

CITY OF DAYTON, WASHINGTON

ORDINANCE NO. 1916

AN ORDINANCE of the City of Dayton, Washington, relating to the water and sewer system of the City; providing for the issuance of a water and sewer revenue bond of the City in the principal amount of not to exceed \$1,100,000, for the purpose of providing funds to pay the cost of the acquisition, construction and installation of improvements to the City's water and sewer system; fixing the date, form, maturity, interest rate, terms and covenants of the bond; providing for the registration and authentication of the bond; creating and adopting certain funds and accounts; providing for the issuance of Additional Junior Lien Bonds; appointing the City's designated representative pursuant to RCW 39.46.040(2) to approve the final terms of the issuance, sale and delivery of the bond; and providing for other matters properly related thereto, all as more particularly set forth herein.

PASSED: June 12, 2017

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



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

#### ARTICLE I. GENERAL PROVISIONS

##### **Section 1.01 Findings.** The Council finds and determines that:

(a) The City is a municipal corporation duly organized and existing under the laws of the State. Pursuant to the provisions of chapters 35.67, 35.92 and 35A.80 RCW, the City is authorized to acquire, construct, install and operate water and sewer systems. Pursuant to Ordinance No. 1622 passed and approved by the Mayor and Council on July 14, 1998, the City combined its water and sewer systems as authorized by RCW 35.67.331. The City is authorized to conduct proceedings pursuant to chapters 35.41, 35.67, 35.92, 35A.40 and 39.46 RCW.

(b) The City currently has Outstanding its City's Water and Sewer Revenue Bond, Series 2004 (the "2004 Bond"), issued pursuant to Ordinance No. 1700, its Water and Sewer Revenue Bond, Series 2004A (the "2004A Bond"), issued pursuant to Ordinance No. 1714, its Water and Sewer Revenue Refunding Bonds, 2010 (the "2010 Bonds"), issued pursuant to Ordinance No. 1795, and the State Loans, all of which are payable from the Revenue of the System.

(c) The Revenue of the System and benefits to be derived from the operation and maintenance of the System, at the rates to be charged for service from the System, will be more than sufficient to meet all Costs of Maintenance and Operation and to permit the setting aside into the Junior Lien Debt Service Fund of the amounts of Junior Lien Net Revenue that, together with Assessments (if any), will be sufficient to pay the principal of and interest on the Bond when due. In creating the Junior Lien Debt Service Fund, and in fixing the amounts to be paid therein out of the Revenue of the System, the Council has had due regard to Costs of Maintenance and Operation and the payments required to be made for the Senior Lien Bonds, the Bond and other obligations payable from Revenue of the System. The Council has not obligated the City to set aside into the Junior Lien Debt Service Fund a greater amount of Revenue of the

System than, in the Council's judgment, will be available over and above Costs of Maintenance and Operation and the amount of Revenue of the System previously pledged for the payment of Outstanding obligations (including the Senior Lien Bonds).

(d) No utility local improvement district was formed in connection to the issuance of the Bond.

(e) RCW 39.46.040(2) provides that an ordinance authorizing the issuance of bonds may authorize an officer or employee of the City to serve as the City's Designated Representative and to accept, on behalf of the City, an offer to purchase those bonds so long as the acceptance of such offer is consistent with terms established by an ordinance that establishes the following Final Terms for the Bond (or parameters with respect thereto): the amount, date, denominations, interest rates, payment dates, final maturity, redemption rights, price, minimum savings for refunding bonds, and any other terms and conditions deemed appropriate by the Council.

(f) The Council, pursuant to RCW 39.46.040(2), desires to delegate authority to the Treasurer (or in the absence or disability of the Treasurer, the Mayor), for a limited time, to accept the Final Terms of, and execute, the Bond Purchase Agreement, subject to the parameters for such Final Terms set forth in this Ordinance.

**Section 1.02 Definitions.** The words and phrases set forth in this Ordinance with initial capitalization shall have the respective meanings ascribed to such words and phrases in this section unless the context clearly requires otherwise.

(a) **"2017 Project Fund"** shall mean the City's "2017 Project Fund" created by Section 3.05 of this Ordinance, or any successor fund.

(b) **"Acquisition** or **"Acquire"** shall include purchase, securing, lease, receipt by gift or grant, condemnation, transfer or other acquirement, or any combination thereof.

(c) **"Additional Junior Lien Bonds"** shall mean any bonds that the City may hereafter issue pursuant to Section 3.06(i) hereof that are secured by a lien upon the Revenue of the System for the payment of the principal thereof and interest thereon equal to the lien upon the Revenue of the System to pay the principal of and interest on the Bond.

(d) **"Adjusted Net Revenue"** shall mean the Junior Lien Net Revenue for the fiscal year preceding the year in which Additional Junior Lien Bonds are issued, as adjusted by an engineer or accountant to take into consideration changes in Junior Lien Net Revenue estimated to occur due to one or more of the following factors:

(1) any increase or decrease in Junior Lien Net Revenue that would result if any change in rates and charges adopted prior to the date of such certificate and subsequent to the beginning of such 12-month period had been in force during the full 12-month period;

(2) any increase or decrease in Junior Lien Net Revenue that is estimated to result from any additions, betterments and improvements to and extensions of any



facilities of the System which (a) became fully operational during such 12-month period, (b) were under construction at the time of such certificate, or (c) will be constructed from the proceeds of the Additional Junior Lien Bonds to be issued; and/or

(3) the additional Junior Lien Net Revenue that would have been received if any customers added to the System prior to the date of such certificate and subsequent to the beginning of such 12-month period were customers for the entire period.

(e) ***“Annual Debt Service”*** shall mean the amount required in a given calendar year for the payment of the principal of and interest on the Junior Lien Bonds, except interest to be paid from the proceeds of the Junior Lien Bonds. With respect to any Term Bonds, the words “principal of and interest on the Junior Lien Bonds” shall be deemed to exclude from “principal” an amount of Term Bonds equal to the mandatory deposits of money into any sinking fund account to provide for payment of the principal of such Term Bonds, and from “interest” the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof all mandatory sinking fund deposits as of the date required and interest on the Term Bonds provided for by such deposits only to the dates of the respective deposits. In the event the City issues Additional Junior Lien Bonds which bear a variable rate of interest, the assumed interest rate for such variable rate Additional Junior Lien Bonds for purposes of forecasting Annual Debt Service shall be determined by reference to such indices as the City deems reasonable, taking into account the formula for calculating such variable interest rate.

(f) ***“Assessment Bonds”*** shall mean the principal amount of Junior Lien Bonds Outstanding at any time which is equal to the aggregate principal amount of nondelinquent Assessments remaining to be paid into the Junior Lien Debt Service Fund at such time plus the principal amount of Assessments previously paid and on deposit in the Junior Lien Debt Service Fund.

(g) ***“Assessment Income”*** shall mean the principal of and interest on Assessments levied in any utility local improvement district and pledged to be paid into the Junior Lien Debt Service Fund and the Junior Lien Reserve Fund. Assessment Income shall be allocated to the years in which it would be received if the installments remaining to be paid from time to time are not paid earlier than at the times and at the rate provided in the ordinance confirming such assessment roll.

(h) ***“Assessments”*** shall mean any special assessments which may be levied in any utility local improvement district of the City created for the Acquisition, construction or installation of additions and betterments to and extensions of the System, if such assessments are pledged to be paid into the Junior Lien Debt Service Fund or the Junior Lien Reserve Fund, and includes any installments of assessments and any interest or penalties which may be due thereon.

(i) ***“Average Annual Debt Service”*** shall mean the average amount of the Annual Debt Service which will become due on the Junior Lien Bonds for the period from the date of such calculation until the final maturity date of the Junior Lien Bonds then Outstanding.

(j) ***“Bond”*** shall mean the City’s Junior Lien Water and Sewer Revenue Bond, 2017, authorized to be issued pursuant to this Ordinance.

(k) ***“Bond Counsel”*** shall mean Foster Pepper PLLC or any firm of lawyers nationally recognized and accepted as bond counsel and so engaged by the City for that purpose.

(l) ***“Bond Purchase Agreement”*** shall mean an offer to purchase the Bond, presented by the Purchaser and accepted by the Designated Representative, setting forth certain terms and conditions of the issuance, sale and delivery of the Bond.

(m) ***“Bond Register”*** shall mean the registration records of the City, maintained by the Registrar, on which shall appear the name and address of the Registered Owner.

(n) ***“City”*** shall mean the City of Dayton, Washington.

(o) ***“Clerk”*** shall mean the *de facto* or *de jure* Clerk of the City, or other officer of the City who is the custodian of the seal of the City and of the records of the proceedings of the Council, and her successors in functions, if any.

(p) ***“Code”*** shall mean the Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

(q) ***“Costs of Maintenance and Operation”*** shall mean all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expense, but excludes depreciation, payments for debt service or into reserve funds, costs of capital additions to or replacements of the System, municipal taxes, or payments to the City in lieu of taxes.

(r) ***“Council”*** shall mean the City Council of the City.

(s) ***“Default Trustee”*** shall mean the trustee appointed by the Registered Owner pursuant to Section 3.07(c) of this Ordinance if an Event of Default occurs.

(t) ***“Designated Representative”*** shall mean the officer or employee of the City appointed in Section 2.03 of this Ordinance to serve as the City’s Designated Representative in accordance with RCW 39.46.040(2) for purposes of accepting and executing, on behalf of the City, the Bond Purchase Agreement on terms consistent with this Ordinance and the parameters set forth herein.

(u) ***“Event of Default”*** shall have the meanings set forth in Section 3.07(a) of this Ordinance.

(v) ***“Final Terms”*** shall mean the terms and conditions for the sale of the Bond, including, but not limited to the amount, date or dates, denominations, interest rate or rates (or mechanism for determining interest rate or rates), payment dates, final maturity, redemption rights, and price.

(w) ***“Government Obligations”*** shall mean cash or those obligations described under the definition of government obligations in RCW 39.53.010(4), as it now reads or



hereafter may be amended, and which are otherwise lawful investments for the City at the time of such investment.

(x) ***“Issue Date”*** shall mean the date of initial issuance and delivery of the Bond to the Purchaser in exchange for the purchase price of the Bond.

(y) ***“Junior Lien Debt Service Fund”*** shall mean the City’s “Water and Sewer System Junior Lien Debt Service Fund” created by Section 3.03 of this Ordinance, or any successor fund.

(z) ***“Junior Lien Net Revenue”*** shall mean the Revenue of the System less the sum of: (i) Costs of Maintenance and Operation, *plus* (ii) all deposits to the Senior Lien Debt Service Fund required by the ordinances authorizing the issuance of the Senior Lien Bonds, *plus* (iii) all deposits to the Senior Lien Reserve Fund required by the ordinances authorizing the issuance of the Senior Lien Bonds.

(aa) ***“Junior Lien Reserve Fund”*** shall mean the City’s “Water and Sewer System Junior Lien Reserve Fund” created by Section 3.04 of this Ordinance, or any successor fund.

(bb) ***“Junior Lien Reserve Fund Facility”*** shall mean a surety bond, insurance policy or letter of credit that constitutes all or a part of the Junior Lien Reserve Fund Requirement, provided such surety bond, insurance policy or letter of credit satisfies the conditions set forth in Section 3.04(b) of this Ordinance.

(cc) ***“Junior Lien Reserve Fund Requirement”*** shall mean, for each issue of Junior Lien Bonds, an amount equal to the lesser of (1) the Maximum Annual Debt Service with respect to such issue of Junior Lien Bonds, (2) 125 percent of the Average Annual Debt Service with respect to such issue of Junior Lien Bonds, or (3) 10 percent of the proceeds (as defined under the Code) of such issue of Junior Lien Bonds.

(dd) ***“Maturity Date”*** shall mean December 1, 2032, or such earlier date specified in the Final Terms.

(ee) ***“Maximum Annual Debt Service”*** shall mean an amount equal to the greatest Annual Debt Service with respect to the Junior Lien Bonds for the then current or any future calendar year.

(ff) ***“Mayor”*** shall mean the *de facto* or *de jure* Mayor of the City (including the Mayor pro tempore in the Mayor’s absence), or any presiding officer or titular head of the City, and his successors in functions, if any.

(gg) ***“Ordinance”*** shall mean this Ordinance passed and approved by the Mayor and Council on June 12, 2017.

(hh) ***“Ordinance No. 1795”*** shall mean the City’s Ordinance No. 1795 dated February 17, 2010 that authorized the issuance of the 2010 Bonds.

(ii) ***“Outstanding”*** when used with reference to the Junior Lien Bonds, as of any particular date, shall mean all such Junior Lien Bonds that have been issued, executed, authenticated and delivered under the ordinances authorizing their issuance, except: (i) Junior Lien Bonds canceled because of payment or redemption prior to their stated dates of maturity; and (ii) any Junior Lien Bond (or portion thereof) deemed to have been paid or defeased pursuant to the ordinance under which it was issued.

(jj) ***“Project”*** shall mean the Acquisition, construction and installation of improvements to the System.

(kk) ***“Purchaser”*** shall mean the corporation, firm, association, partnership, bank, trust, or other legal entity or group of entities selected by the Designated Representative to purchase the Bond.

(ll) ***“Registered Owner”*** shall mean the person named as the registered owner of the Bond on the Bond Register.

(mm) ***“Registrar”*** shall mean the fiscal agent of the State (as designated by the State Finance Committee from time to time pursuant to chapter 43.80 RCW), currently, U.S. Bank, National Association, and any successors or assigns, who has been appointed by the Treasurer as registrar, authenticating agent, transfer agent, exchange agent and registrar with respect to the Bond in the manner provided in this Ordinance.

(nn) ***“Revenue Fund”*** shall mean, collectively, the City’s existing sewer utility fund (currently, Fund No. 401) and the City’s existing water utility fund (currently, Fund No. 403).

(oo) ***“Revenue of the System”*** shall mean all earnings, revenue and money, except Assessment Income, received by the City from or on account of the operation of the System, including the income from investments of money in the Revenue Fund, debt service funds and reserve funds, or from any other investment thereof, except the income from investments irrevocably pledged to the payment of any other water and sewer revenue bonds pursuant to a plan of retirement or refunding. The words “Revenue of the System” also shall include any federal or state reimbursements of operating expenses to the extent such expenses are included as Costs of Maintenance and Operation of the System. The City may consider revenue derived from rates charged by a storm water sewer utility or system as “Revenue of the System” only to the extent such revenues are deposited into the Revenue Fund; provided nothing herein shall be construed as requiring the City to deposit such revenues into the Revenue Fund.

(pp) ***“Senior Lien Bonds”*** shall mean the 2004 Bond, the 2004A Bond and the 2010 Bonds.

(qq) ***“Senior Lien Debt Service Fund”*** shall mean the City’s “Water and Sewer System Debt Service Fund” created by Section 5.03 of Ordinance No. 1623.

(rr) ***“Senior Lien Reserve Fund”*** shall mean the City’s “Water and Sewer System Reserve Fund” created by Section 5.04 of Ordinance No. 1623.



(ss) **"State"** shall mean the State of Washington.

(tt) **"State Loans"** shall mean the City's revenue obligations for borrowed money from the State Public Works Trust Fund, outstanding on May 31, 2017, in the aggregate principal amount of \$293,725.91.

(uu) **"System"** shall mean the City's combined water collection, treatment and distribution system and sewage collection and treatment system, as it now exists and as it may later be added to, extended and improved, and shall include buildings, structures, utilities or other income-producing facilities from the operation of or in connection with which revenues for the payment of the Junior Lien Bonds will be derived, and the lands appertaining thereto.

(vv) **"Term Bonds"** shall mean any Junior Lien Bonds that are identified as such in the ordinances authorizing the issuance thereof, the payment of which is provided for by a requirement for mandatory sinking fund deposits into the Junior Lien Debt Service Fund.

(ww) **"Treasurer"** means the appointive officer of the City who is responsible under the City Charter, if any, and/or City ordinance for fulfilling the various duties of a "city treasurer" specified in the Revised Code of Washington.

## **ARTICLE II. PROVISIONS PARTICULAR TO THE BOND**

**Section 2.01 Authorization of the Bond.** The City is hereby authorized to issue, sell and deliver the Bond for the purpose of providing the money required to accomplish the Project, including the costs related to the issuance, sale and delivery of the Bond. The Bond shall be a special obligation of the City payable solely out of the Junior Lien Debt Service Fund and the Junior Lien Reserve Fund, and shall be a valid claim of the Registered Owner only as against the Junior Lien Debt Service Fund, the Junior Lien Reserve Fund and the amount of Revenue of the System and Assessment Income pledged to those funds. The Bond shall not be a general obligation of the City. The City's full faith, credit and resources are not pledged for the payment of the Bond.

**Section 2.02 Description of the Bond.** The Bond shall be designated as the "City of Dayton, Washington, Junior Lien Water and Sewer Revenue Bond, 2017" (as further designated pursuant to the parameters for the Final Terms set forth in Attachment A, which is attached to this Ordinance and incorporated herein by this reference). The Bond shall be issued in the principal amount of not to exceed \$1,100,000; shall be numbered R-1; shall be issued only in fully registered form; and shall mature on the Maturity Date. The Bond shall be dated the Issue Date, shall bear interest from such Issue Date at the rate and shall mature in the year and principal amount, all as set forth in the Bond Purchase Agreement accepted by the Designated Representative pursuant to Section 2.03 of this Ordinance.

**Section 2.03 Authority to Approve Bond Purchase Agreement.** It is anticipated that the Bond will be sold to the Purchaser and that the Purchaser will present a Bond Purchase Agreement to the City offering to purchase the Bond. Pursuant to RCW 39.46.040(2), the Treasurer, or in the absence or disability of the Treasurer, the Mayor, is hereby appointed as the City's Designated Representative and is authorized and directed on the City's behalf to accept the Final Terms of, and execute, the Bond Purchase Agreement subject to the parameters for



such Final Terms set forth in Attachment A. Final Terms shall be confirmed in the Bond Purchase Agreement and/or separate certificate approved and executed by the Designated Representative in connection with the issuance of the Bond. The authority granted to the Designated Representative by this Section 2.03, and the authority to issue the Bond pursuant to this Ordinance, shall expire on December 31, 2017, if the Issue Date has not occurred by such date.

#### **Section 2.04 Form and Execution of the Bond.**

(a) The Bond shall be prepared in a form consistent with the provisions of this Ordinance and State law and shall be signed by the Mayor and Clerk, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon. The Bond shall be prepared at City expense and shall be delivered to the Purchaser in accordance with the terms of the Bond Purchase Agreement, together with the approving legal opinion of Bond Counsel regarding the Bond.

(b) No Bond shall be valid or obligatory for any purpose, or entitled to the benefits of this Ordinance, unless such Bond bears a certificate of authentication manually signed by the Registrar stating: "This Bond is the fully registered City of Dayton, Washington, Junior Lien Water and Sewer Revenue Bond, 2017, described in the Bond Ordinance." A minor deviation in the language of such certificate shall not void a certificate of authentication that otherwise is substantially in the form of the foregoing. The authorized signing of a certificate of authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this Ordinance.

(c) If any officer whose facsimile signature appears on the Bond ceases to be an officer of the City authorized to sign bonds before the Bond bearing his or her facsimile signature is authenticated or delivered by the Registrar or issued by the City, this Bond nevertheless may be authenticated, delivered and issued and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. The Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bond.

#### **Section 2.05 Registrar, Registration and Transfer of Bond.**

Pursuant to RCW 39.46.030, the Treasurer has appointed the Registrar to act as the City's bond registrar, authenticating agent, transfer agent and exchange agent with respect to the Bond. The Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bond, which books shall be open to inspection by the City at all times. The Registrar is authorized, on behalf of the City, to authenticate and deliver the Bond transferred in accordance with the provisions of the Bond and this Ordinance, to serve as the City's paying agent for the Bond and to carry out all of the Registrar's powers and duties under this Ordinance. The Registrar shall be responsible for its representations contained in the Registrar's Certificate of Authentication on the Bond.



The Bond may be assigned or transferred only: (a) in whole; (b) to a single investor that is a qualified institutional buyer; (c) if endorsed in the manner provided thereon and surrendered to the Registrar; and (d) if the transferee provides the Registrar with an executed transfer certificate in substantially the form to be attached to the Bond. Any such transfer shall be without cost to the Registered Owner or transferee (other than any cost incurred by the Registered Owner or transferee in preparing and delivering such transfer certificate) and shall be noted on the Bond Register. The Registrar shall not be obligated to assign or transfer the Bond during the 15 days preceding any installment payment or prepayment date.

**Section 2.06 Payment of the Bond.** Both principal of and interest on the Bond shall be payable in lawful money of the United States of America and shall be paid by check, draft or electronic transfer of the Registrar sent to the Registered Owner so that the Registered Owner receives said payments when due at the address appearing on the Bond Register. Upon receipt of the final installment payment of principal of and interest on the Bond, whether on the Maturity Date or upon prepayment, the Registered Owner shall present and surrender the Bond to the Registrar to be destroyed or cancelled in accordance with law. If any installment of principal is not paid when due, the City shall be obligated to pay interest on that principal at the same rate provided in the Bond until that principal, together with interest thereon, is paid in full.

**Section 2.07 Prepayment and Redemption Provisions.**

(a) The Bond shall be subject to prepayment and redemption at the option of the City on terms acceptable to the Designated Representative, as set forth in the Bond Purchase Agreement, consistent with the parameters set forth in Attachment A. If the Bond is subject to redemption, then the following Sections 2.07(b) and 2.07(c) shall apply.

(b) The City shall cause notice of any intended redemption of the Bond to be given not less than 15 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Registered Owner of the Bond at the address appearing on the Bond Register at the time the Registrar prepares the notice, and the requirements of this sentence shall be deemed to have been fulfilled when notice has been mailed as so provided, whether or not it is actually received by the Registered Owner of the Bond. Interest on that portion of the principal of the Bond called for redemption shall cease to accrue on the date fixed for redemption unless such principal is not redeemed when presented pursuant to the call.

(c) In the case of an optional redemption, the notice may state that the City retains the right to rescind the redemption notice and the related optional redemption of the Bond by giving a notice of rescission to the affected Registered Owner at any time prior to the scheduled optional redemption date. Any notice of optional redemption that is so rescinded shall be of no effect, and the Bond shall remain Outstanding hereunder.

(d) The City reserves the right and option to purchase the Bond in the open market at any time at any price acceptable to the City plus accrued interest to the date of purchase.

**Section 2.08 Refunding or Defeasance of the Bond.** The City may issue a refunding bond pursuant to the laws of the State or use money available from any other lawful source to pay when due the principal of and interest on the Bond, or any portion thereof, included in a



refunding or defeasance plan (the "Defeased Bond"), and to redeem and retire, refund or defease such Defeased Bond and to pay the costs of such refunding or defeasance. If the City deposits irrevocably with an escrow agent money and/or Government Obligations sufficient in amount, together with the earnings thereon, are sufficient to pay the principal of and premium, if any, on the Defeased Bond becoming due, together with all interest accruing thereon to the due date or redemption date, and pays or makes provision for payment of all fees, costs and expenses of that escrow agent due or to become due with respect to the Defeased Bond, all liability of the System with respect to the Defeased Bond shall cease, the Defeased Bond shall be deemed not to be outstanding hereunder and the Registered Owner of the Defeased Bond shall be restricted exclusively to the money or Government Obligations so deposited, together with any earnings thereon, for any claim of whatsoever nature with respect to the Defeased Bond, and that escrow agent shall hold that money, Government Obligations and earnings in trust exclusively for the Registered Owner and that money, Government Obligations and earnings shall not secure any other Junior Lien Bonds under this Ordinance. After establishing such an escrow account, the City may apply any money in any other fund or account established for the payment or redemption of the Defeased Bond to any lawful purposes as it shall determine, subject only to the rights of the owners of any other Junior Lien Bonds then outstanding. The Defeased Bond shall be excluded from computation of the Coverage Requirements and other covenants under this Ordinance.

**Section 2.09 Pledge of Revenue and Lien Position.** There are hereby pledged, for the equal and ratable benefit of the Registered Owner from time to time of the Bond, as security for the payment of the principal of, premium, if any, and interest on the Bond: (1) all Junior Lien Net Revenue and all rights of the City to receive Junior Lien Net Revenue; (2) all Assessment Income; and (3) all money and securities held in the Junior Lien Debt Service Fund and the Junior Lien Reserve Fund, including the investments thereof, if any, and subject to the provisions of this Ordinance permitting the application of amounts hereunder to the purposes set forth herein. Such pledge is hereby declared to be a prior lien and charge on the foregoing superior to all other liens and charges of any kind whatsoever, except that, liens on the foregoing may be created in favor of Additional Junior Lien Bonds on a parity with the pledge under this Section 2.09 in favor of the Bond. The lien created by this Ordinance is hereby declared to be senior to the lien that secures the State Loans.

**Section 2.10 Preservation of Tax Exemption for Interest on the Bond.** The City covenants that it will take all actions necessary to prevent interest on the Bond from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bond or other funds of the City treated as proceeds of the Bond at any time during the term of the Bond which will cause interest on the Bond to be included in gross income for federal income tax purposes.

**Section 2.11 Designation of Bond as a "Qualified Tax-Exempt Obligation".** The City designates the Bond as a "qualified tax-exempt obligation" for the purposes of Section 265(b)(3) of the Code, and makes the following findings and determinations: (1) the Bond does not constitute a "private activity bond" within the meaning of Section 141 of the Code; (2) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) that the City and any entity subordinate to the City (including any entity that the City controls, that derives its authority to



issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) will issue during 2017 will not exceed \$10,000,000; and (3) the amount of tax-exempt obligations, including the Bond, designated by the City as a "qualified tax-exempt obligation" for the purposes of Section 265(b)(3) of the Code during 2017 will not exceed \$10,000,000.

**Section 2.12 Compliance Policies.** The Council hereby adopts the post-issuance compliance policies and procedures for tax-exempt obligations attached hereto as Attachment B in connection with the Bond and the City's other tax-exempt obligations.

### **ARTICLE III. PROVISIONS GOVERNING ALL JUNIOR LIEN BONDS**

**Section 3.01 Application of Revenue of the System.** All Revenue of the System (together with Assessment Income, if any, with respect to subparagraphs *Second* and *Third*) shall be deposited into the Revenue Fund as collected, and shall be used only for the following purposes and in the following order of priority:

*First*, to pay the Costs of Maintenance and Operation;

*Second*, to pay the interest on the Senior Lien Bonds;

*Third*, to pay the principal of the Senior Lien Bonds, and to make any mandatory sinking fund deposits required to be made for the payment of the principal of any Term Bonds;

*Fourth*, to make all payments required to be made into the Senior Lien Reserve Fund to secure the payment of the Senior Lien Bonds, and to make any payments required in connection with a "Reserve Fund Facility" (as defined in Ordinance No. 1795);

*Fifth*, to pay the interest on the Junior Lien Bonds;

*Sixth*, to pay the principal of the Junior Lien Bonds, and to make any mandatory sinking fund deposits required to be made for the payment of the principal of any Term Bonds;

*Seventh*, to make all payments required to be made into the Junior Lien Reserve Fund to secure the payment of the Junior Lien Bonds, and to make any payments required in connection with a Junior Lien Reserve Fund Facility; and

*Eighth*, for any other lawful City purposes, including but not limited to, payments due on the State Loans, payments of municipal taxes or payments to the City in lieu of taxes, the payment of the principal of and interest on any obligations that have a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on the Junior Lien Bonds, the redemption or by purchase in the open market, any obligations of the City payable out of the Revenue of the System, and the Acquisition and construction of additions, betterments, improvements and repairs to, or extensions and replacements of, the System.

Assessment Income also may be deposited in the Junior Lien Reserve Fund if such deposits are authorized in an ordinance authorizing the issuance of the Assessment Bonds, but



only to the extent such Assessment Income is not then needed to make the deposits required by subparagraphs *Second* and *Third* above.

**Section 3.02 The Revenue Fund.** There has heretofore been created and shall continue to be maintained in the office of the Treasurer, separate and distinct from all other funds and accounts of the City, the City's sewer utility fund (currently, Fund No. 401) and the City's water utility fund (currently, Fund No. 403). Such funds are collectively referred to herein as the "Revenue Fund." Money shall be withdrawn from the Revenue Fund solely for the purposes, and in the priority of order, set forth in Section 3.01 of this Ordinance.

**Section 3.03 The Junior Lien Debt Service Fund.**

(a) The Treasurer is directed to create and maintain the Junior Lien Debt Service Fund as a fund of the City that is separate and distinct from all other funds and accounts of the City. The Junior Lien Debt Service Fund shall be used solely for the purpose of paying the principal of, premium, if any, and interest on the Junior Lien Bonds. Accrued interest received from the sale of the Junior Lien Bonds, if any, shall be deposited in the Junior Lien Debt Service Fund. All Assessment Income shall be deposited in the Junior Lien Debt Service Fund and/or in the Junior Lien Reserve Fund in the manner prescribed by the ordinance(s) authorizing the issuance of the Assessment Bonds to which such Assessment Income is associated.

(b) As long as any Junior Lien Bond remains Outstanding, the City hereby irrevocably obligates, pledges and binds itself to set aside and pay from the Junior Lien Net Revenue into the Junior Lien Debt Service Fund, together with Assessment Income and such other funds as are on hand and available in the Junior Lien Debt Service Fund, those amounts necessary to pay installments of interest, or principal and interest, next coming due on the Junior Lien Bonds. With respect to the Junior Lien Bonds, deposits into the Junior Lien Debt Service Fund shall be made on or before the twentieth day of each month in an equal monthly amount that, together with other money available therefor in the Junior Lien Debt Service Fund, will be sufficient to pay the principal and interest becoming due and payable on the next payment date on the Junior Lien Bonds.

(c) Money in the Junior Lien Debt Service Fund may be invested as permitted by law, provided such investments shall mature prior to the date on which such money shall be needed for required scheduled payments (whether such scheduled payments be of interest or of interest and principal). All interest earned and income derived by virtue of such investments shall remain in the Junior Lien Debt Service Fund. Subject to the other provisions of this paragraph, money in the Junior Lien Debt Service Fund and the Junior Lien Reserve Fund may be combined for the purpose of purchasing investments, *provided*, the records of the City shall show to which account the respective portions of any such combined investments are credited.

**Section 3.04 The Junior Lien Reserve Fund.**

(a) The Treasurer is directed to create and maintain the Junior Lien Reserve Fund as a fund of the City that is separate and distinct from all other funds and accounts of the City. The Junior Lien Reserve Fund shall be used for the purpose of securing the payment of the principal of and interest on the Junior Lien Bonds. On the Issue Date, the City shall cause money



to be deposited into the Junior Lien Reserve Fund, in an amount equal to the Junior Lien Reserve Fund Requirement for the Bond, to be thereafter held as the Junior Lien Reserve Fund Requirement for the Bond.

The City hereby covenants and agrees that, when the required deposits have been made into the Junior Lien Reserve Fund, it will at all times maintain therein an amount at least equal to the Junior Lien Reserve Fund Requirement. The City hereby reserves the right to recalculate the Junior Lien Reserve Fund Requirement from time to time, and at any time. Whenever there is a sufficient amount in the Junior Lien Debt Service Fund and the Junior Lien Reserve Fund to pay the principal of, premium, if any, and interest on all Junior Lien Bonds then Outstanding, the money in the Junior Lien Reserve Fund may be used to pay such principal, premium and interest. Money in the Junior Lien Reserve Fund may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, on any Junior Lien Bonds, as long as the money left remaining on deposit in the Junior Lien Reserve Fund is equal to the Junior Lien Reserve Fund Requirement. If at any time the amount in the Junior Lien Reserve Fund exceeds the Junior Lien Reserve Fund Requirement, such surplus may be deposited into the Junior Lien Debt Service Fund.

In the event there shall be a deficiency in the Junior Lien Debt Service Fund such that maturing installments of principal of and interest on the Junior Lien Bonds cannot be met, such deficiency shall be made up from the Junior Lien Reserve Fund by the withdrawal of money therefrom. Any deficiency created in the Junior Lien Reserve Fund by reason of any such withdrawal shall then be made up out of Revenue of the System after making the necessary provision for the payments required to be made by subparagraphs *First* through *Sixth* of Section 3.01 of this Ordinance.

(b) In lieu of or in substitution for money or investments, the City may fund the Junior Lien Reserve Fund with a Junior Lien Reserve Fund Facility for the benefit of the Registered Owners of the Junior Lien Bonds for all or any part of the Junior Lien Reserve Fund Requirement, *provided* that:

(1) any such Junior Lien Reserve Fund Facility that is a surety bond or insurance policy shall be issued by an insurance company or association duly authorized to do business in the State, and either: (A) the claims paying ability of such insurance company or association is rated the highest rating accorded by a nationally recognized insurance rating agency; or (B) obligations insured by a surety bond or an insurance policy issued by such company or association are rated at the time such surety bond or insurance policy is delivered, without regard to qualification of such rating by symbols such as "+" or "-" or numerical notation, in the highest rating category by Moody's Investors Service, Inc. or Standard & Poor's Ratings Service;

(2) any such Junior Lien Reserve Fund Facility that is a letter of credit shall be issued by a bank, a trust company, a national banking association, a corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provision of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provision of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business



under the laws of any state or territory of the United States, the unsecured or uncollateralized long-term debt obligations of which, or long-term obligations secured or supported by a letter of credit issued by such person, are rated at the time such letter of credit is delivered, without regard to qualification of such rating by symbols such as "+" or "-" or numerical notation, in at least the third highest rating category by Moody's Investors Service, Inc. or Standard & Poor's Ratings Service; and

(3) prior to funding the Junior Lien Reserve Fund with a Junior Lien Reserve Fund Facility, the Treasurer shall have received: (A) an opinion of counsel to the effect that such Junior Lien Reserve Fund Facility has been duly authorized, executed and delivered by the provider thereof and is enforceable in accordance with its terms; and (B) in the event such provider is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to the City.

Notwithstanding the foregoing, if at any time after a Junior Lien Reserve Fund Facility has been deposited in the Junior Lien Reserve Fund the unsecured or uncollateralized long-term debt of the provider thereof, or the long-term debt obligations secured or unsecured by a surety bond, insurance policy or letter of credit of the provider of the Junior Lien Reserve Fund Facility, is reduced below the ratings required by paragraphs (1) and (2) of this subsection (c), the City shall either: (i) replace or cause to be replaced said Junior Lien Reserve Fund Facility with another Junior Lien Reserve Fund Facility that satisfies the requirements set forth in paragraphs (1) and (2) of this subsection (c); or (ii) deposit or cause to be deposited in the Junior Lien Reserve Fund an amount of money or investments that is equal to the value of the Junior Lien Reserve Fund Facility of such provider, such deposits to be made from Junior Lien Net Revenue as money is made available, but in any case within 12 months of the first principal or interest payment date after the reduction in said ratings.

Each Junior Lien Reserve Fund Facility shall be payable (upon the giving of such notice as may be required thereby) on any date on which money is required to be withdrawn from the Junior Lien Reserve Fund and such withdrawal cannot be made without obtaining payment under such Junior Lien Reserve Fund Facility.

In computing the amount on deposit in the Junior Lien Reserve Fund, a Junior Lien Reserve Fund Facility shall be valued at the amount available to be paid thereunder on the date of computation; provided that, if the unsecured or uncollateralized long-term debt of the provider of such Junior Lien Reserve Fund Facility, or if the long-term debt obligations secured or supported by a surety bond, insurance policy or letter of credit of said provider, has been reduced below the ratings required by paragraphs (1) and (2) of this subsection (c), said Junior Lien Reserve Fund Facility shall be valued at the lesser of: (i) the amount available to be paid thereunder on the date of calculation; and (ii) the difference between the amount available to be paid thereunder on the date of issue thereof and an amount equal to a fraction of such available amount, the numerator of which is the aggregate number of principal and interest payment dates that has elapsed since such ratings were reduced and the denominator of which is two; provided, however, that in no event shall the Junior Lien Reserve Fund Facility be valued at less than \$0.00.



(c) Money in the Junior Lien Reserve Fund may be invested as permitted by law, provided such investments shall be available to pay any deficiencies that may occur in the Junior Lien Debt Service Fund. All interest earned and income derived by virtue of such investments shall be deposited into either the Junior Lien Debt Service Fund or the Junior Lien Reserve Fund, as the Treasurer deems necessary, and be used to meet the required deposits therein. Subject to the other provisions of this paragraph, money in the Junior Lien Debt Service Fund and the Junior Lien Reserve Fund may be combined for the purpose of purchasing investments, provided, the records of the City shall show to which account the respective portions of any such combined investments are credited.

### **Section 3.05 The 2017 Project Fund.**

(a) The Treasurer is directed to create and maintain the 2017 Project Fund as a fund of the City that is separate and distinct from all other funds and accounts of the City. The costs of carrying out and accomplishing the Project, including costs of issuing the Bond, shall be paid from the 2017 Project Fund.

(b) Money in the 2017 Project Fund may be invested as permitted by law, provided such investments shall mature prior to the date on which such money must be expended. All interest earned and income derived by virtue of such investments may remain in the 2017 Project Fund or, at the City's discretion, may be deposited into the Junior Lien Debt Service Fund.

### **Section 3.06 Covenants.**

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

(b) Rates and Charges. The City has established, may from time to time revise, and shall maintain and collect from the users of the System, rates and charges for furnishing the services and the facilities of the System to such users thereof. Said rates and charges are, and shall continue to be, uniform as to all persons or properties which are of the same class. The City shall also collect all Assessments, if any, payable into the Junior Lien Debt Service Fund when due. The City shall fix, maintain and collect rates and charges for the use of the services and facilities and all commodities sold, furnished or supplied by the System, which shall be fair and nondiscriminatory and shall adjust such rates and charges from time to time so that:

(i) the Revenue of the System, together with any Assessment Income collected, will at all times be sufficient: (a) to pay the Costs of Maintenance and Operation; (b) to make any payments required to be made on account of the Senior Lien Bonds, the Junior Lien Bonds and the State Loans, as and when the same shall become due and payable; (c) to make



when due all payments which the City is obligated to make into the Senior Lien Reserve Fund and the Junior Lien Reserve Fund. and all other payments which the City is obligated to make pursuant to this Ordinance and any ordinance authorizing the issuance of the Senior Lien Bonds; and (d) to pay all taxes, assessments or other governmental charges lawfully imposed on the System or the Revenue of the System, or payments in lieu thereof, and any and all other amounts which the City may now or hereafter become obligated to pay from the Revenue of the System by law or contract; and

(ii) the Junior Lien Net Revenue for each calendar year, together with Assessment Income, will equal at least: (a) 1.00 times the Annual Debt Service of that portion of all Junior Lien Bonds then Outstanding that are Assessment Bonds; plus (b) 1.25 times the Annual Debt Service of that portion of all Junior Lien Bonds that are not Assessment Bonds.

(c) Sale of the 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 payment into the Junior Lien Debt Service Fund (or another sinking fund pledged to the payment of the Junior Lien Bonds) of cash or Government Obligations sufficient (taking into account interest to be earned on any such Government Obligations) to pay the principal of and interest on all Junior Lien Bonds then Outstanding, nor will it sell or otherwise dispose of any part of the useful operating properties of the System unless such facilities are replaced or provision is made for payment into the Junior Lien Debt Service Fund (or another sinking fund pledged to the payment of the Junior Lien Bonds) of the greatest of the following:

(i) an amount which will be in the same proportion to the net amount of the Junior Lien Bonds then Outstanding (defined as the total principal amount of Junior Lien Bonds less the amount of cash and investments in the Junior Lien Debt Service Fund and the Junior Lien Reserve Fund) that the revenue from the portion of the System sold or disposed of for the preceding year bears to the total Revenue of the System for such period; or

(ii) an amount which will be in the same proportion to the net amount of Junior Lien Bonds then Outstanding (as defined above) that the Junior Lien Net Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Junior Lien Net Revenue for such period.

The proceeds of any such sale or disposition of a portion of the properties and facilities of the System (to the extent required above) shall be paid into the Junior Lien Debt Service Fund (or such other sinking fund).

Notwithstanding any other provision of this paragraph, the City may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, without making any deposit into the Junior Lien Debt Service Fund (or other sinking fund).

(d) Liens and Encumbrances. Except for the lien in favor of the outstanding Senior Lien Bonds, the City will not at any time create or permit to accrue or to exist any lien or



other encumbrance or indebtedness upon the System or the Revenue of the System, or any part thereof, prior or superior to the lien thereon for the payment of the Junior Lien Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Revenue of the System, or any part thereof, prior to or superior to the lien of the Junior Lien Bonds, or which might impair the security of the Junior Lien Bonds. Notwithstanding the foregoing, the City may contest in good faith claims for labor, materials and supplies.

(e) Insurance. The City will keep the works, plants and facilities comprising the System insured, and will carry such other insurance, with responsible insurers, with policies payable to the City, against risks, accidents or casualties, at least to the extent that insurance is usually carried by municipal corporations operating like properties, or will implement a self-insurance program with reserves adequate, in the judgment of the Council, to protect the City and the Registered Owners of the Senior Lien Bonds against loss. In the event of any loss or damage, the City will promptly repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy for that purpose; or in the event the City should determine not to repair or reconstruct such damaged portion of the properties of the System, the proceeds of such insurance in excess of the amount necessary to repay the Senior Lien Bonds shall be paid into the Junior Lien Debt Service Fund (or another sinking fund pledged to the payment of the Senior Lien Bonds) for the redemption of Junior Lien Bonds.

(f) Books of Account. The City shall keep proper books of account which shall be kept in accordance with any applicable rules, regulations and statutes prescribed by the State of Washington. The City shall prepare, and any Registered Owner of the Bond may obtain copies of, balance sheets and profit and loss statements showing in reasonable detail the financial condition of the System as of the close of each year, and the income and expenses of the System for such year, including the amounts paid into the Revenue Fund, the Senior Lien Debt Service Fund, the Senior Lien Reserve Fund the Junior Lien Debt Service Fund, the Junior Lien Reserve Fund and into any and all special funds or accounts created pursuant to the provisions of this Ordinance, and the amounts expended for maintenance, renewals, replacements and capital additions to the System.

(g) No Free Service. Except to aid the poor or infirm, to provide for resource conservation or to provide for the proper handling of hazardous materials, the City will not furnish or supply or permit the furnishing or supplying of any service or facility furnished by or in connection with the operation of the System, free of charge to any person, firm or corporation, public or private, so long as the Bond is Outstanding and unpaid.

(h) Improvements to the System. The City will not expend any of the Revenue of the System or the proceeds of any indebtedness payable therefrom for any extensions, betterments and improvements to the System that are not legally required or economically sound, and that will not properly and advantageously contribute to the conduct of the business of the System in an efficient manner.



(i) *Issuance of Additional Junior Lien Bonds.*

(i) *Restriction Against Prior Lien Bonds.* The City hereby covenants and agrees with the Registered Owner of the Bond, for as long as any of the same remain Outstanding, that the City will not issue any bonds having a greater priority of lien upon the Revenue of the System to pay and secure the payment of the principal of and interest on such bonds than the priority of lien created on such Revenue of the System to pay and secure the payment of the principal of and interest on the Junior Lien Bonds.

(ii) *Restriction Against Additional Junior Lien Bonds.* The City shall not issue any bonds having an equal priority of lien upon the Revenue of the System to pay and secure the payment of the principal of and interest on such bonds than the priority of lien created on such revenues to pay and secure the principal of and interest on the Junior Lien Bonds without the prior written consent of the Registered Owner of the Bond.

(iii) *Subordinate Lien Bonds.* Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations that are a charge upon the Revenue of the System junior or inferior to the payments required by this Ordinance to be made out of such revenue into the Junior Lien Debt Service Fund and the Junior Lien Reserve Fund to pay and secure the payment of the Junior Lien Bonds.

**Section 3.07 Events of Default.**

(a) *Events of Default Defined.* Each of the following shall be an “Event of Default” hereunder:

(i) payment of the principal or redemption price of, or interest on, any Senior Lien Bond is not made when it becomes due and payable at maturity or upon call for redemption; or

(ii) payment of the principal or redemption price of, or interest on, any Junior Lien Bond is not made when it becomes due and payable at maturity or upon call for redemption; or

(iii) the City fails or refuses to comply with any of its covenants hereunder, other than the timely payment of the principal of, redemption price, or interest on the Bond (to which no cure period shall apply), and such failure or refusal shall continue for a period of 90 days after written notice thereof has been given to the City by the Registrar.

(b) *No Acceleration.* If an Event of Default shall happen and shall not have been remedied, the Junior Lien Bonds shall not be subject to acceleration of payment, and each installment of principal of and interest on the Junior Lien Bonds shall be payable when due.

(c) *Proceedings Brought by Registered Owners.* If an Event of Default happens and is not remedied, then the Registered Owners of not less than 25 percent in principal amount of Junior Lien Bonds then Outstanding may proceed, by their agents and attorneys, to protect and enforce their rights under this Ordinance forthwith by a suit in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution



of any power herein granted, or for an accounting against the City as if the City were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the legal representative of the Registered Owners shall deem most effectual to enforce any of their rights, and such Registered Owners may appoint a default trustee (the "Default Trustee") to represent their interests.

All rights of action under this Ordinance may be enforced by any Default Trustee without either the possession of any of the Junior Lien Bonds or the production thereof at the trial or other proceedings, and any such suit or proceedings instituted by the Default Trustee shall be brought in its name.

The Registered Owners of not less than a majority in principal amount of the Junior Lien Bonds then Outstanding may direct the time, method and place of conducting any proceeding for any remedy available to them provided that the Default Trustee shall have the right to decline to follow any such direction if the Default Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken, or if the Default Trustee in good faith shall determine that the action or proceeding so directed would involve the Default Trustee in personal liability or be unjustly prejudicial to the Registered Owners who are not parties to such direction.

The Default Trustee shall have the power to institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Ordinance by any acts that may be unlawful or in violation of this Ordinance, and such suits and proceedings as the Default Trustee may be advised shall be necessary or expedient to preserve or protect the interests of the Registered Owners.

(d) *Restriction on Action of Registered Owners.* Except as otherwise provided above, no Registered Owner shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Ordinance or for any remedy under this Ordinance, unless such Registered Owner shall have previously given to the City written notice of the happening of an Event of Default, and shall have offered it reasonable opportunity, either to: (1) exercise the powers granted in this Ordinance or by the laws of the State of Washington; or (2) institute such action, suit or proceeding in its own name, it being understood and intended that no one or more Registered Owners shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this Ordinance, or to enforce any right under this Ordinance, except in the manner herein provided; and that all proceedings at law or in equity to enforce any provision of this Ordinance shall be instituted, had and maintained in the manner provided in this Ordinance and for the equal benefit of all Registered Owners.

Nothing in this Ordinance or the Bond shall affect or impair the obligation of the City, which is absolute and unconditional, to pay from the sources provided in this Ordinance at the respective dates of maturity and places therein expressed the principal of, premium, if any, and interest on the Bond to the respective Registered Owners thereof, or affect or impair the right of action, which is also absolute and unconditional, of any Registered Owner to enforce such payment of the Bond.



(e) *Remedies Not Exclusive.* No remedy herein conferred is intended to be exclusive of any other remedy or remedies, and each remedy is in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

(f) *Delays and Omissions Not to Impair Rights.* No delays or omissions in respect of exercising any right or power accruing upon any default shall impair such right or power or be a waiver of such default, and every remedy given by this Section 3.07 may be exercised from time to time and as often as may be deemed expedient.

#### **ARTICLE IV. MISCELLANEOUS PROVISIONS**

##### **Section 4.01 Amendments to Ordinance.**

(a) *Adoption of Supplemental Ordinance.* The Council may adopt an ordinance supplemental hereto, which ordinance thereafter shall become a part of this Ordinance, for any one or more of all of the following purposes: (1) to add to or delete from the covenants and agreements of the City in this Ordinance, provided such additions or deletions shall not adversely affect, in any material respect, the interests of the Registered Owner of the Bond; or (2) to cure, correct or supplement any ambiguous or defective provision contained in this Ordinance, provided such supplemental ordinance shall not adversely affect, in any material respect, the interests of the Registered Owner of the Bond. Any such supplemental ordinance may be adopted without the consent of the Registered Owner of the Bond, notwithstanding any of the provisions of Section 4.01(b).

(b) *Amendments with Consent of the Registered Owner.* With the consent of the Registered Owner of the Bond, the Council may adopt an ordinance supplemental hereto for the purpose of adding any provisions to, or changing in any manner, or eliminating any of the provisions of this Ordinance. It shall not be necessary for the consent of Registered Owner under this subsection to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

(c) *Effect of Amendments.* Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section 4.01, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this Ordinance and the Registered Owner of the Bond shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

(d) *Notations; Replacement Bonds.* Bonds executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this Section 4.01 may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new Bonds so modified as to conform in the opinion of the Council to any modification of this Ordinance contained in any such supplemental ordinance, may be prepared and delivered without cost to the Registered Owner of the Bond, upon surrender for cancellation of such Bond.



## CERTIFICATION

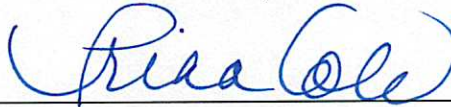
I, Trina Cole, the City Clerk of the City of Dayton, Washington (the "City"), hereby certify as follows:

1. The foregoing Ordinance No. 1916 (the "Ordinance") is a full, true and correct copy of the Ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on June 12, 2017, as that Ordinance appears on the minute book of the City; and the Ordinance is in full force and effect; and the Ordinance will be in full force and effect five days after the publication of its summary in the City's official newspaper; and

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

IN WITNESS WHEREOF, I have hereunto set my hand on June 12, 2017.

CITY OF DAYTON, WASHINGTON



Trina Cole, City Clerk



(SEAL)


**Section 4.02 General Authorization; Ratification; and Limitation on Recourse.** The Mayor, the Clerk and the Treasurer are each authorized to take any actions and to execute documents as in their judgment may be necessary or desirable to carry out the terms of, and complete the transactions contemplated by, this Ordinance and the Bond Purchase Agreement (including everything necessary for the prompt delivery of the Bond to the Purchaser and the proper application and use of the proceeds of the sale thereof). All actions heretofore taken in furtherance thereof and not inconsistent with the provisions of this Ordinance are hereby ratified and confirmed in all respects. No recourse shall be had for any claim based on this Ordinance or the Bond against any Council member, officer or employee, past, present or future, of the City or of any successor body as such, either directly or through the City or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

**Section 4.03 Severability.** If any provision of this Ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Bond.


**Section 4.04 Effective Date.** This Ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law. The Clerk is directed to cause this Ordinance, or a summary hereof, to be published in the official newspaper of the City.

PASSED by the City Council of the City of Dayton, Washington, at a regular open public meeting thereof held on June 12, 2017.

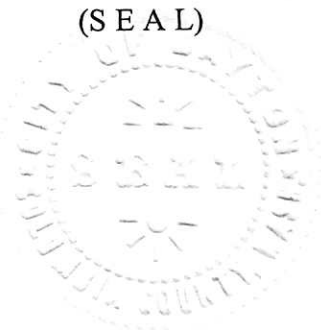
CITY OF DAYTON, WASHINGTON

  
\_\_\_\_\_  
Craig George, Mayor

ATTESTED:

  
\_\_\_\_\_  
Trina Cole, City Clerk

(S E A L)





## ATTACHMENT A

### Parameters For Final Terms

- |     |                             |   |
|-----|-----------------------------|---|
| (a) | Principal Amount.           | The Bond may be issued in the principal amount of not to exceed \$1,100,000.  |
| (b) | Date.                       | The Bond shall be dated its Issue Date, which date shall occur on or before December 31, 2017.  |
| (c) | Interest Rate.              | The Bond shall bear interest at a fixed rate <i>per annum</i> from the Issue Date of the Bond or from the most recent interest payment date for which interest has been paid or duly provided for, whichever is later; provided that the rate of interest for the Bond shall not exceed 4.25%. The Bond Purchase Agreement shall specify whether interest shall be computed using the 30/360, actual/360 or actual/actual convention. |
| (d) | Debt Service Schedule.      | The Designated Representative is authorized to select the timing and manner of debt service payments on the Bond, which shall be set forth in the Bond Purchase Agreement; provided, regularly scheduled debt service payment dates shall only occur on June 1 and/or December 1.   |
| (e) | Maturity Date.              | December 1, 2031, or such earlier date specified in the Bond Purchase Agreement.  |
| (f) | Redemption Rights.          | The Designated Representative may approve in the Bond Purchase Agreement provisions for redemption of the Bond prior to the Maturity Date.  |
| (g) | Price.                      | The purchase price for the Bond shall be not less than 95% nor more than 105% of the stated principal amount.   |
| (h) | Bond Sale Proceeds.         | The Designated Representative shall determine the amounts of Bond sale proceeds received from the Purchaser to be (1) deposited into the Junior Lien Debt Service Fund, (2) deposited into the Junior Lien Reserve Fund, (3) deposited into the 2017 Project Fund, (4) retained by the Purchaser as a fee and reimbursement of expenses, and/or (5) paid directly to third parties as Bond issuance costs.                            |
| (i) | Other Terms and Conditions. | The Designated Representative is authorized to take such additional action as may be necessary or convenient for the issuance of the Bond pursuant to the terms of this Ordinance.  |

## ATTACHMENT B

### City of Dayton, Washington

#### Post-Issuance Compliance Policies and Procedures for Tax-Exempt Obligations

1. **Purpose.** The purpose of these post-issuance compliance procedures (“Compliance Procedures”) is to ensure that the City of Dayton, Washington (the “City”) will be in compliance with: (i) requirements of the Internal Revenue Code of 1986, as amended (the “Code”), that must be satisfied to maintain the tax-exempt status of bonds or other obligations issued by the City that are exempt from federal income tax under the Code (sometimes collectively referred to herein as “bonds” or “tax-exempt bonds”) and (ii) each Continuing Disclosure Undertaking (described in Section 8 below).

2. **Responsibility for Monitoring Post-Issuance Tax Compliance.** The City Council of the City (the “Council”) has the overall, final responsibility for monitoring whether the City is in compliance with post-issuance federal tax requirements for the City’s tax-exempt bonds. However, the City Treasurer (the “Treasurer”) shall have the primary operating responsibility to monitor the City’s compliance with post-issuance federal tax requirements for the City’s bonds. In addition to any compliance checks that may be undertaken in connection with (and prior to) any prospective change in use of property or facilities financed with tax-exempt bonds as described in Section 4 below, the Treasurer will check on the City’s compliance with applicable requirements of the Code and the Continuing Disclosure Undertaking (defined below) at least annually.

3 **Arbitrage Yield Restriction and Rebate Requirements.** The Treasurer shall maintain or cause to be maintained records of:

(a) purchases and sales of investments made with bond proceeds (including amounts treated as “gross proceeds” of bonds under section 148 of the Code) and receipts of earnings on those investments;

(b) expenditures made with bond proceeds (including investment earnings on bond proceeds) in a timely and diligent manner for the governmental purposes of the bonds, such as for the costs of purchasing, constructing and/or renovating property and facilities;

(c) information showing, where applicable for a particular calendar year, that the City was eligible to be treated as a “small issuer” in respect of bonds issued in that calendar year because the City did not reasonably expect to issue more than \$5,000,000 of tax-exempt bonds in that calendar year;

(d) calculations that will be sufficient to demonstrate to the Internal Revenue Service (“IRS”) upon an audit of a bond issue that, where applicable, the City has complied with an available spending exception to the arbitrage rebate requirement in respect of that bond issue;

(e) calculations that will be sufficient to demonstrate to the IRS upon an audit of a bond issue for which no exception to the arbitrage rebate requirement was applicable, that the rebate amount, if any, that was payable to the United States of America in respect of investments



made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS; and

(f) information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments.

4. **Restrictions on Private Business Use and Private Loans.** The Treasurer shall adopt other procedures that are calculated to educate and inform the principal operating officials of those departments, including capital projects and facility departments, if any, of the City (the “users”) for which land, buildings, facilities and equipment (“property”) are financed with proceeds of tax-exempt bonds about the restrictions on private business use that apply to that property after the bonds have been issued, and of the restriction on the use of proceeds of tax-exempt bonds to make or finance any loan to any person other than a state or local government unit.

In particular, following the issuance of bonds for the financing of property, the Treasurer shall provide to the users of the property a copy of these Compliance Procedures and other appropriate written guidance advising that:

(a) “private business use” means use by any person other than a state or local government unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and the United States of America and any federal agency, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain “qualified” management or service contracts), output contract for the purchase of electricity or water, privately sponsored research contract (except for certain “qualified” research contracts), “naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property;

(b) under section 141 of the Code, no more than 10% of the proceeds of any tax-exempt bond issue (including the property financed with the bonds) may be used for private business use, of which no more than 5% of the proceeds of the tax-exempt bond issue (including the property financed with the bonds) may be used for any “unrelated” private business use—that is, generally, a private business use that is not functionally related to the governmental purposes of the bonds; and no more than the lesser of \$5,000,000 or 5% of the proceeds of a tax-exempt bond issue may be used to make or finance a loan to any person other than a state or local government unit;

(c) before entering into any special use arrangement with a nongovernmental person that involves the use of bond-financed property, the user must consult with the Treasurer, provide the Treasurer with a description of the proposed nongovernmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property;



(d) in connection with the evaluation of any proposed nongovernmental use arrangement, the Treasurer should consult with nationally recognized bond counsel to the City as may be necessary to obtain federal tax advice on whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property, and, if not, whether any "remedial action" permitted under Section 141 of the Code may be taken by the City as a means of enabling that use arrangement to be put into effect without adversely affecting the tax-exempt status of the bonds that financed the property; and

(e) the Treasurer and the user of the property shall maintain records of such nongovernmental uses, if any, of bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-exempt status of the bonds that financed the property.

5. **Records to be Maintained for Tax-Exempt Bonds.** It is the procedure of the City that, unless otherwise permitted by future IRS regulations or other guidance, written records (which may be in electronic form) will be maintained with respect to each bond issue for as long as those bonds remain outstanding, plus three years. For this purpose, the bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records to be maintained are to include:

- (a) the official Transcript of Proceedings for the original issuance of the bonds;
- (b) records showing how the bond proceeds were invested, as described in 3(a) above;
- (c) records showing how the bond proceeds were spent, as described in 3(b) above, including purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of bond issuance costs, and records of "allocations" of bond proceeds to make reimbursement for project expenditures made before the bonds were actually issued;
- (d) information, records and calculations showing that, with respect to each bond issue, the City was eligible for the "small issuer" exception or one of the spending exceptions to the arbitrage rebate requirement or, if not, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS, as described in 3(c), (d) and (e) above; and
- (e) records showing that special use arrangements, if any, affecting bond-financed property made by the City with nongovernmental persons, if any, are consistent with applicable restrictions on private business use of property financed with proceeds of tax-exempt bonds and restrictions on the use of proceeds of tax-exempt bonds to make or finance loans to any person other than a state or local government unit, as described in 4 above.

The basic purpose of the foregoing record retention procedure for the City's tax-exempt bonds is to enable the City to readily demonstrate to the IRS upon an audit of any tax-exempt



bond issue that the City has fully complied with all federal tax requirements that must be satisfied after the issue date of the bonds so that those bonds continue to be eligible for tax exemption under the Code.

**6. Identification and Remediation of Potential Violations of Federal Tax Requirements for Tax-Exempt Bonds.**

(a) So long as any of the City's tax-exempt bond issues remain outstanding, the Treasurer should periodically consult with the users of the City's bond-financed property to review and determine whether current use arrangements involving that property continue to comply with applicable federal tax requirements as described in these Compliance Procedures. This may be accomplished, for example, by periodically meeting with users, providing questionnaires to users about current use arrangements, or adopting other protocols reasonably calculated to ensure compliance with applicable federal tax requirements on a continuing basis. This periodic review may be scheduled, for example, at or before the times that the City is required to file with the Municipal Securities Rulemaking Board the annual financial information and operating data pursuant to the City's undertaking to provide continuing disclosure with respect to outstanding bonds.

(b) If at any time during the life of an issue of tax-exempt bonds, the City discovers that a violation of federal tax requirements applicable to that issue may have occurred, the Treasurer will consult with bond counsel to determine whether any such violation actually has occurred and, if so, take prompt action to accomplish an available remedial action under applicable IRS regulations or to enter into a closing agreement with the IRS under the Voluntary Closing Agreement Program described under Notice 2008-31 or other future published guidance.

**7. Education Procedure With Respect to Federal Tax Requirements for Tax-Exempt Bonds.** It is the procedure of the City that the Treasurer and his or her staff, as well as the principal operating officials of those departments of the City for which property is financed with proceeds of tax-exempt bonds should be provided with education and training on federal tax requirements applicable to tax-exempt bonds. The City recognizes that such education and training is vital as a means of helping to ensure that the City remains in compliance with those federal tax requirements in respect of its bonds. The City therefore will enable and encourage, to the extent the City can afford to do so, those personnel to attend and participate in educational and training programs with regard to the federal tax requirements applicable to tax-exempt bonds.

**8. Responsibility for Continuing Disclosure Undertaking.** Under the provisions of Securities and Exchange Commission Rule 15c2-12 ("Rule 15c2-12"), underwriters are required to obtain an agreement for ongoing continuing disclosure in connection with the public offering of municipal securities. The City's responsibility to provide ongoing continuing disclosure to the municipal securities markets is set forth in the bond ordinance or in a separate continuing disclosure agreement for each publicly sold issue of bonds (the "Continuing Disclosure Undertaking"). Each Continuing Disclosure Undertaking requires the City to provide to the municipal securities markets certain annual financial information and notices of certain listed events. For some types of listed events (e.g., bond calls), the Bond Registrar has undertaken the responsibility of filing notice of the applicable listed event. If audited financial

statements are not available by the time of each annual filing, the City shall file unaudited financial statements and file audited financial statements once they become available. For example, the annual filing of operating and financial information may be scheduled to occur at the same time financial information is provided to the State auditor's office, if such time is before the annual deadline described in the Continuing Disclosure Undertaking. The Treasurer shall monitor compliance by the City with each Continuing Disclosure Undertaking, shall maintain a file that includes a copy of each Continuing Disclosure Undertaking entered into by the City, shall ensure that the information required to be disclosed is disclosed in a timely fashion and shall cause any failure to make disclosure to be remedied in a timely fashion.