

CITY OF MOSES LAKE
WATER AND SEWER REVENUE BONDS, 2011

ORDINANCE NO. 2626

AN ORDINANCE OF THE CITY OF MOSES LAKE, WASHINGTON; AUTHORIZING CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE CITY'S COMBINED SYSTEM OF WATER AND SEWERAGE; AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE BONDS OF THE CITY TO PAY THE COSTS OF SAID IMPROVEMENTS IN THE AGGREGATE PRINCIPAL AMOUNT OF \$4,905,000; FIXING THE DATE, FORM, TERMS, MATURITIES AND COVENANTS OF THE BONDS; APPROVING A PURCHASE CONTRACT FOR THE BONDS; RESERVING THE RIGHT TO ISSUE REVENUE BONDS ON A PARITY WITH THE BONDS HEREIN AUTHORIZED UPON COMPLIANCE WITH CERTAIN CONDITIONS AND APPROVING AN AGREEMENT FOR ONGOING DISCLOSURE.

Approved: August 9, 2011

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ORDINANCE NO. 2626
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ORDINANCE NO. 2626

AN ORDINANCE of the City of Moses Lake, Washington; authorizing certain additions, betterments and improvements to the City's combined system of water and sewerage; authorizing the issuance of water and sewer revenue bonds of the City to pay the costs of said improvements in the aggregate principal amount of \$4,905,000; fixing the date, form, terms, maturities and covenants of the bonds; approving a purchase contract for the bonds; reserving the right to issue revenue bonds on a parity with the bonds herein authorized upon compliance with certain conditions; and approving an agreement for ongoing disclosure.

WHEREAS, the City of Moses Lake, Washington (the "City") operates a combined water and sewer system (hereinafter further defined as the "System"); and

WHEREAS, the System is in need of additions, improvements and betterments (the "Project"); and

WHEREAS, pursuant to RCW chs. 35.92, 35.41 and 39.44, the City is authorized to issue its revenue bonds payable and secured by the net revenue of its System under terms approved by the City Council (the "Council") by ordinance; and

WHEREAS, the City has outstanding its Water and Sewer Revenue Bonds, 2004 (the "2004 Bonds") payable from revenues of the System issued under Ordinance No. 2177, dated October 1, 2004, and presently outstanding in the principal amount of \$6,875,000; and

WHEREAS, the ordinance authorizing the 2004 Bonds provides that additional water and sewer revenue bonds may be issued on a parity with such bonds if certain conditions are met; and

WHEREAS, it appears to the Council of the City that such conditions can be met and that it is in the best interests of the City and its inhabitants that the Bonds be issued on a parity with the outstanding water and sewer revenue bonds of the City; and

WHEREAS, Martin Nelson & Co., Inc., Seattle, Washington, has submitted to this Council an offer to purchase the bonds authorized herein in accordance with the terms of this ordinance and this offer is acceptable to the Council;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON, DO ORDAIN as follows:

Section 1. Definitions. As used in this ordinance the following definitions shall apply unless a different meaning clearly appears from the context:

Accreted Value means (1) with respect to any Capital Appreciation Bonds, as of any date of calculation, the sum of the amount set forth in the ordinance authorizing their issuance as the amount representing the initial principal amount of such Capital Appreciation Bonds plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date, or (2) with respect to Original Issue Discount Bonds, as of the date of calculation, the amount representing the initial public offering price of such Original Issue Discount Bonds plus the amount of discounted principal which has accreted since the date of issue. In each case, the Accreted Value shall be determined in accordance with the provisions of the ordinance authorizing the issuance of such Balloon Maturity Bonds.

Annual Debt Service means the total amount of Debt Service for any Parity Bond or series of Parity Bonds or other evidences of indebtedness payable from Revenue of the System in any fiscal year or Base Period.

Balloon Maturity Bonds means any evidences of indebtedness of the City payable from Revenue of the System that are so designated in the ordinance pursuant to which such indebtedness is incurred.

Base Period means any consecutive 12-month period selected by the City out of the 36-month period next preceding the date of issuance of an additional series of Future Parity Bonds; provided, however, that for so long as the 2004 Insurance Policy is in effect, the 12-month period selected by the City shall be within the 24-month period next preceding the date of issuance of an additional series of Future Parity Bonds.

Beneficial Owner means the beneficial owner of all or a portion of a Bond while such Bond is in fully immobilized form.

Bond Fund means 2011 Bond Fund #450 maintained by the City within the Water/Sewer Fund and also shall include any fund established for the payment of debt service on Parity Bonds.

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

Bonds means the \$4,905,000 par value City of Moses Lake, Washington, Water and Sewer Revenue Bonds, 2011 authorized to be issued pursuant to this ordinance.

Bond Year means each one-year period that ends on the date selected by the City. The first and last Bond Years may be short periods. If no day is selected by the City before the earlier of the final maturity date of the Bonds or the date that is five years after the date of issuance of the Bonds, Bond Years end on each anniversary of the date of issue and on the final maturity date of the Bonds.

Capital Appreciation Bonds means any Future Parity Bonds all or a portion of the interest on which is compounded, accumulated and payable only upon redemption or on the maturity date of such Capital Appreciation Bonds. If so provided in the ordinance authorizing

their issuance, Future Parity Bonds may be deemed to be Capital Appreciation Bonds for only a portion of their term. On the date on which Future Parity Bonds no longer are Capital Appreciation Bonds, they shall be deemed outstanding in a principal amount equal to their Accreted Value.

City means the City of Moses Lake, a municipal corporation of the State of Washington.

City Representative means the Mayor, City Manager, Finance Director or such other official or employee of the City designated in writing by either of the foregoing

Code means the United States Internal Revenue Code of 1986, as amended, together with all applicable rulings and regulations heretofore or hereafter promulgated thereunder.

Consultant means at any time an independent municipal financial consultant appointed by the City to perform the duties of the Consultant as required by this ordinance. For the purposes of delivering any certificate required by Section 11 hereof and making the calculation required by Section 11 hereof, the term Consultant shall also include any independent public accounting firm appointed by the City to make such calculation or to provide such certificate.

Costs of Maintenance and Operation means all reasonable expenses incurred by the City in causing the System of the City to be operated and maintained in good repair, working order and condition, but shall not include any payments for debt service or into reserve funds, depreciation or taxes levied or imposed by the City or payments to the City in lieu of taxes, or capital additions or capital replacements to the System.

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

Debt Service means, for any period of time,

(a) with respect to any outstanding Original Issue Discount Bonds or Capital Appreciation Bonds which are not designated as Balloon Maturity Bonds in the ordinance authorizing their issuance, the principal amount thereof shall be equal to the Accreted Value thereof maturing or scheduled for redemption in such period, and the interest payable during such period;

(b) with respect to any outstanding Fixed Rate Bonds, an amount equal to (1) the principal amount of such Fixed Rate Bonds due or subject to mandatory redemption during such period and for which no sinking fund installments have been established, (2) the amount of any payments required to be made during such period into any sinking fund established for the payment of any such Fixed Rate Bonds, plus (3) all interest payable during such period on any such outstanding Fixed Rate Bonds and with respect to Fixed Rate Bonds with mandatory sinking fund requirements, calculated on the assumption that mandatory sinking fund installments will be applied to the redemption or retirement of such Fixed Rate Bonds on the date specified in the ordinance authorizing such Fixed Rate Bonds; and

(c) with respect to all other series of Parity Bonds, other than Fixed Rate Bonds, Original Issue Discount Bonds or Capital Appreciation Bonds, specifically including but not limited to Balloon Maturity Bonds and Parity Bonds bearing variable rates of interest, an amount for any period equal to the amount which would have been payable for principal and interest on such Parity Bonds during such period computed on the assumption that the amount of Parity Bonds as of the date of such computation would be amortized (1) in accordance with the mandatory redemption provisions, if any, set forth in the ordinance authorizing the issuance of such Parity Bonds, or if mandatory redemption provisions are not provided, during a period

commencing on the date of computation and ending on the date 30 years after the date of issuance (2) at an interest rate equal to the yield to maturity set forth in the 40-Bond Index published in the edition of *The Bond Buyer* (or comparable publication or such other similar index selected by the City) and published within ten days prior to the date of calculation or, if such calculation is being made in connection with the certificate required by Section 11 hereof, then within ten days of such certificate, (iii) to provide for essentially level annual debt service of principal and interest over such period. Debt Service shall be net of any interest funded out of Bond proceeds. Debt Service shall include reimbursement obligations to providers of Qualified Letters of Credit and/or Qualified Insurance to the extent authorized by ordinance.

DTC means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York, as depository for the Bonds pursuant to Section 5 hereof.

Finance Director means the duly qualified, appointed and acting Finance Director of the City or any other officer who succeeds to the duties now delegated to that office.

Fixed Rate Bonds means those Parity Bonds other than Capital Appreciation Bonds, Original Issue Discount Bonds or Balloon Maturity Bonds issued under an ordinance in which the rate of interest on such Parity Bonds is fixed and determinable through their final maturity or for a specified period of time. If so provided in the ordinance authorizing their issuance, Parity Bonds may be deemed to be Fixed Rate Bonds for only a portion of their term.

Future Parity Bonds means any water and sewer revenue bonds which the City may hereafter issue having 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 of the Bonds and the 2004 Bonds.

General Fund is the City's operating fund, accounting for all financial resources of the general government, except those required to be accounted for in another fund.

Government Obligations has the meaning given such term in RCW Ch. 39.53, as such chapter may be hereafter amended or restated.

Investment Earnings means all earnings in any form whatsoever derived from Investments.

Investments means any investments permitted to the City by law of money required to be deposited in any fund or account of the Water/Sewer Fund of the City except money deposited in any escrow account for the purpose of refunding any Parity Bonds and except any money which is subject to payment to the United States Treasury under the rebate provisions of the Code.

Letter of Representations means the Blanket Issuer Letter of Representations from the City to DTC.

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

Moody's means Moody's Investors Service, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, **Moody's** shall be deemed to refer to any other nationally recognized securities rating agency designated by the City Representative.

MSRB means the Municipal Securities Rulemaking Board.

Net Proceeds, when used with reference to the Bonds, means the principal amount of the Bonds, plus accrued interest and original issue premium, if any, and less original issue discount and proceeds, if any, deposited in the Reserve Fund-2011.

Net Revenue means Revenue of the System less Costs of Maintenance and Operation.

Original Issue Discount Bonds means Parity Bonds which are sold at an initial public offering price of less than 95% of their face value and which are specifically designated as Original Issue Discount Bonds in the ordinance authorizing their issuance.

Parity Bonds means the 2004 Bonds, the Bonds and any Future Parity Bonds.

Parity Requirement means Net Revenue equal to or greater than:

(a) 125% of Maximum Annual Debt Service for all Parity Bonds computed by deducting from Annual Debt Service the Annual Debt Service for each series or issue of Parity Bonds which is covered by ULID Assessments, and

(b) 100% of Maximum Annual Debt Service for all subordinate lien evidences of indebtedness secured by Revenue of the System.

In determining the amount of Annual Debt Service "covered by ULID Assessments", Annual Debt Service for each future year is reduced by the dollar amount of ULID Assessments projected to be received during such future year, and the remaining outstanding ULID Assessments are assumed to be paid in the remaining number of annual installments with no prepayments.

Private Person means any natural person engaged in a trade or business or any trust, estate, partnership, association, company or corporation.

Private Person Use means the use of property in a trade or business by a Private Person if such use is other than as a member of the general public. Private Person Use includes

ownership of the property by the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the property (such as a lease, management or incentive payment contract or other special arrangement) in such a manner as to set the Private Person apart from the general public. Use of property as a member of the general public includes attendance by the Private Person at municipal meetings or business rental of property to the Private Person on a day-to-day basis if the rental paid by such Private Person is the same as the rental paid by any Private Person who desires to rent the property. Use of property by nonprofit community groups or community recreational groups is not treated as Private Person Use if such use is incidental to the governmental uses of property, the property is made available for such use by all such community groups on an equal basis and such community groups are charged only a *de minimis* fee to cover custodial expenses.

Project means the plan of improvements to the System authorized in Section 3 hereof.

Project Fund means the Operations Complex Construction Fund #472 within the Water/Sewer Fund of the City.

Qualified Insurance means any non-cancelable 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 both Moody's and S&P.

Qualified Letter of Credit means any irrevocable letter of credit issued by a financial institution for the account of the City on behalf of registered owners of the 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 either Moody's or S&P.

Rate Covenant means Net Revenue in each fiscal year together with ULID Assessments received in each fiscal year at least equal to the sum of (a) 125% of the amounts required in such fiscal year to be paid as scheduled debt service (principal and interest) on all Parity Bonds minus the amount of ULID Assessments collected in such year and (b) 100% of the amount of ULID Assessments received in such fiscal year.

Rating Agency means Moody's or S&P.

Rating Category means the generic rating categories of the Rating Agency, without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise.

Registrar means the fiscal agency of the State of Washington, for the purposes of registering and authenticating the Bonds, maintaining the Bond Register, effecting transfer of ownership of the Bonds, and paying the principal of, premium, if any, and interest on the Bonds.

Registered Owner means the person named as the registered owner of a Bond in the Bond Register. For so long as the Bonds are held in book-entry only form, DTC shall be deemed to be the sole Registered Owner.

Reserve Fund-2011 means the 2011 Bond Reserve Fund #451 maintained within the Water/Sewer Fund.

Reserve Requirement-2011 means the lesser of (i) Maximum Annual Debt Service with respect to the Bonds and (ii) 1.25 times average Annual Debt Service with respect to the Bonds; *provided, however*, that the Reserve Requirement-2011 shall not exceed an amount equal to 10% of the aggregate of the initial par amount of the Bonds.

Revenue Fund means the Water/Sewer Fund #410 within the Water/Sewer Fund maintained by the Finance Director of the City and shall also include any other fund of the City into which the Revenue of the System is deposited.

Revenue of the System or **Revenue** means all of the earnings and revenues received by the City from the maintenance and operation of the System and connection and capital improvement charges collected for the purpose of defraying the cost of capital facilities of the System, including Investment Earnings, but excluding government grants, proceeds from the sale of System property, City taxes collected by or through the System, principal proceeds of bonds and earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund System obligations (until commingled with other earnings and revenues of the System) or held in a special account for the purpose of paying a rebate to the United States Government under the Code. **Revenue of the System** shall also include any federal or state reimbursements of operating expenses to the extent such expenses are included as **Costs of Maintenance and Operation**; provided, however, that Revenue of the System shall not include ULID Assessments. Certain Investment Earnings may be transferred from the Revenue Fund to the General Fund of the City, subject to the priorities established in Section 7 of this ordinance.

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

S&P means Standard & Poor's Ratings, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, **S&P** shall be deemed to refer to any other nationally recognized securities rating agency designated by the City Representative.

SEC means the U.S. Securities and Exchange Commission.

System means the City's combined system of water supply and distribution, sanitary sewage disposal and storm drainage, as the same may be added to, improved and extended for as long as any Parity Bonds are outstanding. The term **System** also shall include any other utility that may in the future be combined with the System.

2004 Bonds mean the City's outstanding Water and Sewer Revenue Bonds, 2004, issued under date of October 1, 2004, pursuant to Ordinance No. 2177.

2004 Insurance Policy means the financial guaranty insurance policy with respect to the Bonds issued by the Ambac Assurance Corporation, insuring the payment when due of the principal of and interest on the 2004 Bonds.

ULID means a utility local improvement district of the City. The City does not currently have any existing utility local improvement districts.

ULID Assessments means the assessments levied in all ULIDs, the assessments in which are payable into the Bond Fund, and shall include installments thereof and interest and any penalties thereon.

Underwriter means Martin Nelson & Co., Inc., Seattle, Washington.

Variable Interest Rate means a variable interest rate or rates to be borne by a series of Future Parity Bonds or any one or more maturities within a series of Future Parity Bonds. The method of computing such a variable interest rate shall be specified in the ordinance authorizing such Future Parity Bonds, which ordinance also shall specify either (a) the particular period or periods of time or manner of determining such period or periods of time for which each value of such variable interest rate shall remain in effect or (b) the time or times upon which any change in such variable interest rate shall become effective.

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

Water/Sewer Fund means the proprietary fund of the City that accounts for the activities of the System.

Rules of Interpretation. In this ordinance, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision or clause hereof, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this ordinance;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several sections of this ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect; and

(e) All references herein to “articles,” “sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof.

Section 2. Compliance with Parity Conditions The Council hereby finds and determines, as required by Section 11 of Ordinance No. 2177, as follows:

(1) That the Bonds are being issued for the purpose of providing funds to acquire, construct, reconstruct, install, or replace equipment, facilities, additions, betterments, or other capital improvements to the System for which it is authorized by law to issue revenue bonds;

(2) The City is not and has not been in default of its Rate Covenant for the fiscal year ending December 31, 2010;

(3) The Reserve Requirement-2011 shall be met no later than the date of issuance of the Bonds; and

(4) At the time of the issuance and delivery of the Bonds, there will have been filed a certificate of the Consultant demonstrating fulfillment of Section 11(D) or the City Representative demonstrating fulfillment of Section 11(C) of Ordinance No. 2177.

The applicable parity conditions set forth in Ordinance No. 2177 having been complied with, the Bonds shall be issued on a parity of lien with the 2004 Bonds.

The City hereby further covenants and agrees that the Bonds will not be issued and delivered to the purchasers thereof as bonds on a parity with the 2004 Bonds until the certificate required herein, in form and contents satisfactory to the City and its counsel, has been filed with the City.

Section 3. Findings and Purposes; Plan of Additions and Betterments to the System.

The Council hereby finds that the public interest, welfare and convenience require the construction, acquisition and installation of certain additions and betterments to and extensions of the City's water and sewer system (the "Project") and that said improvements are legally required and/or economically sound, and will contribute to the conduct of the business of the System in an efficient manner.

The City shall provide all equipment, connections and appurtenances together with all work as may be incidental and necessary to complete the Project. The Project facilities shall be integrated into the System as required to provide a fully operational facility.

The City may make such changes in or additions to the Project or in the construction or design of other facilities of the System as may be found necessary or desirable. Implementation or completion of any specified improvement shall not be required if the Council determines that, due to substantially changed circumstances, it has become advisable or impractical. If the Project has either been completed, or its completion duly provided for, or its completion found to be impractical, the City may apply the Bond proceeds or any portion thereof to other improvements to the System, as the Council in its discretion shall determine. In the event that the proceed of sale of the Bonds, plus any other moneys of the City legally available, are insufficient to accomplish all of the Project provided by this section, the City shall use the available funds for paying the cost of those improvements for which the Bonds were approved, deemed by the Council most necessary and to the best interest of the City.

The City shall acquire by purchase, lease or condemnation, all property, both real and personal, or any interest therein, or rights-of-way and easements that may be found necessary to acquire, construct and install the Project.

The estimated cost of this plan of additions and betterments and all costs incidental thereto (including costs of issuance of the Bonds and funding of the Reserve Requirement-2011), is hereby declared to be as nearly as practicable the sum of \$5,640,000, which shall be provided out of the proceeds of the sale of the Bonds and other City funds.

Section 4. Authorization and Description of Bonds. The City shall now issue and sell \$4,905,000 of water and sewer revenue bonds (the "Bonds") for the purpose of providing funds required to pay the cost of the Project.

The Bonds shall be designated as the "City of Moses Lake, Washington Water and Sewer Revenue Bonds, 2011" (the "Bonds"); shall be dated as of their date of initial delivery; shall be fully registered as to both principal and interest; shall be in the denomination of \$5,000 each, or any integral multiple thereof, provided that no Bond shall represent more than one maturity; shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification; and shall bear interest from their date payable semiannually on the first days of each March and September, commencing on March 1, 2012, at the following per annum interest rates and shall mature on September 1 of the following years in the following principal amounts:

<u>Maturity Years (September 1)</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>
2012	\$ 455,000	0.65%
2013	460,000	0.85
2014	460,000	2.00
2015	470,000	2.00
2016	480,000	2.25
2017	490,000	2.25
2018	500,000	2.75
2019	515,000	2.75
2020	530,000	3.25
2021	545,000	3.25

The Bonds shall be obligations only of the Bond Fund and shall be payable and secured as provided herein. The Bonds shall not be general obligations of the City.

Section 5. Registration, Exchange and Payments.

(a) *Registrar/Bond Register.* The City hereby specifies and adopts the system of registration approved by the Washington State Finance Committee from time to time through the appointment of state fiscal agencies. The City shall cause a bond register to be maintained by the Registrar. So long as any Bonds remain outstanding, the Registrar shall make all necessary provisions to permit the exchange or registration or transfer of Bonds at its principal corporate trust office. The Registrar may be removed at any time at the option of the City Representative upon prior notice to the Registrar and a successor Registrar appointed by the City Representative. No resignation or removal of the Registrar shall be effective until a successor shall have been appointed and until the successor Registrar shall have accepted the duties of the Registrar hereunder. The Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of such Bonds and this ordinance 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 Certificate of Authentication of the Bonds.

(b) *Registered Ownership.* The City and the Registrar, each in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes (except as provided in Section 18 of this ordinance), and neither the City nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 5(h) hereof, but such Bond may be transferred as herein provided. All such

payments made as described in Section 5(h) shall be valid and shall satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid.

(c) *DTC Acceptance/Letters of Representations.* The Bonds initially shall be held in fully immobilized form by DTC acting as depository. To induce DTC to accept the Bonds as eligible for deposit at DTC, the City has executed and delivered to DTC a Blanket Issuer Letter of Representations. Neither the City nor the Registrar will have any responsibility or obligation to DTC participants or the persons for whom they act as nominees (or the participants of any successor depository or those for who any such successor acts as nominee) with respect to the Bonds in respect of the accuracy of any records maintained by DTC (or any successor depository) or any DTC participant, the payment by DTC (or any successor depository) or any DTC participant of any amount in respect of the principal of or interest on Bonds, any notice which is permitted or required to be given to Registered Owners under this ordinance (except such notices as shall be required to be given by the City to the Registrar or to DTC (or any successor depository)), or any consent given or other action taken by DTC (or any successor depository) as the Registered Owner. For so long as any Bonds are held in fully-immobilized form hereunder, DTC or its successor depository shall be deemed to be the Registered Owner for all purposes hereunder (except for Section 18 hereof), and all references herein to the Registered Owners shall mean DTC (or any successor depository) or its nominee and shall not mean the owners of any beneficial interest in such Bonds, except as provided in Section 18 of this ordinance.

If any Bond shall be duly presented for payment and funds have not been duly provided by the City on such applicable date, then interest shall continue to accrue thereafter on the unpaid principal thereof at the rate stated on such Bond until it is paid.

(d) *Use of Depository.*

(1) The Bonds shall be registered initially in the name of "Cede & Co.", as nominee of DTC, with one Bond maturing on each of the maturity dates for the Bonds in a denomination corresponding to the total principal therein designated to mature on such date. Registered ownership of such immobilized Bonds, or any portions thereof, may not thereafter be transferred except (A) to any successor of DTC or its nominee, provided that any such successor shall be qualified under any applicable laws to provide the service proposed to be provided by it; (B) to any substitute depository appointed by the City Representative pursuant to subsection (2) below or such substitute depository's successor; or (C) to any person as provided in subsection (4) below.

(2) Upon the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or a determination by the City Representative to discontinue the system of book entry transfers through DTC or its successor (or any substitute depository or its successor), the City Representative may hereafter appoint a substitute depository. Any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it.

(3) In the case of any transfer pursuant to clause (A) or (B) of subsection (1) above, the Registrar shall, upon receipt of all outstanding Bonds, together with a written request of the City Representative, issue a single new Bond for each maturity then outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such written request of the City Representative.

(4) In the event that (A) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained,

or (B) the City Representative determines that it is in the best interest of the beneficial owners of the Bonds that such owners be able to obtain such bonds in the form of Bond certificates, the ownership of such Bonds may then be transferred to any person or entity as herein provided, and shall no longer be held in fully-immobilized form. The City Representative shall deliver a written request to the Registrar, together with a supply of definitive Bonds, to issue Bonds as herein provided in any authorized denomination. Upon receipt by the Registrar of all then outstanding Bonds together with a written request of the City Representative to the Registrar, new Bonds shall be issued in the appropriate denominations and registered in the names of such persons as are requested in such written request.

(e) *Registration of Transfer of Ownership or Exchange; Change in Denominations.*

The transfer of any Bond may be registered and Bonds may be exchanged, but no transfer of any such Bond shall be valid unless it is surrendered to the Registrar with the assignment form appearing on such Bond duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Registered Owner or transferee therefor, a new Bond (or Bonds at the option of the new Registered Owner) of the same date, maturity and interest rate and for the same aggregate principal amount in any authorized denomination, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond. Any Bond may be surrendered to the Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds of the same date, maturity and interest rate, in any authorized denomination. The Registrar shall

not be obligated to register the transfer or to exchange any Bond during the 15 days preceding any interest payment or principal payment date any such Bond is to be redeemed.

(f) *Registrar's Ownership of Bonds.* The Registrar may become the Registered Owner of any Bond with the same rights it would have if it were not the Registrar, and to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as member of, or in any other capacity with respect to, any committee formed to protect the right of the Registered Owners of Bonds.

(g) *Registration Covenant.* The City covenants that, until all Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

(h) *Place and Medium of Payment.* Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be calculated on the basis of a year of 360 days and twelve 30-day months. For so long as all Bonds are in fully immobilized form, payments of principal and interest thereon shall be made as provided in accordance with the operational arrangements of DTC referred to in the Letter of Representations. In the event that the Bonds are no longer in fully immobilized form, interest on the Bonds shall be paid by check or draft mailed to the Registered Owners at the addresses for such Registered Owners appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date, or upon the written request of a Registered Owner of more than \$1,000,000 of Bonds (received by the Registrar at least 15 days prior to the applicable payment date), such payment shall be made by the Registrar by wire transfer to the account within the United States designated by the Registered Owner. Principal of the Bonds shall be

payable upon presentation and surrender of such Bonds by the Registered Owners at the principal office of the Registrar.

Section 6. Redemption and Purchase.

(a) *No Redemption.* The Bonds are not subject to redemption prior to their scheduled maturity.

(b) *Purchase of Bonds for Retirement.* The City reserves the right to use at any time any surplus Revenue of the System available after providing for the payments required by paragraphs First, through Fifth of Section 7 of this ordinance, or other available funds, to purchase any of the Bonds at any price deemed reasonable by the City to purchase for retirement any of the Bonds offered to the City at any price deemed reasonable to the City.

(c) *Effect of Purchase.* To the extent that the City shall have purchased any Balloon Maturity Bonds since the last scheduled mandatory redemption of such Balloon Maturity Bonds, the City may reduce the principal amount of the Balloon Maturity Bonds to be redeemed in like principal amount. Such reduction may be applied in the year specified by the City.

Section 7. Revenue Fund and Priority of Application of Revenue. The City maintains the Water/Sewer Fund as a separate enterprise fund of the City. All Revenue of the System is deposited in the Water/Sewer Fund #410 within the Water/Sewer Fund (the "Revenue Fund"). The Water/Sewer Fund shall be considered a combined fund for purposes of measuring compliance with the Rate Covenant and the Parity Requirement. Notwithstanding the foregoing, the City Finance Director may maintain such separate funds and accounts in such names and under such additional designations as shall be required to comply with the uniform system of accounting established by the State Auditor from time to time. The Revenue Fund shall be held separate and apart from all other funds and accounts of the City and the Revenue of the System

deposited in such Fund shall be used only for the following purposes and in the following order of priority:

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

Second, to pay the interest on any Parity Bonds, including reimbursements to the issuer of a Qualified Letter of Credit or Qualified Insurance if the Qualified Letter of Credit or Qualified Insurance secures the payment of interest on Parity Bonds and the ordinance authorizing such Parity Bonds provides for such reimbursement;

Third, to pay the principal of any Parity Bonds, including reimbursements to the issuer of a Qualified Letter of Credit or Qualified Insurance if the Qualified Letter of Credit or Qualified Insurance secures the payment of principal of Parity Bonds and the ordinance authorizing such Parity Bonds provides for such reimbursement;

Fourth, to make all payments required to be made into the Reserve Fund-2011 and to any reserve fund created in the future for the payment of debt service on Future Parity Bonds, including reimbursements to the issuer of a Qualified Letter of Credit or Qualified Insurance if the Qualified Letter of Credit or Qualified Insurance has been issued to fund the Reserve Requirement-2011 and/or the reserve requirement(s) for any Future Parity Bonds and the ordinance authorizing such Parity Bonds provides for such reimbursement;

Fifth, to make all payments required to be made into any revenue bond redemption fund or revenue warrant redemption fund and debt service fund or reserve fund created to pay and secure the payment of the principal of and interest on any other revenue bonds or revenue warrants of the City having 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 Parity Bonds; and

Sixth, to retire by redemption or purchase any outstanding revenue bonds or revenue warrants of the City, to make necessary additions, betterments, improvements and repairs to or extensions and replacements of the System, or for any other lawful City purposes.

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

Section 8. Bond Fund and Reserve Fund. The Finance Director has established the 2011 Bond Fund #450 within the Water/Sewer Fund for the payment of the debt service on the Bonds, and shall establish separate funds in the future for the payment of debt service on Future Parity Bonds (collectively, the "Bond Fund"). The Finance Director also has established the 2011 Bond Reserve Fund #451 within the Water/Sewer Fund for the purpose of securing the repayment of the Bonds (the "Reserve Fund-2011").

(a) *Payments into Bond Fund.* The Bond Fund shall be maintained for the purpose of paying the principal of and interest on all Parity Bonds.

As long as any Parity Bond remains outstanding, the City hereby irrevocably obligates and binds itself to set aside and pay from the Revenue Fund into the Bond Fund those amounts necessary, together with such other funds as are on hand and available in the Bond Fund, to pay the interest or principal and interest next coming due on outstanding Parity Bonds. Such payments from the Revenue Fund to the Bond Fund shall be made in a fixed amount without regard to any fixed proportion following the closing and delivery of the Bonds on or before each date on which an installment of interest or principal and interest falls due on Parity Bonds equal to the installment of interest or principal and interest.

The City Finance Director is hereby authorized and directed and the City hereby obligates and binds itself to set aside and pay into the Bond Fund all ULID Assessments as the same are collected.

(b) *Payments into Reserve Fund-2011.* The Reserve Fund-2011 shall be maintained for the purpose of securing the payment of the principal of and interest on the Bonds. The City covenants and agrees that from and after the closing and delivery of the Bonds, it will at all times maintain an amount in the Reserve Fund-2011 at least equal to the Reserve Requirement-2011 except for withdrawals therefrom authorized hereinafter, at all times for so long as any Bonds remain outstanding. The Reserve Requirement-2011 may be maintained by deposits of cash, a Qualified Letter of Credit or Qualified Insurance, or a combination of the foregoing. In computing the amount on hand in the Reserve Fund-2011, Qualified Insurance and/or a Qualified Letter of Credit shall be valued at the face amount thereof, and all other obligations purchased as an investment of moneys therein shall be valued at cost. As used herein, the term "cash" shall include U.S. currency, cash equivalents and evidences thereof, including demand deposits, certified or cashier's check; and the deposit to the Reserve Fund-2011 may be satisfied initially by the transfer of qualified investments to such account.

If the balances on hand in the Reserve Fund-2011 are sufficient to satisfy the Reserve Requirement-2011, interest earnings shall be applied as provided in the following sentences. Whenever there is a sufficient amount in the Bond Fund, including the Reserve Fund-2011 to pay the principal of and interest on all outstanding Bonds, the money in the Reserve Fund-2011 may be used to pay such principal and interest. As long as the money left remaining on deposit in the Reserve Fund-2011 is equal to the Reserve Requirement-2011, money in the Reserve Fund-2011 may be transferred to the Bond Fund and used to pay the principal of and interest on

the Bonds as the same becomes due and payable. The City also may transfer out of the Reserve Fund-2011 any money required in order to prevent any Bonds from becoming "arbitrage bonds" under the Code.

If a deficiency in the Bond Fund for the payment of debt service on the Bonds shall occur, such deficiency shall be made up from the Reserve Fund-2011 by the withdrawal of cash therefrom for that purpose and by the sale or redemption of obligations held in the Reserve Fund-2011, in such amounts as will provide cash in the Reserve Fund sufficient to make up any such deficiency with respect to the Bonds, and if a deficiency still exists immediately prior to an interest payment date and after the withdrawal of cash, the City shall then draw from any Qualified Letter of Credit or Qualified Insurance for the Bonds in sufficient amount to make up the deficiency. Such draw shall be made at such times and under such conditions as the agreement for such Qualified Letter of Credit or such Qualified Insurance shall provide.

In making the payments and credits to the Reserve Fund-2011 required by this Section 8(b), 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-2011 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 Reserve Fund-2011 by this Section 8(b) 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.

Any deficiency created in the Reserve Fund by reason of any such withdrawal shall then be made up within one year of the date of withdrawal from Net Revenue or from ULID Assessments (or out of any other moneys on hand legally available for such purpose) after

making necessary provision for the payments required to be made into the Bond Fund within such year.

Any Qualified Letter of Credit or Qualified Insurance shall not be cancelable on less than 30 days' notice to the City. In the event of any cancellation, the Reserve Fund-2011 shall be funded as if the Bonds that remain outstanding had been issued on the date of such notice of cancellation.

In the event that the City elects to meet the Reserve Requirement-2011 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 shall be made from payments of principal and interest on Parity Bonds from the City subject only to the prior lien thereon for the payments required hereunder to be made to registered owners of Parity Bonds.

(c) *Reserve Funds for Future Parity Bonds.* In the event that the City issues Future Parity Bonds, the ordinance authorizing their issuance shall provide for the establishment of a reserve fund for such series ("a future reserve fund") and shall provide for the funding of the future reserve fund in an amount equal to the lesser of (i) Maximum Annual Debt Service with respect to the proposed issue of Future Parity Bonds or (ii) 125% of average annual debt service, but in no event in an amount equal to 10% of the proceeds of the proposed issue of Future Parity Bonds (the "Future Parity Bond reserve requirement"). Each future reserve fund shall be maintained for the purpose of securing the payment of the principal of and interest on the respective series of Future Parity Bonds. A Future Parity Bond reserve requirement may be maintained by deposits of cash, a Qualified Letter of Credit or Qualified Insurance, or a

combination of the foregoing. In computing the amount on hand in the future reserve fund, Qualified Insurance and/or a Qualified Letter of Credit shall be valued at the face amount thereof, and all other obligations purchased as an investment of moneys therein shall be valued at cost. As used herein, the term "cash" shall include U.S. currency, cash equivalents and evidences thereof, including demand deposits, certified or cashier's check; and the deposit to the future reserve fund may be satisfied initially by the transfer of qualified investments to such account.

If the balances on hand in the future reserve fund are sufficient to satisfy its Future Parity Bond reserve requirement, interest earnings shall be applied as provided in the following sentences. Whenever there is a sufficient amount in the Bond Fund, including the future reserve fund to pay the principal of and interest on the respective series of outstanding Future Parity Bonds, the money in the future reserve fund may be used to pay such principal and interest. As long as the money left remaining on deposit in the future reserve fund is equal to the respective Future Parity Bond reserve requirement, money in the future reserve fund may be transferred to the Bond Fund and used to pay the principal of and interest on the series of Future Parity Bonds as the same becomes due and payable. The City also may transfer out of a future reserve fund any money required in order to prevent any Future Parity Bonds from becoming "arbitrage bonds" under the Code.

(d) *Priority of Lien of Payments into Bond Fund and Reserve Fund.* The amounts so pledged to be paid into the Bond Fund and the Reserve Fund-2011 and any other reserve fund created for the benefit of outstanding Parity Bonds from the Revenue Fund and from ULID Assessments are hereby declared to be a prior lien and charge upon the Revenue of the System and ULID Assessments superior to all other charges of any kind or nature whatsoever except the

Costs of Maintenance and Operation of the System, and except that the amounts so pledged are of equal lien to the charges upon such Revenue and ULID Assessments for the payment of the principal of and interest on any Future Parity Bonds.

(e) *Application and Investment of Moneys in the Bond Fund and Reserve Fund.* Money in the Bond Fund and Reserve Fund-2011 may be kept in cash or invested as permitted by law. Investments in the Bond Fund shall mature prior to the date on which such money shall be needed for required interest or principal payments (for investments in the Bond Fund) or having a guaranteed redemption price prior to maturity. Investments in the Reserve Fund-2011 shall mature not later than the last maturity of any then outstanding Bonds.

(f) *Sufficiency of Revenues.* The City Council hereby finds that in fixing the amounts to be paid into the Bond Fund and the Reserve Fund-2011 out of the Revenue of the System, it has exercised due regard for the Costs of Maintenance and Operation and has not obligated the City to set aside and pay into the Bond Fund and the Reserve Fund-2011 and any reserve fund created for outstanding Parity Bonds a greater amount of such Revenue than in its judgment will be available over and above the Costs of Maintenance and Operation.

Section 9. Specific Covenants.

(a) *Rate Covenant.* The City will establish, maintain and collect such rates and charges for service of its System for so long as any Bonds are outstanding as will maintain the Rate Covenant.

(b) *System Maintenance.* The City will at all times maintain and keep the System in good repair, working order and condition, and also will at all times operate such utility and the business in connection therewith in an efficient manner and at a reasonable cost.

(c) *Disposal of Properties.* The City will not mortgage, sell, lease, or in any manner encumber or dispose of all or substantially all the property of the System (voluntarily or involuntarily), unless provision is made for payment into the Bond Fund of a sum sufficient to pay the principal of, premium, if any, and interest on all outstanding bonds payable therefrom, nor will it mortgage, sell, lease, or in any manner encumber or dispose of (including but not limited to a disposition by transfer to another public or private organization) voluntarily or involuntarily any part of the System that is used, useful and material to the operation of the System unless

(1) the City certifies, based upon reasonable expectations, that the remaining assets of the System shall be sufficient to continue regular operations of the City on a financially sound basis for a period of at least five years and

(2) provision is made for replacement thereof or for payment into the Bond Fund of the total amount of revenue received which shall not be less than an amount which shall bear the same ratio to the amount of outstanding Parity Bonds as the greater of

(A) the Net Revenue available for Debt Service for such outstanding Parity Bonds for the 12 months preceding such sale, lease, encumbrance or disposal from the portion of the System sold, leased, encumbered or disposed of bears to the Net Revenue available for Debt Service for such Parity Bonds from the entire System for the same period;

(B) the Revenue of the System for the 12 months preceding such sale, lease, encumbrance or disposal from the portion of the System sold, leased, encumbered or disposed of bears to the Revenue of the System for the same period;

(C) the proportion of assets (on a depreciated basis) allocable to the assets being sold, leased, encumbered or disposed of bears to the total assets of the System; or

(D) the proportion of customers of the City allocable to the assets being sold, leased, encumbered or disposed of bears to the total number of customers of the System,

provided, however, that the City may dispose of any portion of the facilities of the System up to an aggregate of five percent of the book value of the total assets of the System without the requirement for any deposit to the Bond Fund as hereinabove provided.

Any such moneys so paid into the Bond Fund shall be used to retire such outstanding Parity Bonds at the earliest possible date. Any money received by the City as condemnation awards, insurance proceeds or the proceeds of sale, if not deposited to the Bond Fund, shall be used for the replacement of facilities of the System.

(d) *Books and Records.* The City will, while any of the Bonds remains outstanding, keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the System, and it will furnish the original purchaser or purchasers of the Bonds or any subsequent owner or owners thereof, at the written request of such owner or owners, complete operating and income statements of the System in reasonable detail covering any fiscal year, showing the financial condition of the water and sewer departments and compliance with the terms and conditions of this ordinance, not more than 150 days after the close of such fiscal year, and it will grant any owner or owners of at least 25% of the outstanding Bonds the right at all reasonable times to inspect the entire System and all records, accounts and data of the City relating thereto. Upon request of any owner of any of said Bonds, it will also furnish to such owner a copy of the most recently completed audit of the City's accounts by the State Auditor of Washington or independent certified public accountant.

(e) *No Free Service.* The City will not furnish water or sanitary sewerage disposal service to any customer whatsoever free of charge (except to aid the poor or infirm, to provide for resource conservation or to provide for the proper handling of hazardous materials) and will promptly take legal action to enforce collection of all delinquent accounts.

(f) *Property Insurance.* The City will at all times carry fire and extended coverage and such other forms of insurance on the buildings, equipment, facilities and properties of the System, if such insurance is obtainable at reasonable rates and upon reasonable conditions, against such risks, in such amounts, and with such deductibles as the Council shall deem necessary for the protection of the System and the owners of all outstanding Parity Bonds.

(g) *Liability Insurance.* The City will at all times keep and arrange to keep in full force and effect policies of public liability and property damage insurance which will protect the City against anyone claiming damages of any kind or nature arising out of the operation of the System, if such insurance is obtainable at reasonable rates and upon reasonable conditions, in such amounts and with such deductibles as the Council shall deem necessary for the protection of the City and the owners of the outstanding Parity Bonds.

(h) *Delinquencies of Accounts.* The City will, on or before March 1 of each calendar year, determine all accounts that are delinquent and will take all necessary action to enforce payment of any such delinquencies.

(i) *ULID Assessments.* All ULID Assessments shall be paid into the Bond Fund and shall be used to pay and secure the payment of the principal of and interest on the Bonds and Future Parity Bonds. Nothing in this ordinance or this section shall be construed to prohibit the City from issuing water, sewer or water and sewer revenue bonds junior in lien to the Bonds and pledging as security for their payment assessments levied in any ULID which may have been

specifically created to pay part of the cost of improvements to the System for which those junior lien bonds were specifically issued.

Section 10. Tax Covenants. The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exemption from federal income taxation of the interest on the Bonds and will take or require to be taken such acts as may reasonably be within its ability and as may from time to time be required under applicable law to continue the exemption from federal income taxation of the interest on the Bonds.

(a) *Arbitrage Covenant*. Without limiting the generality of the foregoing, the City covenants that it will not take any action or fail to take any action with respect to the proceeds of sale of the Bonds or any other funds of the City which may be deemed to be proceeds of the Bonds pursuant to Section 148 of the Code and the regulations promulgated thereunder which, if such use had been reasonably expected on the date of delivery of the Bonds to the initial purchasers thereof, would have caused the Bonds as "arbitrage bonds" within the meaning of such term as used in Section 148 of the Code.

The City represents that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is an issuer whose arbitrage certifications may not be relied upon. The City will comply with the requirements of Section 148 of the Code and the applicable regulations thereunder throughout the term of the Bonds.

(b) *Private Person Use Limitation for Bonds*. The City covenants that for as long as the Bonds are outstanding, it will not permit:

(1) More than 10% of the Net Proceeds of the Bonds to be used for any Private Person Use; and

(2) More than 10% of the principal or interest payments on the Bonds in a Bond Year to be directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use.

The City further covenants that, if:

(3) More than five percent of the Net Proceeds of the Bonds are to be used for any Private Person Use; and

(4) More than five percent of the principal or interest payments on the Bonds in a Bond Year are (under the terms of this ordinance or any underlying arrangement) directly or indirectly:

(A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or

(B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use,

then, (i) any Private Person Use of the projects described in subsection (3) hereof or Private Person Use payments described in subsection (4) hereof that is in excess of the five percent limitations described in such subsections (3) or (4) will be for a Private Person Use that is related to the state or local governmental use of the Project, and (ii) any Private Person Use will not exceed the amount of Net Proceeds of the Bonds used for the state or local governmental use portion of the project to which the Private Person Use of such portion of the Project relates. The City further covenants that it will comply with any limitations on the use of the projects by other

than state and local governmental users that are necessary, in the opinion of its bond counsel, to preserve the tax exemption of the interest on the Bonds. The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bonds.

(c) *Designation under Section 265(b) of the Code.* The City hereby designates the Bonds as “qualified tax exempt obligations” for investment by financial institutions under Section 265(b) of the Code. The City does not anticipate that it will issue more than \$10,000,000 in qualified tax-exempt obligations during 2011 (excluding obligations permitted by the Code to be excluded for purposes of the City’s qualification as a qualified small issuer).

(d) *Modification of Tax Covenants.* The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bonds. To that end, the provisions of this section may be modified or eliminated without any requirement for formal amendment thereof upon receipt of an opinion of the City’s bond counsel that such modification or elimination will not adversely affect the tax exemption of interest on any Bonds.

Section 11. Issuance of Future Parity Bonds.

(a) *Conditions upon the Issuance of Future Parity Bonds.* As long as any of the Bonds remain outstanding, the City hereby further covenants and agrees that it will not issue any Future Parity Bonds except that the City hereby reserves the right to issue additional water and sewer revenue bonds, which shall constitute a charge and lien upon the Revenue of the System equal to the lien thereon of the Bonds. Except as provided in subsection (b) below, the City shall not issue any series of Future Parity Bonds or incur any additional indebtedness with a parity lien or charge on Net Revenue (*i.e.*, on a parity of lien with Parity Bonds at the time outstanding) unless:

(1) the City shall not have been in default of its Rate Covenant for the immediately preceding fiscal year, and

(2) The ordinance authorizing the issuance of such Future Parity Bonds shall include the covenants provided in Section 8(c) hereof and provide that the Future Parity Bond reserve requirement shall be funded no later than the date of delivery of the Future Parity Bonds.

(3) there shall have been filed a certificate (prepared as described in subsection (c) or (d) below) demonstrating fulfillment of the Parity Requirement, commencing with the first full fiscal year following the date on which any portion of interest on the series of Future Parity Bonds then being issued no longer will be paid from the proceeds of such series of Future Parity Bonds.

(b) *No Certificate Required.* The certificate described in the foregoing subsection (a)(2) shall not be required as a condition to the issuance of Future Parity Bonds:

(1) if the Future Parity Bonds being issued are for the purpose of refunding outstanding Parity Bonds; or

(2) if the Future Parity Bonds are being issued to pay costs of construction of facilities of the System for which Future Parity Bonds have been issued previously and the principal amount of such Future Parity Bonds being issued for completion purposes does not exceed an amount equal to an aggregate of 15% of the principal amount of Future Parity Bonds theretofore issued for such facilities and reasonably allocable to the facilities to be completed as shown in a written certificate of the City Representative, and there is delivered a Consultant's certificate stating that the nature and purpose of such facilities has not materially changed.

(c) *Certificate of the City Without A Consultant.* If required pursuant to the foregoing subsection (a)(2), a certificate may be delivered by the City (executed by the City

Representative) without a Consultant if Net Revenue for the Base Period (confirmed by an independent auditor) conclusively demonstrate that the Parity Requirement will be fulfilled commencing with the first full fiscal year following the date on which any portion of interest on the series of Future Parity Bonds then being issued will not be paid from the proceeds of such series of Future Parity Bonds.

(d) *Certificate of a Consultant.* Unless compliance with the requirements of subsection (a)(2) have been otherwise satisfied (as provided in (b) or (c) above), compliance with the Parity Requirement shall be demonstrated conclusively by a certificate of a Consultant.

In making the computations of Net Revenue for the purpose of certifying compliance with the Parity Requirement, the Consultant shall use as a basis the Net Revenue (which may be based upon unaudited financial statements of the City if the audit has not yet been completed) for the Base Period. Such Net Revenue shall be determined by adding the following:

(1) The historical net revenue of the City for the Base Period being issued as determined by a Consultant.

(2) The net revenue derived from those customers of the City that have become customers during such 12-month period or thereafter and prior to the date of such certificate, adjusted to reflect a full year's net revenue from each such customer to the extent such net revenue was not included in (1) above.

(3) The estimated annual net revenue to be derived from any person, firm, association, private or municipal corporation under any executed contract for service, which net revenue was not included in any of the sources of net revenue described in this subsection (d).

(4) The estimated annual net revenue to be derived from the operation of any additions or improvements to or extensions of the City under construction but not completed at

the time of such certificate and not being paid for out of the proceeds of sale of such Future Parity Bonds being issued, and which net revenue is not otherwise included in any of the sources of net revenue described in this subsection (d).

(5) The estimated annual net revenue to be derived from the operation of any additions and improvements to or extensions of the City being paid for out of the proceeds of sale of such Bonds being issued.

In the event the City will not derive any revenue as a result of the construction of the additions, improvements or extensions being made or to be made to the System within the provisions of subparagraphs (4) and (5) immediately above, the estimated normal Costs of Maintenance and Operation (excluding any transfer of money to other funds of the City and license fees, taxes and payments in lieu of taxes payable to the City) of such additions, improvements and extensions shall be deducted from estimated annual net revenue.

The words "historical net revenue" or "net revenue" as used in this subsection (d) shall mean the Revenue or any part or parts thereof less the normal expenses of maintenance and operation of the System or any part or parts thereof, but before depreciation.

Such "historical net revenue" or "net revenue" shall be adjusted to reflect the rates and charges effective on the date of such certificate if there has been any change in such rates and charges during or after such 12-consecutive-month period.

(e) *Subordinate Lien Obligations.* Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations which 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 to pay and secure the payment of any outstanding Parity Bonds.

(f) *Refunding Obligations.* Nothing herein contained shall prevent the City from issuing revenue bonds to refund maturing Parity Bonds for the payment of which moneys are not otherwise available.

Section 12. Form of Bonds. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA

No. _____

\$ _____

STATE OF WASHINGTON
CITY OF MOSES LAKE

WATER AND SEWER REVENUE BOND, 2011

INTEREST RATE:

MATURITY DATE:

CUSIP NO.:

REGISTERED OWNER: CEDE & Co.

PRINCIPAL AMOUNT:

The City of Moses Lake, Washington, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington (herein called the "City") hereby acknowledges itself to owe and for value received promises to pay, but only from the sources and as hereinafter provided, to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, the Principal Amount indicated above and to pay interest thereon from August 23, 2011, or the most recent date to which interest has been paid or duly provided for, at the Interest Rate set forth above, payable on March 1, 2012, and semiannually thereafter on the first days of each September and March until such principal sum is paid or payment has been duly provided for.

Both principal of and interest on this bond are payable in lawful money of the United States of America. Interest and principal shall be paid as provided in the Blanket Issuer Letter of Representations (the "Letter of Representations") from the City to The Depository Trust Company ("DTC"). The fiscal agency of the State of Washington has been appointed by the City as the authenticating agent, paying agent and registrar for the bonds of this issue (the "Registrar"). Capitalized terms used in this bond that are not specifically defined have the meanings given such terms in Ordinance No. 2626 of the City (the "Bond Ordinance"). Reference is made to the Bond Ordinance and any and all modifications and amendments thereto for a description of the nature and extent of the security for the bonds of this issue, the funds or revenues pledged, and the terms and conditions upon which such bonds are issued.

This bond is one of an authorized issue of bonds of the City of like date and tenor except as to number, amount, rate of interest and date of maturity in the aggregate principal amount of \$4,905,000. This issue of bonds is authorized by the Bond Ordinance for the purposes of providing money to pay part of the cost of construction and acquisition of certain improvements to the System, all in conformity with the laws of the State of Washington and ordinances of the City.

This bond and the bonds of this issue are payable solely from the special funds of the City defined as the "Bond Fund" in the Bond Ordinance. The City has irrevocably obligated and bound itself to pay into the Bond Fund out of the Revenue of the System or from such other moneys as may be provided therefor certain amounts necessary to pay and secure the payment of the principal and interest on such bonds. The bonds of this issue are not general obligations of the City.

The City has designated the bonds of this issue as qualified tax-exempt obligations for purposes of Section 265(b) of the Internal Revenue Code of 1986.

The bonds of this issue are issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Washington and duly adopted ordinances of the City. The City hereby covenants and agrees with the owner of this bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed, and reference is hereby made to the Bond Ordinance for a complete statement of such covenants.

The City does hereby pledge and bind itself to set aside from the Revenue Fund out of the revenue of the System and to pay into the Bond Fund and the Reserve Fund-2011 the various amounts required by the Bond Ordinance to be paid into and maintained in such Fund and account, all within the times provided by the Bond Ordinance. To the extent more particularly provided by the Bond Ordinance, the amounts so pledged to be paid from the Revenue Fund out of the revenue of the System into the Bond Fund and the account therein shall be a lien and charge thereon equal in rank to the lien and charge upon said revenue of the 2004 Bonds and the amounts required to pay and secure the payment of any revenue bonds of the City hereafter issued on a parity with 2004 Bonds and the bonds of this issue and superior to all other liens and charges of any kind or nature except the Costs of Maintenance and Operation of the System.

The pledge of Revenue 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 provision for the payment thereof on the terms and conditions set forth in the Bond Ordinance.

The bonds of this issue are not subject to redemption prior to their stated maturities.

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

It is hereby certified that all acts, conditions, and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done, and performed precedent to and in the issuance of this bond have happened, been done, and performed.

IN WITNESS WHEREOF, the City of Moses Lake, Washington has caused this bond to be signed with the facsimile or manual signature of the Mayor, to be attested by the facsimile or manual signature of the City's Finance Director, and the corporate seal of the City to be impressed, imprinted or otherwise reproduced hereon, all as of this 23rd day of August, 2011.

CITY OF MOSES LAKE, WASHINGTON

By _____
/s/ facsimile or manual
Mayor

(SEAL)

ATTEST:

/s/ facsimile or manual
Finance Director

The Registrar's certificate authentication on the Bonds shall be in substantially the following form:

CERTIFICATE OF AUTHENTICATION

Date of Authentication: August 23, 2011

This bond is one of the bonds described in the within-mentioned Bond Ordinance and is one of the Water and Sewer Revenue Bonds, 2011 of the City of Moses Lake, Washington, dated August 23, 2011.

WASHINGTON STATE FISCAL
AGENCY, Registrar

By _____
Authorized Signer

Section 13. Execution of Bonds. The Bonds shall be executed on behalf of the City with the manual or facsimile signature of the Mayor, shall be attested by the manual or facsimile signature of the Finance Director, and the seal of the City shall be impressed, imprinted or otherwise reproduced thereon.

Only such Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the 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 Bonds so authenticated have been duly executed, authenticated, and delivered hereunder and are entitled to the benefits of this ordinance.

In case either of the officers who shall have executed the Bonds shall cease to be an officer or officers of the City before the Bonds so signed shall have been authenticated or delivered by the Registrar, or issued by the City, such Bonds shall be valid nevertheless and may be issued by the City with the same effect as though the persons who had executed such Bonds had not ceased to be such officers.

Section 14. Defeasance. In the event that money and/or Governmental Obligations maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any bonds payable out of the Bond Fund in accordance with their terms are irrevocably set aside in a special account to effect such redemption and retirement, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on such Bonds and the owner of such Bonds shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive the funds so set aside and pledged, and such Bonds shall be deemed not to be outstanding hereunder.

The Registrar shall provide notice of defeasance of Bonds to Registered Owners and to each party entitled to receive notice in accordance with Section 18 of this ordinance.

Section 15. Lost or Destroyed Bonds. In case any Bonds shall be lost, stolen or destroyed, the Registrar may authenticate and deliver a new Bond or Bonds of like amount, date and tenor to the owner thereof upon the owner's paying the expenses and charges of the

Registrar and the City in connection therewith and upon his filing with the Registrar and the City evidence satisfactory to both that such Bond or Bonds were actually lost, stolen or destroyed and of his ownership thereof, and upon furnishing the City and the Registrar with indemnity satisfactory to both.

Section 16. Sale of Bonds. The City hereby accepts the written offer of the Underwriter to purchase the Bonds at the price set forth in its purchase offer presented to this Council and under the terms, conditions and covenants of the Bonds as set forth herein. The City Representative is authorized and directed to execute the purchase offer presented by the Underwriter.

The City Administrator and the Finance Director are hereby authorized to review and approve on behalf of the City the preliminary and final Official Statements relative to the Bonds with such additions and changes as may be deemed necessary and advisable to them. The Preliminary Official Statement for the Bonds, dated August 3, 2011, is hereby deemed final for purposes of Securities and Exchange Commission Rule 15c2-12.

The Finance Director and other City officials, agents and representatives are hereby authorized and directed to do everything necessary for the prompt issuance, execution and delivery of the Bonds to the Underwriter, and for the proper use and application of the proceeds of sale of the Bonds.

Section 17. Disposition of Bond Proceeds. The Finance Director has heretofore established the Operations Complex Construction Fund #472 within the Water/Sewer Fund of the City (the "Project Fund"). The net proceeds of sale of the Bonds shall be deposited in the Project Fund and shall be expended solely to pay the cost of issuing and selling the Bonds and, together with other available moneys of the City, shall be used to undertake the Project. Money

in the Project Fund shall be invested by the Finance Director, pending disbursement, in any legal investment for City funds.

Section 18. Undertaking to Provide Ongoing Disclosure.

(a) *Contract/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) *Financial Statements/Operating Data.* The City agrees to provide or cause to be provided to the Municipal Securities Rulemaking Board ("MSRB"), the following annual financial information and operating data for the prior fiscal year (commencing in 2012 for the fiscal year ended December 31, 2011):

1. Annual financial statements, which statements may or may not be audited, 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;
2. The principal amount of Parity Bonds;
3. Debt service coverage for Parity Bonds;
4. Rates for the System; and
5. Number of customers of the System.

Items 2-5 shall be required only to the extent that such information is not included in the annual financial statements.

The information and data described above shall be provided on or before nine months after the end of the City's fiscal year. The City's current fiscal year ends December 31. The City may adjust such fiscal year by providing written notice of the change of fiscal year to the MSRB. In lieu of providing such annual financial information and operating data, the City may

cross-refer to other documents available to the public on the MSRB's internet website or filed with the SEC.

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 the MSRB.

(c) *Material Events.* The City agrees to provide or cause to be provided, in a timely manner, to the MSRB notice of the occurrence of any of the following events with respect to the Bonds not in excess of ten business days after the occurrence of the event:

- Principal and interest payment delinquencies;
- Non-payment related defaults, if material;
- 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, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- Modifications to the rights of Bondholders, if material;
- Bond calls, if material, and tender offers;
- Defeasances;

- Release, substitution, or sale of property securing repayment of the Bonds, if material;
- Rating changes;
- Bankruptcy, insolvency, receivership or similar event of the City;
- The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- Appointment of a successor or additional trustee or the change of name of a trustee, if material.

Solely for purposes of information, and not intending to modify this undertaking, the City advises that no property secures payment of the Bonds. The City shall promptly determine whether the events described above are material.

(d) *Notification Upon Failure to Provide Financial Data.* The City agrees to provide or cause to be provided, in a timely manner to the MSRB 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.

(e) *Emma; Format for Filings with the MSRB.* Until otherwise designated by the MSRB or the SEC, any information or notices submitted to the MSRB in compliance with the Rule are to be submitted through the MSRB's Electronic Municipal Market Access system ("EMMA"), currently located at www.emma.msrb.org. All notices, financial information and operating data required by this undertaking to be provided to the MSRB must be in an electronic

format as prescribed by the MSRB. All documents provided to the MSRB pursuant to this undertaking must be accompanied by identifying information as prescribed by the MSRB.

(f) *Termination/Modification.* The City's obligations to provide annual financial information and 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 the MSRB of such opinion and the cancellation of this section.

The City may amend this section with an opinion of nationally recognized bond counsel in accordance with the Rule. In the event of any amendment of this section, the City shall describe such amendment in the next annual report, and shall include, a narrative explanation of the reason for the amendment and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a material event under Subsection (c), and (ii) the annual report for the year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

(g) *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.

(h) *No Default.* The City is not and has not been in default in the performance of its obligations of any prior undertaking for ongoing disclosure with respect to its obligations.

Section 19. Effective Date. The City Council declares that an emergency exists and this ordinance shall take effect immediately as provided by law upon one reading if 2/3 of the entire City Council present vote in favor of passage.

Adopted by the City Council and signed by its Mayor on August 9, 2011.

CITY OF MOSES LAKE, WASHINGTON



Mayor

ATTEST:



Finance Director

APPROVED AS TO FORM:



Cynthia M. Weed, Bond Counsel
K&L Gates LLP

CERTIFICATE OF FINANCE DIRECTOR

I DO HEREBY CERTIFY that I am the duly chosen, qualified and acting Finance Director of the City of Moses Lake, Washington (the "City"), and keeper of the records of the City Council (the "Council"); and

I HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. 2626 of the City (the "Ordinance"), as finally passed at a regular meeting of the Council held on the 9th day of August, 2011, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the 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 this 9th of August, 2011.



Finance Director

Appendix D

AUDIT REPORT