advisory expenses, required payments to pension, retirement, health and hospitalization funds, insurance premiums and any taxes, assessments, or payments in lieu of taxes, all to the extent properly allocable to the System; (ii) any current expenses required to be paid by the City under the provisions of this ordinance or by law, all to the extent properly allocable to the System; and (iii) the fees and expenses of any Bond Registrar. Operating Expenses shall not include any costs or expenses for new construction or other capital outlays, interest, amortization of debt service on any evidence of indebtedness or any allowance for depreciation.

Outstanding Parity Bonds means those water and sewer revenue and refunding bonds identified in the recitals of this ordinance.

Outstanding Parity Bond Ordinances means Ordinance No. 3482, passed by the Council on July 18, 1995; and Ordinance No. 3523, passed by the Council on February 6, 1996.

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

Permitted Investments means any of the following, but only to the extent that it is at the time a legal investment for public funds held by cities in the State of Washington:

(a) Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

(b) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership
2. Farmers Home Administration (FmHA)
Certificates of beneficial ownership
3. Federal Financing Bank
4. Federal Housing Administration Debentures (FHA)
5. General Services Administration
Participation certificates
6. Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA — guaranteed mortgage-backed bonds
GNMA — guaranteed pass-through obligations
(not acceptable for certain cash-flow sensitive issues.)
7. U.S. Maritime Administration
Guaranteed Title XI financing
8. U.S. Department of Housing and Urban Development (HUD)
Project Notes

Local Authority Bonds

New Communities Debentures —U.S. government guaranteed debentures

U.S. Public Housing Notes and Bonds — U.S. government guaranteed public housing notes and bonds

(c) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System
Senior debt obligations
2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mae")
Participation Certificates
Senior debt obligations
3. Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations
4. Student Loan Marketing Association (SLMA or "Sallie Mae")
Senior debt obligations
5. Resolution Funding Corp. (REFCORP) obligations
6. Farm Credit System
Consolidated systemwide bonds and notes

(d) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAM-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa 1 or Aa2.

(e) Certificates of deposit secured at all times by collateral described in (a) and/or (b) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

(f) Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.

(g) Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements acceptable to the Bond Insurer (Investment Agreement criteria is available upon request).

(h) Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by S&P.

(i) Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

(j) Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P.

(k) Repurchase Agreements for 30 days or less must follow the following criteria. Repurchase Agreements which exceed 30 days must be acceptable to the Bond Insurer (criteria available upon request)

Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the municipal entity in exchange for the securities at a specified date.

1. Repos must be between the municipal entity and a dealer bank or securities firm

A. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by Standard & Poor's Corporation and Moody's Investor Services, or

B. Banks rated "A" or above by Standard & Poor's Corporation and Moody's Investor Services.

2. The written repo contract must include the following:

A. Securities which are acceptable for transfer are:

(i) Direct U.S. governments, or

(ii) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)

B. The term of the repo may be up to 30 days.

C. The collateral must be delivered to the municipal entity, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).

D. Valuation of Collateral

(i) The securities must be valued weekly, market-to-market at current market price plus accrued interest

(ii) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

3. Legal opinion which must be delivered to the municipal entity to the effect that the repo meets guidelines under state law for legal investment of public funds.

(l) State of Washington Local Government Investment Pool.

Professional Utility Consultant means the independent person(s) or firm(s) selected by the City having a favorable reputation for skill and experience with water/sewer systems of comparable size and character to the System in such areas as are relevant to the purposes for which they are retained.

Project means the plan or system of additions to and betterments and extensions of the system specified, adopted and ordered to be carried out by Section 2.1 of this ordinance.

Qualified Insurance means any non-cancellable municipal bond insurance policy or surety bond issued by any insurance company licensed to conduct an insurance business in any state of the United States (or by a service corporation acting on behalf of one or more such insurance companies), which insurance company or companies, as of the time of issuance of such policy or surety bond, are currently rated in one of the two highest rating categories by Moody's Investors Service, Inc. or Standard & Poor's Ratings Group or both Moody's Investors Service, Inc., and Standard & Poor's Ratings Group if such institution is rated by both or their comparably recognized business successors.

Qualified Letter of Credit means any irrevocable letter of credit issued by a financial institution for the account of the City on behalf of the owners of one or more series of Bonds, which institution maintains an office, agency or branch in the United States and as of the time of issuance of such letter of credit is currently rated in one of the two highest rating categories by Moody's Investors Service, Inc. or Standard & Poor's Ratings Group or their comparably recognized business successors or both Moody's Investors Service, Inc. and Standard & Poor's Ratings Group if such institution is rated by both or their comparably recognized business successors.

Refunding Bonds means \$2,130,000 of the Bonds issued pursuant to this ordinance for the purpose of refunding the 1995 Bonds and paying a proportionate share of the costs of issuance.

Reserve Fund means the City's Water and Sewer Debt Service Reserve Fund created pursuant to Ordinance 3842 for the purpose of securing the payment of the principal of and interest on Parity Bonds.

Reserve Requirement means the amount equal to the Maximum Annual Debt Service.

Revenues means all income (including investment income), receipts and revenues derived by the City through the ownership and operation of the System, including assessments in ULIDs, but shall not include:

(a) any income derived by the City through the ownership and operation of any facilities that may hereafter be purchased, constructed or otherwise acquired by the City as a separate utility system;

(b) general *ad valorem* taxes;

(c) grants;

(d) proceeds of borrowing; or

(e) investment income restricted to a particular purpose inconsistent with its use for the payment of debt service, including investment income derived pursuant to a plan of debt retirement or refunding.

Rule means the Commission's Rule 15c2-12 under the Securities and Exchange Act of 1934, as the same may be amended from time to time.

Serial Bonds means Parity Bonds other than Term Bonds.

SID means a state information depository for the State of Washington (if one is created).

Sinking Fund Requirement for any Fiscal Year means the principal amount of Term Bonds required to be purchased, redeemed or paid in such Fiscal Year as established by the ordinance of the City authorizing the issuance of such Term Bonds.

Sinking Fund Requirement Date means, for any Fiscal Year, the date by which the Sinking Fund Requirement for such Fiscal Year must be met, which with respect to the Term Bonds shall be June 1.

Supplemental Ordinance means any ordinance amending, modifying or supplementing the provisions of this ordinance, including any ordinance providing for the issuance of Future Parity Bonds.

System means 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.

Term Bonds means those Parity Bonds specifically identified as "Term Bonds" in the ordinance authorizing their issuance.

ULID means a utility local improvement district.

ULID Assessments means all ULID assessments and installments thereof, plus interest and penalties thereon payable into a bond fund to secure the payment of any Parity Bonds.

Underwriter means D.A. Davidson & Co., Seattle, Washington.

Water/Sewer Fund means the Water/Sewer Operating Fund of the City.

Section 1.2. Interpretation.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words imparting the singular number shall include the plural numbers and vice versa unless the context shall otherwise indicate. Reference to Articles, Sections and other subdivisions of this ordinance are to the Articles, Sections and other subdivisions of this ordinance as originally adopted unless expressly stated to the contrary. The headings or titles of the Articles and Sections hereof, and the Table of Contents appended hereto, are for convenience of reference only and shall not define or limit the provisions hereof.

ARTICLE II FINDINGS AND DETERMINATIONS

Section 2.1. Adoption of Plan and System. The City will undertake additions to and betterments and extensions of the System identified in the City's adopted six-year Capital Improvement Program (herein referred to as the "Project.") The Project shall be funded with a portion of the proceeds of the Bonds, along with other funds of the System and interest earnings during construction.

There shall be included in the foregoing Project 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.

Section 2.2. Adoption of Refunding Plan.

The City shall use a portion of the proceeds of the Bonds to refund the 1995 Bonds, to pay costs of issuance, including but not limited to bond insurance, and to pay the interest on and principal of all outstanding 1995 Bonds on and prior to June 1, 2005 (the "Redemption Date"), and to fix the form, terms, conditions and covenants of said revenue and refunding bonds (the "Refunding Plan").

Section 2.3. Best Interest of the City.

The Council hereby finds and determines that it is in the best interests of the City to undertake the Project and Refunding Plan.

Section 2.4. Due Regard.

The Council hereby finds and determines that due regard has been given to the cost of the operation and maintenance of the System and that it has not obligated the City to set aside into the bond funds for the account of Parity Bonds a greater amount of the revenues and proceeds of the System than in its judgment will be available over and above such cost of maintenance and operation.

Section 2.5. Satisfaction of Parity Conditions.

The City Council hereby finds and determines, as required by the Outstanding Parity Bond Ordinances, as follows:

First, at this time and the time of issuance of the Bonds, there is and will be no deficiency in any account in the bond funds established for the payment of the Outstanding Parity Bonds or the Reserve Fund;

Second, no Event of Default has occurred and is continuing; and

Third, on or prior to the Closing, the Director will deliver a certificate to the effect that Net Revenues for the year 2002 are more than 125% of Maximum Annual Debt Service for each future Fiscal Year.

ARTICLE III
AUTHORIZATION AND ISSUANCE OF BONDS

Section 3.1. Authorization of Bonds.

For the purpose of accomplishing the Project and paying allocable costs of issuance, the City shall issue the Improvement Bonds in the aggregate principal amount of \$960,000. For the purpose of undertaking the Refunding Plan and paying a proportionate amount of costs of issuance, the City shall issue the Refunding Bonds in the aggregate principal amount of \$2,130,000. The Refunding Bonds and the Improvement Bonds shall be combined and sold as a single series in the aggregate principal amount of \$3,090,000 (the "Bonds"). The Bonds shall be designated as Water and Sewer Revenue and Refunding Bonds, 2004 (the "Bonds"), shall bear interest from their date at the rates per annum of interest and shall mature on June 1 of years and in principal amounts as follows:

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2005	\$ 150,000*	2.00%
2005	180,000	2.00
2006	150,000*	2.50
2006	165,000	2.50
2007	145,000*	3.00
2007	140,000	3.00
2008	150,000*	3.00
2008	145,000	3.00
2009	145,000*	3.00
2009	160,000	3.00
2010	145,000*	3.25
2010	170,000	3.25
2011	150,000*	3.50
2012	160,000*	3.75
2013	460,000*	4.00
2014	475,000*	4.00

* Denotes Refunding Bonds.

Section 3.2. Additional Provisions of Bonds.

The Bonds shall be dated August 1, 2004, shall be fully registered as to both principal and interest, shall be in denominations of \$5,000 or any integral multiple thereof, provided that no Bond shall represent more than one maturity, and shall be numbered separately in such manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification.

Interest may be paid by the Bond Registrar. Principal of the Bonds, at maturity or when otherwise due, shall be payable upon due presentation and surrender of the Bonds at the office of

the Bond Registrar in such coin or currency of the United States of America which at the time of payment is legal tender for public and private debts. The principal of and interest on the Bonds shall be payable solely from the Bond Fund.

Interest on the Bonds shall be payable semiannually on June 1 and December 1 of each year, beginning December 1, 2004.

The Bond Register shall be maintained by the Bond Registrar, and shall contain the name and mailing address of the registered owner or owners of each Bond or nominee of such registered owner or owners and the principal amount and number of Bonds held by each registered owner or nominee.

Section 3.3. Reservation of Right to Purchase.

The City reserves the right to use moneys in the Water/Sewer Fund or any other funds legally available therefor after providing for the payments identified at Section 6.1(B)(1)(i) through (v) at any time to purchase any of the Bonds offered to the City for retirement only if such purchase shall be found by the Director to be economically advantageous and in the best interest of the City.

Any purchases of Bonds may be made with or without tenders of Bonds and at either public or private sale. All Bonds so purchased or redeemed shall be cancelled and not reissued. Any moneys which are to be applied to the purchase or redemption of Bonds shall, prior to such purchase or redemption, be transferred to and deposited in the Bond Fund to the credit of the appropriate account therein.

Section 3.4. Optional Redemption of Bonds.

The Bonds are not subject to optional redemption prior to their stated maturities.

ARTICLE IV
ISSUANCE OF FUTURE PARITY BONDS

Section 4.1. Authorization of Bonds.

Before any series of Future Parity Bonds shall be issued under the provisions of this Section and the remaining sections of this Article, the City shall adopt an ordinance or ordinances authorizing the issuance of such bonds, fixing the amount and the details thereof, describing in brief and general terms the purpose or purposes for which such bonds are to be issued and specifying the amount, if any, of the proceeds of such bonds to be deposited to the credit of the construction or project fund created with respect to such bonds or to another fund for the payment of capitalized interest on such bonds and to the Reserve Fund; provided, however, that deposits to the Reserve Fund shall be made as required under Section 6.2.D hereof. The bonds of each series issued under the provisions of this Section shall be designated "Water and Sewer Revenue Bonds," and may include an additional designation identifying the year of

issuance, shall be in such denominations, shall be dated, shall bear interest at a rate or rates (including variable rates) not exceeding the maximum rate then permitted by law, shall be payable, both as to principal and interest, at such place or places, shall mature in such year or years, shall be made redeemable at such times and prices (subject to the provisions of this ordinance), shall be numbered, shall have such Bond Registrar, and any Term Bonds of such series shall have such amortization requirements, all as may be provided by ordinance or ordinances approved by the City prior to the issuance of such bonds.

Section 4.2. Future Parity Bonds.

A. *General Authorization.* Future Parity Bonds may be issued on a parity with the Bonds and secured by an equal charge and lien on the Revenues pledged to the Bond Fund for any lawful purpose of the City, including the refunding of outstanding Bonds; provided that, (i) except as to Bonds issued pursuant to Section 4.2E hereof, at the time of the issuance of such Future Parity Bonds, there is no deficiency in the any bond fund securing the repayment of Parity Bonds, and no Event of Default has occurred and is continuing, and (ii) the requirements of the applicable provisions of this Section 4.2 are complied with.

B. *Certificate of Director.* Future Parity Bonds may be issued for any lawful purpose of the City if the following requirements are met. A certificate signed by the Director shall set forth:

(1) the amount of the Net Revenues for any 12 consecutive months of the 36 months prior to the date of the issuance of such Bonds;

(2) the amount of the Maximum Annual Debt Service in any Fiscal Year thereafter on account of all Parity Bonds then outstanding under this ordinance and the Future Parity Bonds then to be issued hereunder; and

(3) the percentage derived by dividing the amount shown in (i) above by the amount shown in (ii) above, and shall state that such percentage is not less than 125%;

C. *Certificate of Professional Utility Consultant.* Future Parity Bonds may also be issued for any lawful purpose of the City if the following requirements are met. A certificate signed by a Professional Utility Consultant and filed with the City Clerk shall set forth:

(1) the amount of the Adjusted Net Revenues computed as provided in Section 4.2.F;

(2) the amount of the Maximum Annual Debt Service thereafter on account of all Parity Bonds then outstanding under this ordinance and the Future Parity Bonds then to be issued hereunder; and

(3) as to the applicable Fiscal Year under (ii) above, the percentage derived by dividing the amount shown in (i) above by the amount shown in (ii) above, and shall state that such percentage is not less than 125%.

Future Parity Bonds may be issued pursuant to Subsection E of this Section 4.2 without complying with the provisions of this Subsection C.

D. *Completion Bonds.* Future Parity Bonds may also be issued for the purpose of paying part of the costs of the System for which Parity Bonds have theretofore been issued, if a certificate is signed by a Professional Utility Consultant and filed with the City Clerk, which shall comply with the requirements of paragraph C above or shall state that the issuance of such Future Parity Bonds is necessary to complete such facilities and that the completion is necessary for the efficient and economic operation of the System.

E. *Refunding Bonds.* Future Parity Bonds may also be issued from time to time for the purpose of providing funds, together with any other available funds, for retiring at or prior to their maturity or maturities any or all of the outstanding Parity Bonds of any series, including the payment of any redemption premium thereon, and, if deemed necessary by the City, for paying the interest to accrue thereon to the date fixed for their retirement and any expenses incident to the issuance of such Future Parity Bonds.

Future Parity Bonds issued for refunding purposes under this subsection shall not be delivered unless the proceeds (excluding any accrued interest but including any premium) of such Future Parity Bonds, together with any other moneys that have been made available for such purposes, and the principal of and the interest on the investment of such proceeds or any such moneys, shall be sufficient to pay the principal of and the redemption premium, if any, on the Parity Bonds to be refunded and the interest that will become due and payable on or prior to the date of their payment or redemption, and the expenses incident to the issuance of such Future Parity Bonds.

If such Future Parity Bonds are to be issued pursuant to this subsection,

(1) there shall be filed with the City a certificate signed by the Director showing that the Annual Debt Service for any Fiscal Year thereafter shall not be increased by more than \$5,000 by reason of the issuance of the Future Parity Bonds, or

(2) There shall be filed with the City a certificate signed by a Professional Utility Consultant setting forth:

(i) the amount of the Adjusted Net Revenues computed as provided in Section 4.2.F;

(ii) the amount of the Maximum Annual Debt Service in any Fiscal Year thereafter on account of all Parity Bonds to be outstanding in such Fiscal Year and the Future Parity Bonds then to be issued hereunder; and

(iii) stating that the amount shown in (a) above is not less than 125% of the amount shown in (b) above.

F. *Content of Professional Utility Consultant's Certificate.* In rendering any certificate under this Section, the Professional Utility Consultant may rely upon, and such certificate shall have attached thereto, (1) financial statements of the System, certified by the Director thereof, showing income and expenses for the period upon which the same are based and a balance sheet as of the end of such period, or (2) similar certified statements by the Division of Municipal Corporations of the Office of the State Auditor of the State of Washington (or any successor thereto), or (3) similar certified statement by an independent certified public accountant, if any, for as much of said period as any examination by them has been made and completed. If two or more of such statements are inconsistent with each other, the Professional Utility Consultant shall rely on the statement described under (1) above.

In connection with the issuance of any Bonds pursuant to subsections 4.2.C and 4.2.D of this Section, the certificate of the Professional Utility Consultant hereinabove referred to shall be conclusive and the only evidence required to demonstrate compliance with the provisions and requirements of said subsection.

For the purposes of the certificates required by subsection 4.2.C of this ordinance, Adjusted Net Revenues shall be computed by the Professional Utility Consultant as follows:

(1) The Net Revenues for any 12 consecutive months (selected by the City) out of the 36 months prior to the date of issuance of the Future Parity Bonds (such 12-month period being herein called the "Base Period") may be adjusted:

(i) to reflect any changes in Net Revenues for the Base Period which would have occurred if the schedule of rates and charges in effect at the time of the computation (or approved by the Council as of the time of such computation and to become effective within 12 months thereof) had been in effect during the portion of the Base Period in which such schedule was not in effect;

(ii) to reflect a full 12 months of Net Revenues from any customers of the System added prior to the computation date; and

(iii) to reflect any changes in Net Revenues estimated as a result of, and upon completion of, any facilities under construction or to be acquired, constructed or installed as a part of the System from the proceeds of any Bonds.

G. *Provisos.* Nothing contained herein shall prevent the City from refunding at one time all of the Parity Bonds then outstanding. Nothing contained herein shall prevent the City from issuing obligations payable from a lien on the Revenues that is junior and inferior to Parity Bonds.

H. *Exceptions.* Future Parity Bonds may be issued from time to time without complying with the requirements set forth above if, in the opinion of the Professional Utility Consultant, as evidenced by a certificate filed with the City, it is necessary to repair any damage or loss to the System or if the System has been destroyed or damaged by disaster or unanticipated event to such an extent that it cannot be operated; provided, however, that the proceeds of any Future Parity Bonds issued for such purpose may only be used to return the System to, or to maintain the System at, substantially its former or then operating capacity; and provided further, that in the case of repair, such Future Parity Bonds may be issued only to the extent that insurance proceeds from such damage or loss are insufficient for the accomplishment of such purpose.

I. *Calculation of Annual Debt Service.* In calculating Annual Debt Service for purposes of this Section, if the interest rate on any Parity Bonds is other than a fixed rate, the rate applicable at the time of computation shall be used unless such rate is less than the most recently published *Bond Buyer's Revenue Bond Index* for municipal revenue bonds, in which case the rate stated by such index shall be used. If such index is no longer published, another nationally recognized index for municipal revenue bonds maturing in 20 to 30 years shall be used.

ARTICLE V GENERAL TERMS AND PROVISIONS OF PARITY BONDS

Section 5.1. Execution and Payment of Parity Bonds.

The Bonds and, except as otherwise provided in the Supplemental Ordinance providing for the issuance thereof, Future Parity Bonds shall be executed on behalf of the City with the manual or facsimile signature of the Mayor and attested with the manual or facsimile signature of the City Clerk or the Director; and the seal of the City shall be impressed or imprinted on each of the Parity Bonds. In case any of the officers who shall have signed, attested or registered any of the Parity Bonds shall cease to be such officer before such Parity Bonds have been actually issued and delivered, such Parity Bonds shall be valid nevertheless and may be issued by the City with the same effect as though the persons who had signed, attested or registered such Parity Bonds had not ceased to be such officers. The Parity Bonds of each series shall be payable as to principal, premium, if any, and interest in lawful money of the United States of America and, except as otherwise provided in Section 5.6 shall be payable at the principal office of the Bond Registrar of the City for such series of Parity Bonds.

Only such Parity Bonds as shall bear thereon a Certificate of Authentication in the form set forth in Section 11.2 of this ordinance, manually executed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Parity Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this ordinance.

Section 5.2. Ownership of Parity Bonds.

The City, the Bond Registrar and any other person may treat the registered owner of any Parity Bond as the absolute owner of such Parity Bond for the purpose of paying the principal thereof, and premium, if any, and interest thereon and for all other purposes, and neither the City nor the Bond Registrar shall be bound by any notice or knowledge to the contrary, whether such Parity Bond or the interest thereon shall be overdue or not. All payments of or on account of interest to any registered owner (or to his registered assigns), and all payments of or on account of principal to any registered owner of any Parity Bond, shall be valid and effectual and shall be a discharge of the City and Bond Registrar in respect of the liability upon the Parity Bonds or claims for principal or interest, as the case may be, to the extent of the sum or sums paid.

Section 5.3. Bond Registrar.

The City hereby adopts for the Bonds the system of registration specified and approved by the Washington State Finance Committee. 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 is authorized, on behalf of the City, to authenticate and deliver the Bonds transferred or exchanged in accordance with the provisions of such Bonds and this ordinance and to carry out all of the Bond Registrar's powers and duties under this ordinance.

The Bond Registrar shall be responsible for its representations contained in the 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 depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond owners.

Section 5.4. Transfers and Exchanges.

The provisions of this Section shall be applicable only if the Bonds are no longer held in book-entry only form. Upon surrender thereof to the Bond Registrar, the Bonds are interchangeable for Bonds in any authorized denomination of 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.

In every case of an exchange of Parity Bonds and of a transfer of any Parity Bond, the surrendered Parity Bonds shall be held by the Bond Registrar and a certificate evidencing such exchange or transfer shall be promptly transmitted by the Bond Registrar to the City. All Parity Bonds surrendered for exchange or transfer shall be cancelled and a certificate evidencing such cancellation shall be promptly transmitted to the City. All Parity Bonds executed and delivered in exchange for or upon transfer of Parity Bonds so surrendered shall be valid obligations of the City evidencing the same debt as the Parity Bonds surrendered, and shall be entitled to all the

benefits and protection of this ordinance to the same extent as the Parity Bonds in exchange for, or upon transfer for, which they were executed and delivered.

Section 5.5. Payment of Parity Bonds and Interest.

The provisions of this Section shall be applicable only if the Bonds are no longer held in book-entry only form. The Parity Bonds of each series may be presented for payment at the principal office of any of the Bond Registrar for such series of Parity Bonds.

The principal of all Parity Bonds of a series shall be payable at the principal office of any Bond Registrar for such series of Parity Bonds. Payment of the interest on each Parity Bond shall be made on each interest payment date by check or draft drawn upon one of the Bond Registrar therefor and mailed by first class mail to the registered owner at his address as it appears on the Parity Bond Register as of the 15th day of the month preceding the interest payment date. Upon request of a registered owner of at least \$1,000,000 in principal amount of Parity Bonds, payment shall be made by wire transfer to an account designated by such owner.

All Parity Bonds upon the payment thereof shall be cancelled and destroyed by the Bond Registrar. A certificate evidencing such payment, cancellation and destruction shall be promptly transmitted by the Bond Registrar to the City.

Section 5.6. Lost, Stolen, Destroyed or Mutilated Parity Bonds.

The provisions of this Section shall be applicable only if the Bonds are no longer held in book-entry only form. In case any Parity Bond shall at any time become mutilated or be lost, stolen or destroyed, the City in the case of such mutilated Parity Bond shall, and in the case of such a lost, stolen or destroyed Parity Bond, in its discretion may, execute and deliver a new Parity Bond of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender or cancellation of such mutilated Parity Bond, or in lieu of or in substitution for such destroyed, stolen or lost Parity Bond or if such stolen, destroyed or lost Parity Bond shall be matured, instead of issuing a substitute therefor, the City may at its option pay the same without the surrender thereof. Any such exchange or substitution shall be accomplished in accordance with RCW Chapter 39.72, as the same shall be amended from time to time, or any successor statute thereto. Except in the case where a mutilated Parity Bond is surrendered, the applicant for the issuance of a substitute Parity Bond shall furnish to the City evidence satisfactory to it of the theft, destruction or loss of the original Parity Bond, and of the ownership thereof, and also such security and indemnity as may be required by the City, and no such substitute Parity Bond shall be issued unless the applicant for the issuance thereof shall reimburse the City for the expenses incurred by the City in connection with the preparation (including printing), execution, issuance and delivery of the substitute Parity Bond. Any such substitute Parity Bond shall be equally and proportionately entitled to the security of this ordinance with all other Parity Bonds issued hereunder, whether or not the Parity Bond alleged to have been lost, stolen or destroyed shall be found at any time or enforceable by anyone. The City shall advise the Bond Registrar of the issuance of substitute Parity Bonds. All mutilated Parity Bonds so surrendered to the City shall be cancelled by it.

Section 5.7. Limitations on Duty to Register, Exchange or Transfer Parity Bonds.

The provisions of this Section shall be applicable only if the Bonds are no longer held in book-entry only form. Neither the City nor the Bond Registrar shall be required (a) to issue, transfer or exchange Parity Bonds for a period of 15 days next preceding any interest payment date therefor; (b) to issue, register, discharge from registration, transfer or exchange Parity Bonds for a period of ten days thereafter; or (c) to register, discharge from registration, transfer or exchange any Parity Bonds which have been designated for redemption within a period of 30 days next preceding the date fixed for redemption.

Section 5.8. Paid or Surrendered Parity Bonds Not to be Reissued.

No Parity Bonds shall be issued in lieu of Parity Bonds surrendered upon exchange or transfer, except as expressly provided by this ordinance; provided that the City reserves the right to account for any Parity Bonds redeemed at the option of the registered owner thereof prior to maturity pursuant to the Supplemental Ordinance authorizing the issuance of such Parity Bonds as having been purchased by the City and eligible for resale or reissuance (including the issuance of substitute Parity Bonds).

Section 5.9. CUSIP Identification Numbers.

At the sole option of the City, CUSIP identification numbers may be printed on the Parity Bonds of any series of Parity Bonds, but no such number shall be deemed to be a part of any Parity Bond or a part of the contract evidenced thereby, and no liability shall hereafter attach to the City or any officer or agent thereof (including the Bond Registrar) because of or on account of said CUSIP identification numbers or any use made thereof.

ARTICLE VI

CREATION OF SPECIAL FUNDS AND ACCOUNTS AND PAYMENTS THEREFROM

Section 6.1. Water/Sewer Fund.

A. *Maintenance of Water/Sewer Fund.* The City currently maintains the Water/Sewer Operating Fund (the "Water/Sewer Fund"). The Water/Sewer Fund shall be maintained and continued in existence, and shall be held and administered by the City. The City covenants and agrees that it will pay or cause to be paid all Revenues into the Water/Sewer Fund as promptly as practicable after receipt thereof.

B. *Priority of Expenditures.* The Revenues of the City shall be deposited and credited to the following accounts in the Water/Sewer Fund and used only for the following purposes and in the following order of priority:

- (1) All Revenues paid into the Water/Sewer Fund shall be applied as follows:

- (i) to pay Operating Expenses;
- (ii) to make all payments required to be made for the payment of accrued interest on Parity Bonds on the next interest payment date;
- (iii) to make all payments required to be made for the payment of the principal amount of Serial Bonds next coming due, and for the mandatory redemption of Term Bonds;
- (iv) to make all payments required to be made into the Reserve Fund;
- (v) to make all payments required to be made into any special fund or account created to pay or secure the payment of the principal of and interest on any revenue bonds, warrants or other revenue obligations of the City having a lien upon Revenues and moneys in the Water/Sewer Fund therein junior and inferior to the lien thereon for the payment of the principal of and interest on the Bonds; and
- (vi) to make additions, betterments, extensions, renewals, replacements and other capital improvements to the System, to purchase and/or retire Parity Bonds, or for any other lawful purpose of the City.

Nothing contained in this Section 6.1 shall be construed to require the deposit into the Water/Sewer Fund of any of the revenues, income, receipts or other moneys of the City derived by the City through the ownership or operation of any separate utility system hereafter created or established from funds other than the proceeds of Parity Bonds.

Section 6.2. Bond Fund.

A special fund of the City is hereby authorized to be created to be designated the "2004 Water and Sewer Revenue Bond Redemption Fund" (hereinafter referred to as the "Bond Fund"). The Bond Fund shall be held in trust and administered by the City and shall be used solely for the purposes of paying the principal of, premium, if any, and interest on the Bonds, and retiring the Bonds prior to maturity in the manner herein provided. The City hereby obligates and binds itself irrevocably to set aside and to pay (to the extent not otherwise provided) from moneys in the Water/Sewer Fund into the Bond Fund, after paying or making provision for Operating Expenses and prior to the payment of any other charge or obligation against such Revenues, amounts sufficient to pay the principal of, premium, if any, and interest on all the Bonds from time to time outstanding as the same respectively become due and payable, either at the maturity thereof or in accordance with the terms of any Sinking Fund Requirement established for the retirement of Term Bonds. The fixed amounts to be paid into the Bond Fund, to the extent that such payments are not made from Bond proceeds or from other moneys which may legally be available therefor, shall be as follows and in the following order of priority:

A. *Interest.* No later than the last day of the month of August 2004 and on or before the last day of each month thereafter, the City shall pay from the Water/Sewer Fund into the

Bond Fund an amount such that, if the same amount were so paid and credited to the Bond Fund on the last day of each of the months preceding the next date upon which an installment of interest falls due on Bonds, the aggregate of the amounts so paid and credited to the Bond Fund would on such date be equal to the installment of interest then falling due on all Bonds then outstanding.

B. *Principal.* No later than the last day of the month of August 2004, and on or before the last day of each month thereafter, the City shall pay from the Water/Sewer Fund into the Bond Fund an amount such that, if the same amount were so paid and credited to the Bond Fund on the last day of each succeeding month thereafter and prior to such Serial Bond maturity date, the aggregate of the amounts so paid and credited to the Bond Fund would on such date be equal to the principal amount of Serial Bonds then falling due.

C. *Reserve Fund.* The Reserve Fund is maintained for the purpose of securing the repayment of all Parity Bonds. On or prior to the Closing, the City shall have on deposit in the Reserve Fund an amount equal to the Reserve Requirement. In the event of the issuance of any Future Parity Bonds, the Supplemental Ordinance authorizing the issuance of such Future Parity Bonds shall provide for approximately equal monthly payments into the Bond Fund for credit to the Reserve Fund from the moneys in the Water/Sewer Fund, in such amounts and at such times so that by no later than three years from the date of issuance of such Future Parity Bonds the Reserve Fund will be increased to an amount equal to the Reserve Requirement at the date of issuance of such Future Parity Bonds; provided, however, that the proceedings authorizing the issuance of Future Parity Bonds may provide for payments into the Reserve Fund from the proceeds of such Future Parity Bonds or from any other moneys lawfully available therefor, in which event, in providing for deposits and credits required by the foregoing provisions of this paragraph, allowance shall be made for any such amounts so paid into such Fund.

In making the payments and credits to the Bond Fund and Reserve Fund required by Bond Ordinance 3842 and now fully funded, to the extent that such payments are made from Bond proceeds, from moneys in any capitalized interest account, or from other moneys which may legally be available, such payments are not required to be made from the Water/Sewer Fund.

The City may elect to meet the requirements of this Section 6.2.C with respect to the Reserve Fund through the use of a Qualified Letter of Credit, Qualified Insurance or other equivalent credit enhancement device currently rated in one of the two highest rating categories by Moody's Investors Service, Inc. or Standard & Poor's Ratings Group. The City may contract with the entity providing such Qualified Letter of Credit, Qualified Insurance or other equivalent credit enhancement device that the City's reimbursement obligation, if any, to such entity ranks on a parity of lien with the Bonds.

In the event that the City elects additionally to secure any issue of Future Parity Bonds through the use of a Qualified Letter of Credit, Qualified Insurance or other equivalent credit enhancement device, the City may contract with the entity providing such Qualified Letter of Credit, Qualified Insurance or other equivalent credit enhancement device that the City's reimbursement obligation, if any, to such entity ranks on a parity of lien with outstanding Parity

Bonds; provided that the payments due under such reimbursement agreement are such that if such reimbursement obligation were a series of Future Parity Bonds, such Bonds could be issued in compliance with the provisions of Article IV hereof.

In making the payments and credits to the Reserve Fund to the extent that the City has obtained Qualified Insurance or a Qualified Letter of Credit for specific amounts required pursuant to this section to be paid out of the Reserve Fund, such amounts so covered by Qualified Insurance or a Qualified Letter of Credit shall be credited against the amounts required to be maintained in the Bond Reserve Fund by this Section 6.2.C to the extent that such payments and credits to be made are insured by an insurance company, or guaranteed by a letter of credit from a financial institution. Upon the expiration of any Qualified Letter of Credit or the termination of any Qualified Insurance, the Reserve Fund shall be funded in accordance with the third paragraph of this Section 6.2.C as if the Parity Bonds that remain outstanding had been issued on the date of such notice of expiration or termination.

D. *Application of Money in Bond Fund and Reserve Fund.* In the event that there shall be a deficiency in the Bond Fund, the City shall promptly make up such deficiency from the Reserve Fund by the withdrawal of cash therefrom for that purpose and by the sale or redemption of obligations held in the Reserve Fund, if necessary, in such amounts as will provide cash in the Reserve Fund sufficient to make up any such deficiency. The City covenants and agrees that any deficiency created in the Reserve Fund by reason of any withdrawal therefrom for payment into the Bond Fund shall be made up from moneys in the Water/Sewer Fund first available after making provision first for payment of Operating Expenses and then for the required payments into the Bond Fund.

Moneys in the Bond Fund shall be transmitted to the Bond Registrar in amounts sufficient to meet the maturing installments of principal of, premium, if any, and interest on the Bonds when due. Whenever the assets of the Bond Fund shall be sufficient to provide moneys to retire all Bonds then outstanding, including such interest thereon as thereafter may become due and payable and any premium upon redemption thereof, no further payments need be made into the Bond Fund. All moneys remaining in the Bond Fund after provision for the payment in full of the principal of, premium, if any, and interest on the Bonds shall be returned to the Water/Sewer Fund.

The Bond Fund shall be drawn upon solely for the purpose of paying the principal of, premium, if any, and interest on the Bonds. Moneys set aside from time to time with the Bond Registrar for such payment shall be held in trust for the owners of the Bonds in respect of which the same shall have been so set aside. Until so set aside, all moneys in the Bond Fund shall be held in trust for the benefit of the owners of all Bonds at the time outstanding equally and ratably.

Section 6.3. Construction Fund.

The City currently maintains a special fund of the City known as the "Water/Sewer Construction Fund" (the "Construction Fund"). The Construction Fund is maintained in existence and shall be used to pay those costs of capital improvements to the System, including

the Project to be financed by a portion of the Bonds and the costs of issuing the Bonds. If, after the payment in full of all costs of the Project and any other approved capital costs, Bond proceeds, if any, remaining in the Construction Fund shall be paid into the Bond Fund.

Section 6.4. Investment of Funds.

Moneys held for the credit of the Bond Fund shall, to the fullest extent practicable and reasonable, be invested and reinvested at the direction of the City in any legal investment for City funds. Moneys in the Reserve Fund not required for immediate disbursement for the purposes for which such Fund is created shall, to the fullest extent practicable and reasonable, be invested and reinvested at the direction of the City solely in any legal investment for City funds maturing or subject to redemption at the option of the owner thereof maturing prior to the final maturity date of the Bonds then outstanding. For as long as the Bonds are insured by the Bond Insurer, Reserve Fund investments allocable to the Bonds may not have maturities extending beyond five years.

Moneys in the Water/Sewer Fund and Construction Fund and any arbitrage rebate fund not required for immediate disbursement for the purposes for which such Funds were created shall, to the fullest extent practicable and reasonable, be invested and reinvested by the City in any legal investment for City funds.

Except to the extent there are deficiencies in any account in the Bond Fund, all income received from the investment of moneys in the Water/Sewer Fund shall be from time to time deposited in the Water/Sewer Fund.

All moneys held or set aside by the City in the Water/Sewer Fund, the Construction Fund, the Reserve Fund and Bond Fund shall, until otherwise invested or applied as provided in this ordinance, be deposited by the City in its name in such depository or depositories as the City shall at any time or from time to time appoint for such purpose. All moneys so deposited shall be secured in the manner prescribed by the laws of the State of Washington for the securing of funds of the City.

ARTICLE VII
DISPOSITION OF PROCEEDS

Section 7.1. Disposition of the Proceeds from the Sale of the Bonds.

The proceeds of the Bonds shall be deposited as follows:

A. The amount equal to the interest accruing on the Bonds from August 1, 2004, to the date of their delivery shall be deposited in the Bond Fund.

B. The balance of the proceeds from the Improvement Bonds shall be deposited in the Construction Fund and shall be used to pay costs of the Project and to pay the allocable costs of issuance of the Bonds.

C. There is hereby authorized to be created in the 1995 Water and Sewer Revenue Bond Redemption Fund an account known as the "Advance Refunding Account" which Account is to be drawn upon for the sole purpose of paying the principal of and interest on the 1995 Bonds until their date of redemption and of paying costs related to the refunding of the 1995 Bonds.

The proceeds of sale of the Refunding Bonds shall be credited to the Advance Refunding Account.

Money in the Advance Refunding Account shall be used immediately upon receipt thereof to defease the 1995 Bonds as authorized by the 1995 Parity Bond Ordinance and pay costs of issuance. The City shall defease the 1995 Bonds and discharge such obligations by the use of money in the Advance Refunding Account to purchase certain Government Obligations (which obligations so purchased, are herein called "Acquired Obligations"), bearing such interest and maturing as to principal and interest in such amounts and at such times which, together with any necessary beginning cash balance, will provide for the payment of:

- (i) interest on the 1995 Bonds on each date on which interest is due and payable on and prior to June 1, 2005;
- (ii) principal of the 1995 Bonds maturing on June 1, 2005; and
- (iii) the redemption price (100% of the principal amount thereof) on June 1, 2005, of the 1995 Bonds maturing on and after June 1, 2006.

Such Acquired Obligations shall be purchased at a yield not greater than the yield permitted by the Code and regulations relating to acquired obligations in connection with refunding bond issues.

The City hereby appoints the corporate trust department of U.S. Bank National Association, Seattle, Washington, as the Escrow Agent for the 1995 Bonds (the "Escrow Agent"). A beginning cash balance, if any, and Acquired Obligations shall be deposited irrevocably with the Escrow Agent in an amount sufficient to defease the 1995 Bonds. The proceeds of the Bonds remaining in the Advance Refunding Account after acquisition of the Acquired Obligations and provision for the necessary beginning cash balance shall be utilized to pay expenses of the acquisition and safekeeping of the Acquired Obligations and expenses of the issuance of the Bonds.

Section 7.2. Call For Redemption of 1995 Bonds.

The City hereby irrevocably sets aside sufficient funds out of the purchase of Acquired Obligations from proceeds of the Bonds to make the payments described in Section 7.1 of this ordinance.

The City hereby irrevocably calls the 1995 Bonds for redemption on June 1, 2005 in accordance with the provisions of Section 3.4 of the 1995 Parity Bond Ordinance, authorizing the redemption and retirement of the 1995 Bonds prior to their fixed maturities.

Said defeasance and call for redemption of the 1995 Bonds shall be irrevocable after the final establishment of the escrow account and delivery of the Acquired Obligations to the Escrow Agent.

The Escrow Agent is hereby authorized and directed to provide for the giving of notices of the redemption of the 1995 Bonds in accordance with the applicable provisions of the 1995 Parity Bond Ordinance. The Director is authorized and requested to provide whatever assistance is necessary to accomplish such redemption and the giving of notices therefor. The costs of publication of such notices shall be an expense of the City.

The Escrow Agent is hereby authorized and directed to pay to the Director, or, at the direction of the Director, to the fiscal agency or agencies of the State of Washington, sums sufficient to pay, when due, the payments specified in of Section 7.1 of this ordinance. All such sums shall be paid from the moneys and Acquired Obligations deposited with said Escrow Agent pursuant to the previous section of this ordinance, and the income therefrom and proceeds thereof. All such sums so paid to said Director of Finance & Administration shall be credited to the Advance Refunding Account. All moneys and Acquired Obligations deposited with said bank and any income therefrom shall be held, invested (but only at the direction of the Director) and applied in accordance with the provisions of this ordinance and with the laws of the State of Washington for the benefit of the City and owners of the 1995 Bonds.

The City will take such actions as are found necessary to see that all necessary and proper fees, compensation and expenses of the Escrow Agent for the 1995 Bonds shall be paid when due.

In order to carry out the purposes of the preceding section of this ordinance and this section, the Director is authorized and directed to execute and deliver to the Escrow Agent, a copy of such agreement when the provisions thereof have been fixed and determined. Such agreement, shall be substantially in the form attached hereto as "Exhibit A".

ARTICLE VIII
COVENANTS TO SECURE PARITY BONDS

Section 8.1. Security for Bonds.

All Parity Bonds are special limited obligations of the City payable from and secured solely by Revenues, and by other moneys and assets specifically pledged hereunder for the payment thereof. There are hereby pledged as security for the payment of the principal of, premium, if any, and interest on all Bonds in accordance with the provisions of this ordinance, subject only to the provisions of this ordinance restricting or permitting the application thereof for the purposes and on the terms and conditions set forth in this ordinance: (i) the Revenues, and (ii) the moneys and investments, if any, credited to the Water/Sewer Fund and the Bond Fund, and the income therefrom. The Revenues and other moneys and securities hereby pledged shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City regardless of whether such parties have notice thereof.

All Parity Bonds previously issued and outstanding and now or hereafter outstanding shall be equally and ratably payable and secured hereunder without priority by reason of date of adoption of the ordinance providing for their issuance or by reason of their series, number or date of sale, issuance, execution or delivery, or by the liens, pledges, charges, trusts, assignments and covenants made herein, except as otherwise expressly provided or permitted in this ordinance and except as to insurance which may be obtained by the City to insure the repayment of one or more series or maturities within a series.

The pledge of the Revenues and of the amounts to be paid into and maintained in the funds and accounts described above in this Section to pay and secure the payment of Bonds is hereby declared to be a prior lien and charge on the Revenues and the moneys and investments in such funds and accounts, subject to provision for operating capital and to the payment of Operating Expenses as provided in Section 6.1.B hereof, equal to the lien thereon of Parity Bonds and superior to all other liens and charges of any kind or nature.

Parity Bonds shall not in any manner or to any extent constitute general obligations of the City or of the State of Washington, or any political subdivision of the State of Washington, or a charge upon any general fund or upon any moneys or other property of the City or of the State of Washington, or of any political subdivision of the State of Washington, not specifically pledged thereto by this ordinance.

Section 8.2. Rate Covenant - General.

The City will establish, maintain and collect rates and charges for water and sewer service and other services, facilities and commodities sold, furnished or supplied through the facilities of the System that shall be fair and nondiscriminatory and adequate to provide Revenues sufficient, together with other funds legally available therefor, for the punctual payment of the principal of,

premium, if any, and interest on Parity Bonds for which the payment has not otherwise been provided, for all payments which the City is obligated to make into the Bond Fund, and for the proper operation and maintenance of the System, and all necessary repairs, replacements and renewals thereof, including the payment of all taxes, assessments or other governmental charges lawfully imposed on the System or the Revenues therefrom, or payments in lieu thereof, and the payment of all other amounts which the City may now or hereafter become obligated to pay from the Revenues by law or contract.

Section 8.3. Coverage Requirement - Debt Service Coverage.

The City will also establish, maintain and collect rates and charges which shall be adequate to provide in each Fiscal Year Net Revenues in an amount equal to at least 1.25 times the Maximum Annual Debt Service on the then outstanding Parity Bonds in such Fiscal Year.

The City also covenants and agrees to maintain Net Revenues for the then current Fiscal Year in an amount that will be equal to the Annual Debt Service on the then outstanding Parity Bonds in such Fiscal Year.

The failure to collect Revenues in any Fiscal Year sufficient to comply with the covenants contained in this Section 8.3 shall not constitute an Event of Default if the City, before the 60th day of the following Fiscal Year:

A. Employs a Professional Utility Consultant to recommend changes in the City's rates which are estimated to produce Revenues sufficient (once the rates recommended by the Professional Utility Consultant have been imposed by the City) to meet the Coverage Requirement; and

B. Promptly imposes rates at least as high as those recommended by such Professional Utility Consultant.

The calculation of the coverage requirements set forth above, and in Section 4.2 hereof, and the City's compliance therewith, may be made solely with reference to this ordinance without regard to future changes in generally accepted accounting principles. If the City has changed one or more of the accounting principles used in the preparation of its financial statements, because of a change in generally accepted accounting principles or otherwise, then an event of default relating to these coverage requirements shall not be considered an Event of Default if the coverage requirement ratios would have been complied with had the City continued to use those accounting principles employed at the date of the most recent audited financial statements prior to the date of this ordinance.

Section 8.4. Restrictions on Contracting of Obligations Secured by Revenues.

A. *Limitation on Future Parity Funds.* The City will not hereafter create any other special fund or funds for the payment of revenue bonds, warrants or other revenue obligations, or issue any bonds, warrants or other obligations or create any additional indebtedness which will

rank on a parity with or prior to the charge and lien on the Revenues or properties of the System for the payments into the Bond Fund, except as provided under Article IV hereof.

B. *Cross-reference to Future Parity Bond Authorization.* Future Parity Bonds may be issued as provided in Article IV.

C. *Subordinate Lien Authorization.* The City may issue bonds, notes, warrants or other obligations payable from and secured by a lien on the Revenues of the System that is subordinate or inferior to the lien on such Revenues securing the Parity Bonds and may create a special fund or funds for payment of such subordinate obligations.

Section 8.5. Covenant to Maintain System in Good Condition.

The City shall at all times maintain, preserve and keep, or cause to be maintained, preserved and kept, the properties of the System and all additions and betterments thereto and extensions thereof and every part and parcel thereof, in good repair, working order and condition, and will from time to time make, or cause to be made, all necessary and proper repairs, renewals, replacements, extensions and betterments thereto so that at all times the business carried on in connection therewith shall be properly and advantageously conducted. The City will at all times operate such properties and the business in connection therewith or cause such properties and business to be operated in an efficient manner and at a reasonable cost.

Section 8.6. Covenants Concerning Disposal of Properties of System.

The City shall not sell, mortgage, lease or otherwise dispose of the properties of the System except as provided in this Section.

A. *Entire System.* The City will not sell or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition, provision is made for the payment, redemption or other retirement of all Parity Bonds then outstanding.

B. *Partial Disposition.* Except as provided in C below, the City will not sell or otherwise dispose of any part of the System unless provision is made for the payment, redemption or other retirement of a principal amount of Parity Bonds equal to the greater of the following amounts, provided, such amount is in excess of \$100,000:

(1) An amount that will be in the same proportion to the net principal amount of Parity Bonds then outstanding (defined as the total principal amount of Parity Bonds outstanding less the amount of cash and investments in the Bond Fund) that the Revenues attributable to the part of the System sold or disposed of for the 12 preceding months bears to the total Revenues for such period; or

(2) An amount that will be in the same proportion to the net principal amount of Parity Bonds then outstanding that the book value of the part of the System sold or disposed of bears to the book value of the entire System immediately prior to such sale or disposition.

The City shall only be required to comply with the requirements of subsections (1) and (2) above if the proceeds of such sale, lease or other disposition shall exceed two percent of the value of the net utility plant of the System.

C. *Disposal of Surplus Property.* The City may sell or otherwise dispose of any part of the System that shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation. The proceeds of any such sale or disposition pursuant to this subsection C shall be paid into the Reserve Fund to the extent of any deficiency in such Reserve Fund, and the balance of such proceeds, if any, shall be deposited in the Water/Sewer Fund.

D. *Alternate Authorization.* Notwithstanding any other provision of this Section 8.8 to the contrary, the City may sell or otherwise dispose of any part of the System if the City obtains a certificate satisfying the requirements of Section 4.2.B or Section 4.2.C hereof.

Section 8.7. Insurance.

The City shall either self-insure or, as needed, and to the extent insurance coverage is available at reasonable cost with responsible insurers, keep, or cause to be kept, the System and the operation thereof insured, with policies payable to the City, against the risks of direct physical loss, damage to or destruction of the System, or any part thereof, and against accidents, casualties or negligence, including liability insurance and employer's liability, at least to the extent that similar insurance is usually carried by utilities operating like properties.

In the event of any loss or damage to the properties of the System covered by insurance, the City will (i) with respect to each such loss, promptly repair and reconstruct to the extent necessary to the proper conduct of the operations of the System the lost or damaged portion thereof and shall apply the proceeds of any insurance policy or policies covering such loss or damage for that purpose to the extent required therefor, unless in the case of loss or damage involving \$300,000 or more, such repair and reconstruction shall not be recommended by the Professional Utility Consultant, and (ii) if the City shall not use the entire proceeds of such insurance to repair or reconstruct such lost or damaged property, such insurance proceeds thereof not so used shall be paid into the Water/Sewer Fund, and if in excess of \$300,000 for any one loss or damage, shall be used to purchase or redeem Bonds or to acquire or construct extensions, betterments and improvements to the System.

Section 8.8. Books of Account.

The City shall keep proper books of account as required by this ordinance in accordance with the rules and regulations prescribed by the Division of Municipal Corporations of the Office of the State Auditor of the State of Washington, or other State department or agency succeeding to such duties of the State Auditor's office. The City shall cause its books of account to be audited by the Office of the State Auditor or other state agency as may be authorized and directed by law to make such audit, or if the audit shall not be made within twelve months after the close

of any Fiscal Year of the City, then the City shall cause such audit to be made by independent certified public accountants licensed, registered or entitled to practice, and practicing as such, under the laws of the State of Washington who, or each of whom, is in fact independent and does not have any interest, direct or indirect, in any contract with the City other than his contract of employment pursuant to this Section and who is not connected with the City as an officer or employee of the City. The City will furnish a copy of the most recent audit report to any owner of Bonds upon written request therefor. Any owner of Bonds may also obtain at the office of the City copies of the balance sheet and income and expense statements showing in reasonable detail the financial condition of the System as of the close of each Fiscal Year, including the transactions relating to the Water/Sewer Fund, the Bond Fund, and all other funds and accounts created or maintained pursuant to the provisions of this ordinance.

Section 8.9. Covenant Not to Render Service Free of Charge.

So long as any Bonds are outstanding, the City shall not furnish or supply or permit the furnishing or supplying of water or sewer service or any other commodity, service or facility furnished by or in connection with the operation of the System free of charge to any person, firm or corporation, public or private, and the City will promptly enforce the payment of any and all accounts owing to the City and delinquent, by discontinuing service or by filing suits, actions or proceedings, or by both discontinuance of service and filing suit; provided, that to the extent permitted by law, the City may loan money and may provide commodities, services or facilities free of charge or at a reduced charge in connection with a senior citizen or indigent ratepayer discounts adopted by the Council.

Section 8.10. Covenant to Make Only Economically Sound Improvements.

The City shall not expend any moneys in the Water/Sewer Fund or the proceeds of Future Parity Bonds or other obligations for any renewals, replacements, extensions, betterments and improvements to the System which are not economically sound, and which will not properly and advantageously contribute to the conduct of the business of the City in an efficient and economical manner; provided that the foregoing shall not preclude the City from paying any legal or contractual obligations.

Section 8.11. Covenant to Pay Bond Principal and Interest Punctually.

The City shall duly and punctually pay or cause to be paid, but only from the Bond Fund, the principal of, premium, if any, and interest on each and every Parity Bond on the dates and at the places and in the manner provided in the Parity Bonds, according to the true intent and meaning thereof, and will faithfully do and perform and fully observe and keep any and all covenants, undertakings, stipulations and provisions contained in Parity Bonds and in this ordinance and each Supplemental Ordinance authorizing Future Parity Bonds.

Section 8.12. Covenant to Pay Taxes, Assessments and Other Claims.

The City shall from time to time duly pay and discharge, or cause to be paid and discharged, when the same shall become due, all taxes, assessments and other governmental charges, or payments in lieu thereof, lawfully imposed upon the System or the Revenues, and all claims for labor and materials and supplies which, if not paid, might become a lien or charge upon the System, or any part thereof, or upon the Revenues, or which might in any way impair the security of the Bonds, except taxes, assessments, charges or claims which the City shall in good faith contest by proper legal proceedings.

Section 8.13. Covenant to Retain Competent Management.

The City shall at all times retain and employ a competent manager for the System who shall be an experienced executive of administrative ability. All employees or agents of the City who collect or handle money of the City shall be bonded by a responsible surety company or companies in amounts sufficient to protect the City adequately from loss.

Section 8.14. Further Assurances.

The City shall, at any and all times, insofar as it may be authorized so to do, pass, make, do, execute, acknowledge and deliver all and every such further ordinances, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming any and all of the rights, Revenues and other funds hereby pledged or assigned to the payment of the Parity Bonds, or intended so to be, or which the City may hereafter become bound to pledge or assign.

Section 8.15. Tax Covenants.

The City shall comply with the provisions of this Section 8.15 unless, in the written opinion of bond counsel to the City, such compliance is not required in order to maintain the exemption of the interest on the Bonds from federal income taxation.

The City hereby covenants that it will not make any use of the proceeds of sale of the Bonds or any other funds of the City which may be deemed to be proceeds of such Bonds pursuant to Section 148 of the Code that will cause the Bonds to be "arbitrage bonds" within the meaning of said section and said regulations. The City will comply with the requirements of Section 148 of the Code (or any successor provision thereof applicable to the Bonds), and the applicable regulations thereunder throughout the term of the Bonds.

The City further covenants that it will not take any action or permit any action to be taken that would cause the Bonds to constitute "private activity bonds" under Section 141 of the Code.

Section 8.16. Undertaking to Provide Ongoing Disclosure.

A. *Undertaking.* This section constitutes the City's written undertaking for the benefit of the owners of the Bonds as required by Section (b)(5) of the Rule.

B. *Annual Report.* The City agrees to provide or cause to be provided to each NRMSIR and to the SID, in each case as designated by the Commission in accordance with the Rule, the following annual financial information and operating data for the prior fiscal year (commencing in 2005 for the fiscal year ended December 31, 2004):

- (1) Annual financial statements showing ending fund balances for the System prepared in accordance with the Budget Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute);
- (2) Debt service coverage for outstanding Parity Bonds;
- (3) Rates for the System; and
- (4) Number of customers of the System by type (water or sewer) and Revenues.

Such annual information and operating data described above shall be available on or before September 1 of each year. The City may adjust such date if the City changes its Fiscal Year by providing written notice of the change of Fiscal Year and the new reporting date to each then existing NRMSIR and the SID, if any. In lieu of providing such annual financial information and operating data, the City may cross-reference to other documents the City provides to the NRMSIRs, the SID or to the Commission and, if such document is a final official statement within the meaning of the Rule, available from the MSRB.

If not provided as part of the annual financial information discussed above, the City shall provide the City's audited annual financial statement prepared in accordance with the Budget Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute) when and if available to each then existing NRMSIR and the SID, if any.

C. *Material Events.* The City agrees to provide or cause to be provided, in a timely manner, to the SID, if any, and to each NRMSIR or to the MSRB notice of the occurrence of any of the following events with respect to the Bonds, if material:

- Principal and interest payment delinquencies;
- Non-payment related defaults;
- Unscheduled draws on debt service reserves reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity providers, or their failure to perform;
- Adverse tax opinions or events affecting the tax-exempt status of the Bonds;

- Modifications to the rights of Bond owners;
- Bond calls (optional, contingent or unscheduled Bond calls other than scheduled sinking fund redemptions for which notice is given pursuant to Exchange Act Release 34-238560);
- Defeasances;
- Release, substitution or sale of property, securing repayment of the Bonds; and
- Rating changes.

Solely for purposes of disclosure, and not intending to modify the undertaking, the City advises that there is no property securing repayment of the Bonds, as the City lacks legal authority for such measure. If further changes in the law permit such measure, and if the City subsequently chooses to provide such property as security for the Bonds, the City will provide notice of such establishment or provision and undertake to provide notices of material events relating thereto, should such events occur.

D. *Termination/Modification.* The City's obligations to provide notices of material events shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. Any provision of this section shall be null and void if the City (1) obtains an opinion of nationally recognized bond counsel to the effect that the portion of the Rule that requires that provision is invalid, has been repealed retroactively or otherwise does not apply to the Bonds and (2) notifies each NRMSIR and the SID, if any, of such opinion and the cancellation of this section. The City may amend this section with an approving opinion of nationally recognized bond counsel in accordance with the Rule.

E. *Bond Owner's Remedies Under This Section.* The right of any bondowner or beneficial owner of Bonds to enforce the provisions of this section shall be limited to a right to obtain specific enforcement of the City's obligations under this section, and any failure by the City to comply with the provisions of this undertaking shall not be an event of default with respect to the Bonds. For purposes of this section, "beneficial owner" means any person who has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds, including persons holding Bonds through nominees or depositories.

F. *Notification Upon Failure to Provide Financial Data.* The City agrees to provide or cause to be provided, in a timely manner, to each NRMSIR or the MSRB and to the SID, if any, notice of its failure to provide the annual financial information described in subsection (b) above on or prior to the date set forth in subsection B. above.

ARTICLE IX SUPPLEMENTAL AND AMENDATORY ORDINANCES

Section 9.1. Amendments Without Consent of Bondowners.

The City may adopt at any time and from time to time without the consent of the owners of any Bonds an ordinance or ordinances supplemental to or amendatory of this ordinance and any Supplemental Ordinance theretofore adopted for any one or more of the following purposes:

(1) To provide for the issuance of Future Parity Bonds pursuant to Article IV hereof, and to prescribe the terms and conditions pursuant to which such Parity Bonds may be issued, paid or redeemed;

(2) To add additional covenants and agreements of the City for the purpose of further securing the payment of Parity Bonds, provided such additional covenants and agreements are not contrary to or inconsistent with the covenants and agreements of the City contained in this ordinance or any Supplemental Ordinance;

(3) To prescribe further limitations and restrictions upon the issuance of Parity Bonds and the incurring of indebtedness by the City payable from the Revenues which are not contrary to or inconsistent with the limitations and restrictions thereon theretofore in effect;

(4) To surrender any right, power or privilege reserved to or conferred upon the City by the terms of this ordinance;

(5) To confirm as further assurance any pledge under, and the subjection to any lien, claim or pledge created or to be created by, the provisions of this ordinance of the Revenues or of any other moneys, securities or funds;

(6) To cure any ambiguity or defect or inconsistent provision of this ordinance or any Supplemental Ordinance or to insert such provisions clarifying matters or questions arising under this ordinance or any Supplemental Ordinance as are necessary or desirable in the event any such modifications are not contrary to or inconsistent with this ordinance or any Supplemental Ordinance as theretofore in effect;

(7) To appoint a Bond Owners' Trustee and specify the qualifications, duties, rights and immunities of such Trustee; or

(8) To modify any of the provisions of this ordinance or any Supplemental Ordinance in any other respect; provided that such modification shall not be effective until after Parity Bonds outstanding as of the date of adoption of such ordinance shall cease to be outstanding, and any Parity Bonds issued under such ordinance shall contain a specific reference to the modifications contained in such subsequent ordinance.

Section 9.2. Amendments With Consent of Bondowners.

The provisions of this ordinance and of any Supplemental Ordinance may be modified at any time or from time to time by a Supplemental Ordinance, with the consent of bondowners.

Section 9.3. Consent of Bond Insurer.

For so long as the Bond Insurance Policy remains in force and effect and there is no payment default by the Bond Insurer thereunder, the prior written consent of the Bond Insurer shall be a condition precedent to any amendment hereunder.

ARTICLE X
DEFAULTS AND REMEDIES

Section 10.1. Events of Default.

The Council of the City hereby finds and determines that the continuous operation of the System and the collection, deposit and disbursement of the Revenues in the manner provided in this ordinance and in any Supplemental Ordinance are essential to the payment and security of the Bonds, and the failure or refusal of the City to perform the covenants and obligations contained in this ordinance or any such Supplemental Ordinance will endanger the necessary continuous operation of the System and the application of the Revenues to the purposes set forth in this ordinance. This ordinance and each Supplemental Ordinance adopted pursuant to Article X are hereinafter in this Article XI referred to collectively as "this ordinance".

The City hereby covenants and agrees with the purchasers and owners from time to time of Parity Bonds, in order to protect and safeguard the covenants and obligations undertaken by the City securing Parity Bonds, that the following shall constitute "Events of Default":

- (1) If the City shall fail to deposit Revenues into the Water/Sewer Fund as required by this ordinance;
- (2) If default shall be made in the due and punctual payment of the principal of and premium, if any, on any Parity Bonds when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise;
- (3) If default shall be made in the due and punctual payment of any installment of interest on any Parity Bond;
- (4) If the City shall default in the observance and performance of any other of the covenants, conditions and agreements on the part of the City contained in this ordinance and such default or defaults shall have continued for a period of 60 days after the City shall have received from a Bondowners' Trustee or from the owners of not less than 20% in principal amount of the Parity Bonds outstanding, a written notice specifying and demanding the cure of such default;
- (5) If the City shall (except as herein permitted) sell, transfer, assign or convey any properties constituting the System or interests therein, or any part or parts thereof, or shall make any agreement for such sale or transfer (except as expressly authorized by Section 8.6 hereof);

(6) If an order, judgment or decree shall be entered by any court of competent jurisdiction: (a) appointing a receiver, trustee or liquidator for the City or the whole or any substantial part of the System; (b) approving a petition filed against the City seeking the bankruptcy, arrangement or reorganization of the City under any applicable law of the United States or the State of Washington; or (c) assuming custody or control of the City or of the whole or any substantial part of the System under the provisions of any other law for the relief or aid of debtors and such order, judgment or decree shall not be vacated or set aside or stayed (or, in case custody or control is assumed by said order, such custody or control shall not be otherwise terminated) within 60 days from the date of the entry of such order, judgment or decree; or

(7) If the City shall: (a) admit in writing its inability to pay its debts generally as they become due; (b) file a petition in bankruptcy or seeking a composition of indebtedness under any state or federal bankruptcy or insolvency law; (c) make an assignment for the benefit of its creditors; (d) consent to the appointment of a receiver of the whole or any substantial part of the System; or (e) consent to the assumption by any court of competent jurisdiction under the provisions of any other law for the relief or aid of debtors of custody or control of the City or of the whole or any substantial part of the System.

Section 10.2. Waivers of Default.

No delay or omission of the Bondowners' Trustee or of any owner of Bonds to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or to be an acquiescence therein; and every power and remedy given by this Article to the Bondowners' Trustee or to the owners of Bonds may be exercised from time to time and as often as may be deemed expedient by the Bondowners Trustee or by such owners.

The Bondowners' Trustee or the owners of not less than 50% in principal amount of the Bonds at the time outstanding, or their attorneys-in-fact duly authorized, may on behalf of the owners of all of the Bonds waive any past default under this ordinance and its consequences, except a default in the payment of the principal of, premium, if any, or interest on any of the Bonds. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 10.3 Bondowners' Trustee.

So long as an Event of Default shall not have been remedied, a Bondowners' Trustee may be appointed by the owners of 20% in principal amount of the Parity Bonds then outstanding, by an instrument or concurrent instruments in writing signed and acknowledged by such bondowners or by their attorneys-in-fact duly authorized and delivered to such Bondowners' Trustee, notification thereof being given to the City. Any Bondowners' Trustee appointed under the provisions of this Section 10.3 shall be a bank or trust company organized under the laws of any state or a national banking association. The fees and expenses of the Bondowners' Trustee shall be borne by the bondowners and not by the City. The bank or trust company acting as

Bondowners' Trustee may be removed at any time, and a successor Bondowners' Trustee may be appointed, by the owners of a majority in principal amount of Parity Bonds, by an instrument or concurrent instruments in writing signed and acknowledged by such bondowners or by their attorneys-in-fact duly authorized.

The Bondowners' Trustee appointed in the manner herein provided, and each successor thereto, is hereby declared to be a trustee for the owners of all Parity Bonds and is empowered to exercise all the rights and powers herein conferred on the Bondowners' Trustee.

Section 10.4. Suits at Law or in Equity.

The Bondowners' Trustee may upon the happening of an Event of Default, and during the continuance thereof, take such steps and institute such suits, actions or other proceedings in its own name, or as trustee, all as it may deem appropriate for the protection and enforcement of the rights of bondowners to collect any amounts due and owing the City, or to obtain other appropriate relief, and may enforce the specific performance of any covenant, agreement or condition contained in this ordinance, or in any of the Bonds.

Any action, suit or other proceedings instituted by the Bondowners' Trustee hereunder shall be brought in its name as trustee for the bondowners and all such rights of action upon or under any Parity Bonds or the provisions of this ordinance may be enforced by the Bondowners' Trustee without the possession of any of said Parity Bonds, and without the production of the same at any trial or proceedings relative thereto except where otherwise required by law, and the respective owners of said Parity Bonds, by taking and holding the same, shall be conclusively deemed irrevocably to appoint the Bondowners' Trustee the true and lawful trustee of the respective owners of said Parity Bonds, with authority to institute any such action, suit or proceeding; to receive as trustee and deposit in trust any sums becoming distributable on account of said Parity Bonds; to execute any paper or documents for the receipt of such money, and to do all acts with respect thereto that the bondowner himself might have done in person. Nothing herein contained shall be deemed to authorize or empower the Bondowners' Trustee to consent to accept or adopt, on behalf of any owner of any Parity Bond, any plan or reorganization or adjustment affecting the said Bonds of the City or any right of any owner thereof, or to authorize or empower the Bondowners' Trustee to vote the claims of the owners thereof in any receivership, insolvency, liquidation, bankruptcy, reorganization or other proceeding to which the City shall be a party.

Section 10.5. Books of City Open to Inspection.

The City covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and account of the City shall at all times be subject to the inspection and use of the Bondowners' Trustee.

The City covenants that if an Event of Default shall happen and shall not have been remedied, the City will continue to account, as a trustee of an express trust, for all Revenues and other moneys, securities and funds pledged under this ordinance.

Section 10.6. Payment of Funds to Bondowners' Trustee.

The City covenants that if an Event of Default shall happen and shall not have been remedied, the City, upon demand of the Bondowners' Trustee, shall pay over to the Bondowners' Trustee (i) forthwith, all moneys, securities and funds then held by the City and pledged under this ordinance, and (ii) as promptly as practicable after receipt thereof, all Revenues.

The Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy.

Section 10.7. Application of Funds by Bondowners' Trustee.

During the continuance of an Event of Default, the Revenues received by the Bondowners' Trustee pursuant to the provisions of the preceding paragraph shall be applied by the Bondowners' Trustee, water/sewer service furnished or supplied by the System), and second, in accordance with the provisions of Section 6.1 of this ordinance.

In the event that at any time the funds held by the Bondowners' Trustee and the Bond Registrar for Parity Bonds shall be insufficient for the payment of the principal of, premium, if any, and interest then due on Parity Bonds, such funds (other than funds held for the payment or redemption of particular Parity Bonds which have theretofore become due at maturity or by call for redemption) and all Revenues and other moneys received or collected for the benefit or for the account of owners of Parity Bonds by the Bondowners' Trustee shall be applied as follows:

First, to the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, earliest maturities first, and, if the amount available shall not be sufficient to pay in full any installment or installments or interest maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second, to the payment to the persons entitled thereto of the unpaid principal and premium, if any, of any Parity Bonds which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, earliest maturities first, and, if the amount available shall not be sufficient to pay in full all Parity Bonds due on any date, then to the payment thereof ratably, according to the amounts of principal and premium, if any, due on such date, to the persons entitled thereto, without any discrimination or preference.

Section 10.8. Relinquishment of Funds Upon Remedy of Default.

If and whenever all overdue installments of interest on all Parity Bonds, together with the reasonable and proper charges, expenses and liabilities of the Bondowners' Trustee and the

owners of Parity Bonds, their respective agents and attorneys, and all other sums payable by the City under this ordinance, including the principal of, premium, if any, and accrued unpaid interest on all Parity Bonds which shall then be payable (with interest upon such principal and premium, if any, and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest specified in the Parity Bonds, to the date of such payment or deposit), shall either be paid by or for the account of the City, or provision satisfactory to the Bondowners' Trustee shall be made for such payment, and all defaults under this ordinance or the Parity Bonds shall be made good or secured to the satisfaction of the Bondowners' Trustee or provision deemed by the Bondowners' Trustee to be adequate shall be made therefor, the Bondowners' Trustee shall pay over to the City all moneys, securities, funds and Revenues then remaining unexpended in the hands of the Bondowners' Trustee and thereupon all Revenues shall thereafter be applied as provided in this ordinance. No such payment over to the City by the Bondowners' Trustee or resumption of the application of Revenues as provided in this ordinance shall extend to or affect any subsequent default under this ordinance or impair any right consequent thereon.

Section 10.9. Suits by Individual Bondowners.

No owner of any one or more of said Parity Bonds shall have any right to institute any action, suit or proceeding at law or in equity, unless an Event of Default shall have happened and be continuing, and unless no Bondowners' Trustee has been created as herein provided, but any remedy herein authorized to be exercised by the Bondowners' Trustee may be exercised individually by any bondowner, in his own name and on his own behalf or for the benefit of all bondowners, in the event no Bondowners' Trustee has been appointed, or with the consent of the Bondowners' Trustee if such Bondowners' Trustee has been appointed; provided, however, that nothing in this ordinance or in the Bonds shall affect or impair the obligation of the City, which is absolute and unconditional, to pay from Net Revenues the principal of and interest on Parity Bonds to the respective owners thereof at the respective due dates therein specified, or affect or impair the right of action, which is absolute and unconditional, of such owners to enforce such payment.

Section 10.10. Remedies Granted in Ordinance not Exclusive.

No remedy by the terms of this ordinance conferred upon or reserved to the Bondowners' Trustee or the owners of Parity Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this ordinance or existing at law or in equity or by statute on or after the date of approval of this ordinance.

ARTICLE XI
FORM OF PARITY BONDS

Section 11.1. Form of Future Parity Bonds.

The bonds of each series of Future Parity Bonds shall, unless or except as is otherwise provided in the Supplemental Ordinance or Ordinances authorizing their issuance, be in substantially the form provided in Section 1.2 of this ordinance, with such modifications, additions or deletions as may be necessary or advisable to reflect the details and provisions of the issuance of such Parity Bonds and the provisions of this ordinance authorizing the same or as otherwise required or permitted by the provisions of such ordinance.

Section 11.2. Form of Bonds. The Bonds shall be in substantially the following form:

STATEMENT OF INSURANCE

MBIA Insurance Corporation (the "Insurer") has issued a policy containing the following provisions, such policy being on file at the principal office of the Fiscal Agency of the State of Washington in New York, New York.

The Insurer, in consideration of the payment of the premium and subject to the terms of the policy, hereby unconditionally and irrevocably guarantees to any owner, as hereinafter defined, of the following described obligations, the full and complete payment required to be made by or on behalf of the City of Kirkland, Washington (the "Issuer") to the Fiscal Agency of the State of Washington, or its successor (the "Paying Agent"), of an amount equal to (i) the principal of (either at the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment) and interest on, the Obligations (as that term is defined below) as such payments shall become due but shall not be so paid (except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed hereby shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration); and (ii) the reimbursement of any such payment which is subsequently recovered from any owner pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such owner within the meaning of any applicable bankruptcy law. The amounts referred to in clauses (i) and (ii) of the preceding sentence shall be referred to herein collectively as the "Insured Amounts." "Obligations" shall mean:

\$3,090,000

CITY OF KIRKLAND, WASHINGTON
WATER AND SEWER REVENUE AND REFUNDING BONDS, 2004

Upon receipt of telephonic or telegraphic notice, such notice subsequently confirmed in writing by registered or certified mail, or upon receipt of written notice by registered or certified

mail, by the Insurer from the Paying Agent or any owner of an Obligation the payment of an Insured Amount for which is then due, that such required payment has not been made, the Insurer on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with U.S. Bank Trust National Association, in New York, New York, or its successor, sufficient for the payment of any such Insured Amounts which are then due. Upon presentment and surrender of such Obligations or presentment of such other proof of ownership of the Obligations, together with any appropriate instruments of assignment to evidence the assignment of the Insured Amounts due on the Obligations as are paid by the Insurer, and appropriate instruments to effect the appointment of the Insurer as agent for such owners of the Obligations in any legal proceeding related to payment of Insured Amounts on the Obligations, such instruments being in a form satisfactory to U.S. Bank Trust National Association, U.S. Bank Trust National Association shall disburse to such owners or the Paying Agent payment of the Insured Amounts due on such Obligations, less any amount held by the Paying Agent for the payment of such Insured Amounts and legally available therefor. This policy does not insure against loss of any prepayment premium which may at any time be payable with respect to any Obligation.

As used herein, the term "owner" shall mean the registered owner of any Obligation as indicated in the books maintained by the Paying Agent, the Issuer, or any designee of the Issuer for such purpose. The term owner shall not include the Issuer or any party whose agreement with the Issuer constitutes the underlying security for the Obligations.

Any service of process on the Insurer may be made to the Insurer at its offices located at 113 King Street, Armonk, New York 10504 and such service of process shall be valid and binding.

This policy is non-cancelable for any reason. The premium on this policy is not refundable for any reason including the payment prior to maturity of the Obligations.

MBIA Insurance Corporation

UNITED STATES OF AMERICA

NO. _____

\$

STATE OF WASHINGTON

CITY OF KIRKLAND

WATER AND SEWER REVENUE AND REFUNDING BOND, 2004

Interest Rate:

Maturity Date:

CUSIP No.

Registered Owner:

Principal Amount:

THE CITY OF KIRKLAND, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington (the "City"), promises to pay to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, solely from the special fund of the City known as the "City of Kirkland Revenue Bond Interest and Redemption Fund" (the "Bond Fund") the Principal Amount indicated above and to pay interest thereon from the Bond Fund from August 1, 2004, or the most recent date to which interest has been paid or duly provided for or until payment of this bond at the Interest Rate set forth above, payable on December 1, 2004, and semiannually thereafter on the first days of each June and December. Both principal of and interest on this bond are payable in lawful money of the United States of America. Interest shall be paid by mailing a check or draft to the Registered Owner or assigns at the address shown on the Bond Register on the 15th day of the month prior to the interest payment date. Principal shall be paid to the Registered Owner or assigns upon presentation and surrender of this bond at the principal office of the fiscal agency of the State of Washington (the "Bond Registrar").

This bond is one of an issue of \$3,090,000 of bonds of the City of like date, tenor and effect, except as to number, amount, rate of interest and date of maturity and is issued pursuant to Ordinance No. 3955 of the City Council (the "Bond Ordinance") to pay a portion of the costs of the Project, refund certain outstanding water and sewer revenue bonds of the City and to pay costs of issuance.

The bonds of this issue are not subject to redemption prior to maturity.

The bonds of this issue are interchangeable for bonds of any denomination authorized by the Bond Ordinance of an equal aggregate principal amount and of the same interest rate and maturity. Portions of the principal sum of this bond in installments of \$5,000 or any integral multiple thereof may also be redeemed in accordance with the schedule set forth above, and if less than all of the principal sum hereof is to be redeemed, upon the surrender of this bond at the

principal office of the Bond Registrar there shall be issued to the registered owner, without charge therefor, for the then unredeemed balance of the principal sum hereof, at the option of the owner, a bond or bonds of like maturity and interest rate in any of the denominations authorized by the Bond Ordinance.

The bonds of this issue are not general obligations of the City. The City hereby covenants and agrees with the owner and holder of this bond that it will keep and perform all the covenants of this bond and the Bond Ordinance.

The bonds of this issue are not "private activity bonds" as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"). The bonds of this issue have been designated by the City as qualified tax-exempt obligations under Section 265(b) of the Code.

The City does hereby pledge and bind itself to set aside from the Revenue of the System, and to pay into said Bond Fund and the Reserve Fund and subaccounts created therein the various amounts required by the Bond Ordinance to be paid into and maintained in said Fund and Account, all within the times provided by said Bond Ordinance.

To the extent more particularly provided by the Bond Ordinance, the amounts so pledged to be paid out of the Revenue of the System into the Bond Fund and the Reserve Fund shall be a prior lien and charge upon the Revenue of the System superior to all other charges of any kind or nature whatsoever except the Operating Expenses, and except that said amounts are equal in rank to the lien and charge upon such Revenue of any amounts required to pay and secure the water and sewer revenue (and refunding) bonds of the City issued under date of March 1, 1996 and any water and sewer revenue bonds of the City hereafter issued on a parity therewith and with the bonds of this issue (herein and in the Bond Ordinance called "Parity Bonds").

The City has further bound itself to maintain the System in good repair, working order and condition, to operate the same in an efficient manner and at a reasonable cost, and to fix, maintain and collect rates and charges for as long as any of the bonds of this issue are outstanding that will maintain the Rate Covenant.

The pledge of Revenues of the System and other obligations of the City under the Bond Ordinance may be discharged at or prior to the maturity or redemption of the bonds of this issue upon the making of provisions for the payment thereof on the terms and conditions set forth in the Bond Ordinance.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance (as hereinafter defined) until the Certificate of Authentication hereon shall have been manually signed by or on behalf of the Bond Registrar.

It is hereby certified and declared that this bond and the bonds of this issue are issued pursuant to and in strict compliance with the Constitution and laws of the State of Washington and ordinances of the City and that all acts, conditions and things required to be done precedent to and in the issuance of this bond have happened, been done and performed.

IN WITNESS WHEREOF, the City of Kirkland, Washington, has caused this bond to be executed by the facsimile signature of the Mayor and attested by the facsimile signature of the Clerk of the City, and a facsimile corporate seal of the City to be imprinted hereon as of the 1st day of August, 2004.

[SEAL]

CITY OF KIRKLAND, WASHINGTON

By _____ /s/ _____
Mayor

ATTEST:

_____/s/_____
Clerk or Director of
Finance & Administration

The Bond Registrar's Certificate of Authentication on the Bonds shall be in substantially the following form:

CERTIFICATE OF AUTHENTICATION

Date of Authentication:

This bond is one of the bonds described in the within-mentioned Bond Ordinance and is one of the City of Kirkland, Washington, Water and Sewer Revenue and Refunding Bonds, 2004, dated August 1, 2004.

WASHINGTON STATE FISCAL
AGENCY, as Bond Registrar

By _____
Authorized Signer

ARTICLE XII
MISCELLANEOUS, DEFEASANCE; SALE OF BONDS AND APPROVAL OF OFFICIAL
STATEMENT

Section 12.1. Ordinance and Laws a Contract With Bondowners.

This ordinance is adopted under the authority of and in full compliance with the Constitution and laws of the State of Washington, as amended and supplemented. In consideration of the purchase and acceptance of Parity Bonds by those who shall hold the same from time to time, the provisions of this ordinance and of any Supplemental Ordinance authorizing the issuance of Future Parity Bonds and of said laws shall constitute a contract with the owner or owners of each Parity Bond and the obligations of the City and its Council under said acts and under this ordinance shall be enforceable by any court of competent jurisdiction; and the covenants and agreements herein set forth to be performed on behalf of the City shall be for the equal benefit, protection and security of the owners of any and all of said Parity Bonds all of which, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any of said Parity Bonds over any others thereof except as expressly provided herein.

Section 12.2. Bonds Deemed No Longer to be Outstanding Hereunder.

In the event that the City, in order to effect the payment, retirement or redemption of any Bond, sets aside in the Bond Fund or in another special account, held in trust by the City or by a qualified trustee, advance refunding bond proceeds or other money lawfully available or Government Obligations, or any combination of such proceeds, money and/or Government Obligations, in amounts which, together with known earned income from the investment thereof are sufficient to redeem, retire or pay such Bond in accordance with its terms and to pay when due the interest and redemption premium, if any, thereon, and such proceeds, money and/or Government Obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on such Bond, and the owner of such Bond shall cease to be entitled to any lien, benefit or security of this ordinance, or any other ordinance of the City, except the right to receive payment of principal, premium, if any, and interest from such special account, and such Bonds shall be deemed not to be outstanding hereunder. The City shall obtain an opinion of nationally recognized bond counsel to the effect set forth in the preceding sentence and that the tax-exempt status of such Bonds is not adversely affected, and a verification from a certified public accountant that the money when due or Government Obligations so set aside will be sufficient to pay the principal, premium, if any, and interest on Bonds to be refunded. Notice of any such defeasance shall be given to each NRMSIR and SID, if any.

For so long as the Bond Insurance Policy is in effect, the Bond Insurer shall be provided with an opinion of counsel acceptable to the Bond Insurer to the effect that the Bonds have been legally defeased and that the escrow agreement, if any, established for such defeasance operates to defease legally the Bonds under this ordinance. In addition, the Bond Insurer will be entitled to receive (i) 15 business days notice of any advance refunding of the Bonds and (ii) an

accountant's report with respect to the sufficiency of the amounts deposited in escrow to defease the Bonds.

Section 12.3. Moneys Held by Bond Registrar One Year After Due Date.

Moneys held by the Bond Registrar in trust for the payment and discharge of any of Parity Bonds which remain unclaimed for one year after the date when such Parity Bonds shall have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by such Bond Registrar at such date or for one year after the date of deposit of such moneys if deposited with the Bond Registrar after the date when such Parity Bonds become due and payable, shall at the written request of the City be repaid by the Bond Registrar to the City as the City's property and free from the trust created by this ordinance, or any other ordinance of the City, and the Bond Registrar shall thereupon be released and discharged with respect thereto, and the owners of the Parity Bonds payable from such moneys shall look only to the City for the payment of such Parity Bonds.

Section 12.4. Sale of Bonds.

The Underwriter has presented a bond purchase contract dated August 3, 2004 (the "Purchase Contract") to the City by which it 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 Clerk of the Council and is incorporated herein by this reference. The 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 its execution by the Mayor, the Director or any City official designated by either of them. The proper City officials are authorized and directed to do everything necessary for the prompt authentication and delivery of the Bonds to the purchaser and for the proper application and use of the proceeds of the sale thereof.

Section 12.5. Approval of Insurance Policy.

(a) *Acceptance of Commitment.* In accordance with the commitment received from MBIA Insurance Corporation (the "Bond Insurer") and under the terms of the Purchase Contract presented by the Underwriter, the City accepts the commitment of the Bond Insurer to issue the Bond Insurance Policy in accordance with the terms of its commitment and this ordinance.

(b) *Payments Under the Bond Insurance Policy.*

(1) In the event that, on the second business day, and again on the business day, prior to the payment date on the Bonds, the Bond Registrar has not received sufficient money to pay all principal of and interest on the Bonds due on the second following or following, as the case may be, business day, the Bond Registrar shall immediately notify the Bond Insurer or its designee on the same business day by telephone or telegraph, confirmed in writing by registered or certified mail, of the amount of the deficiency.

(2) If the deficiency is made up in whole or in part prior to or on the payment date, the Bond Registrar shall so notify the Bond Insurer or its designee.

(3) In addition, if the Bond Registrar has notice that any bondowner has been required to disgorge payments of principal or interest on the Bonds to a trustee in bankruptcy or creditors or others pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such bondowner within the meaning of any applicable bankruptcy laws, then the Bond Registrar shall notify the Bond Insurer or its designee of such fact by telephone or telegraphic notice, confirmed in writing by registered or certified mail.

(4) The Bond Registrar is hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for owners of the Bonds as follows:

a. If and to the extent there is a deficiency in amounts required to pay interest on the Bonds, the Bond Registrar shall (i) execute and deliver to U.S. Bank Trust National Association, or its successors under the Bond Insurance Policy (the "Insurance Paying Agent"), in form satisfactory to the Insurance Paying Agent, an instrument appointing the Bond Insurer as agent for such owners in any legal proceeding related to the payment of such interest and an assignment to the Bond Insurer of the claims for interest to which such deficiency relates and which are paid by the Bond Insurer, (ii) receive as designee of the respective owners (and not as Bond Registrar) in accordance with the tenor of the Bond Insurance Policy payment from the Insurance Paying Agent with respect to the claims for interest so assigned, and (iii) disburse the same to such respective owners; and

b. If and to the extent of a deficiency in amounts required to pay principal of the Bonds, the Bond Registrar shall (i) execute and deliver to the Insurance Paying Agent in form satisfactory to the Insurance Paying Agent an instrument appointing the Bond Insurer as agent for such owner in any legal proceeding relating to the payment of such principal and an assignment to the Bond Insurer of any of the Bonds surrendered to the Insurance Paying Agent of so much of the principal amount thereof as has not previously been paid or for which moneys are not held by the Bond Registrar and available for such payment (but such assignment shall be delivered only if payment from the Insurance Paying Agent is received), (ii) receive as designee of the respective owners (and not as Bond Registrar) in accordance with the tenor of the Bond Insurance Policy payment therefor from the Insurance Paying Agent, and (iii) disburse the same to such owner.

(5) Payments with respect to claims for interest on and principal of Bonds disbursed by the Bond Registrar from proceeds of the Bond Insurance Policy shall not be considered to discharge the obligation of the City with respect to such Bonds, and the Bond Insurer shall become the owner of such unpaid Bonds and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of this subsection or otherwise.

(6) Irrespective of whether any such assignment is executed and delivered, the City and the Bond Registrar hereby agree for the benefit of the Bond Insurer that:

a. They recognize that to the extent the Bond Insurer makes payments, directly or indirectly (as by paying through the Bond Registrar), on account of principal of or interest on the Bonds, the Bond Insurer will be subrogated to the rights of such owners to receive the amount of such principal and interest from the City, with interest thereon as provided and solely from the sources stated in this ordinance and the Bonds; and

b. They will accordingly pay to the Bond Insurer the amount of such principal and interest (including principal and interest recovered under subparagraph (ii) of the first paragraph of the Bond Insurance Policy, which principal and interest shall be deemed past due and not to have been paid), with interest thereon as provided in this ordinance and the Bonds, but only from the sources and in the manner provided herein for the payment of principal of and interest on the Bonds to owners, and will otherwise treat the Bond Insurer as the owner of such rights to the amount of such principal and interest.

(c) *Rights of Bond Insurer.*

(1) In connection with the issuance of Future Parity Bonds, the City shall deliver to the Bond Insurer a copy of the disclosure document, if any, circulated with respect to such Future Parity Bonds.

(2) The Bond Insurer shall receive copies of the City's audited financial statements and annual budget.

(3) Copies of any amendments made to the documents executed in connection with the issuance of the Bonds which are consented to by the Bond Insurer shall be sent to Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc.

(4) The Bond Insurer shall receive notice of the resignation or renewal of the Bond Registrar and the appointment of a successor, other than the designated state fiscal agent.

(5) Any notices required to be given by any party under this ordinance shall also be given to the Bond Insurer and sent by registered or certified mail addressed to: MBIA Insurance Corporation, 113 King Street, Armonk, New York 10504, Attention: Surveillance.

(6) The City agrees to reimburse the Bond Insurer immediately and unconditionally upon demand, to the extent permitted by law, for all reasonable expenses, including reasonable attorneys' fees and expenses, incurred by the Bond Insurer in connection with (i) enforcement by the Bond Insurer of the City's obligations, or the preservation or defense of any rights of the Bond Insurer, under this ordinance and any other document executed in connection with the issuance of the Bonds, and (ii) any consent, amendment, waiver or other action with respect to this ordinance or any related document, whether or not granted or approved, together with interest on all such expenses from and including the date incurred to the date of payment at Citibank's Prime Rate plus 3% or the maximum interest rate permitted by law, whichever is less. In addition, the Bond Insurer reserves the right to charge a reasonable fee

in connection with its review of any such consent, amendment or waiver, whether or not granted or approved.

(7) The City agrees not to use the Bond Insurer's name in any published document including, without limitation, a press release or presentation, announcement or forum without the Bond Insurer's prior consent; *provided* that the City may use the Bond Insurer's name in any general or particular factual statement to the effect that the Bond Insurer insures certain outstanding City bonds. In the event that the City is advised by counsel that it has a legal obligation to disclose the Bond Insurer's name in any press release, public announcement or other published document, the City shall provide the Bond Insurer with at least three (3) business days' prior written notice of its intent to use the Bond Insurer's name together with a copy of the proposed use of the Bond Insurer's name and of any description of a transaction with the Bond Insurer and shall obtain the Bond Insurer's prior consent as to the form and substance of the proposed use of the Bond Insurer's name and any such description. The foregoing shall not apply to any request for public records duly received by the City pursuant to RCW Ch. 42.17, and the City shall not be obligated to notify the Bond Insurer of its intent to comply with any public disclosure request.

(8) The City shall not enter into any agreement nor shall it consent to or participate in any arrangement pursuant to which Bonds are tendered or purchased for any purpose other than the redemption and cancellation or legal defeasance of such Bonds without the prior consent of the Bond Insurer.

The provisions of this section shall be in effect only so long as the Bond Insurance Policy is in full force and effect.

Section 12.6. Approval of Official Statement.

The Director is authorized and directed to execute and deliver to the Underwriter copies of an Official Statement in the form presented at this meeting, and with such changes thereto as have been noted thereon; provided, however, that the Director is authorized to supplement or amend the Official Statement as the Director, with the approval of bond counsel to the City, deems necessary or appropriate. The City represents and warrants to the purchaser that such Official Statement is deemed final by the City as of the date thereof, and that the Preliminary Official Statement dated July 8, 2004, was deemed final by the City as of the date thereof for purposes of the Rule, except for the omission of the offering prices, interest rates, maturities, principal amounts, redemption provisions, ratings and related information.

The Council approves and authorizes the distribution and use of such Official Statement (including any such supplements and amendments thereto) in connection with the public offering and sale of the Bonds by the purchaser. The Council hereby ratifies, approves and confirms the distribution and use of the Preliminary Official Statement in connection with the public offering and sale of the Bonds.

Section 12.7. Benefits of Ordinance Limited to City, Bondowners, and Bond Registrar.

Nothing in this ordinance, expressed or implied, is intended or shall be construed to confer upon or give to any person or corporation other than the City, the Bond Registrar, the Bond Insurer and the owners from time to time of the Bonds any rights, remedies or claims under or by reason of this ordinance or any covenant, condition or stipulation thereof; and all the covenants, stipulations, promises and agreements in this ordinance contained by or on behalf of the City shall be for the sole and exclusive benefit of the City, the Bond Registrar, the Bond Insurer and the owners from time to time of Parity Bonds.

Section 12.8. Term "City" Includes Successors.

Whenever in this ordinance the City is named or referred to, it shall be deemed to include its successors and assigns, including any successor by merger or consolidation, and all the covenants and agreements in this ordinance contained by or on behalf of the City shall bind and inure to the benefit of its successors and assigns whether so expressed or not.

Section 12.9. Severability.

If any one or more of the covenants or agreements provided in this ordinance on the part of the City to be performed shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this ordinance or of the Parity Bonds issued hereunder.

Section 12.10. General Authorization.

The Mayor, the Director and the City Clerk and each of the other appropriate officers of the City are each hereby authorized and directed to take such steps, to do such other acts and things, and to execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this ordinance.

Section 12.11. Special Designation.

The Bonds are hereby designated as qualified tax-exempt obligations pursuant to Section 265(b) of the Code for investment by financial institutions. The City does not expect to issue more than \$10,000,000 in tax-exempt obligations during 2004.

Section 12.12. Prior Acts.

All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 12.13. Effective Date of Ordinance.

This ordinance shall be in effect from and after its passage in accordance with law.

Section 12.14. Repealer.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

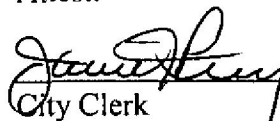
PASSED by majority vote of the Kirkland City Council in regular, open meeting this 3rd day of August, 2004.

SIGNED in authentication thereof this ____ day of August, 2004.




Mayor

Attest:



City Clerk

Approved as to Form:



Bond Counsel

CERTIFICATE

I, the undersigned, the duly chosen, qualified and acting City Clerk of the City of Kirkland, Washington (the "City"), and keeper of the records of the City, DO HEREBY CERTIFY:

1. That the attached Ordinance is a true and correct copy of Ordinance No. 3955 (the "Ordinance") passed by the City Council of the City (the "City Council"), at a regular open public meeting of the City Council held on the 3rd day of August, 2004, and the Ordinance has been duly recorded in my office.

2. That said meeting was duly convened on a regularly scheduled meeting date and held in all respects in accordance with law; that a quorum was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand as of this ____ day of August, 2004.



City Clerk

EXHIBIT A**ESCROW DEPOSIT AGREEMENT
CITY OF KIRKLAND, WASHINGTON
WATER AND SEWER REVENUE AND REFUNDING BONDS, 2004**

THIS ESCROW AGREEMENT, dated as of August ____, 2004 (herein, together with any amendments or supplements hereto, called the "Agreement") is entered into by and between the City of Kirkland, Washington (herein called the "City") and U.S. Bank National Association, Seattle, Washington as escrow agent (herein, together with any successor in such capacity, called the "Escrow Agent"). The notice addresses of the City and the Escrow Agent are shown on Exhibit A attached hereto and made a part hereof.

WITNESSETH:

WHEREAS, the City heretofore has issued and there presently remain outstanding the obligations described in Exhibit B attached hereto (the "1995 Bonds"); and

WHEREAS, pursuant to Ordinance No. 3955 adopted on August 3, 2004 (the "Bond Ordinance"), the City has determined to issue its Water and Sewer Revenue and Refunding Bonds, 2004 (the "Bonds"); and

WHEREAS, a portion of the proceeds of the Bonds are being used for the purpose of providing funds to pay the costs of refunding the 1995 Bonds; and

WHEREAS, the Escrow Agent has reviewed the Bond Ordinance and this Agreement, and is willing to serve as Escrow Agent hereunder; and

WHEREAS, Causey Demgen & Moore, Certified Public Accountants of Denver, Colorado has prepared a verification report which is dated August ____, 2004 (the "Verification Report") relating to the source and use of funds available to accomplish the refunding of the 1995 Bonds, the investment of such funds and the adequacy of such funds and investments to provide for the payment of the debt service due on the 1995 Bonds; and

WHEREAS, pursuant to the Bond Ordinance, the 1995 Bonds have been designated for redemption prior to their scheduled maturity dates and, after provision is made for such redemption, the 1995 Bonds will come due in such years, bear interest at such rates, and be payable at such times and in such amounts as are set forth in Exhibit C attached hereto and made a part hereof; and

WHEREAS, when Escrowed Securities have been deposited with the Escrow Agent for the payment of all principal and interest of the 1995 Bonds when due, then the 1995 Bonds shall no longer be regarded as outstanding except for the purpose of receiving payment from the funds provided for such purpose; and

WHEREAS, the issuance, sale, and delivery of the Bonds have been duly authorized to be issued, sold, and delivered for the purpose of obtaining the funds required to provide for the payment of the principal of, interest on and redemption premium (if any) on the 1995 Bonds when due as shown on Exhibit C attached hereto; and

WHEREAS, the City desires that, concurrently with the delivery of the Bonds to the purchasers thereof, the proceeds of the Bonds, together with certain other available funds of the City, shall be applied to purchase certain obligations of the United States of America hereinafter defined as the "Escrowed Securities" for deposit to the credit of the Escrow Fund created pursuant to the terms of this Agreement and to establish a beginning cash balance (if needed) in such Escrow Fund; and

WHEREAS, the Escrowed Securities shall mature and the interest thereon shall be payable at such times and in such amounts so as to provide moneys which, together with cash balances from time to time on deposit in the Escrow Fund, will be sufficient to pay interest on the 1995 Bonds as it accrues and becomes payable and the principal of the 1995 Bonds as it becomes due and payable; and

WHEREAS, to facilitate the receipt and transfer of proceeds of the Escrowed Securities, particularly those in book entry form, the City desires to establish the Escrow Fund at the corporate trust office of the Escrow Agent in Seattle, Washington; and

WHEREAS, the Escrow Agent is a party to this Agreement to acknowledge its acceptance of the terms and provisions hereof;

NOW, THEREFORE, in consideration of the mutual undertakings, promises and agreements herein contained, the sufficiency of which hereby are acknowledged, and to secure the full and timely payment of principal of and the interest on the 1995 Bonds, the City and the Escrow Agent mutually undertake, promise and agree for themselves and their respective representatives and successors, as follows:

Article 1. Definitions

Section 1.1. Definitions.

Unless the context clearly indicates otherwise, the following terms shall have the meanings assigned to them below when they are used in this Agreement:

Escrow Fund means the fund created by this Agreement to be established, held and administered by the Escrow Agent pursuant to the provisions of this Agreement.

Escrowed Securities means the noncallable Government Obligations described in Exhibit D attached to this Agreement, or cash or other noncallable obligations substituted therefor pursuant to Section 4.2 of this Agreement.

Government Obligations means direct, noncallable (a) United States Treasury Obligations, (b) United States Treasury Obligations - State and Local Government Series, (c) non-prepayable obligations which are unconditionally guaranteed as to full and timely payment of principal and interest by the United States of America or (d) REFCORP debt obligations unconditionally guaranteed by the United States.

Paying Agent means the fiscal agency of the State of Washington, as the paying agent for the 1995 Bonds.

Section 1.2. Other Definitions.

The terms "Agreement," "City," "Escrow Agent," "Bond Ordinance," "Verification Report," "1995 Bonds," and "Bonds" when they are used in this Agreement, shall have the meanings assigned to them in the preamble to this Agreement.

Section 1.3. Interpretations.

The titles and headings of the articles and sections of this Agreement have been inserted for convenience and reference only and are not to be considered a part hereof and shall not in any way modify or restrict the terms hereof. This Agreement and all of the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to achieve the intended purpose of providing for the refunding of the 1995 Bonds in accordance with applicable law.

Article 2. Deposit of Funds and Escrowed Securities

Section 2.1. Deposits in the Escrow Fund.

Concurrently with the sale and delivery of the Bonds the City shall deposit, or cause to be deposited, with the Escrow Agent, for deposit in the Escrow Fund, the funds (from the proceeds of the Bonds) sufficient to purchase the Escrowed Securities and pay costs of issuance described in Exhibit D attached hereto, and the Escrow Agent shall, upon the receipt thereof, acknowledge such receipt to the City in writing.

Article 3. Creation and Operation of Escrow Fund

Section 3.1. Escrow Fund.

The Escrow Agent has created on its books a special trust fund and irrevocable escrow to be known as the Refunding Account (the "Escrow Fund"). The Escrow Agent hereby agrees that upon receipt thereof it will deposit to the credit of the Escrow Fund the funds and the Escrowed Securities described in Exhibit D attached hereto and pay Costs of Issuance as described in Exhibit D. Such deposit, all proceeds therefrom, and all cash balances from time to time on deposit therein (a) shall be the property of the Escrow Fund, (b) shall be applied only in strict

conformity with the terms and conditions of this Agreement, and (c) are hereby irrevocably pledged to the payment of the principal of and interest on the 1995 Bonds, which payment shall be made by timely transfers of such amounts at such times as are provided for in Section 3.2 hereof. When the final transfers have been made for the payment of such principal of and interest on the 1995 Bonds, any balance then remaining in the Escrow Fund shall be transferred to the City, and the Escrow Agent shall thereupon be discharged from any further duties hereunder.

Section 3.2. Payment of Principal and Interest.

The Escrow Agent is hereby irrevocably instructed to transfer to the Paying Agent from the cash balances from time to time on deposit in the Escrow Fund, the amounts required to pay the principal of the 1995 Bonds at their respective redemption dates and interest thereon to such redemption dates in the amounts and at the times shown in Exhibit C attached hereto.

Section 3.3. Sufficiency of Escrow Fund.

The City represents that, based upon the information provided in the Verification Report, the successive receipts of the principal of and interest on the Escrowed Securities will assure that the cash balance on deposit from time to time in the Escrow Fund will be at all times sufficient to provide moneys for transfer to the Paying Agent at the times and in the amounts required to pay the interest on the 1995 Bonds as such interest comes due and the principal of the 1995 Bonds as the 1995 Bonds are paid on an optional redemption date prior to maturity, all as more fully set forth in Exhibit E attached hereto. If, for any reason, at any time, the cash balances on deposit or scheduled to be on deposit in the Escrow Fund shall be insufficient to transfer the amounts required by the Paying Agent to make the payments set forth in Section 3.2. hereof, the City shall timely deposit in the Escrow Fund, from any funds that are lawfully available therefor, additional funds in the amounts required to make such payments. Notice of any such insufficiency shall be given promptly as hereinafter provided, but the Escrow Agent shall not in any manner be responsible for any insufficiency of funds in the Escrow Fund or the City's failure to make additional deposits thereto.

Section 3.4. Trust Fund.

The Escrow Agent or its affiliate, shall hold at all times the Escrow Fund, the Escrowed Securities and all other assets of the Escrow Fund, wholly segregated from all other funds and securities on deposit with the Escrow Agent; it shall never allow the Escrowed Securities or any other assets of the Escrow Fund to be commingled with any other funds or securities of the Escrow Agent; and it shall hold and dispose of the assets of the Escrow Fund only as set forth herein. The Escrowed Securities and other assets of the Escrow Fund shall always be maintained by the Escrow Agent as trust funds for the benefit of the owners of the 1995 Bonds; and a special account thereof shall at all times be maintained on the books of the Escrow Agent. The owners of the 1995 Bonds shall be entitled to the same preferred claim and first lien upon the Escrowed Securities, the proceeds thereof, and all other assets of the Escrow Fund to which they are entitled as owners of the 1995 Bonds. The amounts received by the Escrow Agent under this

Agreement shall not be considered as a banking deposit by the City, and the Escrow Agent shall have no right to title with respect thereto except as a trustee and Escrow Agent under the terms of this Agreement. The amounts received by the Escrow Agent under this Agreement shall not be subject to warrants, drafts or checks drawn by the City or, except to the extent expressly herein provided, by the Paying Agent.

Article 4. Limitation on Investments

Section 4.1. Investments.

Except for the initial investment in the Escrowed Securities, and except as provided in Section 4.2 hereof, the Escrow Agent shall not have any power or duty to invest or reinvest any money held hereunder, or to make substitutions of the Escrowed Securities, or to sell, transfer, or otherwise dispose of the Escrowed Securities.

Section 4.2. Substitution of Securities.

At the written request of the City, and upon compliance with the conditions hereinafter stated, the Escrow Agent shall utilize cash balances in the Escrow Fund, or sell, transfer, otherwise dispose of or request the redemption of the Escrowed Securities and apply the proceeds therefrom to purchase 1995 Bonds or Government Obligations which do not permit the redemption thereof at the option of the obligor. Any such transaction may be effected by the Escrow Agent only if (a) the Escrow Agent shall have received a written opinion from a firm of certified public accountants that such transaction will not cause the amount of money and securities in the Escrow Fund to be reduced below an amount sufficient to provide for the full and timely payment of principal of and interest on all of the remaining 1995 Bonds as they become due, taking into account any optional redemption thereof exercised by the City in connection with such transaction; and (b) the Escrow Agent shall have received the unqualified written legal opinion of the City's bond counsel or tax counsel to the effect that such transaction will not cause any of the Bonds or 1995 Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended.

Article 5. Application of Cash Balances

Section 5.1. In General.

Except as provided in Sections 2.1, 3.2 and 4.2 hereof, no withdrawals, transfers, or reinvestment shall be made of cash balances in the Escrow Fund. Cash balances shall be held by the Escrow Agent in U.S. currency and shall not be reinvested by the Escrow Agent, except as directed or authorized herein.

Article 6. Redemption of 1995 Bonds

Section 6.1. Call for Redemption.

The City hereby irrevocably calls the 1995 Bonds for redemption on their earliest redemption dates, as shown in the Verification Report and on Appendix A-1 attached hereto.

Section 6.2. Notice of Redemption/Notice of Defeasance.

The Escrow Agent agrees to give a notice of defeasance and a notice of the redemption of the 1995 Bonds pursuant to the terms of the 1995 Bonds and in substantially the forms attached hereto as Appendices A-1 through A-2 attached hereto and as described on said Appendices A-1 through A-2 to the Paying Agent for distribution as described therein. The notice of defeasance shall be given immediately following the execution of this Agreement, and the notice of redemption shall be given in accordance with the ordinance authorizing the 1995 Bonds. The Escrow Agent hereby certifies that provision satisfactory and acceptable to the Escrow Agent has been made for the giving of notice of redemption of the 1995 Bonds.

Article 7. Records and Reports

Section 7.1. Records.

The Escrow Agent will keep books of record and account in which complete and accurate entries shall be made of all transactions relating to the receipts, disbursements, allocations and application of the money and Escrowed Securities deposited to the Escrow Fund and all proceeds thereof, and such books shall be available for inspection during business hours and after reasonable notice.

Section 7.2. Reports.

While this Agreement remains in effect, the Escrow Agent quarterly shall prepare and send to the City a written report summarizing all transactions relating to the Escrow Fund during the preceding financial quarter, including, without limitation, credits to the Escrow Fund as a result of interest payments on or maturities of the Escrowed Securities and transfers from the Escrow Fund for payments on the 1995 Bonds or otherwise, together with a detailed statement of all Escrowed Securities and the cash balance on deposit in the Escrow Fund as of the end of such period.

Article 8. Concerning the Paying Agents and Escrow Agent

Section 8.1. Representations.

The Escrow Agent hereby represents that it has all necessary power and authority to enter into this Agreement and undertake the obligations and responsibilities imposed upon it herein, and that it will carry out all of its obligations hereunder.

Section 8.2. Limitation on Liability.

The liability of the Escrow Agent to transfer funds for the payment of the principal of and interest on the 1995 Bonds shall be limited to the proceeds of the Escrowed Securities and the cash balances from time to time on deposit in the Escrow Fund. Notwithstanding any provision contained herein to the contrary, the Escrow Agent shall have no liability whatsoever for the insufficiency of funds from time to time in the Escrow Fund or any failure of the obligors of the Escrowed Securities to make timely payment thereon, except for the obligation to notify the City promptly of any such occurrence.

The recitals herein and in the proceedings authorizing the Bonds shall be taken as the statements of the City and shall not be considered as made by, or imposing any obligation or liability upon, the Escrow Agent.

The Escrow Agent is not a party to the proceedings authorizing the Bonds or the 1995 Bonds and is not responsible for nor bound by any of the provisions thereof (except to the extent that the Escrow Agent may be a place of payment and paying agent and/or a paying agent/registrars therefor). In its capacity as Escrow Agent, it is agreed that the Escrow Agent need look only to the terms and provisions of this Agreement.

The Escrow Agent makes no representations as to the value, conditions or sufficiency of the Escrow Fund, or any part thereof, or as to the title of the City thereto, or as to the security afforded thereby or hereby, and the Escrow Agent shall not incur any liability or responsibility in respect to any of such matters.

It is the intention of the parties hereto that the Escrow Agent shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

The Escrow Agent shall not be liable for any action taken or neglected to be taken by it in good faith in any exercise of reasonable care and believed by it to be within the discretion or power conferred upon it by this Agreement, nor shall the Escrow Agent be responsible for the consequences of any error of judgment; and the Escrow Agent shall not be answerable except for its own neglect or willful misconduct, nor for any loss unless the same shall have been through its negligence or bad faith.

Unless it is specifically otherwise provided herein, the Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the City with respect to arrangements or contracts with others, with the Escrow Agent's sole duty hereunder being to safeguard the Escrow Fund, to dispose of and deliver the same in accordance with this Agreement. If, however, the Escrow Agent is called upon by the terms of this Agreement to determine the occurrence of any event or contingency, the Escrow Agent shall be obligated, in making such determination, only to exercise reasonable care and diligence, and in event of error in making such determination the Escrow

Agent shall be liable only for its own willful misconduct or its negligence. In determining the occurrence of any such event or contingency the Escrow Agent may request from the City or any other person such reasonable additional evidence as the Escrow Agent in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may make inquiries of, and consult with, among others, the City at any time.

Section 8.3. Compensation.

The City shall pay to the Escrow Agent fees for performing the services hereunder and for the expenses incurred or to be incurred by the Escrow Agent in the administration of this Agreement pursuant to the terms of the Fee Schedule attached hereto as Appendix B. The Escrow Agent hereby agrees that in no event shall it ever assert any claim or lien against the Escrow Fund for any fees for its services, whether regular or extraordinary, as Escrow Agent, or in any other capacity, or for reimbursement for any of its expenses as Escrow Agent or in any other capacity.

Section 8.4. Successor Escrow Agents.

Any corporation, association or other entity into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or otherwise transfer all or substantially all of its corporate trust assets and business or any corporation, association or other entity resulting from any such conversion, sale, merger, consolidation or other transfer to which it is a party, *ipso facto*, shall be and become successor escrow agent hereunder, vested with all other matters as was its predecessor, without the execution or filing of any instrument or any further act on the part of the parties hereto, notwithstanding anything herein to the contrary.

If at any time the Escrow Agent or its legal successor or successors should become unable, through operation or law or otherwise, to act as escrow agent hereunder, or if its property and affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy or for any other reason, a vacancy shall forthwith exist in the office of Escrow Agent hereunder. In such event the City, by appropriate action, promptly shall appoint an Escrow Agent to fill such vacancy. If no successor Escrow Agent shall have been appointed by the City within 60 days, a successor may be appointed by the owners of a majority in principal amount of the 1995 Bonds then outstanding by an instrument or instruments in writing filed with the City, signed by such owners or by their duly authorized attorneys-in-fact. If, in a proper case, no appointment of a successor Escrow Agent shall be made pursuant to the foregoing provisions of this section within three months after a vacancy shall have occurred, the owner of any Refunded Bond may apply to any court of competent jurisdiction to appoint a successor Escrow Agent. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Escrow Agent.

Any successor Escrow Agent shall be a corporation organized and doing business under the laws of the United States or the State of Washington, authorized under such laws to exercise corporate trust powers, having its principal office and place of business in the State of

Washington, having a combined capital and surplus of at least \$50,000,000 and subject to the supervision or examination by federal or state authority.

Any successor Escrow Agent shall execute, acknowledge and deliver to the City and the Escrow Agent an instrument accepting such appointment hereunder, and the Escrow Agent shall execute and deliver an instrument transferring to such successor Escrow Agent, subject to the terms of this Agreement, all the rights, powers and trusts of the Escrow Agent hereunder. Upon the request of any such successor Escrow Agent, the City shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Escrow Agent all such rights, powers and duties.

The obligations assumed by the Escrow Agent pursuant to this Agreement may be transferred by the Escrow Agent to a successor Escrow Agent if (a) the requirements of this Section 8.4 are satisfied; (b) the successor Escrow Agent has assumed all the obligations of the Escrow Agent under this Agreement; and (c) all of the Escrowed Securities and money held by the Escrow Agent pursuant to this Agreement have been duly transferred to such successor Escrow Agent.

Article 9. Miscellaneous

Section 9.1. Notice.

Any notice, authorization, request, or demand required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when mailed by registered or certified mail, postage prepaid addressed to the City or the Escrow Agent at the address shown on Exhibit A attached hereto. The United States Post Office registered or certified mail receipt showing delivery of the aforesaid shall be conclusive evidence of the date and fact of delivery. Any party hereto may change the address to which notices are to be delivered by giving to the other parties not less than ten days prior notice thereof.

Section 9.2. Termination of Responsibilities.

Upon the taking of all the actions as described herein by the Escrow Agent, the Escrow Agent shall have no further obligations or responsibilities hereunder to the City, the owners of the 1995 Bonds or to any other person or persons in connection with this Agreement.

Section 9.3. Binding Agreement.

This Agreement shall be binding upon the City and the Escrow Agent and their respective successors and legal representatives, and shall inure solely to the benefit of the owners of the 1995 Bonds, the City, the Escrow Agent and their respective successors and legal representatives.

Section 9.4. Severability.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

Section 9.5. Washington Law Governs.

This Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Washington.

Section 9.6. Time of the Essence.

Time shall be of the essence in the performance of obligations from time to time imposed upon the Escrow Agent by this Agreement.

Section 9.7. Amendments.

This Agreement shall not be amended except to cure any ambiguity or formal defect or omission in this Agreement. No amendment shall be effective unless the same shall be in writing and signed by the parties thereto. No such amendment shall adversely affect the rights of the holders of the 1995 Bonds. No such amendment shall be made without first receiving written confirmation from the rating agencies, (if any) which have rated the 1995 Bonds that such administrative changes will not result in a withdrawal or reduction of its rating then assigned to the 1995 Bonds. If this Agreement is amended, prior written notice and copies of the proposed changes shall be given to the rating agencies which have rated the 1995 Bonds.

EXECUTED as of the date first written above.

CITY OF KIRKLAND, WASHINGTON

Director of Finance & Administration

U.S. BANK NATIONAL ASSOCIATION

as Authorized Signer

Exhibit A	—	Addresses of the City and the Escrow Agent
Exhibit B	—	Description of the 1995 Bonds
Exhibit C	—	Schedule of Debt Service on 1995 Bonds
Exhibit D	—	Description of Beginning Cash Deposit (if any) and Escrowed Securities
Exhibit E	—	Escrow Fund Cash Flow
Appendix A-1	—	Notice of Redemption for the 1995 Bonds
Appendix A-2	—	Notice of Defeasance for the 1995 Bonds
Appendix B	—	Fee Schedule

EXHIBIT A
Addresses of the City and Escrow Agent

City: City of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033-6189
Attention: Director of Finance & Administration

Escrow Agent: U.S. Bank National Association
Corporate Trust Services PD-WA-T7CT
1420 Fifth Avenue, 7th Floor
Seattle, WA 98101
Attention: Corporate Trust

EXHIBIT B
Description of the 1995 Bonds

1995 Bonds

Maturity Years (June 1)	Principal Amounts	Interest Rates
2005	\$ 105,000	5.10%
2006	115,000	5.15
2007	120,000	5.25
2008	125,000	5.35
2014	1,550,000	5.75

EXHIBIT C
Schedule of Debt Service on 1995 Bonds

<u>Period Ending</u>	<u>Interest</u>	<u>Principal Redeemed</u>	<u>Total</u>
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**EXHIBIT D
Escrow Deposit**

I. Cash \$ _____

II. Other Obligations

<u>Description</u>	<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Total Cost</u>
		\$	%	\$

\$

\$

III. Costs of Issuance

EXHIBIT E
Escrow Fund Cash Flow

<u>Date</u>	<u>Escrow Securities Principal</u>	<u>Escrow Securities Interest</u>	<u>Cash Receipts</u>	<u>Cash Disbursement</u>	<u>Cash Balance</u>
	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	

APPENDIX A-1

NOTICE OF REDEMPTION*

**City of Kirkland, Washington
Water and Sewer Revenue Bonds, 1995**

NOTICE IS HEREBY GIVEN that the City of Kirkland, Washington has called for redemption on June 1, 2005, its outstanding Water and Sewer Revenue Bonds, 1995 (the "Bonds").

The Bonds will be redeemed at a price of one hundred percent (100%) of their principal amount, plus interest accrued to June 1, 2005. The redemption price of the Bonds is payable on presentation and surrender of the Bonds at the office of:

<p>The Bank of New York Fiscal Agency Department Ground Floor 101 Barclay Street 7 East New York, NY 10286</p>	-or-	<p>Wells Fargo Bank National Association Corporate Trust Department 14th Floor - M/S 257 999 Third Avenue Seattle, WA 98104</p>
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Interest on all Bonds or portions thereof which are redeemed shall cease to accrue on June 1, 2005.

The following Bonds are being redeemed:

Maturity Years (June 1)	Principal Amounts	Interest Rates	CUSIP Nos.
2006	\$ 115,000	5.15%	497494GT5
2007	120,000	5.25	497494GU2
2008	125,000	5.35	497494GV0
2014	1,550,000	5.75	497494GW8

By Order of the City of Kirkland, Washington

The Bank of New York, as Paying Agent

* This notice shall be given not more than 60 nor less than 30 days prior to June 1, 2005 by first class mail to each registered owner of the 1995 Bonds. In addition notice shall be mailed at least 35 days prior to June 1, 2005 to The Depository Trust Company, New York, New York; Piper Jaffray & Co., Seattle, Washington; Moody's Investors Service and Standard & Poor's.

Dated: _____.

Withholding of 28% of gross redemption proceeds of any payment made within the United States may be required by the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act") unless the Paying Agent has the correct taxpayer identification number (social security or employer identification number) or exemption certificate of the payee. Please furnish a properly completed Form W-9 or exemption certificate or equivalent when presenting your Bonds.

APPENDIX A-2*

NOTICE OF DEFEASANCE

**City of Kirkland, Washington
Water and Sewer Revenue Bonds, 1995**

NOTICE IS HEREBY GIVEN to the owners of that portion of the above captioned bonds with respect to which, pursuant to an Escrow Agreement dated August ___, 2004, by and between City of Kirkland, Washington (the "City") and U.S. Bank National Association, Seattle, Washington (the "Escrow Agent"), the City has deposited into an escrow account, held by the Escrow Agent, cash and obligations of the United States of America, the principal of and interest on which, when due, will provide money to pay each year, to and including the respective maturity or redemption dates of such bonds so provided for, the principal thereof and interest thereon (the "Defeased Bonds"). Such Defeased Bonds are therefore deemed to be no longer outstanding pursuant to Ordinance No. 3482 of the City authorizing the Defeased Bonds, but will be paid by application of the assets in such escrow.

The Defeased Bonds are described as follows:

City of Kirkland, Washington Water and Sewer Revenue Bonds, 1995.

(Dated August 1, 1995)

Maturity Years (June 1)	Principal Amounts	Interest Rates	CUSIP Nos.	Redemption Date (100%)
2005	\$ 105,000	5.10%	497494GS7	---
2006	115,000	5.15%	497494GT5	June 1, 2005
2007	120,000	5.25	497494GU2	June 1, 2005
2008	125,000	5.35	497494GV0	June 1, 2005
2014	1,550,000	5.75	497494GW8	June 1, 2005

* This notice shall be given immediately by first class mail to each registered owner of the Defeased Bonds. In addition notice shall be mailed to The Depository Trust Company of New York, New York; The Bank of New York, as Fiscal Agent; Moody's Investors Service, New York, New York; and Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, Inc., New York, New York, to the MSRB and to the NRMSIRs.

APPENDIX B
Fee Schedule

Escrow Agent Fee: \$ _____

CITY OF KIRKLAND

WATER AND SEWER REVENUE AND REFUNDING BONDS, 2004

ORDINANCE NO. 3955

AN ORDINANCE of the City of Kirkland, Washington, specifying and adopting the certain additions to and betterments and extensions of the City's combined system of water and sewerage; approving a plan of refunding for certain outstanding water and sewer revenue bonds; authorizing the issuance of \$3,090,000 par value Water and Sewer Revenue and Refunding Bonds, 2004, of the City for the purpose of paying part of the cost of carrying out such additions, betterments and extensions and such refunding; fixing the date, form, terms, interest rates, maturities and covenants of those bonds; providing for the issuance of bonds in the future on a parity therewith; appointing an escrow agent; and providing for the sale and delivery of the bonds.

Approved: August 3, 2004

Prepared by:

PRESTON GATES & ELLIS

Seattle, Washington

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Exhibit A – Form of Escrow Agreement

CITY OF KIRKLAND

Summary of Ordinance No. 3955 passed August 3, 2004 authorizing water and sewer revenue and refunding bonds in the amount of \$3,090,000

AN ORDINANCE of the City of Kirkland, Washington, specifying and adopting the certain additions to and betterments and extensions of the City's combined system of water and sewerage; approving a plan of refunding for certain outstanding water and sewer revenue bonds; authorizing the issuance of \$3,090,000 par value Water and Sewer Revenue and Refunding Bonds, 2004, of the City for the purpose of paying part of the cost of carrying out such additions, betterments and extensions and such refunding; fixing the date, form, terms, interest rates, maturities and covenants of those bonds; providing for the issuance of bonds in the future on a parity therewith; appointing an escrow agent; and providing for the sale and delivery of the bonds.

Article I (Definitions and Interpretation) defines certain capitalized terms used in the Ordinance.

Article II (Findings and Determinations) adopts the City's plan for undertaking additions to and betterments and extensions of the water and sewer system (the "Project"), adopts the refunding plan for the City's outstanding Water and Sewer Revenue Bonds, 1995 (the "1995 Bonds") and confirms that the City is in compliance with the covenants of its prior water and sewer revenue bond ordinances.

Article III (Authorization and Issuance of Bonds) authorizes the City's Water and Sewer Revenue and Refunding Bonds, 2004 in the aggregate principal amount of \$3,090,000 (the "Bonds") to provide funds to undertake the Project and refunding of the 1995 Bonds, and provides details regarding maturities, interests rates and redemption of the Bonds.

Article IV (Issuance of Future Parity Bonds) establishes the conditions under which the City may issue parity water and sewer revenue bonds in the future.

Article V (General Terms and Provisions of Parity Bonds) authorizes procedures for execution and authentication of the Bond, adopts a system of registration and exchange for the Bonds and describes the arrangements for paying principal of and interest on the Bonds.

Article VI (Creation of Special Funds and Accounts and Payments Therefrom) provides details of the maintenance and creation of funds, establishes the priority of applications of the revenues of the City's water and sewer system and establishes the covenants of the City to make the required deposits into the City's Bond Fund.

Article VII (Disposition of Proceeds) authorizes the application of the Bond proceeds for the Project and the payment of principal and interest on the 1995 Bonds, authorizes the

appointment of an Escrow Agent, calls the 1995 Bonds for redemption and authorizes the Escrow Agreement..

Article VIII (Covenants to Secure Parity Bonds) establishes the operating covenants for the City's water and sewer system, establishes the covenants to assure the tax exemption of the Bonds and provides an undertaking for disclosure as required by the Securities and Exchange Commission.

Article IX (Supplemental and Amendatory Ordinances) establishes the conditions under which amendments may be made to this ordinance.

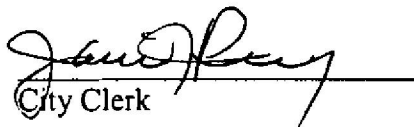
Article X (Defaults and Remedies) identifies the events of default under the Bonds and the available remedies for Bondowners.

Article XI (Form of Parity Bonds) describes the form of the Bonds.

Article XII (Miscellaneous, Defeasance; Sale of Bonds and Approval of Official Statement) provides conditions under which the Bonds may be defeased, authorizes the sale of the Bonds to the Underwriter pursuant to the purchase offer, approves the insurance policy, approves the form of Official Statement, designates the Bonds as "qualified tax-exempt obligations" for purchase by financial institutions pursuant to Section 265(b)(3) of the Code, provides that other covenants and agreements in the ordinance are not affected if one is made invalid and provides that the ordinance shall become effective immediately upon adoption.

The full text of Ordinance No. 3955 will be mailed without cost to any party requesting it from:

Ms. Marilynne Beard
Finance Director
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033-6189


City Clerk

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