CITY OF CLARKSTON
CITY COUNCIL AGENDA
829 5th Street
MONDAY, SEPTEMBER 23, 2013

1. CALL TO ORDER: 7:00 P.M.
2. PLEDGE OF ALLEGIANCE:
3. AGENDA CHANGES:
4. APPROVAL OF MINUTES:
   September 9, 2013 Regular Meeting

5. COMMUNICATIONS:
   - A. From the Public (Please limit comments to 3 minutes)
   - B. From the Mayor
   - C. From Staff or Employees

6. COMMITTEE REPORTS:
   - A. Finance – Audit Report on Current Bills
   - B. Public Safety – no meeting
   - C. Public Works – September 18
   - D. Administrative/Intergovernmental – September 23
   - E. Community Development – no meeting

7. UNFINISHED BUSINESS:

   A. Ordinance No. 1514, 2013 Sewer Revenue Bonds – 2nd Reading for Action

8. NEW BUSINESS:

   A. Presentation of Award, Pat McGuire, Dept of Ecology

   B. Change Order Approval, 12th Street Project

   C. Letter of Engagement, Foster Pepper, Bond Counsel

9. COUNCIL COMMENTS
10. MEDIA QUESTIONS
11. ADJOURN:

Time limits for addressing the council have been established by council direction. Presentations are limited to 15 minutes and public comments are limited to 3 minutes per person, per topic.

Individuals with disabilities may request reasonable accommodations by calling (509) 769-0131 at least three days prior to meeting.

CLARKSTON CITY COUNCIL MINUTES
September 9, 2013

CALL TO ORDER: Mayor Warren, 7:00 P.M.

COUNCIL:

☒	Beadles	☒	Nash
☒	Provost	☒	Baumberger
☒	Smith	☒	Blackmon
☒	Manchester		

STAFF:

☒	Chief Hastings	☒	Chief Cooper	☒	PWD Martin
☒	Clerk Storey	☒	City Attorney Grow		

AGENDA CHANGES: Add stormwater committee report by Councilmember Nash.

APPROVAL OF MINUTES: MOTION BYBEADLES/NASH to approve the minutes of the August 26, 2013, Regular Meeting. Motion carried.

COMMUNICATIONS:

A. **From the Public:** Brian Shinn, Asotin County Committee, said he is pleased to see the letter regarding dispatch coming from the City of Clarkston, Asotin and Asotin County Fire District because it represents progress. The Commission does have concerns about the suggestion that some charges should be negotiated separately. He said he doesn't believe the county would sign an agreement that doesn't include all costs. Councilmember Provost asked if Shinn is saying that if the county doesn't get everything it wants, they wouldn't sign a new contract. Shinn said that is not his intent. He agreed that some charges may not appropriate for all entities. Councilmember Beadles said he envisioned two separate contracts. Shinn said he doesn't think two contracts are likely, but the county is anxious to pursue one contract that works for everyone. He said they would consider making any changes retroactive to the beginning of July.

B. **From the Mayor:** Mayor Warren read an invitation for a fund raiser for the Asotin County Library. Funds will go toward construction of a mezzanine at the library.

C. **From Staff:** Chief Cooper announced there will be a ceremony on September 11 in honor of those who lost their lives in the terrorist attacks of September 11 at the flag pole at City Hall. It is scheduled for 11:00 a.m. There will also be an emergency vehicle procession at 5:30 that afternoon.

Chief Cooper said a letter is being sent to the County requesting to negotiate an amendment to the dispatch contract.

PWD Martin reported that the 12th Street project is complete with the exception of a couple of punch list items.

Martin said the Stormwater Bubble-up project is scheduled to begin in a few days. He asked council for authorization to add a catch basin to address another drainage problem that was not included in the original plans. Cost will be approximately $7,000. MOTION BY NASH/BAUMBERGER to authorize the change order for the additional drywell. Martin said the change would be paid from the capital reserves. Motion carried.

Martin asked the council to authorize the final acceptance of the 12th Street Project. MOTION BY BAUMBERGER/SMITH to accept the 12th Street Project as substantially complete. Motion carried.

COMMITTEE REPORTS:

Finance: Councilmember Provost reported the bills were reviewed and approved for payment. MOTION BY PROVOST/BLACKMON to approve the bills for September 9, 2013, total expenditures of

$736,462.85.Motion carried.

Public Safety: Councilmember Beadles reported that committee met on September 3 Chief Cooper discussed retention of volunteers and competency review Purchase of a new fire engine was discussed. It appears the City may have opportunity to order a new truck at demo prices.
Chief Hastings discussed some items in the dispatch amendment the city is seeking. The new patrol car is due for delivery next week and equipment has been arriving so it should be in service soon.

Public Works: No meeting.

Admin Committee: Councilmember Manchester said committee met on September 9. They reviewed the HRA VEBA revision that is on the agenda and Ordinance No. 1514 which authorizes the new sewer revenue bonds. Manchester said committee also discussed pay for non-represented employees.

Community Development: No meeting.

Stormwater: Councilmember Nash said the Stormwater Management Team met this afternoon. The team is working to bring some new educational tools to the area schools.

UNFINISHED BUSINESS:

NEW BUSINESS

A. Revise HRA VEBA Agreement

MOTION BY MANCHESTER/NASH to authorize the mayor to sign the revised HRA VEBA agreement. Motion carried.

B. **Ordinance No. 1514, Authorizing 2013 Sewer Revenue Bonds, 1st Reading**

City Attorney Grow said he has reviewed the ordinance, but does not have much expertise in the field. He said the ordinance was written by the City's bond counsel and he would defer to his expertise. The ordinance was read by title.

COUNCIL COMMENTS:

Councilmember Blackmon announced that his son is attaining his Eagle Scout status and there will be an award ceremony on Friday, September 13. He invited councilmembers to attend.

MEDIA QUESTIONS:

ADJOURNMENT:

Meeting adjourned at 7:20 p.m.

Vickie Storey, City Clerk

Kathleen A. Warren, Mayor

Total Fund Expenditures, 9/09/13	CK #54581-54655	$468,286.84
Total Payroll, 8/31/13	CK #54523-54580	$268,176.01

ORDINANCE NO. 1514

AN ORDINANCE of the City of Clarkston, Washington, relating to the City's system of sewerage; providing for the issuance, fixing or setting parameters with respect to certain terms and covenants, and fixing the form of not to exceed $3,600,000 principal amount of Sewer Revenue Bonds, 2013, of the City to provide money with which to pay the cost of certain improvements to the City's wastewater treatment plant; establishing and adopting certain funds and accounts relating to such bonds; making certain covenants in favor of bondholders; appointing the City's designated representative pursuant to RCW 39.46.040(2) to approve the final terms of the sale, issuance and delivery of the bonds; and providing for other matters properly relating thereto.

PASSED: September 23, 2013

Prepared by:

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(509)777-1600

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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.

ORDINANCE NO. 1514

AN ORDINANCE of the City of Clarkston, Washington, relating to the City's system of sewerage; providing for the issuance, fixing or setting parameters with respect to certain terms and covenants, and fixing the form of not to exceed $3,600,000 principal amount of Sewer Revenue Bonds, 2013, of the City to provide money with which to pay the cost of certain improvements to the City's wastewater treatment plant; establishing and adopting certain funds and accounts relating to such bonds; making certain covenants in favor of bondholders; appointing the City's designated representative pursuant to RCW 39.46.040(2) to approve the final terms of the sale, issuance and delivery of the bonds; and providing for other matters properly relating thereto.

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

ARTICLE I. GENERAL PROVISIONS

Section 1.01 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) ***"1997 State Loan"*** means the City's revenue obligation for borrowed money pursuant to the Washington State Water Pollution Control Revolving Fund Loan Agreement (Loan No. L9700039), with an effective date of February 19, 1997, between the State of Washington Department of Ecology and the City, as the same has been amended.

(b) ***"2011 Bonds"*** means the City's Sewer Revenue Bonds, 2011, issued in the original principal amount of $2,250,000 pursuant to the 2011 Ordinance.

(c) ***"2011 Ordinance"*** means Ordinance No. 1495 passed and approved by the Mayor and Council on November 28, 2011, authorizing the sale, issuance and delivery of the 2011 Bonds.

(d) ***"2012 State Loan"*** means the City's revenue obligations for borrowed money pursuant to the Washington State Water Pollution Control Revolving Fund Loan Agreement (Loan No. L1200009) between the State of Washington Department of Ecology and the City executed on May 1, 2012.

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

(f) ***"Additional Bonds"*** means 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 2011 Bonds and the Bonds.

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

(1) any increase or decrease in 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 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 Bonds to be issued; and/or

(3) the additional 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.

(h) ***"Aggregate Purchase Price"*** means the price to be paid by the Purchaser for the Bonds, calculated as the stated principal amount of the Bonds, plus original issue premium, if any, net of original issue discount, if any, and less underwriter's discount.

(i) ***"Annual Debt Service"*** means the amount required in a given calendar year for the payment of the principal of and interest on the Parity Bonds, except interest to be paid from the proceeds of the Parity Bonds. With respect to any Term Bonds, the words "principal of and interest on the Parity 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 Bonds which bear a variable rate of interest, the assumed interest rate for such variable rate Additional 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.

(j) ***"Assessment Bonds"*** means the principal amount of Parity Bonds Outstanding at any time which is equal to the aggregate principal amount of nondelinquent Assessments remaining to be paid into the Debt Service Fund at such time plus the principal amount of Assessments previously paid and on deposit in the Debt Service Fund.

(k) ***"Assessment Income"*** means the principal of and interest on Assessments levied in any utility local improvement district and pledged to be paid into the Debt Service Fund and, if authorized by the documents imposing the Assessments, the 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.

(l) ***"Assessments"*** means 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 Debt Service Fund or the Reserve Fund, and includes any installments of assessments and any interest or penalties which may be due thereon.

(m) ***"Authorized Denomination"*** means $5,000 or any integral multiple thereof within a maturity.

(n) ***"Average Annual Debt Service"*** means the average amount of the Annual Debt Service which will become due on the Parity Bonds for the period from the date of such calculation until the final maturity date of the Parity Bonds then Outstanding.

(o) ***"Beneficial Owner"*** means the owner of any beneficial interests in the Bonds.

(p) ***"Bond Counsel"*** means the firm of Foster Pepper PLLC, its successor or any other lawyers or firm of lawyers with a nationally recognized standing as bond counsel in the field of municipal finance selected by the City.

(q) ***"Bond Purchase Agreement"*** means an offer to purchase the Bonds, presented by the Purchaser and accepted by the Designated Representative, setting forth certain terms and conditions of the sale, issuance and delivery of the Bonds.

(r) ***"Bond Register"*** means the registration records of the City, maintained by the Bond Registrar, on which shall appear the names and addresses of the Registered Owners.

(s) ***"Bond Registrar"*** means the fiscal agent of the State (as designated by the State Finance Committee from time to time pursuant to chapter 43.80 RCW), currently The Bank of New York Mellon in New York, New York, and any successors or assigns, who has been appointed by the Treasurer as bond registrar, authenticating agent, transfer agent and exchange agent with respect to the Bonds in the manner provided in this Ordinance.

(t) ***"Bonds"*** means the Sewer Revenue Bonds, 2013, authorized to be issued by this Ordinance.

(u) ***"City"*** means the City of Clarkston, Washington.

(v) ***"Clerk"*** means 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.

(w) ***"Code"*** means the Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

(x) ***"Costs of Maintenance and Operation"*** means 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.

(y) ***"Council"*** means the City Council of the City.

(z) ***"Coverage Requirement"*** means, with respect to any fiscal year, the Net Revenue and Assessment Income in that fiscal year is equal to at least: (a) 1.00 times the Annual Debt Service of that portion of all Parity Bonds then Outstanding that are Assessment Bonds; plus (b) 1.25 times the Annual Debt Service of that portion of all Parity Bonds that are not Assessment Bonds. Solely for purposes of computing the Coverage Requirement for any period: (i) "Revenue of the System" shall not include amounts otherwise treated as Revenue of the System that are treated as having been deposited into the Rate Stabilization Fund during such period; (ii) "Costs of Maintenance and Operation" shall not include costs that are treated as having been paid from the Rate Stabilization Fund during such period; and (iii) the City may account for the deposits referenced in clause (i) and the expenditures referenced in clause (ii) at any time up to and including the date that is 180 days after the end of the fiscal year for which the deposit or expenditure is to be included in the City's annual financial statements.

(aa) ***"Debt Service Fund"*** means the City's "Sewer System Debt Service Fund" created by Section 3.03 of the 2011 Ordinance.

(bb) ***"Default Trustee"*** means the trustee appointed by the Registered Owners pursuant to Section 3.07(c) of this Ordinance if an Event of Default occurs.

(cc) ***"Defeased Bonds"*** shall have the meaning specified in Section 2.07.

(dd) ***"Designated Representative"*** means the officer or employee of the City appointed in Section 2.10 hereof 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.

(ee) ***"DTC"*** means The Depository Trust Company, New York, New York.

(ff) ***"Event of Default"*** shall have the meanings set forth in Section 3.07(a) of this Ordinance.

(gg) ***"Government Obligations"*** means 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.

(hh) ***"Issue Date"*** means the date of initial delivery of the Bonds to the Purchaser.

(ii) ***"Letter of Representations"*** means the Blanket Issuer Letter of Representations dated June 8, 2010, between the City and DTC, as it may be amended from time to time.

(jj) ***"Maximum Annual Debt Service"*** means an amount equal to the greatest Annual Debt Service with respect to the Parity Bonds for the then current or any future calendar year.

(kk) ***"Mayor"*** means 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 her successors in functions, if any.

(ll) ***"MSRB"*** means the Municipal Securities Rulemaking Board.

(mm) ***"Net Revenue"*** means the Revenue of the System less the Costs of Maintenance and Operation.

(nn) ***"Official Statement"*** shall have the meaning specified in Section 2.13.

(oo) ***"Ordinance"*** means this ordinance passed and approved by the Mayor and Council on September 23, 2013.

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

(qq) ***"Owners"*** means, without distinction, the Registered Owner(s) and the Beneficial Owner(s).

(rr) ***"Parity Bonds"*** means the 2011 Bonds, the Bonds and any Additional Bonds that are hereafter issued.

(ss) ***"Preliminary Official Statement"*** shall have the meaning specified in Section 2.13.

(tt) ***"Project"*** means the upgrades and improvements to the City's existing wastewater treatment plant, as more particularly described in the maps, plans and specifications prepared by Keller Associates, Inc., consulting engineers to the City, and now on file in the office of the Clerk.

(uu) ***"Project Fund"*** means the City's "2013 Sewer Bond Project Fund" created by Section 2.12 of this Ordinance.

(vv) ***"Purchaser"*** means D.A. Davidson & Co., of Coeur d'Alene, Idaho.

(ww) ***"Rate Stabilization Fund"*** means the City's "Sewer System Rate Stabilization Fund" created by Section 3.05 of the 2011 Ordinance.

(xx) ***"RCW"*** means the Revised Code of Washington.

(yy) ***"Registered Owner"*** means the person in whose name a Bond is registered on the Bond Register. For so long as the City utilizes the book-entry system for the Bonds under the Letter of Representations, Registered Owner shall mean DTC or its nominee.

(zz) ***"Reserve Fund"*** means the City's "Sewer System Reserve Fund" created by Section 3.04 of the 2011 Ordinance.

(aaa) ***"Reserve Fund Requirement"*** means, for each issue of Parity Bonds, an amount equal to the lesser of (1) the Maximum Annual Debt Service with respect to such issue of Parity Bonds, (2) 125 percent of the Average Annual Debt Service with respect to such issue of Parity Bonds, or (3) 10 percent of the proceeds (as defined under the Code) of such issue of Parity Bonds.

(bbb) ***"Revenue Fund"*** means the City's existing sewer utility fund (currently, Fund No. 400).

(ccc) ***"Revenue of the System"*** means 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, the Debt Service Fund, and the Reserve Fund, or from any other investment thereof, except the income from investments irrevocably pledged to the payment of any other 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.

(ddd) ***"Rule 15c2-12"*** means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended.

(eee) ***"SEC"*** means the United States Securities and Exchange Commission.

(fff) ***"State"*** means the State of Washington.

(ggg) ***"System"*** means the City's 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 Parity Bonds will be derived, and the lands appertaining thereto.

(hhh) ***"Term Bonds"*** means any Parity Bonds that are identified as such in the documents authorizing the issuance thereof, the payment of which is provided for by a requirement for mandatory sinking fund deposits into the Debt Service Fund.

(iii) ***"Treasurer"*** means the appointive officer of the City who is responsible for fulfilling the various duties of a "city treasurer" specified in the Revised Code of Washington.

(jjj) ***"Undertaking"*** means the City's undertaking pursuant to Section 2.14.

Section 1.02 Findings. The Council finds and determines that:

(a) The City is a municipal corporation duly organized and existing as a code city under the laws of the State. The City has adopted the mayor-council plan of government. Pursuant to the provisions of chapters 35.67 and 35A.80 RCW, the City is authorized to acquire, construct, install and operate systems of sewerage. The City has not combined its system of sewerage with its water system or its garbage and refuse collection and disposal system pursuant to RCW 35.67.331. The City is authorized to conduct proceedings and to issue revenue bonds pursuant to chapters 35.41, 35.67, 35.92, 35A.40, and 39.46 RCW.

(b) It is advisable for the City to acquire, construct and install the Project. In determining the costs of the Project pursuant to RCW 35.41.090, the Council has estimated that the total costs of the Project will be $15,500,000. It is advisable for the City to provide funds for defraying a portion of the cost of the Project from the proceeds of the sale of the Bonds.

(c) The 2011 Bonds currently are outstanding. There is no deficiency in the Debt Service Fund or the Reserve Fund. At the time the Bonds are issued, the City will have satisfied the requirements of the 2011 Ordinance pertaining to the issuance of the Bonds as "Additional Bonds" on a parity of lien with the 2011 Bonds.

(d) Part IV, paragraph B.2, of the 1997 State Loan provides that the lien and charge upon Net Revenue securing the 1997 State Loan shall be junior and subordinate to the lien and charge upon Net Revenue securing "Senior Lien Obligations," which are defined to include bonds issued to other than a governmental entity after the date the 1997 State Loan was executed. Because the Purchaser is not a governmental entity, the Bonds are "Senior Lien Obligations" within the meaning of the 1997 State Loan, and the lien and charge upon Net Revenue securing the 1997 State Loan shall be junior and subordinate to any lien and charge upon Net Revenue securing the Bonds.

(e) Attachment 4 of the 2012 State Loan, in paragraph 4 under the heading "Loan Repayment", provides that 2012 State Loan constitutes a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon the Net Revenue of any "Senior Lien Obligations" (which are defined to include bonds issued on a parity with bonds outstanding as of the date the 2012 State Loan was executed). The 2012 State Loan was executed on May 1, 2012. The 2011 Bonds were issued on December 20, 2011, and have been outstanding at all times since such date. The Bonds are being issued on a parity of lien with the 2011 Bonds, meaning they are "Senior Lien Obligations" within the meaning of the 2012 State Loan, and the lien and charge

upon Net Revenue securing the 2012 State Loan shall be junior and subordinate to any lien and charge upon Net Revenue securing the Bonds.

(f) 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 Debt Service Fund of the amounts of Net Revenue that, together with Assessments, will be sufficient to pay the principal of and interest on the Bonds and the 2011 Bonds when due. In fixing the amounts to be paid into the Debt Service Fund out of the Revenue of the System, the Council has had due regard for the Costs of Maintenance and Operation and the payments required to be made for the Bonds and other obligations payable from Revenue of the System. The Council has not obligated the City to set aside into the 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.

(g) 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 terms for the bonds (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.

(h) Pursuant to Resolution No. 2011-09 adopted on October 10, 2011, the Council adopted Post-Issuance Compliance Policies and Procedures for Tax-Exempt Bonds. Such procedures remain in effect and have not been repealed, revoked or rescinded.

ARTICLE II. PROVISIONS PARTICULAR TO THE BONDS

Section 2.01 Authorization and Description of Bonds.

(a) The City shall sell, issue and deliver the Bonds, designated as the "City of Clarkston, Washington, Sewer Revenue Bonds, 2013" (unless otherwise designated pursuant to Section 2.10(g) hereof) for the purpose of providing the money required to: pay a portion of the costs of accomplishing the Project; fund the Reserve Fund Requirement for the Bonds; and pay the costs of issuing the Bonds. Subject to the parameters set forth in Section 2.10 hereof, the Bonds shall be dated the Issue Date; shall be in Authorized Denominations; shall be numbered separately in the manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification; and shall bear interest at fixed rate or rates *per annum* (computed on the basis of a 360-day year of twelve 30-day months), from the Issue Date or from the most recent interest payment date for which interest has been paid or duly provided for, whichever is later, which interest shall be payable semiannually (on each June 1 and December 1), commencing on a date selected by the Designated Representative occurring within 12 months of the Issue Date. The Bonds shall mature in the years and principal amounts, and may be subject to mandatory redemption (in the case of Term Bonds, if any), all as set forth in

the Bond Purchase Agreement accepted by the Designated Representative pursuant to Section 2.10 hereof.

(b) The Bonds shall be special obligations of the City payable solely out of the Debt Service Fund and the Reserve Fund, and shall be a valid claim of the Registered Owners only as against the Debt Service Fund, the Reserve Fund and the amount of Revenue of the System and Assessment Income pledged to those funds. The Bonds shall not be general obligations of the City. The City's full faith, credit and resources are not pledged for the payment of the Bonds.

Section 2.02 Form and Execution of Bonds.

(a) The Bonds 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 Bonds will be printed at City expense and shall be delivered to the Purchaser in accordance with the Bond Purchase Agreement, together with the approving legal opinion of Bond Counsel regarding the Bonds.

(b) No Bond shall be valid or obligatory for any purpose, or entitled to the benefits of this Ordinance, unless the Bond bears a certificate of authentication manually signed by the Bond Registrar stating: "This Bond is one of the fully registered City of Clarkston, Washington, Sewer Revenue Bonds, 2013, 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 manual or facsimile signature appears on the Bonds ceases to be an officer of the City authorized to sign bonds before the Bonds bearing his or her manual or facsimile signature are authenticated or delivered by the Bond Registrar or issued by the City, those Bonds nevertheless may be authenticated, issued and delivered 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. Any 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 Issue Date.

Section 2.03 Redemption Provisions; Open Market Purchase of Bonds.

(a) *Optional Redemption.* Subject to the parameters established in Section 2.10, the Bond Purchase Agreement shall specify the date or dates on which all or a portion of the Bonds may be redeemed at the City's option, and shall establish the redemption price or prices for any such Bonds that are to be redeemed pursuant to such optional redemption by the City.

(b) *Mandatory Redemption.* Term Bonds, if any, that are not redeemed pursuant to an optional redemption or purchased in the open market under the provisions set

forth below, shall be called for redemption at par plus accrued interest on December 1 in years and amounts as set forth in the Bond Purchase Agreement. If the City redeems under the optional redemption provisions, purchases in the open market or defeases Term Bonds, the par amount of the Term Bonds so redeemed, purchased or defeased (irrespective of their actual redemption or purchase prices) shall be credited against one or more scheduled mandatory redemption amounts for those Term Bonds. The City shall determine the manner in which the credit is to be allocated and shall notify the Bond Registrar in writing of its allocation prior to the earliest mandatory redemption date for that maturity of Term Bonds for which notice of redemption has not already been given.

(c) *Partial Redemptions*. Portions of the principal amount of any Bond, in any Authorized Denomination, may be redeemed (but only to the extent those Bonds are otherwise subject to redemption pursuant to paragraphs (a) or (b) of this section). If less than all of the principal amount of any Bond is redeemed, upon surrender of that Bond to the Bond Registrar, there shall be issued to the Registered Owner, without charge, a new Bond (or Bonds, at the option of the Registered Owner) of the same maturity and interest rate in any Authorized Denomination in the aggregate principal amount remaining unredeemed.

(d) *Selection of Bonds for Redemption.* If fewer than all of the outstanding Bonds within a maturity are to be redeemed prior to maturity, selection of Bonds for redemption shall be randomly within a maturity in such manner as the Bond Registrar shall determine. Notwithstanding the foregoing, for as long as the Bonds are registered in the name of DTC or its nominee, selection of Bonds for redemption shall be in accordance with the Letter of Representations.

(e) *Notice of Redemption.* While the Bonds are held by DTC in book-entry only form, any notice of redemption shall be given at the time, to the entity and in the manner required by DTC in accordance with the Letter of Representations, and the Bond Registrar shall not be required to give any other notice of redemption. If the Bonds cease to be in book-entry only form, unless waived by any Registered Owner of the Bonds to be redeemed, the City shall cause notice of any intended redemption of Bonds to be given by the Bond Registrar not less than 20 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Registered Owner of any Bond to be redeemed at the address appearing on the Bond Register at the time the Bond 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 Owner of any Bond.

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 Bonds by giving a notice of rescission to the affected Registered Owners 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 Bonds for which the notice of optional redemption has been rescinded shall remain outstanding.

In addition, the redemption notice shall be mailed or sent electronically within the same period to the MSRB, consistent with the Undertaking, to any nationally recognized rating agency which at the time maintains a rating on the Bonds at the request of the City, and to such

other persons and with such additional information as the City shall determine, but these additional mailings shall not be a condition precedent to the redemption of Bonds.

(f) *Effect of Redemption.* Interest on Bonds called for redemption shall cease to accrue on the date fixed for redemption, except in the case of a rescinded optional redemption as described above, or unless the Bond or Bonds called are not redeemed when presented pursuant to the call.

(g) *Open Market Purchase.* The City further reserves the right and option to purchase any or all of the Bonds in the open market at any time at any price acceptable to the City.

(h) *Cancellation of Bonds.* All Bonds purchased or redeemed under this section shall be canceled immediately upon such purchase or redemption.

Section 2.04 Failure to Redeem Bonds. If any Bond is not redeemed when properly presented at its maturity or date set for redemption, the City shall be obligated to pay interest on that Bond at the same rate provided in the Bond from and after its maturity or date set for redemption until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Debt Service Fund and the Bond has been called for payment by giving notice of that call to the Registered Owner.

Section 2.05 Bond Registrar; Registration and Transfer of Bonds.

(a) *Registration of Bonds.* The Bonds shall be issued only in registered form as to both principal and interest and shall be recorded on the Bond Register.

(b) *Bond Registrar.* The City hereby appoints the Bond Registrar as the registrar, paying agent, transfer agent and authenticating agent with respect to the Bonds. The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond Register shall contain the name and mailing address of the Registered Owner of each Bond and the principal amount and number of each of the Bonds held by each Registered Owner. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this Ordinance, to serve as the City's paying agent for the Bonds and to carry out all of the Bond Registrar's powers and duties under this Ordinance. The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on the Bonds. The Bond Registrar may become an Owner of Bonds with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Beneficial Owners.

(c) *Transfer and Exchange of Bonds.* Bonds surrendered to the Bond Registrar may be exchanged for Bonds in any Authorized Denomination of an equal aggregate principal amount and of the same interest rate and maturity. Bonds may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall be without cost to the Owner or transferee. The Bond Registrar shall not be

obligated to exchange or transfer any Bond during the 15 days preceding any principal payment or redemption date.

(d) *DTC and the Book-Entry System.* The Bonds initially shall be registered in the name of Cede & Co., as the nominee of DTC. The Bonds so registered shall be held in fully immobilized form by DTC as depository in accordance with the provisions of the Letter of Representations. Neither the City nor the Bond Registrar shall have any responsibility or obligation to DTC participants or the persons for whom they act as nominees with respect to the Bonds regarding accuracy of any records maintained by DTC or DTC participants of any amount in respect of principal of or interest on the Bonds, or any notice which is permitted or required to be given to Registered Owners hereunder (except such notice as is required to be given by the Bond Registrar to DTC).

For as long as any Bonds are held in fully immobilized form, DTC, its nominee or its successor depository shall be deemed to be the Registered Owner for all purposes hereunder and all references to registered owners, bondowners, bondholders or the like shall mean DTC or its nominee and, except for the purpose of the Undertaking herein to provide continuing disclosure, shall not mean the Beneficial Owners. Registered ownership of such Bonds, or any portions thereof, may not thereafter be transferred except: (i) to any successor of DTC or its nominee, if that successor shall be qualified under any applicable laws to provide the services proposed to be provided by it; (ii) to any substitute depository appointed by the City or such substitute depository's successor; or (iii) to any person if the Bonds are no longer held in immobilized form.

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 that it no longer wishes to continue the system of book entry transfers through DTC or its successor (or any substitute depository or its successor), the City may 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.

If (i) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained or (ii) the City determines that the Bonds are to be in certificated form, the ownership of Bonds may be transferred to any person as provided herein and the Bonds no longer shall be held in fully immobilized form.

(e) *System of Registration.* The City adopts as its system of registration for the Bonds the procedure described in this section.

Section 2.06 Payment of Bonds. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. For as long as the Bonds are registered in the name of DTC or its nominee, payment of principal of and interest on the Bonds shall be made in the manner set forth in the Letter of Representations. If the Bonds cease to be in book entry only form, interest on the Bonds shall be paid by checks or drafts of the Bond Registrar mailed on the interest payment date to the Registered Owners at the addresses appearing on the Bond Register on the 15th day of the month preceding the interest payment date or by electronic

transfer on the interest payment date. The City shall not be required to make electronic transfers except to a Registered Owner of Bonds pursuant to a request in writing (and at the sole expense of that Registered Owner) received at least 10 days before an interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the Registered Owners to the Bond Registrar.

Section 2.07 Refunding or Defeasance of Bonds. The City may issue refunding bonds 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 Bonds, or any portion thereof included in a refunding or defeasance plan, and to redeem and retire, refund or defease all such then-outstanding Bonds (hereinafter collectively called the "Defeased Bonds") and to pay the costs of the refunding or defeasance. If money and/or Government Obligations maturing at a time or times and bearing interest in amounts (together with money, if necessary) sufficient to redeem and retire, refund or defease the Defeased Bonds in accordance with their terms are set aside in a special trust fund or escrow account irrevocably pledged to that redemption, retirement or defeasance of Defeased Bonds (hereinafter called the "trust account"), then all right and interest of the Owners of the Defeased Bonds in the covenants of this Ordinance and in the funds and accounts obligated to the payment of the Defeased Bonds shall cease and become void. The Owners of Defeased Bonds shall have the right to receive payment of the principal of and interest on the Defeased Bonds from the trust account. The City shall include in the refunding or defeasance plan such provisions as the City deems necessary for the random selection of any Defeased Bonds that constitute less than all of a particular maturity of the Bonds, for notice of the defeasance to be given to the Owners of the Defeased Bonds and to such other persons as the City shall determine, and for any required replacement of Bond certificates for Defeased Bonds. The Defeased Bonds shall be deemed no longer outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the Defeased Bonds to any lawful purposes as it shall determine. If the Bonds are registered in the name of DTC or its nominee, notice of any defeasance of Bonds shall be given to DTC in the manner prescribed in the Letter of Representations for notices of redemption of Bonds.

Section 2.08 Pledge of Revenue and Lien Position. There are hereby pledged, for the equal and ratable benefit of the Registered Owners from time to time of the Bonds, as security for the payment of the principal of, premium, if any, and interest on the Bonds: (1) all Net Revenue; (2) all Assessment Income; and (3) all money and securities held in the Debt Service Fund and the 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 (i) such parity lien and charge that has been created in favor of the 2011 Bonds pursuant to the 2011 Ordinance and (ii) such parity liens and charges that hereafter may be created in favor of Additional Bonds pursuant to Section 3.06(i) of this Ordinance. The lien created by this Ordinance is hereby declared to be senior to the liens that secure the 1997 State Loan and the 2012 State Loan.

Section 2.09 Federal Income Tax Matters.

(a) *Preservation of Tax Exemption for Interest on Bonds*. The City covenants that it will take all actions necessary to prevent interest on the Bonds from being included in

gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bonds or other funds of the City treated as proceeds of the Bonds at any time during the term of the Bonds which will cause interest on the Bonds to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirement of Section 148 of the Code, is applicable to the Bonds, take all actions necessary to comply (or to be treated as having complied) with that requirement in connection with the Bonds, including the calculation and payment of any penalties that the City has elected to pay as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section 148 of the Code to prevent interest on the Bonds from being included in gross income for federal income tax purposes.

(b) *Small Governmental Issuer Arbitrage Rebate Exception and Section 265(b)(3) Designation.* The City finds and declares that (i) it is a duly organized and existing governmental unit of the State and has general taxing power; (ii) the Bonds are not "private activity bonds" within the meaning of Section 141 of the Code; (iii) at least 95% of the net proceeds of the Bonds will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City); (iv) the 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, which derives its authority to issue tax-exempt obligations from the City, or which issues tax-exempt obligations on behalf of the City) reasonably expects to issue during 2013 (*i.e.*, the calendar year in which the Bonds will be issued) is not reasonably expected to exceed $5,000,000; and (v) the amount of tax-exempt obligations, including the Bonds, designated by the City as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Bonds are issued will not exceed $10,000,000. The City therefore certifies that the Bonds are eligible for the arbitrage rebate exception under Section 148(f)(4)(D) of the Code and designates the Bonds as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code, but only if the Issue Date occurs in 2013.

Section 2.10 Appointment of Designated Representative; Setting Parameters with Respect to the Terms of the Bonds; Approval of Bond Purchase Agreement. It is anticipated that the Bonds will be sold by negotiated sale to the Purchaser and that the Purchaser will present the Bond Purchase Agreement to the City offering to purchase the Bonds. Pursuant to the terms of RCW 39.46.040, the Mayor is hereby appointed as the City's Designated Representative and is authorized and directed on the City's behalf to accept the terms of, and execute, the Bond Purchase Agreement subject to the following parameters (which parameters shall be confirmed in the Bond Purchase Agreement and/or separate certificate(s) approved and executed by the Designated Representative in connection with the issuance of the Bonds):

(a) *Principal amount.* The Bonds shall be issued in the aggregate principal amount of not to exceed $3,600,000, and shall specify the principal amounts, if any, coming due in each calendar year (whether as maturing principal or as principal of a Term Bond to be redeemed pursuant to Section 2.03(b) of this Ordinance). The Bond Purchase Agreement shall (i) identify each principal maturity of the Bonds, if any, that represents a Term Bond, and (ii) identify for each such Term Bond, if any, the dates and principal amounts of all mandatory redemptions of the Term Bond that will occur before its stated maturity.

(b) *Interest rate(s).* One or more rates of interest may be fixed for each maturity of the Bonds; provided that, no rate of interest for any maturity of the Bonds may exceed 5.5%.

(c) *Payment dates.* Principal of the Bonds shall be payable on such date(s) and in such amount(s) as set forth in the Bond Purchase Agreement; provided that, principal shall only be payable on June 1 and/or December 1 in any given year.

(d) *Final maturity.* The Bond Purchase Agreement shall establish the final maturity date of the Bonds, which date shall occur no later than December 1, 2043.

(e) *Redemption rights.* The Bonds may be issued subject to optional and mandatory redemption provisions, including designation of Term Bonds, if any, as set forth in Section 2:03 herein; provided, the Bonds shall be subject to optional redemption on at least one date that occurs less than 10½ years after the Issue Date.

(f) *Price.* The Aggregate Purchase Price for the Bonds shall not be less than 95% or more than 105% of the aggregate stated principal amount of the Bonds.

(g) *Series designation.* If the Issue Date occurs after 2013, the series designation of the Bonds shall be changed, without further action of the Council, to reflect the calendar year in which the Bonds are issued (*e.g.*, "Sewer Revenue Bonds, 2014"). Conforming changes shall be made in the certificate(s) of authentication authorized by Section 2.02(b) of this Ordinance.

(h) *Other terms and conditions.*

(i) The Designated Representative, in consultation with the Purchaser, may determine that it is in the City's best interest to provide for bond insurance or other credit enhancement, and may accept, on behalf of the City, such additional terms, conditions, and covenants as may be required by a bond insurer, if consistent with the provisions of this Ordinance.

(ii) The Designated Representative is authorized to take such additional action as may be necessary or convenient for the issuance of the Bonds pursuant to the terms of this Ordinance.

(i) *Expiration of authority.* The Issue Date of the Bonds shall be on or before one year from the date of this Ordinance.

Section 2.11 Delivery of Bonds; Deposit of Proceeds. The Bonds will be delivered to the Purchaser in accordance with the Bond Purchase Agreement. From and after the time the Bond Purchase Agreement is executed and delivered by the City, the Mayor, the Clerk, the Treasurer and the Designated Representative are each authorized and directed to do everything necessary for the prompt delivery of the Bonds to the Purchaser. The Treasurer is further authorized to cause the Purchaser to pay from Bond proceeds, on the City's behalf, certain costs of issuing the Bonds (such as the fees of Bond Counsel and the rating agency) by electronic transfer on the Issue Date. Upon receiving the net proceeds of the Bonds from the Purchaser on

the Issue Date, the City shall (i) deposit into the Reserve Fund an amount of such proceeds equal to the Reserve Fund Requirement and (ii) deposit into the Project Fund the balance of such proceeds.

Section 2.12 Project Fund. The Treasurer is authorized and directed to create and maintain a special fund separate and distinct from all other funds and accounts of the City, designated the "2013 Sewer Bond Project Fund" (the "Project Fund"). The City shall use the money deposited into the Project Fund, and the investment earnings thereon, to pay costs of the Project, including costs of issuance and sale of the Bonds. The City may transfer money from the Project Fund to the Debt Service Fund to pay (i) interest accruing on the Bonds for up to six months after construction of the Project is completed, and (ii) to the extent money remains on deposit in the Project fund after all costs of the Project have been paid, to pay the principal of and/or interest on the Bonds. Money in the Project Fund shall be invested and reinvested by the City to the fullest extent practicable. Interest earnings on any such investments shall be deposited in the Project Fund upon receipt. Notwithstanding the provisions for the deposit of earnings, any earnings that are subject to a federal tax or rebate requirement may be withdrawn from the Project Fund for deposit into a separate fund or account for the purpose of making payments necessary to comply with such requirement.

Section 2.13 Preliminary Official Statement Deemed Final; Authorization of Official Statement. For the sole purpose of the Purchaser's compliance with paragraph (b)(1) of Rule 15c2-12 with respect to the Preliminary Official Statement, the City authorizes the Mayor, on the City's behalf, to "deem final" the Preliminary Official Statement as of its date, except for the omission of information permitted to be omitted by Rule 15c2-12 and authorizes and approves the distribution by the Purchaser of the Preliminary Official Statement to potential purchasers of the Bonds. The Mayor is hereby authorized to review and approve on behalf of the City a final official statement (the "Official Statement") with respect to the Bonds, substantially in the form of the Preliminary Official Statement and supplemented or amended as the Mayor, with the approval of Bond Counsel, deems necessary, desirable, or appropriate. The Mayor is authorized to execute such Official Statement and the City is authorized to deliver or cause to be delivered the Official Statement to the Purchaser in the manner required by Rule 15c2-12, the MSRB and the Bond Purchase Agreement.

Section 2.14 Undertaking to Provide Continuing Disclosure. To meet the requirements of paragraph (b)(5) of Rule 15c2-12, as applicable to a participating underwriter for the Bonds, the City makes the following written Undertaking for the benefit of holders of the Bonds:

(a) *Undertaking to Provide Annual Financial Information and Notice of Listed Events*. The City undertakes to provide or cause to be provided, either directly or through a designated agent, to the MSRB, in an electronic format as prescribed by the MSRB, accompanied by identifying information as prescribed by the MSRB:

(i) Annual financial information and operating data of the type included in the Official Statement for the Bonds and described in subsection (b) of this section ("annual financial information");

(ii) Timely notice (not in excess of 10 business days after the occurrence of the event) of the occurrence of any of the following events with respect to the Bonds: (1) principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701 – TEB) or other material notices or determinations with respect to the tax status of the Bonds; (7) modifications to rights of holders of the Bonds, if material; (8) bond calls (other than scheduled mandatory redemptions of Term Bonds), if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the City, as such "Bankruptcy Events" are defined in Rule 15c2-12; (13) 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 (14) appointment of a successor or additional trustee or the change of name of a trustee, if material.

(iii) Timely notice of a failure by the City to provide required annual financial information on or before the date specified in subsection (b) of this section.

(b) *Type of Annual Financial Information Undertaken to be Provided.* The annual financial information that the City undertakes to provide in subsection (a) of this section:

(i) Shall consist of (1) annual financial statements prepared (except as noted in the financial statements) in accordance with the Budgeting Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200, as such principles may be changed from time to time, which statements shall not be audited, except, however, that if and when audited financial statement are otherwise prepared and available to the City they will be provided; (2) a statement of the outstanding principal amount of all Parity Bonds; (3) a statement of the debt service coverage ratio for the System calculated in the same manner as the Coverage Requirement is calculated; (4) a table showing the number of System customer accounts (reflecting residential and commercial accounts separately); (5) a statement of any changes to the rate structure used for the System; and (6) a table in the form of the table included in the Official Statement for the Bonds under the heading "Historical Net Revenue Available for Debt Service and Debt Service Coverage" showing operating results for the prior year;

(ii) Shall be provided not later than the last day of the ninth month after the end of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the City's fiscal year ending December 31, 2013; and

(iii) May be provided in a single or multiple documents, and may be incorporated by specific reference to documents available to the public on the Internet website of the MSRB or filed with the SEC.

(c) *Amendment of Undertaking.* The Undertaking is subject to amendment after the primary offering of the Bonds without the consent of any holder of any Bond, or of any broker, dealer, municipal securities dealer, participating underwriter, rating agency or the MSRB, under the circumstances and in the manner permitted by Rule 15c2-12. The City will give notice to the MSRB of the substance (or provide a copy) of any amendment to the Undertaking and a brief statement of the reasons for the amendment. If the amendment changes the type of annual financial information to be provided, the annual financial information containing the amended financial information will include a narrative explanation of the effect of that change on the type of information to be provided.

(d) *Beneficiaries.* The Undertaking evidenced by this section shall inure to the benefit of the City and any Beneficial Owner of Bonds, and shall not inure to the benefit of or create any rights in any other person.

(e) *Termination of Undertaking.* The City's obligations under this Undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the City's obligations under this Undertaking shall terminate if those provisions of Rule 15c2-12 which require the City to comply with this Undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of Bond Counsel or other counsel familiar with federal securities laws delivered to the City, and the City provides timely notice of such termination to the MSRB.

(f) *Remedy for Failure to Comply with Undertaking.* As soon as practicable after the City learns of any failure to comply with the Undertaking, the City will proceed with due diligence to cause such noncompliance to be corrected. No failure by the City or other obligated person to comply with the Undertaking shall constitute a default in respect of the Bonds. The sole remedy of any Beneficial Owner of a Bond shall be to take such actions as that Beneficial Owner deems necessary, including seeking an order of specific performance from an appropriate court, to compel the City or other obligated person to comply with the Undertaking.

(g) *Designation of Official Responsible to Administer Undertaking.* The Treasurer or his or her designee is authorized and directed in his or her discretion to take such further actions as may be necessary, appropriate or convenient to carry out the Undertaking of the City in respect of the Bonds set forth in this section and in accordance with Rule 15c2-12, including, without limitation, the following actions:

(i) Preparing and filing the annual financial information undertaken to be provided;

(ii) Determining whether any event specified in subsection (a) has occurred, assessing its materiality, where necessary, with respect to the Bonds, and preparing and disseminating any required notice of its occurrence;

(iii) Determining whether any person other than the City is an "obligated person" within the meaning of Rule 15c2-12 with respect to the Bonds, and obtaining from such person an undertaking to provide any annual financial information and notice of listed events for that person in accordance with Rule 15c2-12;

(iv) Selecting, engaging and compensating designated agents and consultants, including but not limited to financial advisors and legal counsel, to assist and advise the City in carrying out the Undertaking; and

(v) Effecting any necessary amendment of the Undertaking.

ARTICLE III. PROVISIONS GOVERNING ALL PARITY 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, Third* and, if authorized by the documents imposing the Assessments, *Fourth*) 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 Parity Bonds;

Third, to pay the principal of the Parity 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 Reserve Fund to secure the payment of the Parity Bonds;

Fifth, to make deposits into the Rate Stabilization Fund; and

Sixth, for any other lawful City purposes, including but not limited to, 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 Parity 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.

Section 3.02 The Revenue Fund. The Revenue Fund 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. 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 Debt Service Fund.

(a) The Debt Service Fund 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, for the purpose of paying the principal of, premium, if any, and interest on the Parity Bonds. Accrued interest received from the sale of the Parity Bonds, if any, shall be deposited in the Debt Service Fund. Amounts received due to rounding the principal amount of Additional Bonds to the next denomination of $5,000 and proceeds of Additional Bonds to pay for any contingencies shall be deposited or otherwise used in the manner prescribed by the

ordinance(s) authorizing the issuance of such Additional Bonds. All Assessment Income shall be deposited in the Debt Service Fund and/or in the 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) The City hereby irrevocably obligates, pledges and binds itself, for as long as any Parity Bond remains Outstanding, to set aside and pay from the Net Revenue into the Debt Service Fund, together with Assessment Income and such other funds as are on hand and available in the Debt Service Fund, those amounts necessary to pay installments of interest, or principal and interest, next coming due on the Parity Bonds. With respect to the Parity Bonds, deposits into the 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 Debt Service Fund, will be sufficient to pay the principal and interest becoming due and payable on the next payment date on the Parity Bonds.

(c) Money in the 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 Debt Service Fund. Subject to the other provisions of this paragraph, money in the Debt Service Fund and the 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 Reserve Fund.

(a) The Reserve Fund 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, for the purpose of securing the payment of the principal of and interest on the Parity Bonds. The Treasurer may, in her discretion, create a separate account in the Reserve Fund for each series of Parity Bonds that are issued.

(b) On the Issue Date, the City shall deposit Bond proceeds into the Reserve Fund in an amount equal to the Reserve Fund Requirement for the Bonds.

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

In the event there shall be a deficiency in the Debt Service Fund such that maturing installments of principal of and interest on the Parity Bonds cannot be met, such deficiency shall be made up from the Reserve Fund by the withdrawal of money therefrom. Any deficiency created in the 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, Second and Third of Section 3.01 of this Ordinance.

(c) Money in the Reserve Fund may be invested as permitted by law, provided such investments shall be available to pay any deficiencies that may occur in the Debt Service Fund. All interest earned and income derived by virtue of such investments shall be deposited into either the Debt Service Fund or the 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 Debt Service Fund and the 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 Rate Stabilization Fund. The Rate Stabilization Fund 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 may at any time, as determined by the Council and as consistent with this Ordinance, deposit Revenue of the System and other legally-available money (excluding the principal proceeds of any Parity Bonds or other borrowing) in the Rate Stabilization Fund; provided, no deposit of Revenue of the System shall be made into the Rate Stabilization Fund to the extent that such deposit would prevent the City from meeting the Coverage Requirement in any fiscal year. The City may apply amounts withdrawn from the Rate Stabilization Fund for any proper purpose related to the System. Money in the Rate Stabilization Fund shall be invested and reinvested by the City to the fullest extent practicable. Interest earnings on any such investments shall be deposited in the Rate Stabilization Fund upon receipt. Notwithstanding the provisions for the deposit of earnings, any earnings that are subject to a federal tax or rebate requirement may be withdrawn from the Rate Stabilization Fund for deposit into a separate fund or account for the purpose of making payments necessary to comply with such requirement.

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 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 Parity Bonds, 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 Reserve Fund and all other payments which the City is obligated to make pursuant to this Ordinance; 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 City satisfies the Coverage Requirement in each fiscal year.

(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 Debt Service Fund (or another sinking fund pledged to the payment of the Parity 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 Parity 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 Debt Service Fund (or another sinking fund pledged to the payment of the Parity Bonds) of the greatest of the following:

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

(iii) an amount which will be in the same proportion to the net amount of Parity Bonds then Outstanding (as defined above) that the depreciated-cost value of the facilities sold or disposed of bears to the depreciated-cost value of the entire System immediately prior to such sale or disposition.

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 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 Debt Service Fund (or other sinking fund).

(d) *Liens and Encumbrances.* 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 Net Revenue, or any part thereof, prior or superior to the lien thereon for the payment of the Parity 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 Parity Bonds, or which might impair the security of the Parity 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 Parity 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 shall be paid into the Debt Service Fund (or another sinking fund pledged to the payment of the Parity Bonds) for the redemption of Parity 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. The City shall prepare, and any Registered Owner of the Bonds 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 Debt Service Fund, the 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 any Bonds are 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 Bonds.*

(i) *Restriction Against Prior Lien Bonds.* The City hereby covenants and agrees with the Registered Owners of the Bonds, 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 Parity 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 Parity Bonds except as provided below.

(ii) *Purposes for Which Additional Bonds May Be Issued.* The City reserves the right to issue Additional Bonds for the purposes of:

(1) providing funds to Acquire, construct, reconstruct, install or replace any equipment, facilities, additions, betterments or other improvements to the System for which it is authorized by law to issue revenue bonds, or

(2) refunding at or prior to their maturity, any revenue bond anticipation notes or outstanding revenue bonds or other obligations payable out of the Revenue of the System.

(iii) *Conditions of Issuing Additional Bonds.* Additional Bonds may be issued only if the following conditions are satisfied:

(1) At the time of the issuance of any Additional Bonds there is no deficiency in the Debt Service Fund or the Reserve Fund.

(2) The principal of and interest on the Additional Bonds shall be payable out of the Debt Service Fund.

(3) If there are Assessments levied in any utility local improvement district to pay for additions and improvements to and extensions of the System that will be constructed from the proceeds of such Additional Bonds, or if there are Assessments pledged to be paid into a warrant or bond redemption fund for revenue bonds or warrants being refunded by Additional Bonds, the ordinance authorizing such Additional Bonds shall require that such Assessments be paid into the Debt Service Fund and/or the Reserve Fund.

(4) The City shall provide in the ordinance authorizing the issuance of such Additional Bonds that it will pay into the Reserve Fund out of the Revenue of the System (or, at the option of the City, out of any other funds on hand legally available for such purpose) so that by the date such Additional Bonds are issued there will have been paid into the Reserve Fund an amount which, with the money already on deposit therein, will be equal to the Reserve Fund Requirement.

(5) Prior to the delivery of any Additional Bonds, the City shall have on file in the office of the Clerk a certificate of an independent licensed professional

engineer or certified public accountant, dated not earlier than 90 days prior to the date of delivery of such Additional Bonds, showing that the Adjusted Net Revenue, together with Assessment Income, will satisfy the Coverage Requirement (as such is calculated to include the Additional Bonds to be issued). Such engineer or accountant shall base his certification upon, and his certificate shall have attached thereto, financial statements of the System that are audited by the State Examiner or by such other person or firm currently authorized by the statutes of the State to perform such audits (unless such an audit is not available for a 12-month period within the preceding 30 months), and certified by the Treasurer, showing income and expenses for the period upon which the same is based. For purposes of this paragraph, the term "independent" means a person who is neither a Council member nor an employee of the City.

(iv) 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 Debt Service Fund and the Reserve Fund to pay and secure the payment of the Parity Bonds.

(v) Refunding Bonds. The restrictions set forth in Section 3.06(i)(iii)(5) shall not apply in the event the City issues Additional Bonds to refund all or a portion of the Parity Bonds then Outstanding, provided: (A) the annual maturities of the refunding bonds do not extend over a longer period of time than the Parity Bonds being refunded; and (B) the sum of the principal and interest due on each annual maturities of the refunding bonds does not exceed by more than $5,000 the sum of the principal of and interest on the refunded Parity Bonds that would have otherwise been due on the respective annual maturities. Notwithstanding the foregoing, this Section 3.06(i) shall not prevent the City from issuing revenue bonds to refund maturing Parity Bonds for the payment of which money is not otherwise available.

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 any Parity Bond is not made when it becomes due and payable at maturity or upon call for redemption; or

(ii) payment of any interest on any Parity Bond is not made when it becomes due and payable; 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 Bonds (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 Bond Registrar.

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

(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 Owners of any Bonds; 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 Owners of the Bonds. Any such supplemental ordinance may be adopted without the consent of the Registered Owners of any Bonds at any time Outstanding, notwithstanding any of the provisions of Section 4.01(b).

(b) *Amendments With Consent of the Registered Owners.* With the consent of the Registered Owners of not less than 65 percent in aggregate principal amount of the Bonds at the time Outstanding, 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; provided, however, that no such supplemental ordinance shall: (1) extend the fixed maturity of any Bonds, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Registered Owner of each Bond so affected; or (2) reduce the aforesaid percentage of Registered Owners required to approve any such supplemental ordinance under this subsection, without the consent of the Registered Owners of all of the Bonds then Outstanding. It shall not be necessary for the consent of Registered Owners 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, 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 all Registered Owners of Bonds Outstanding hereunder 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 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 Owners of any affected Bonds then Outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

Section 4.02 General Authorization; Ratification; and Limitation on Recourse. The Mayor, the Clerk, the Treasurer and the Designated Representative 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. 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 Bonds 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 Bonds.

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 (or a publication of its summary) as provided by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Clarkston, Washington, at a regular open public meeting thereof, this 23rd day of September, 2013.

CITY OF CLARKSTON, WASHINGTON

_____

Mayor

ATTESTED:

_____

City Clerk

(S E A L)

CERTIFICATION

I, the undersigned, the City Clerk of the City of Clarkston, Washington (the "City"), hereby certify as follows:

1. The foregoing Ordinance No. 1514 (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 September 23, 2013, as that Ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after the publication of its summary in the City's official newspaper;

2. A quorum of the members of the City Council was present throughout the continued regular 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 this 23rd day of September, 2013.

CITY OF CLARKSTON, WASHINGTON

_____

City Clerk

(S E A L)

WORK CHANGE DIRECTIVE

No. 1

DATE OF ISSUANCE **8-1-13** EFFECTIVE DATE **7-26-13**

OWNER **City of Clarkston**
CONTRACTOR **McCall's Classic Construction**
Contract: _____
Project: **12th St. Chestnut St to Highland Ave**
OWNER's Contract No. _____ ENGINEER's Project No. **1990**

You are directed to proceed promptly with the following change(s):
Description: **Remove all sections of curb and gutter that fall in front of sections of sidewalk which is planned to be removed during construction. Work will be done using project bid prices for Item No. 1.4 and Item No. 18.1.**

Purpose of Work Change Directive: **The bottom face of the existing sidewalk is under the back of the existing curb and curb is breaking during sidewalk removal.**

Attachments: (List documents supporting change) **Photos, cost estimate for work between Chestnut St. and Libby St.**

If OWNER or CONTRACTOR believe that the above change has affected Contract Price any Claim for a Change Order based thereon will involve one or more of the following methods as defined in the Contract Documents.

Method of determining change in Contract Price:

- [x] Unit Prices
- [ ] Lump Sum
- [ ] Cost of the Work _____

Estimated increase in Contract Price:
$**25,860.00**.
If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Estimated increase in Contract Times:
Substantial Completion: **7** days;
Ready for final payment: **0** days.

RECOMMENDED:

_____
ENGINEER
By: John R. Watson

AUTHORIZED:

_____
OWNER
By: James E. Martin

EJCDC No. 1910-8-F (1996 Edition) Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

Washington State Department of Transportation

Change Order

Contract Number	Contract Title – 12th St, Chestnut to Highland	Federal Aid Number
Change Order Number - 1	Change Description – Days added, Manhole Rings and Covers	Date 8/28/2013
Prime Contractor / Design-Builder – McCall's Classic Construction		

Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications

Change proposed by Contractor/ Design-Builder

Change Description

(1.) Add seven (7) days to the contracted 45 days for completion due to added quantity of curb, gutter and sidewalk. (2.) Include a price for manhole rings and covers due to the fact that some of the existing rings and covers were broken prior to construction and additional rings and covers are too tall to accommodate the new street grade. The City of Clarkston thought they would be able to provide rings and covers, however they did not have any extra to use for this project so the contractor had to purchase them. The additional cost for rings and covers is $250.00 per/each.

Verbal Approval Date – 8/6/13		Working Days +/- (+ 7)	
Original Contract Amount $ 422,465.30	Current Contract Amount $ 422,465.30	Est.Net Change This C.O. $ 1,250.00	Est. Contract Amount $ 423,715.30

Approval Recommended	Approved	Approved
Project Engineer		Approving Authority per C/A. Agreement
Date 08/28/13		Date 8-28-13
Approval Recommended		Other Approval As Required
By Prime Contractor		Signature Date
8-28-13		
Date		Representing

Washington State Department of Transportation

Change Order

Contract Number	Contract Title 12th St, Chestnut to Highland	Federal Aid Number
Change Order Number - 2	Change Description - Reinforced Concrete Wall	Date 8-30-29
Prime Contractor / Design-Builder - McCall's Classic Construction		

Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications

Change proposed by Contractor/ Design-Builder

Change Description – Addition of Cement Concrete Retaining Wall per the City's Request. The work is for a cement concrete retaining wall needed as a result of a failed retaining wall adjacent to existing concrete sidewalk. The existing wall fell over during sidewalk removal operations. McCall's Classic Construction provided the City of Clarkston with bid price of $2580.00 for an approximate 1.5' x 50' concrete wall at Sta. 24+50-25+00. This price calculates to $34.4 per square foot which was used to construct the proposed wall at approx. Sta. 24+50 – 25+00 RT and included a wall at approx. Sta. 17+90 RT.

Verbal Approval Date		Working Days +/- (0)	
Original Contract Amount $ 422,465.30	Current Contract Amount $ 423,715.30	Est.Net Change This C.O. $ 2,786.4	Est. Contract Amount $ 426,501.70

Approval Recommended	Approved	Approved
Project Engineer 8/30/13 Ben Waldman		Approving Authority per C.A. Agreement 8-30-13
Date		Date
Approval Recommended		Other Approval As Required
By Prime Contractor Randy McCall		Signature Date
Date 8-30-13		Representing

DOT Form 140-005 EF
Revised 04/2012

FOSTER PEPPER PLLC

Direct Phone (509) 777-1601
Direct Facsimile (800) 533-2202
E-Mail navej@foster.com

September 17, 2013

Vickie Storey, Clerk-Treasurer
City of Clarkston
829 Fifth Street
Clarkston, WA 99403

Re: Issuance of $3,405,000 Sewer Revenue Bonds, 2013

Vickie:

I appreciate the opportunity to work with the City of Clarkston again as bond counsel. The purpose of this engagement letter is to set forth certain matters concerning the services Foster Pepper PLLC will perform as bond counsel to the City in connection with the issuance of the above-referenced bonds (the "Bonds"). We understand the Bonds will be issued to finance the acquisition, construction and installation of improvements and betterments to the City's sewer system (the "Project"), and that the Bonds will be purchased by D.A. Davidson & Co. (the "Purchaser").

In this engagement, we expect to perform the following duties: (i) subject to the completion of proceedings to our satisfaction, render our legal opinion (the "Bond Opinion") regarding the validity and binding effect of the Bonds, the source of payment and security for the Bonds, and the excludability of interest on the Bonds from gross income for federal income tax purposes; (ii) prepare and review documents necessary or appropriate to the authorization, issuance and delivery of the Bonds, and coordinate the authorization and execution of such documents; (iii) review legal issues relating to the structure of the Bond issue; and (iv) review the section of the official statement, private placement memorandum or other form of offering or disclosure document to be disseminated in connection with the sale of the Bonds involving the federal income tax treatment of interest on the Bonds. In rendering our Bond Opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation.

Foster Pepper will represent the City as its bond counsel in connection with the Bonds. Foster Pepper has represented the Purchaser, from time to time, as underwriter's counsel on financings by other issuers. Our representation of the Purchaser, however, is unrelated to the issuance of the Bonds. Foster Pepper will represent the City in negotiating a bond purchase agreement regarding the sale of the Bonds to the Purchaser.

The Washington Rules of Professional Conduct prohibit an attorney, and all members of that attorney's firm, from representing a client in a matter which is adverse to the interests of another client of the firm. This is called a conflict of interest. The conflict of interest arises because a lawyer has a duty of loyalty to every client, even if the lawyer is not representing the client in a particular matter. Since Foster Pepper will represent the City as bond counsel with respect to the Bonds and represents the Purchaser on unrelated matters, a conflict of interest is presented.

The Rules of Professional Conduct allow clients to waive conflicts of interest when: (1) the lawyer reasonably believes the representation of the one client will not adversely affect the relationship with the other client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of claims by one client against another client in a proceeding in which the lawyer representing both clients; and (4) all clients consent in writing after full disclosure of the material facts. We have considered the conflicts presented here, and we believe that it is appropriate to ask the City to waive the conflicts. We have

obtained a written waiver from the Purchaser for any conflicts that may arise from our representation of issuers who issue bonds underwritten by the Purchaser. If you have any questions, however, we would encourage you to seek legal advice from the City Attorney.

The primary risk associated with waivers of conflicts of interest in circumstances like this is the risk that confidential information of one client will be disclosed to the other client, to the disadvantage of the first client. We believe that risk will not be present for either the City or the Purchaser in this matter for the following reasons. First, the attorneys representing the Purchaser will be different than the attorneys that represent the City. Second, the attorneys representing the Purchaser will not have access to the City's files and confidential information relating to this matter. Third, material financial information learned about the City that the attorneys in our firm working on these financings obtain, must in any event be made available to the Purchaser under securities laws.

Our representation of the Purchaser is not prohibited by law. And, Foster Pepper is not representing the Purchaser on this issue or in any related proceedings in which we are also representing the City.

Another risk associated with waivers of conflicts of interest is the risk that a lawyer will not zealously represent one client out of fear of offending another client. We assure you that we will continue to represent the City's interests fully and to the best of our abilities. We anticipate that the issuance of the Bonds will proceed amicably and all parties will be satisfied with the results. However, it is always possible that disputes or even litigation between the City and/or the Purchaser may arise in the future. In that event, we will not be able to represent any party in that dispute.

Execution of this letter will confirm that the City has consented to our representation of the Purchaser consistent with the circumstances described in the foregoing paragraphs, and that the City has waived the conflicts of interest identified herein.

Additionally, Foster Pepper represents many political subdivisions, companies and individuals. It is possible that during the time that we are representing the City, one or more of our present or future clients will have transactions with the City. It is also possible that we may be asked to represent, in an *unrelated* matter, one or more of those types of clients. For example, from time to time we serve as counsel to bond underwriters, or we represent neighboring governments, or we assist developers in land use or environmental matters. We do not foresee, however, that any such prior or future representation will adversely affect our ability to represent you as provided in this letter, either because such matters were or will be sufficiently different from the issuance of the Bonds so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance of the Bonds. Execution of this letter will signify the City's consent to our representation of others consistent with the circumstances described in this paragraph. To the extent we believe such future representation may adversely affect our representation of the City, we will disclose such representation to the City and, if required by ethical rules, seek the appropriate City consent. However, the City's consent to our representation of other clients as described in this paragraph does not extend to our firm's lawyers representing a client in any litigation or similar dispute adverse to the City before any court or similar forum. A separate waiver would need to be sought, based on the facts of the relevant dispute.

Based upon: (i) our current understanding of the terms, structure, size and schedule of the financing represented by the Bonds; (ii) the duties we will undertake pursuant to this engagement letter; and (iii) the responsibilities we will assume in connection therewith, our fee will be $16,500, including out-of-pocket costs. Our fee may vary if: (a) the principal amount of the Bonds actually issued differs significantly from the estimated principal amount of $3,405,000; (b) material changes in the structure or schedule of the financing occur; or (c) if unusual or unforeseen circumstances arise that require a significant increase in our time or responsibility. If, at any time, we believe that circumstances require an adjustment of our original fee estimate, we will advise you. Our fee will be paid (*via* wire transfer) at Closing from Bond proceeds by the Purchaser, and the City consents to payment of our fee in this manner. If for any reason, however, the financing is completed without the delivery of our Bond Opinion as bond counsel, or our services are otherwise terminated, we will expect to be compensated at our normal hourly rates for time actually spent on your behalf; provided that, (1) we submit a billing statement to the City that describes the time, legal services and expenses incurred on your behalf, and (2) such compensation does not exceed the amount of the fee that would have been paid had the Bond issue closed with our Bond Opinion.

Upon request, papers and property furnished by you will be returned promptly. Our own files, including lawyer work product, pertaining to the transaction will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other materials retained by us after the termination of this engagement.

Our services as bond counsel regarding the Project are limited to those described herein. Our representation of the City regarding the Project will be concluded upon issuance of the Bonds and the mailing of the appropriate IRS Form 8038.

If the foregoing terms are acceptable, the engagement letter should be approved by the City Council, and the Mayor should sign and date two copies. Please return one copy to me and the remaining copy should be retained in the City's files. We look forward to working with you again.

FOSTER PEPPER PLLC

Jeffrey C. Nave

Accepted and approved this _____ day of September, 2013.

CITY OF CLARKSTON, WASHINGTON

_____

Kathleen Warren, Mayor

cc: James Grow, City Attorney