

CITY OF SUNNYSIDE, WASHINGTON

ORDINANCE 2017 - 07

AN ORDINANCE of the City of Sunnyside, Washington, providing for the issuance, sale and delivery of a not to exceed \$2,500,000 aggregate principal amount water and sewer revenue refunding bond to provide funds to refund certain outstanding water and sewer revenue bonds and to pay the costs of issuance; fixing or setting parameters with respect to certain terms and covenants of the bond; appointing the City's designated representative to approve the final terms of the sale of the bond; and providing for other related matters.

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

Section 1. Definitions. As used in this ordinance, the following capitalized terms shall have the following meanings:

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

(b) "*Acquired Obligations*" means those United States Treasury Certificates of Indebtedness, Notes, and Bonds--State and Local Government Series and other direct, noncallable obligations of the United States of America purchased to accomplish the refunding of the Refunded Bonds as authorized by this ordinance.

(c) "*Annual Debt Service*" means the total amount of Debt Service for any Parity Bond or series of Parity Bonds or other evidences of indebtedness payable from Revenue of the System in any fiscal year or Base Period. Once the Outstanding Parity Bonds are no longer outstanding, in calculating the Annual Debt Service the City may exclude any direct payment the City is expected to receive in respect of any Future Parity Bonds for which the federal government will provide the City with a direct payment of a portion of the interest from the interest portion of Annual Debt Service. The owner of the Bond by taking and holding the same shall be deemed to have consented to the amendment.

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

(e) “*Base Period*” means any consecutive 12-month period selected by the City out of the 36-month period next preceding the date of issuance of an additional series of Future Parity Bonds.

(f) “*Bond*” means the not to exceed \$2,500,000 principal amount Water and Sewer Revenue Refunding Bond, 2017, of the City issued pursuant to and for the purposes provided in this ordinance.

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

(h) “*Bond Fund*” means the City of Sunnyside Revenue Bond Interest and Redemption Fund and also shall include any fund established in the future for the payment of debt service on Parity Bonds.

(i) “*Bond Register*” means the books or records maintained by the Bond Registrar for the purpose of identifying ownership of the Bond.

(j) “*Bond Registrar*” means the Director of Finance of the City, or any successor bond registrar selected by the City.

(k) “*Capital Appreciation Bonds*” means any Future Parity Bonds all or a portion of the interest on which is compounded, accumulated and payable only upon redemption or on the maturity date of such Capital Appreciation Bonds. If so provided in the ordinance authorizing their issuance, Future Parity Bonds may be deemed to be Capital Appreciation Bonds for only a portion of their term. On the date on which Future Parity Bonds no longer are Capital Appreciation Bonds, they shall be deemed outstanding in a principal amount equal to their Accreted Value.

(l) “*City*” means the City of Sunnyside, Washington, a municipal corporation duly organized and existing under the laws of the State.

(m) “*City Council*” means the legislative authority of the City, as duly and regularly constituted from time to time.

(n) “*Code*” means the United States Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

(o) “*Consultant*” means at any time an independent municipal financial consultant appointed by the City to perform the duties of the Consultant as required by this ordinance. For the purposes of delivering any certificate required by Section 12 hereof and making the calculation required by Section 12 hereof, the term Consultant shall also include any independent public accounting firm appointed by the City to make such calculation or to provide such certificate.

(p) “*Costs of Maintenance and Operation*” means all reasonable expenses incurred by the City in causing the System of the City to be operated and maintained in good repair, working

order and condition, but shall not include any payments for debt service or into the Reserve Account, depreciation or taxes levied or imposed by the City or payments to the City in lieu of taxes, or capital additions or capital replacements to the System.

(q) “*Coverage Stabilization Account*” means the account of that name maintained pursuant to Section 10(c) of this ordinance.

(r) “*Debt Service*” means, for any period of time, (a) with respect to any outstanding Original Issue Discount Bonds or Capital Appreciation Bonds which are not designated as Balloon Maturity Bonds in the ordinance authorizing their issuance, the principal amount thereof shall be equal to the Accreted Value thereof maturing or scheduled for redemption in such period, and the interest payable during such period; (b) with respect to any outstanding Fixed Rate Bonds, an amount equal to (1) the principal amount of such Fixed Rate Bonds due or subject to mandatory redemption during such period and for which no sinking fund installments have been established, (2) the amount of any payments required to be made during such period into any sinking fund established for the payment of any such Fixed Rate Bonds, plus (3) all interest payable during such period on any such outstanding Fixed Rate Bonds and with respect to Fixed Rate Bonds with mandatory sinking bond requirements, calculated on the assumption that mandatory sinking fund installments will be applied to the redemption or retirement of such Fixed Rate Bonds on the date specified in the ordinance authorizing such Fixed Rate Bonds; and (c) with respect to all other series of Parity Bonds, other than Fixed Rate Bonds, Original Issue Discount Bonds or Capital Appreciation Bonds, specifically including but not limited to Balloon Maturity Bonds and Parity Bonds bearing variable rates of interest, an amount for any period equal to the amount which would have been payable for principal and interest on such Parity Bonds during such period computed on the assumption that the amount of Parity Bonds as of the date of such computation would be amortized (i) in accordance with the mandatory redemption provisions, if any, set forth in the ordinance authorizing the issuance of such Parity Bonds, or if mandatory redemption provisions are not provided, during a period commencing on the date of computation and ending on the date 30 years after the date of issuance, (ii) at an interest rate equal to the yield to maturity set forth in the 40-Bond Index published in the edition of *The Bond Buyer* (or comparable publication or such other similar index selected by the City) and published within ten days prior to the date of calculation or, if such calculation is being made in connection with the certificate required by Section 18 hereof, then within ten days of such certificate, (iii) to provide for essentially level annual debt service of principal and interest over such period. Debt Service shall be net of any interest funded out of Bond proceeds. Debt Service shall include reimbursement obligations to providers of Credit Facilities to the extent authorized by ordinance.

(s) “*Designated Representative*” means the officer of the City appointed in Section 5 of this ordinance to serve as the City’s designated representative in accordance with RCW 39.46.040(2).

(t) “*Event of Default*” means the determination by the Purchaser that there has been (i) a failure to pay principal or interest on the Bond when due, (ii) a failure by the City to comply with any of its obligations, or to perform any of its duties, under this ordinance, which failure continues and is not cured for a period of more than 60 days after the Purchaser has made written demand on the City to cure the default, or (iii) a material written misrepresentation to the

Purchaser by the City in purchasing the Bond, as reasonably concluded by the Purchaser after investigation and discussion with the City.

(u) “*Final Terms*” means the terms and conditions for the sale of the Bond including the amount, date, denominations, interest rate or rates (or mechanism for determining interest rate or rates), payment dates, final maturity, prepayment rights, price, financial reporting requirements and other terms or covenants, including minimum savings for refunding bonds.

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

(w) “*Future Parity Bonds*” means any water and sewer revenue bonds which the City may hereafter issue having a lien upon the Revenue of the System for the payment of the principal thereof and interest thereon equal to the lien upon the Revenue of the System of the Bonds.

(x) “*Government Loans*” means the SRF Loans, PWTF Loans and subordinate lien revenue loans received by the City in the future from the State of Washington or the United States of America.

(y) “*Government Obligations*” has the meaning given in RCW 39.53.010, as now in effect or as may hereafter be amended.

(z) “*Issue Date*” means, with respect to the Bond, the date of initial issuance and delivery of that Bond to the Purchaser in exchange for the purchase price of that Bond.

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

(bb) “*Net Proceeds*,” when used with reference to the Bond, means the principal amount of the Bond, plus accrued interest and original issue premium, if any, and less original issue discount and proceeds, if any, deposited in the Reserve Account.

(cc) “*Net Revenue*” means Revenue of the System less Costs of Maintenance and Operation.

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

(ee) “*Outstanding Parity Bonds*” means the City’s outstanding 2005 Bonds and 2007 Bonds.

(ff) “*Parity Bonds*” means the 2005 Bonds, the 2007 Bonds, the Bond and any Future Parity Bonds.

(gg) “*Parity Requirement*” means Net Revenues equal to or greater than: (a) 125% of Maximum Annual Debt Service for all Parity Bonds computed by deducting from Annual Debt Service the Annual Debt Service for each series or issue of Parity Bonds which is covered by ULID Assessments, and (b) 100% of Maximum Annual Debt Service for all subordinate lien evidences of indebtedness secured by Revenue of the System. In determining the amount of Annual Debt Service “covered by ULID Assessments,” Annual Debt Service for each future year is reduced by the dollar amount of ULID Assessments projected to be received during such future year, and the remaining outstanding ULID Assessments are assumed to be paid in the remaining number of annual installments with no prepayments.

(hh) “*Pricing Certificate*” means the certificate of a Designated Representative with the Final Terms of the Bond.

(ii) “*Purchaser*” means JPMorgan Chase Bank, NA or such other corporation, firm, association, partnership, trust, bank, financial institution or other legal entity or group of entities selected by the Designated Representative to serve as purchaser in a private placement or underwriter in a negotiated sale of the Bond.

(jj) “*PWTF Loans*” mean the loans from the State of Washington Department of Community Development acting for the Public Works Trust Fund, approved by City Council Ordinance No. 1989-29 and an additional loan designated as PW-03-691-PRE-125, approved by City Council Ordinance No. 2004-18.

(kk) “*Qualified Insurance*” means any non-cancelable municipal bond insurance policy or surety bond issued by any insurance company licensed to conduct an insurance business in any state of the United States (or by a service corporation acting on behalf of one or more such insurance companies) which insurance company; or companies, as of the time of issuance of such policy or surety bond, are currently rated in one of the two highest Rating Categories by all Rating Agencies.

(ll) “*Qualified Letter of Credit*” means any irrevocable letter of credit issued by a financial institution for the account of the City on behalf of registered owners of the Bond, which institution maintains an office, agency or branch in the United States and as of the time of issuance of such letter of credit, is currently rated in one of the two highest Rating Categories by any Rating Agency.

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

(nn) “*Refunded Bonds*” means all or a portion of the Refunding Candidates selected by the Designated Representative to be refunded with proceeds of the Bond and included in a Refunding Plan.

(oo) “*Refunding Candidates*” means all or a portion of the outstanding Water and Sewer Revenue Bonds, 2007, of the City issued pursuant to Ordinance No. 2168, the refunding of which has been provided for by this ordinance.

(pp) “*Refunding Plan*” means:

(1) the placement of sufficient proceeds of the Bond which, with other money of the City, if necessary, may be used to acquire the Acquired Obligations to be deposited, with cash, if necessary, with the Refunding Trustee;

(2) the payment of the principal of and interest on the Refunded Bonds when due up to and including such date as determined by the Designated Representative, and the call, payment, and redemption on such date, of all of the then-outstanding Refunded Bonds at a price of par; and

(3) may include the payment of the costs of issuing the Bond and the costs of carrying out the foregoing elements of the Refunding Plan.

(qq) “*Refunding Trust Agreement*” means a Refunding Trust Agreement between the City and the Refunding Trustee.

(rr) “*Refunding Trustee*” means the trustee or escrow agent or any successor trustee or escrow agent serving as refunding trustee to carry out the Refunding Plan.

(ss) “*Reserve Account*” means the Bond Debt Service Reserve Account maintained within the Bond Fund.

(tt) “*Reserve Requirement*” means the lesser of (a) Maximum Annual Debt Service and (b) 1.25 times Average Annual Debt Service; *provided, however*, that the Reserve Requirement shall not exceed an amount equal to 10% of the aggregate of the initial par amount of each issue of Parity Bonds.

(uu) “*Revenue Fund*” means the Water and Sewer Operating Funds of the City and shall also include any other fund of the City into which the Revenue of the System is deposited.

(vv) “*Revenue of the System*” or “*Revenue*” means all of the earnings and revenues received by the City from the maintenance and operation of the System and connection and capital improvement charges collected for the purpose of defraying the cost of capital facilities of the System, including investment earnings, but excluding government grants, proceeds from the sale of System property, City taxes collected by or through the System, principal proceeds of bonds and earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund System obligations (until commingled with other earnings and revenues of the System) or held in a special account for the purpose of paying a rebate to the United States Government under the Code. Revenue of the System shall also include any federal or state reimbursements of operating expenses to the extent such expenses are included as Costs of Maintenance and Operation; *provided, however*, that Revenue of the System shall not include ULID Assessments. Amounts withdrawn from the Coverage Stabilization Account shall increase Revenue for the period in which they are withdrawn, and amounts deposited in the

Coverage Stabilization Account shall reduce Revenue for the period during which they are deposited. Credits to or from the Coverage Stabilization Account that occur within 90 days after the end of a fiscal year may be treated as occurring within such fiscal year.

(ww) “*SRF Loans*” mean the DSRF Loan 04-65104-035 and the SRF Loan L0600004, authorized by Resolution 2005-54 of the City.

(xx) “*System*” means the existing sanitary sewerage collection and treatment system of the City, including facilities for the collection and disposal of storm water runoff, as it now exists and as it may later be added to, extended and improved, and the existing water supply and distribution system of the City, as it now exists and as it may later be added to, extended and improved, for as long as any Parity Bonds remain outstanding.

(yy) “*ULID*” means a utility local improvement district of the City. The City does not currently have any existing utility local improvement districts.

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

(aaa) “*State*” means the State of Washington.

(bbb) “*2005 Bonds*” means the City’s Water and Sewer Revenue Refunding Bonds, 2005, of the City authorized by Ordinance No. 2102.

(ccc) “*2007 Bonds*” means the City’s Water and Sewer Revenue Bonds, 2007, of the City authorized by Ordinance No. 2168.

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

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

Section 2. Findings and Determinations. The City takes note of the following facts and makes the following findings and determinations:

(a) *Refunding Plan.* Pursuant to Ordinance No. 2168, the City issued its \$2,285,000 principal amount Water and Sewer Revenue Bonds, 2007 (the “2007 Bonds”), for the purpose of designing, constructing and installing utility services within the City’s urban growth boundary,

and by that ordinance reserved the right to redeem the 2007 Bonds prior to their maturity on or after June 1, 2017, at a price of par plus accrued interest to the date fixed for redemption.

There are presently \$2,285,000 principal amount of 2007 Bonds outstanding, all of which are subject to redemption prior to their stated maturities (the "Refunding Candidates").

After due consideration, it appears to the City Council that all or a portion of the Refunding Candidates may be refunded by the issuance and sale of the limited tax general obligation refunding bond authorized herein so that a savings will be effected by the difference between the principal and interest cost over the life of the Bond and the principal and interest cost over the life of the Refunded Bonds but for such refunding, which refunding will be effected by carrying out the Refunding Plan.

To effect that refunding in the manner that will be most advantageous to the City it may be found necessary and advisable that certain Acquired Obligations bearing interest and maturing at such time or times as necessary to accomplish the refunding as aforesaid be purchased out of a portion of the proceeds of the Bond.

(b) *The Bond.* For the purpose of providing the funds necessary to carry out the refunding of the Refunded Bonds and to pay the costs of issuance and sale of the Bond, the City Council finds that it is in the best interests of the City and its ratepayers to issue and sell the Bond to the Purchaser, pursuant to the terms as approved by the City's Designated Representative consistent with this ordinance.

Section 3. Compliance with Parity Conditions. The Council hereby finds and determines, as required by Section 10 of Ordinance No. 2102 and Section 11 of Ordinance No. 2168, which authorized the Outstanding Parity Bonds, that:

(a) the City has not have been in default of its Rate Covenant for the immediately preceding fiscal year (2016);

(b) this ordinance (in Sections 11 and 12(a)) includes the covenants provided in Section 7(b) of Ordinance No. 2102 and Section 8(b) of Ordinance No. 2168 and provides that the Reserve Requirement shall be funded no later than the date of delivery of the Bond; and

(c) the Bond is being issued to refund outstanding Parity Bonds.

The conditions contained in Section 10 of Ordinance No. 2102 and Section 11 of Ordinance No. 2168 having been complied with or assured, the payments required herein to be made out of the Revenue Fund into the Bond Fund and the Reserve Account to pay and secure the payment of the principal of and interest on the Bond shall constitute a lien and charge upon the money in the Revenue Fund equal in rank with the lien and charge thereon for the payments required to be made for the Outstanding Parity Bonds.

Section 4. Authorization of the Bond. The City is authorized to borrow money on the credit of the City and issue a water and sewer revenue refunding bond evidencing indebtedness in the aggregate principal amount not to exceed \$2,500,000 to provide funds necessary to refund the Refunded Bonds and to pay the costs of issuance and sale of the Bond.

Section 5. Description of the Bond; Appointment of Designated Representative. The Director of Finance, or the City Manager in the absence of the Director of Finance, is appointed as the Designated Representative of the City and is authorized and directed to conduct the sale of the Bond in the manner and upon the terms deemed most advantageous to the City, and to approve the Final Terms of the Bond, with such additional terms and covenants as the Designated Representative deems advisable, within the following parameters.

(a) *Principal Amount.* The Bond shall not exceed the aggregate principal amount of \$2,500,000.

(b) *Date or Dates.* The Bond shall be dated as of its date of delivery to the Purchaser, which date may not be later than December 31, 2017.

(c) *Interest Rate(s).* The Bond shall bear interest at fixed or variable rates, provided that the average interest rate on the Bond may not exceed 5.00%, other than an adjustment that may occur upon an Event of Default or determination of taxability, and the true interest cost to the City for the Bond may not exceed 4.00%.

(d) *Payment Dates.* Interest must be payable at the rates and on such dates as are acceptable to the Designated Representative. Principal payments shall commence on a payment date acceptable to the Designated Representative and must be payable at maturity or in installments on such dates as are acceptable to the Designated Representative.

(e) *Final Maturity.* The Bond shall mature no later than December 1, 2027.

(f) *Price.* The purchase price for the Bond may be in an amount as is acceptable to the Designated Representative.

(g) *Savings.* There is a minimum net present value savings of 5.0% of the Refunded Bonds.

(h) *Other Terms and Conditions.*

(1) The Bond may be sold in accordance with Section 19 of this ordinance.

(2) The Designated Representative may accept such additional terms, conditions and covenants as he or she may determine are in the best interests of the City, consistent with this ordinance.

(3) The Designated Representative may enter into a continuing disclosure agreement, bond purchase agreement or loan agreement with the Purchaser, as applicable.

Section 6. Bond Registrar; Registration and Transfer of the Bond. Pursuant to RCW 39.46.030(4) the City's Director of Finance shall serve as initial fiscal agent for the City (the "Bond Registrar") with respect to the Bond and is authorized, on behalf of the City, to authenticate and deliver the Bond in accordance with the provisions of the Bond and this ordinance. The Bond shall be issued only in registered form as to both principal and interest and

shall be recorded on books or records maintained by the Bond Registrar (the "Bond Register"). The Bond Register shall contain the name and mailing address of the owner of the Bond.

Upon a determination by the Director of Finance that maintenance of the duties of the Bond Registrar is no longer convenient, the fiscal agent of the State of Washington shall act as Bond Registrar.

The Bond Registrar shall keep, or cause to be kept, at its office, sufficient books for the registration, assignment or transfer of the Bond, which books shall be open to inspection by the City at all times. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver the Bond transferred or exchanged in accordance with the provisions of the Bond and this ordinance, to serve as the City's paying agent for the Bond and to carry out all of the 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 Bond.

The Bond may be assigned or transferred only in whole by the registered owner to a single investor that is a financial institution or an entity who is reasonably believed to be a qualified institutional buyer within the meaning of the applicable federal securities laws. Any transfer shall be without cost to the owner or transferee, except for governmental charges imposed on any such transfer or exchange. The Bond Registrar shall not be obligated to exchange or transfer the Bond during the 15 days preceding any installment or prepayment date. When the Bond has been paid in full, both principal and interest, the Bond shall be surrendered to the Bond Registrar, who shall cancel the Bond.

Section 7. Prepayment. The City reserves the right and option to prepay and redeem any or all of the principal amount of the Bond outstanding at par plus accrued interest to the date of prepayment upon such terms as designated by the Designated Representative. The City shall provide the Purchaser with written notice of any intended prepayment prior to such prepayment date. Interest on the principal amount of the Bond called for prepayment shall cease to accrue on the date fixed for prepayment unless the principal amount called for prepayment is not paid on the prepayment date.

At any time there is a partial prepayment, the remaining installment payments will continue to be made as set forth in the Bond, until the Bond has been repaid in full, unless the Purchaser agrees otherwise.

Section 8. Form and Execution of the Bond.

(a) *Form of the Bond; Signatures and Seal.* The Bond shall be prepared in a form consistent with the provisions of this ordinance and State law. The City Council authorizes the Bond to be signed by the Mayor and the City 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. If any officer whose manual or facsimile signature appears on the Bond ceases to be an officer of the City authorized to sign bonds before the Bond bearing his or her manual or facsimile signature is authenticated by the Bond Registrar, or issued or delivered by the City, that Bond 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. The Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on its Issue Date.

(b) *Authentication.* Only the Bond bearing a Certificate of Authentication in substantially the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance: “Certificate of Authentication. This Bond is the fully registered City of Sunnyside, Washington, Water and Sewer Revenue Refunding Bond, 2017, described in the Bond Ordinance.” 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.

Section 9. Payment of the Bond. Principal of and interest on the Bond shall be payable in lawful money of the United States of America. Principal of and interest on the Bond registered in the name of the Securities Depository is payable in the manner set forth in the Letter of Representations. Interest on the Bond not registered in the name of the Securities Depository is payable by electronic transfer on the interest payment date, or by check or draft of the Bond Registrar mailed on the interest payment date to the Registered Owner at the address appearing on the Bond Register on the Record Date. However, the City is not required to make electronic transfers except pursuant to a request by a Registered Owner in writing received on or prior to the Record Date and at the sole expense of the Registered Owner. Principal of the Bond not registered in the name of the Securities Depository is payable upon presentation and surrender of the Bond by the Registered Owner to the Bond Registrar. The Bond is not subject to acceleration under any circumstances.

Section 10. Revenue Fund; Priority of Application of Revenue; Coverage Stabilization Account.

(a) *Revenue Fund.* The City maintains the Water Sewer Operating Fund as a separate enterprise fund of the City. All Revenue of the System is deposited in the Water and Sewer Operating Funds (the “Revenue Fund”). Notwithstanding the foregoing, the Director of Finance may maintain such separate funds and accounts in such names and under such additional designations as shall be required to comply with the uniform system of accounting established by the State Auditor from time to time.

(b) *Priority of Application of Revenue of the System.* The Revenue Fund shall be held separate and apart from all other funds and accounts of the City and the Revenue of the System deposited in such Fund shall be used only for the following purposes and in the following order of priority:

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

Second, to pay the interest on any Parity Bonds, including reimbursements to the issuer of a Qualified Letter of Credit or Qualified Insurance if the Qualified Letter of Credit or

Qualified Insurance secures the payment of interest on Parity Bonds and the ordinance authorizing such Parity Bonds provides for such reimbursement;

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

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

Fifth, to make all payments required to be made into any revenue bond redemption fund or revenue warrant redemption fund and debt service fund or Reserve Account created to pay and secure the payment of the principal of and interest on Government Loans and any other revenue bonds or revenue warrants of the City having a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on Parity Bonds; and

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

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

(c) *Coverage Stabilization Account.* The Director of Finance is hereby authorized and directed to create a Coverage Stabilization Account within the Revenue Fund. The City hereby determines that the maintenance of a Coverage Stabilization Account will even out fluctuations in Net Revenues and help to alleviate the need for short-term rate adjustments. Money in the Coverage Stabilization Account will be transferred as determined from time to time by the City. The City may make payments into the Coverage Stabilization Account from the Revenue Fund at any time. Money in the Coverage Stabilization Account may be withdrawn at any time and used for the purpose for which the Revenue of the System may be used. Amounts withdrawn from the Coverage Stabilization Account shall increase Revenue of the System for the period in which they are withdrawn, and amounts deposited in the Coverage Stabilization Account shall reduce Revenue of the System for the period during which they are deposited. Credits to or from the Coverage Stabilization Account that occur within 90 days after the end of a fiscal year may be treated as occurring within such fiscal year. Earnings on the Coverage Stabilization Account shall be credited to the Revenue Fund.

Section 11. Bond Fund and Reserve Account. The Director of Finance has established the City of Sunnyside Revenue Bond Interest and Redemption Fund for the payment of the debt

service on all Parity Bond (the "Bond Fund"). The Director of Finance also has established the Bond Debt Service Reserve Account within the Bond Fund for the purpose of securing the repayment of all Parity Bonds (the "Reserve Account").

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

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

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

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

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

If a deficiency in the Bond Fund for the payment of debt service on Parity Bonds shall occur, such deficiency shall be made up from the Reserve Account by the withdrawal of cash therefrom for that purpose and by the sale or redemption of obligations held in the Reserve

Account, in such amounts as will provide cash in the Reserve Account sufficient to make up any such deficiency with respect to Parity Bonds, and if a deficiency still exists immediately prior to an interest payment date and after the withdrawal of cash, the City shall then draw from any Qualified Letter of Credit or Qualified Insurance for Parity Bonds in sufficient amount to make up the deficiency. Such draw shall be made at such times and under such conditions as the agreement for such Qualified Letter of Credit or such Qualified Insurance shall provide.

In making the payments and credits to the Reserve Account required by this Section 11(b), to the extent that the City has obtained Qualified Insurance or a Qualified Letter of Credit for specific amounts required pursuant to this section to be paid out of the Reserve Account such amounts so covered by Qualified Insurance or a Qualified Letter of Credit shall be credited against the amounts required to be maintained in the Reserve Account by this Section 11(b) to the extent that such payments and credits to be made are insured by an insurance company, or guaranteed by a letter of credit from a financial institution.

Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up within one year of the date of withdrawal from Net Revenues or from ULID Assessments (or out of any other moneys on hand legally available for such purpose) after making necessary provision for the payments required to be made into the Bond Fund within such year.

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

In the event that the City elects to meet the Reserve Requirement through the use of a Qualified Letter of Credit, Qualified Insurance or other equivalent credit enhancement device, the City may contract with the entity providing such Qualified Letter of Credit, Qualified Insurance or other equivalent credit enhancement device that the City's reimbursement obligation, if any, to such entity shall be made from payments of principal and interest on Parity Bonds from the City subject only to the prior lien thereon for the payments required hereunder to be made to registered owners of Parity Bonds.

Once the Outstanding Parity Bonds are no longer outstanding, the ordinance authorizing any Future Parity Bonds may establish a separate debt service reserve account for any such Future Parity Bonds and set forth the reserve account requirement for such bonds or provide that some or all of such Future Parity Bonds be secured by the Reserve Account. The owner of the Bond by taking and holding the same shall be deemed to have consented to the adoption by the City of such supplemental ordinance.

(c) *Priority of Lien of Payments into Bond Fund and Reserve Account.* The amounts so pledged to be paid into the Bond Fund and the Reserve Account from the Revenue Fund and from ULID Assessments are hereby declared to be a prior lien and charge upon the Revenue of the System and ULID Assessments superior to all other charges of any kind or nature whatsoever except the Costs of Maintenance and Operation of the System, and except that the amounts so

pledged are of equal lien to the charges upon such Revenue of the System and ULID Assessments for the payment of the principal of and interest on any Future Parity Bonds.

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

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

Section 12. Specific Covenants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) *Liability Insurance.* The City will at all times keep and arrange to keep in full force and effect policies of public liability which will protect the City against anyone claiming damages of any kind or nature arising out of the operation of the System, if such insurance is obtainable at reasonable rates and upon reasonable conditions, in such amounts and with such

deductibles as the Council shall deem necessary for the protection of the City and the owners of the outstanding Parity Bonds.

(h) *Delinquencies of Accounts.* The City will on or before March 1 (or once the Outstanding Parity Bonds are no longer outstanding, on such date as determined by the City) of each calendar year, determine all accounts that are delinquent and will take all necessary action to enforce payment of any such delinquencies.

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

Section 13. Failure to Pay the Bond. If the principal of the Bond is not paid when the Bond is properly presented at its maturity or date fixed for prepayment, the City shall be obligated to pay interest on the Bond at the same rate provided in the Bond from and after its maturity or date fixed for prepayment until the Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Bond Fund, or in a trust account established to refund or defease the Bond, and the Bond has been called for payment by giving notice of that call to the Registered Owner.

Section 14. Refunding of the Refunded Bonds.

(a) *Appointment of Refunding Trustee.* The Designated Representative is authorized to appoint a Refunding Trustee in connection with the Bond.

(b) *Use of Bond Proceeds; Acquisition of Acquired Obligations.* The proceeds of the sale of the Bond shall be deposited immediately upon the receipt thereof with the Refunding Trustee and used to discharge the obligations of the City relating to the Refunded Bonds under Ordinance No. 2168 by providing for the payment of the amounts required to be paid by the Refunding Plan. If necessary, and to the extent practicable, such obligations may be discharged fully by the Refunding Trustee's simultaneous purchase of the Acquired Obligations, bearing such interest and maturing as to principal and interest in such amounts and at such times so as to provide, together with a beginning cash balance, if necessary, for the payment of the amount required to be paid by the Refunding Plan. The Acquired Obligations, if acquired, will be listed and more particularly described in an exhibit to be attached to the Refunding Trust Agreement between the City and the Refunding Trustee, but are subject to substitution as set forth below. Any Bond proceeds or other money deposited with the Refunding Trustee not needed to purchase the Acquired Obligations and provide a beginning cash balance, if any, and pay the costs of issuance of the Bond shall be returned to the City at the time of delivery of the Bond to the Bank and deposited in the Bond Account and used to pay interest on the Bond on their first interest payment date.

If payment of the costs of issuance of the Bond is not included in the Refunding Plan, the Bond proceeds that are not deposited with the Refunding Trustee will be deposited with the City to be used to pay the costs of issuance of the Bond.

(c) *Substitution of Acquired Obligations.* Prior to the purchase of any Acquired Obligations by the Refunding Trustee, the City reserves the right to substitute other direct, noncallable obligations of the United States of America (“Substitute Obligations”) for any of the Acquired Obligations and to use any savings created thereby for any lawful City purpose if, (a) in the opinion of the City’s Bond Counsel, the interest on the Bond and the Refunded Bonds will remain excluded from gross income for federal income tax purposes under Sections 103, 148, and 149(d) of the Code, and (b) such substitution shall not impair the timely payment of the amounts required to be paid by the Refunding Plan, as verified by a nationally recognized independent certified public accounting firm.

After the purchase of the Acquired Obligations by the Refunding Trustee, the City reserves the right to substitute therefor cash or Substitute Obligations subject to the conditions that such money or securities held by the Refunding Trustee shall be sufficient to carry out the Refunding Plan, that such substitution will not cause the Bond or the Refunded Bonds to be arbitrage bonds within the meaning of Section 148 of the Code and regulations thereunder in effect on the date of such substitution and applicable to obligations issued on the issue dates of the Bond and the Refunded Bonds, as applicable, and that the City obtain, at its expense: (i) a verification by a nationally recognized independent certified public accounting firm acceptable to the Refunding Trustee confirming that the payments of principal of and interest on the substitute securities, if paid when due, and any other money held by the Refunding Trustee will be sufficient to carry out the Refunding Plan; and (ii) an opinion from a nationally recognized Bond Counsel to the City, to the effect that the disposition and substitution or purchase of such securities, under the statutes, rules, and regulations then in force and applicable to the Bond, will not cause the interest on the Bond or the Refunded Bonds to be included in gross income for federal income tax purposes and that such disposition and substitution or purchase is in compliance with the statutes and regulations applicable to the Bond. Any surplus money resulting from the sale, transfer, other disposition, or redemption of the Acquired Obligations and the substitutions therefor shall be released from the trust estate and transferred to the City to be used for any lawful City purpose.

(d) *Administration of Refunding Plan.* The Refunding Trustee is authorized and directed to purchase the Acquired Obligations (or substitute obligations), if so directed by the Designated Representative, and to make the payments required to be made by the Refunding Plan from the Acquired Obligations (or substitute obligations) and money deposited with the Refunding Trustee pursuant to this ordinance. All Acquired Obligations (or substitute obligations) and the money deposited with the Refunding Trustee and any income therefrom shall be held irrevocably, invested and applied in accordance with the provisions of Ordinance No. 2168, this ordinance, chapter 39.53 RCW and other applicable statutes of the State of Washington and the Refunding Trust Agreement. All necessary and proper fees, compensation, and expenses of the Refunding Trustee for the Bond and all other costs incidental to the setting up of the escrow to accomplish the refunding of the Refunded Bonds and costs related to the issuance and delivery of the Bond, including Bond Counsel’s fees, and other related expenses, shall be paid out of the proceeds of the Bond.

(e) *Authorization for Refunding Trust Agreement.* In order to carry out the Refunding Plan provided for by this ordinance, the Director of Finance is authorized and directed to execute and deliver to the Refunding Trustee a Refunding Trust Agreement setting forth the duties, obligations and responsibilities of the Refunding Trustee in connection with the payment, redemption, and retirement of the Refunded Bonds as provided herein. Prior to executing the Refunding Trust Agreement, the Director of Finance of the City is authorized to make such changes therein that do not change the substance and purpose thereof or that assure that the escrow provided therein and the Bond are in compliance with the requirements of federal law governing the exclusion of interest on the Bond from gross income for federal income tax purposes.

Section 15. Call for Redemption of the Refunded Bonds. The City calls for redemption on such date as shall be determined by the Designated Representative, all of the Refunded Bonds at par plus accrued interest. Such call for redemption shall be irrevocable after the delivery of the Bond to the Bank.

The proper City officials are authorized and directed to give or cause to be given such notices as required, at the times and in the manner required, pursuant to Ordinance No. 2168 in order to effect the redemption prior to their maturity of the Refunded Bonds.

Section 16. Findings with Respect to Refunding. The City Council authorizes the issuance of the Bond if it will achieve debt service savings to the City and is in the best interest of the City and its ratepayers. In making such finding and determination, the City Council will give consideration to the maturity of the Bond and the Refunded Bonds, the costs of issuance of the Bond and the known earned income from the investment of the proceeds of the issuance and sale of the Bond and other money of the City used in the Refunding Plan, if any, pending payment and redemption of the Refunded Bonds.

The Designated Representative may purchase Acquired Obligations to be deposited with the Refunding Trustee, together with the income therefrom, and with any necessary beginning cash balance, which will be sufficient to redeem the Refunded Bonds and will discharge and satisfy the obligations of the City under Ordinance No. 2168 with respect to the Refunded Bonds, and the pledges, charges, trusts, covenants, and agreements of the City therein made or provided for as to the Refunded Bonds, and that the Refunded Bonds shall no longer be deemed to be outstanding under such ordinance immediately upon the deposit of such money with the Refunding Trustee.

Section 17. Tax Covenants; Designation of the Bond as a “Qualified Tax Exempt Obligation.”

(a) *Preservation of Tax Exemption for Interest on the Bond.* The City covenants that it will take all actions necessary to prevent interest on the Bond from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bond or other funds of the City treated as proceeds of the Bond that will cause interest on the Bond to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirements of Section 148

of the Code are applicable to the Bond, take all actions necessary to comply (or to be treated as having complied) with those requirements in connection with the Bond.

(b) *Post-Issuance Compliance.* The Director of Finance is authorized and directed to adopt and implement the City's written procedures to facilitate compliance by the City with the covenants in this ordinance and the applicable requirements of the Code that must be satisfied after the Issue Date to prevent interest on the Bond from being included in gross income for federal tax purposes.

(c) *Designation of the Bond as a "Qualified Tax-Exempt Obligation."* The City may designate the Bond as a "qualified tax-exempt obligation" for the purposes of Section 265(b)(3) of the Code, if the following conditions are met:

(1) the Bond does not constitute a "private activity bond" within the meaning of Section 141 of the Code;

(2) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) that the City and any entity subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) will issue during the calendar year in which the Bond is issued will not exceed \$10,000,000; and

(3) the amount of tax-exempt obligations, including the Bond, 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 Bond is issued does not exceed \$10,000,000.

Section 18. Issuance of Future Parity Bonds.

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

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

(2) the ordinance authorizing the issuance of such Future Parity Bonds shall include the covenants provided in Section 12 hereof and provide that the Reserve Requirement shall be funded no later than the date of delivery of the Future Parity Bonds; and

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

(b) *No Certificate Required.* The certificate described in the foregoing subsection (a)(3) shall not be required as a condition to the issuance of Future Parity Bonds:

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

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

(c) *Certificate of the City without a Consultant.* If required pursuant to the foregoing subsection (a)(3), a certificate may be delivered by the City (executed by the Director of Finance) without a Consultant if Net Revenues for the Base Period (confirmed by an audit) conclusively demonstrate that the Parity Requirement will be fulfilled commencing with the first full fiscal year following the date on which any portion of interest on the series of Future Parity Bonds then being issued will not be paid from the proceeds of such series of Future Parity Bonds.

(d) *Certificate of a Consultant.* Unless compliance with the requirements of subsection (a)(3) have been otherwise satisfied (as provided in (b) or (c) above), compliance with the Parity Requirement shall be demonstrated conclusively by a certificate of a Consultant.

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

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

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

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

(4) The estimated annual net revenue to be derived from the operation of any additions or improvements to or extensions of the City under construction but not completed at the time of such certificate and not being paid for out of the proceeds of sale of such Future Parity Bonds being issued, and which net revenue is not otherwise included in any of the sources of net revenue described in this subsection (d); and

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

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

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

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

(e) *Subordinate Lien Obligations.* Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations which are a charge upon the Revenue of the System junior or inferior to the payments required by this ordinance to be made out of such Revenue to pay and secure the payment of any outstanding Parity Bonds.

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

Section 19. Sale and Delivery of the Bond.

(a) *Manner of Sale of the Bond; Delivery of the Bond.* The Designated Representative is authorized to sell the Bond by negotiated sale or private placement based on the assessment of the Designated Representative of market conditions, in consultation with appropriate City officials and staff, Bond Counsel and other advisors. In determining the method of sale of the Bond and accepting the Final Terms, the Designated Representative shall take into account those factors that, in the judgment of the Designated Representative, may be expected to result in the lowest true interest cost to the City.

(b) *Procedure for Negotiated Sale or Private Placement.* If the Designated Representative determines that the Bond is to be sold by negotiated sale or private placement, the Designated Representative shall select one or more Purchasers with which to negotiate such sale. A Pricing Certificate shall set forth the Final Terms of the Bond. The Designated Representative is authorized to execute the Pricing Certificate on behalf of the City, so long as the terms provided therein are consistent with the terms of this ordinance.

(c) *Preparation, Execution and Delivery of the Bond.* The Bond will be prepared at City expense and will be delivered to the Purchaser in accordance with this ordinance, together with the approving legal opinion of Bond Counsel regarding the Bond.

Section 20. Reporting Requirements. While the Bond is outstanding, the City shall submit its annual financial reports, audit reports and budgets to the Purchaser along with such additional information as the Purchaser may reasonably request as set forth in the Pricing Certificate.

Section 21. Supplemental and Amendatory Ordinances. The City may supplement or amend this ordinance for any one or more of the following purposes without the consent of the owner of the Bond:

(a) To add covenants and agreements that do not materially adversely affect the interests of the owner, or to surrender any right or power reserved to or conferred upon the City.

(b) To cure any ambiguities, or to cure, correct or supplement any defective provision contained in this ordinance in a manner that does not materially adversely affect the interest of the owner of the Bond.

Section 22. General Authorization and Ratification. The Designated Representative and other appropriate officers of the City are severally authorized to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this ordinance, and to do everything necessary for the prompt delivery of the Bond to the Purchaser thereof and for the proper application, use and investment of the proceeds of the Bond. All actions taken prior to the effective date of this ordinance in furtherance of the purposes described in this ordinance and not inconsistent with the terms of this ordinance are ratified and confirmed in all respects.

Section 23. Severability. The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

Section 24. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Sunnyside, Washington, at an open public meeting thereof, this 12th day of June, 2017.



James Restucci, Mayor

ATTEST:



Deborah Estrada, City Clerk

APPROVED AS TO FORM:



Bond Counsel

CERTIFICATION

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

1. The attached copy of Ordinance 2017 - 07 (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on June 12, 2017, as that ordinance appears on the minute book of the City.

2. The Ordinance will be in full force and effect five days after publication in the City's official newspaper, which publication date is June 15, 2017.

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

Dated: June 13, 2017.

CITY OF SUNNYSIDE, WASHINGTON



Deborah Estrada, City Clerk