Everett City Council Agenda
6:30 P.M. October 19, 2016
City Council Chambers

Roll Call

Pledge of Allegiance

Approval of Minutes: October 12, 2016

Mayor's Comments

Council Comments/Liaison Reports

Administration Update on prior business

City Attorney

Citizen Comments

COUNCIL BRIEFING AGENDA: (These items come before the City Council serving as a Council Committee of the Whole and are likely to be scheduled at a future meeting.)

(1) CB 1610-43 -1st Reading – Adopt the Proposed Ordinance authorizing the issuance of Water and Sewer Revenue bonds in the principal amount not to exceed $82,500,000 for the purpose of refunding certain outstanding revenue bonds of the City.(3rd and final reading on 11-2-16).

Documents:

CB 1610-43.pdf

(2) Authorize the Mayor to sign a Wholesale Water Delivery Contract for 2016-2066 with the Tulalip Tribes.

Documents:

Tulalips.pdf

(3) Adopt Resolution naming the proposed Riverfront Park in the Riverfront Redevelopment Project "Eclipse Mill Park".

Documents:

Eclipse Mill Park.pdf

CONSENT ITEMS:

PUBLIC HEARING:

ACTION ITEMS:

Executive Session

Adjourn

(7)

(6) Adopt the Resolution No. ____ authorizing claims against the City of Everett in the amount of $1,239,830.55 for the period of May 23, 2015 through May 29, 2015.

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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Ordinance authorizing the issuance of Water and Sewer Revenue bonds in the principal amount of not to exceed $82,500,000 for the purpose of refunding certain outstanding revenue bonds of the City.

10/19/16	Briefing	COUNCIL BILL #	CB1610-43
	Proposed Action	Originating Department	Finance/PW
	Consent	Contact Person	Susy Haugen Matt Welborn
	Action	Phone Number	X8612/X8974
10/19/16	First Reading	FOR AGENDA OF	10/19/16
10/26/16	Second Reading		
11/2/16	Third Reading		
	Public Hearing		
	Budget Advisory		

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
		Ordinance	

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The proposed bond issue will refinance the outstanding 2009 and 2011 Water & Sewer Bonds. The purpose of this refinance is to obtain savings through lower financing costs. The estimated present value of savings is $7.4 million, which is in excess of 10%. The actual savings will be determined through competitive sale on the bond sale date. This transaction will not impact the rate forecast.

RECOMMENDATION (Exact action requested of Council):

Adopt Ordinance authorizing the issuance of Water and Sewer Revenue bonds in the principal amount of not to exceed $82,500,000 for the purpose of refunding certain outstanding revenue bonds of the City

CITY OF EVERETT
WATER AND SEWER REVENUE REFUNDING BONDS, 2016

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE REFUNDING BONDS OF THE CITY IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED $82,500,000 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING REVENUE BONDS OF THE CITY.

Passed: November 2, 2016

Prepared by:

K&L GATES LLP
Seattle, Washington

CITY OF EVERETT
ORDINANCE NO. _____
TABLE OF CONTENTS*

		Page
Section 1.	Definitions	4
Section 2.	Compliance with Parity Conditions	21
Section 3.	Authorization of Bonds and Bond Details	22
Section 4.	Registration, Exchange and Payments	23
Section 5.	Redemption; Purchase of Bonds	28
Section 6.	Revenue Fund; Priority of Payments from Revenue Fund; Coverage Stabilization Account	31
Section 7.	Payments into Revenue Bond Fund	33
Section 8.	Bond Covenants	38
Section 9.	Issuance of Future Parity Bonds	43
Section 10.	Tax Covenants	46
Section 11.	Form of Bonds	49
Section 12.	Execution of Bonds	51
Section 13.	Defeasance	52
Section 14.	Lost, Stolen or Destroyed Bonds	53
Section 15.	Sale of Bonds	53
Section 16.	Disposition of Bond Proceeds; Refunding Plan and Procedures	55
Section 17.	Undertaking to Provide Ongoing Disclosure	58
Section 18.	Amendments	58
Section 19.	Severability	60
Section 20.	Effective Date	61

* This Table of Contents and the Cover Page are for convenience of reference and are not intended to be a part of this ordinance.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE REFUNDING BONDS OF THE CITY IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED $82,500,000 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING REVENUE BONDS OF THE CITY.

WHEREAS, the City of Everett, Washington (the "City") now owns and operates a combined system of water supply and distribution and sewage treatment and disposal (the "System"); and

WHEREAS, the City has outstanding its water and sewer revenue bonds payable from revenues of the System as follows:

Authorizing Ordinance	Bond Designation	Date of Bonds	Principal Amount Outstanding (10/1/16)
Ordinance No. 3123-09	Water and Sewer Revenue and Refunding Bonds, 2009 ("2009 Bonds")	May 13, 2009	$ 31,945,000
Ordinance No. 3211-11	Water and Sewer Revenue Bonds, 2011 ("2011 Bonds")	March 30, 2011	48,145,000
Ordinance No. 3313-13	Water and Sewer Revenue Refunding Bonds, 2013 ("2013 Bonds")	February 14, 2013	57,750,000
Ordinance No. 3450-15	Water and Sewer Revenue Bonds, 2015 ("2015 Bonds")	November 3, 2015	50,525,000

(collectively, the "Outstanding Parity Bonds"); and

WHEREAS, the remaining outstanding 2009 Bonds mature on the following dates and in the following principal amounts:

Maturity Year (December 1)	Principal Amount	Interest Rate
2016	$ 1,190,000	4.000%
2017	1,235,000	4.000
2018	1,285,000	4.000
2019	1,340,000	4.500
2020	1,400,000	5.000
2021	1,470,000	5.000
2022	1,540,000	5.000
2023	1,620,000	5.000
2024	1,700,000	4.000
2025	1,765,000	4.125
2026	1,840,000	4.200
2027	1,920,000	5.000
2028	2,015,000	5.000
2029	2,115,000	5.000
2033	9,510,000	4.625

; and

WHEREAS, Ordinance No. 3123-09 provides that the 2009 Bonds maturing on and after December 1, 2019 (the "2009 Refunding Bond Candidates") may be redeemed in whole, or in part, on any date on and after June 1, 2019 at par; and

WHEREAS, the remaining outstanding 2011 Bonds mature on the following dates and in the following principal amounts:

Maturity Year (December 1)	Principal Amount	Interest Rate
2016	$ 1,525,000	3.00%
2017	1,575,000	2.50
2018	1,610,000	5.00
2019	1,695,000	5.00
2020	1,775,000	5.00
2021	1,865,000	5.00
2022	1,960,000	5.00
2023	2,060,000	5.00
2024	2,160,000	5.00
2025	2,270,000	5.00
2026	2,380,000	5.00
2027	2,500,000	4.25
2028	2,605,000	5.00
2029	2,740,000	4.75
2030	2,870,000	4.75
2031	3,005,000	4.80
2032	3,150,000	4.75
2035	10,400,000	5.00

; and

WHEREAS, Ordinance No. 3211-11 provides that the 2011 Bonds maturing on and after December 1, 2021 (the "2011 Refunding Bond Candidates") may be redeemed in whole, or in part, on any date on and after December 1, 2020 at par; and

WHEREAS, it appears that all or a portion of the 2009 Refunding Bond Candidates and the 2011 Refunding Bond Candidates (together, the "Refunding Bond Candidates") may be refunded with the proceeds of water and sewer revenue refunding bonds (the "Bonds"), thereby realizing savings in debt service for the benefit of the City's ratepayers; and

WHEREAS, the ordinances authorizing the Outstanding Parity Bonds provide that additional water and sewer revenue bonds may be issued on a parity with such bonds if certain conditions are met; and

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

WHEREAS, the Bonds authorized herein shall be sold pursuant to a competitive sale as herein provided;

NOW, THEREFORE, the City of Everett does ordain, as follows:

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

Accreted Value means (1) with respect to any Capital Appreciation Bonds, as of any date of calculation, the sum of the amount set forth in the ordinance authorizing their issuance as the amount representing the initial principal amount of such Capital Appreciation Bonds plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date, or (2) with respect to Original Issue Discount Bonds, as of the date of calculation, the amount representing the initial public offering price of such Original Issue Discount Bonds plus the amount of discounted principal that 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.

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

Annual Debt Service means the total amount of Debt Service for any Parity Bond or series of Parity Bonds or other subordinate lien evidences of indebtedness payable from Revenue of the System in any fiscal year or Base Period. From and after the New Date, (absent a written

election by a Designated Representative to the contrary) Annual Debt Service shall be calculated net of any federal subsidy legally available to pay the principal of or interest on Parity Bonds in the year of calculation. Thereafter, such federal subsidy shall no longer be included in the definition of Revenue of the System.

Approved Bid means the winning bid submitted for the Bonds.

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

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

Beneficial Owner means any person that has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

Bonds mean the City of Everett, Washington, Water and Sewer Revenue Refunding Bonds, 2016 authorized herein.

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

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

issuance of the Bonds, Bond Years end on each anniversary of the date of issue and on the final maturity date of the Bonds.

Call Date means June 1, 2019 for the 2009 Refunding Bond Candidates and December 1, 2020 for the 2011 Refunding Bond Candidates.

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.

Chief Financial Officer means the duly qualified, appointed and acting Chief Administrative Assistant-Chief Financial Officer of the City or any other officer who succeeds to the duties now delegated to that office.

City means the City of Everett, a municipal corporation duly organized and existing under the laws of the State of Washington.

Code means the federal Internal Revenue Code of 1986, as amended, and applicable regulations.

Commission means the United States Securities and Exchange Commission.

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 9 hereof and making the calculation required by Section 9 hereof, the term Consultant shall also include any independent public

accounting firm or engineer appointed by the City to make such calculation or to provide such certificate.

Continuing Disclosure Agreement means the agreement entered into by the Chief Financial Officer pursuant to Section 17 of this ordinance in order to permit the successful bidder for the Bonds to comply with the Rule.

Cost of Issuance Agreement means the agreement of that name, to be entered into by the City and the Escrow Agent, providing for the payment of certain costs of issuance with respect to the issuance of the Bonds.

Costs of Maintenance and Operation means all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expense with respect to the System, but excludes depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the System, municipal taxes, or payments to the City in lieu of taxes.

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

Coverage Stabilization Account means the account of that name maintained pursuant to Section 6(c) of this ordinance.

Covered Bonds means the Outstanding Parity Bonds, the Bonds and those Future Parity Bonds designated in the ordinance authorizing their issuance as Covered Bonds secured by the Reserve Account.

Credit Facility means a policy of municipal bond insurance, a letter of credit, surety bond, line of credit, guarantee or other financial instrument or any combination of the foregoing,

which obligates a third party to make payment or provide funds for the payment of financial obligations of the City. There may be one or more Credit Facilities outstanding at any time.

Debt Service means, for any period of time,

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

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

(c) with respect to all other series of Parity Bonds, other than Fixed Rate Bonds, Original Issue Discount Bonds or Capital Appreciation Bonds, specifically including but not limited to Balloon Maturity Bonds and Parity Bonds bearing variable rates of interest, an amount for any period equal to the amount which would have been payable for principal and interest on such Parity Bonds during such period computed on the assumption that the amount of Parity Bonds as of the date of such computation would be amortized (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 for the Base Period determined as follows: (A) if the Variable Rate Bonds have been outstanding for at least twelve (12) months, assume that the Parity Bonds bear interest at the higher of the actual rate borne by the Parity Bonds on the date of calculation or the average rate borne by the Parity Bonds over the twelve (12) months immediately preceding the date of calculation, and (B) if the Parity Bonds have been outstanding for less than twelve (12) months or are not yet outstanding, assume that the Parity Bonds bear interest at the higher of the actual rate borne by the Parity Bonds on the date of calculation or (X) if interest on the Parity Bonds is excludable from gross income under the applicable provisions of the Code, the average rate set forth on the Securities Industry and Financial Markets Association Municipal Swap Index over the twelve (12) months immediately preceding the date of calculation, or (Y) if interest is not so excludable, the average rate on Federal Securities with maturities comparable to the rate reset period (iii) to provide for essentially level annual debt service of principal and interest over such period.

Debt Service shall be net of any principal and/or interest funded out of Bond proceeds. Debt Service shall include reimbursement obligations to providers of Credit Facilities to the extent authorized by ordinance. Debt Service shall exclude the payments required to be made with respect to revenue bond anticipation notes to the extent that the ordinance authorizing their issuance provides that the bond anticipation notes will be funded with the proceeds of Future Parity Bonds.

Designated Representative means the Mayor, the Chief Financial Officer or any City employee designated by either of them.

DTC means The Depository Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York, as depository for the Bonds pursuant to Section 4 hereof.

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

Escrow Agreement means the Escrow Deposit Agreement to be dated as of the date of closing and delivery of the Bonds.

Federal Securities means direct obligations of (including obligations issued or held in book-entry form on the books of), or obligations the timely payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America.

Fitch means Fitch, Inc., organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such organization shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, ***Fitch*** shall be deemed to refer to any other nationally recognized securities rating agency (other than S&P or Moody's) designated by the Chief Financial Officer.

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

Future Parity Bonds means any water and sewer revenue bonds which the City may hereafter issue having a lien upon the Revenue of the System for the payment of the principal

thereof and interest thereon equal to the lien upon the Revenue of the System of the Bonds and the Outstanding Parity Bonds.

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

Government Obligations means those obligations now or hereafter defined as such in chapter 39.53 RCW.

Letter of Representations means the blanket issuer letter of representations from the City to DTC.

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

Moody's means Moody's Investors Service, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, ***Moody's*** shall be deemed to refer to any other nationally recognized securities rating agency (other than S&P and Fitch) designated by the Chief Financial Officer.

MSRB means the Municipal Securities Rulemaking Board.

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

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

New Date means the earlier of (i) the date on which all Outstanding Parity Bonds issued prior to 2013 are no longer outstanding; or (ii) the date on which the owner(s) of at least 60% of

all Parity Bonds then outstanding consent to the amendment to the definitions of Rate Covenant, Revenue of the System and Annual Debt Service made in Ordinance No. 3313-13. For purposes of this provision, the owners of the 2013 Bonds, the Bonds and any Future Parity Bonds are deemed to have approved the amended definitions in this ordinance.

Notice of Sale means the notice of bond sale authorized to be given in Section 15 of this ordinance.

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.

Outstanding Parity Bonds means the 2009 Bonds, the 2011 Bonds, the 2013 Bonds and the 2015 Bonds.

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

Parity Requirement means Net Revenues equal to or greater than 125% of average 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 that is covered by ULID Assessments.

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. For purposes of determining whether the Parity Requirement has been met, transfers from the Coverage Stabilization Account shall not be taken into account.

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

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

PWTF Loans mean the loans from the State of Washington Department of Community Development acting for the Public Works Trust Fund identified in the following chart.

Date of Issue	Original Amount	Bond Holder/Program Lender	Principal Balance (December 31, 2015)
05/04/01	$ 1,881,000	PWTF Northend Basement Sewer Flooding Reduction	$ 594,000
05/04/01	4,369,454	PWTF Phase 5 Replacement Transmission Lines 2 and 3	1,340,925
05/19/03	5,490,000	PWTF Pumped Effluent to Deepwater Outfall	2,318,000
06/30/03	841,670	PWTF Transmission Lines No 2 & 3 Replacement Phase VI	359,309
04/15/05	10,000,000	PWTF Treatment Plant Upgrade	5,277,778
06/14/06	7,000,000	PWTF Water Pollution Control Facility Expansion Phase a	4,052,632
07/07/11	10,000,000	PWTF Water Pollution Control Facility Expansion	9,323,120
01/01/11	62,063	City of Mukilteo Annexation	22,763
01/01/11	80,932	City of Mukilteo Annexation	52,751

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 any Rating Agency.

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 Parity Bonds, which institution maintains an office, agency or branch in the United States and as of the time of issuance of such letter of credit, is currently rated in one of the two highest Rating Categories by any Rating Agency.

Rate Covenant means Net Revenue in each fiscal year at least equal to 125% of the amounts required in such fiscal year to be paid as scheduled debt service (principal and interest) on all Parity Bonds, subtracting from scheduled debt service the amount of ULID Assessments collected in such year. Furthermore, in determining compliance with the Rate Covenant, Net

Revenues are subject to adjustment to reflect the following: (1) Revenue and Costs of Maintenance and Operation may be adjusted, regardless of then applicable generally accepted accounting principles, for certain items (e.g., to omit unrealized gains or losses in investments) to more fairly reflect the System's annual operating performance, and (2) from and after the New Date, (absent a written election by a Designated Representative to the contrary) scheduled debt service shall be calculated net of any federal subsidy legally available to pay the principal of or interest on Parity Bonds in the year of calculation and thereafter, such federal subsidy shall no longer be included in the definition of Revenue of the System. Scheduled debt service shall exclude the payments required to be made with respect to revenue bond anticipation notes to the extent that the ordinance authorizing their issuance provides that the bond anticipation notes will be funded with the proceeds of Future Parity Bonds.

Rating Agency means Moody's, S&P or Fitch.

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

Refunded Bonds means those 2009 Refunding Bond Candidates and 2011 Refunding Bond Candidates designated by the Designated Representative or his/her designee pursuant to authority delegated by Section 16 of this ordinance.

Registered Owner means the person in whose name the Bond is registered on the Bond Register. For so long as the Bonds are held in book-entry only form, DTC shall be deemed to be the sole Registered Owner.

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

Reserve Account means common Reserve Account maintained pursuant to Section 7(b) of this ordinance.

Reserve Requirement means the dollar amount to be calculated with respect to all Covered Bonds and separately with respect to other Parity Bonds.

(a) With respect to Covered Bonds, the Reserve Requirement shall be equal to the least of:

(1) Maximum Annual Debt Service for Covered Bonds,

(2) 10% of the initial principal amount of Covered Bonds of each series, and

(3) 125% of average annual debt service for Covered Bonds; provided, however, that the dollar amount required to be contributed, if any, as a result of the issuance of a series of Future Parity Bonds shall not be greater than the Tax Maximum. If the dollar amount required to be contributed at the time of issuance of a series exceeds the Tax Maximum, then the amount required to be contributed shall be equal to the Tax Maximum.

(b) With respect to other series of Parity Bonds, the Reserve Requirement shall be equal to the amount specified in the ordinance authorizing the issuance of that series of Parity Bonds.

The Reserve Requirement shall be adjusted accordingly and remain in effect until the earlier of (i) at the City's option, a payment of principal of Parity Bonds or (ii) the issuance of a subsequent series of Future Parity Bonds (when the Reserve Requirement shall be re-calculated).

Revenue Bond Fund means the "Fund 401 – Public Works-Utilities Bond Redemption Subaccount" created in the office of the Chief Financial Officer for the sole purpose of paying and securing the payment of the principal of, premium, if any, and interest on Parity Bonds.

Revenue Fund means the Water and Sewer Revenue Fund of the City created by Section 6 of Ordinance No. 536-78, now known as Fund 401 – Public Works – Utilities and shall include cash accounts therein.

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, connection and capital improvement charges collected for the purpose of defraying the cost of capital facilities of the System, and investment earnings and income from investments of money in the Revenue Fund and the Revenue Bond Fund or from any other investment of Revenues. Excluded from Revenue of the System are 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. From and after the New Date, unless declined by a written election by a Designated Representative, the term ***Revenue of the System*** shall not include any federal subsidy legally available to pay the principal of or interest on Parity Bonds. For purposes of determining compliance with the Rate Covenant, 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.

Rule means the Securities and Exchange Commission's Rule 15c2-12 under the Securities Exchange Act of 1934.

S&P means Standard & Poor's, a Division of The McGraw Hill Companies, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, ***S&P*** shall be deemed to refer to any other nationally recognized securities rating agency (other than Moody's and Fitch) designated by the Chief Financial Officer.

Savings Target means a dollar amount equal to at least four percent (4.0%) of the outstanding principal of the Refunded Bonds.

SRF Loans mean the State Revolving Fund loans identified in the following chart.

Date of Issue	Original Amount	Bond Holder/Program Lender	Principal Balance (December 31, 2015)
10/01/04	$ 4,040,000	SRF Clearwell No 2	$ 2,225,737
10/01/05	4,040,000	SRF Clearwell No 2	2,338,947
10/01/06	3,030,000	SRF Clearwell No 2	1,913,684
03/04/08	4,040,000	SRF Design & Const. of 2nd 5-Million Gallon Clearwell	2,773,154
03/03/09	3,030,000	SRF Recovered Water Outfall	1,014,298
02/26/14	1,994,497	SRF Bond St CSO Control Facilities	1,812,598

Surety Bond means one or more of the surety bond(s), if any, issued by the Surety Bond Issuer on the date of issuance of the Bonds for the purpose of satisfying all or a portion of the Reserve Requirement; provided that the Surety Bond meets the requirements for "Qualified Insurance." There may be more than one Surety Bond.

Surety Bond Agreement means any Agreement between the City and the Surety Bond Issuer with respect to the Surety Bond.

Surety Bond Issuer means the surety bond issuer(s), if any, issuing a surety bond for the purpose of satisfying all or a portion of the Reserve Requirement. There may be more than one Surety Bond Issuer.

System means the sanitary sewage 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, including the interest of the City in the water supply facilities constructed by Public Utility District No. 1 of Snohomish County pursuant to the Sultan River Project Agreement, as it now exists and as it may later be added to, extended and improved, for as long as Parity Bonds remain outstanding.

2009 Bond Ordinance means Ordinance No. 3123-09 adopted by the Council on April 15, 2009.

2009 Bonds mean the City's outstanding Water and Sewer Revenue and Refunding Bonds, 2009, issued under date of May 13, 2009, pursuant to Ordinance No. 3123-09.

2009 Refunding Bond Candidates means all or a portion of the 2009 Bonds maturing on and after December 1, 2019.

2011 Bond Ordinance means Ordinance No. 3211-11 adopted by the Council on March 2, 2011.

2011 Bonds mean the City's outstanding Water and Sewer Revenue Bonds, 2011, issued under date of March 20, 2011, pursuant to Ordinance No. 3211-11.

2011 Refunding Bond Candidates means all or a portion of the 2011 Bonds maturing on and after December 1, 2021.

2013 Bonds mean the City's outstanding Water and Sewer Revenue Refunding Bonds, 2013, issued under date of February 14, 2013, pursuant to Ordinance No. 3313-13.

2015 Bonds mean the City's outstanding Water and Sewer Revenue Bonds, 2015, issued under date of November 3, 2015, pursuant to Ordinance No. 3450-15.

Tax Maximum means the maximum dollar amount permitted by the Internal Revenue Code of 1986, as amended, including applicable regulations thereunder, to be allocated to a bond reserve account from bond proceeds without requiring a balance to be invested at a restricted yield.

ULID means a utility local improvement district of the City.

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

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

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

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

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

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

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

Section 2. Compliance with Parity Conditions The Council hereby finds and determines, as required by Section 10 of Ordinance No. 3123-09, Section 10 of Ordinance No. 3211-11, Section 9 of Ordinance No. 3313-13 and Section 10 of Ordinance No. 3450-15, as follows:

(1) That the Bonds are being issued for the purpose of refunding Outstanding Parity Bonds payable out of the Revenue of the System;

(2) The City has not been in default of its Rate Covenant for the immediately preceding fiscal year, without regard to transfers from the Coverage Stabilization Account;

(3) This ordinance, in Section 8(b), contains a covenant that the City will at all times establish, maintain and collect rates and charges in the operation of all of its business sufficient to meet the Rate Covenant.

(4) The Bonds being issued are for the purpose of refunding outstanding Parity Bonds.

The applicable parity conditions set forth in Ordinance Nos. 3123-09, 3211-11, 3313-13 and 3450-15 having been complied with, the Bonds shall be issued on a parity of lien with the Outstanding Parity Bonds.

Section 3. Authorization of Bonds and Bond Details.

(a) *Bonds*. For the purpose of refunding the Refunded Bonds, funding the Reserve Requirement or purchasing a Surety Bond as Qualified Insurance to meet the Reserve Requirement and paying the costs of issuance related thereto, the City shall issue its water and sewer revenue refunding bonds (the "Bonds").

(b) *Bond Details*. The Bonds shall be designated as the City of Everett, Washington, Water and Sewer Revenue Refunding Bonds, 2016, shall be dated as of their date of delivery; shall be fully registered as to both principal and interest; shall be in the denomination of $5,000 each, or any integral multiple thereof, provided that no Bond shall represent more than one maturity; shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification; and shall bear interest from their date payable on the first days of each June and December, commencing on June 1, 2017 at rates set forth in the Approved Bid; and shall mature on the dates and in the principal amounts set forth in the Approved Bid and as approved by the Chief Financial Officer pursuant to Section 15. The Bonds of any of the maturities may be combined and issued as term bonds, subject to mandatory redemption as provided in the Notice of Sale for the Bonds and the Approved Bid.

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

Section 4. Registration, Exchange and Payments.

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

(b) *Registered Ownership.* The City and the Registrar, each in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes (except as provided in Section 17 of this ordinance), and neither the City nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 4(h) hereof, but such Bond may be transferred as herein provided. All such payments made as described in Section 4(h) shall be valid and shall satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid.

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

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

(d) *Use of Depository.*

(1) The Bonds shall be registered initially in the name of "Cede & Co.", as nominee of DTC, with one Bond maturing on each of the maturity dates for the Bonds in a denomination corresponding to the total principal therein designated to mature on such date.

Registered ownership of such immobilized Bonds, or any portions thereof, may not thereafter be transferred except (A) to any successor of DTC or its nominee, provided that any such successor shall be qualified under any applicable laws to provide the service proposed to be provided by it; (B) to any substitute depository appointed by the Designated Representative pursuant to subsection (2) below or such substitute depository's successor; or (C) to any person as provided in subsection (4) below.

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

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

(4) In the event that (A) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (B) the Designated Representative determines that it is in the best interest of the beneficial owners of the Bonds that such owners be able to obtain such bonds in the form of Bond certificates, the ownership of such Bonds may then be transferred to any person or entity as herein provided, and shall no longer be held in fully-immobilized form. The Designated

Representative shall deliver a written request to the Registrar, together with a supply of definitive Bonds, to issue Bonds as herein provided in any authorized denomination. Upon receipt by the Registrar of all then outstanding Bonds together with a written request of the Designated Representative to the Registrar, new Bonds shall be issued in the appropriate denominations and registered in the names of such persons as are requested in such written request.

(e) *Registration of Transfer of Ownership or Exchange; Change in Denominations.* The transfer of any Bond may be registered and Bonds may be exchanged, but no transfer of any such Bond shall be valid unless it is surrendered to the Registrar with the assignment form appearing on such Bond duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Registered Owner or transferee therefor, a new Bond (or Bonds at the option of the new Registered Owner) of the same date, maturity and interest rate and for the same aggregate principal amount in any authorized denomination, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond. Any Bond may be surrendered to the Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds of the same date, maturity and interest rate, in any authorized denomination. The Registrar shall not be obligated to register the transfer or to exchange any Bond during the 15 days preceding any interest payment or principal payment date any such Bond is to be redeemed.

(f) *Registrar's Ownership of Bonds.* The Registrar may become the Registered Owner of any Bond with the same rights it would have if it were not the Registrar, and to the

extent permitted by law, may act as depository for and permit any of its officers or directors to act as member of, or in any other capacity with respect to, any committee formed to protect the right of the Registered Owners of Bonds.

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

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

Section 5. Redemption; Purchase of Bonds.

(a) *Optional Redemption.* The Bonds may be subject to optional redemption on the dates, at the prices and under the terms set forth in the Notice of Sale approved by the Chief Financial Officer pursuant to Section 15 of this ordinance.

(b) *Mandatory Redemption.* The Bonds may be subject to mandatory redemption to the extent, if any, set forth in the Approved Bid and as approved by the Chief Financial Officer pursuant to Section 15 of this ordinance.

(c) *Purchase of Bonds for Retirement.* The City further reserves the right to use at any time any surplus Revenue of the System available after providing for the payments required by paragraphs First, through Sixth of Section 6(b) of this ordinance, or other available funds, to purchase any of the Bonds that are offered to the City at any price deemed appropriate by the City. Any purchase of Bonds may be made with or without tender of Bonds and at either public or private sale.

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

(e) *Selection of Bonds for Redemption.* If Bonds are called for optional redemption, the maturities of Bonds to be redeemed shall be selected by the City. If any Bonds to be redeemed (optional or mandatory) then are held in book-entry-only form, the selection of Bonds to be redeemed within a maturity shall be made in accordance with the operational arrangements then in effect at DTC. If the Bonds to be redeemed are no longer held in book-entry-only form,

the selection of such Bonds to be redeemed shall be made in the following manner. If the City redeems at any one time fewer than all of the Bonds having the same maturity date, the particular Bonds or portions of Bonds and maturity to be redeemed shall be selected by lot utilizing a random selection process reasonably determined by the Registrar) in increments of $5,000. In the case of a Bond of maturity in a denomination greater than $5,000, the City and Registrar shall treat each Bond of that maturity as representing such number of separate Bonds each of the denomination of $5,000 as is obtained by dividing the actual principal amount of such Bond of that maturity by $5,000. In the event that only a portion of the principal sum of a Bond is redeemed, upon surrender of such Bond at the principal office of the Registrar there shall be issued to the Registered Owner, without charge therefor, for the then-unredeemed balance of the principal sum thereof a Bond or, at the option of the Registered Owner, Bonds of like maturity and interest rate in any of the denominations herein authorized.

(f) *Notice of Redemption.* Written notice of any redemption of Bonds prior to maturity, which notice may be conditional, shall be given by the Registrar on behalf of the City by first class mail, postage prepaid, not less than 20 days nor more than 60 days before the date fixed for redemption to the Registered Owners of Bonds that are to be redeemed at their last addresses shown on the Bond Register. This requirement shall be deemed complied with when notice is mailed to the Registered Owners at their last addresses shown on the Bond Register, whether or not such notice is actually received by the Registered Owners.

So long as the Bonds are in book-entry only form, notice of redemption shall be given to Beneficial Owners of Bonds to be redeemed in accordance with the operational arrangements then in effect at DTC, and neither the City nor the Registrar shall be obligated or responsible to confirm that any notice of redemption is, in fact, provided to Beneficial Owners.

Each notice of redemption prepared and given by the Registrar to Registered Owners of Bonds shall contain the following information: (1) the proposed redemption date, (2) the redemption price, (3) if fewer than all outstanding Bonds are to be redeemed, the identification by maturity (and, in the case of partial redemption, the principal amounts) of the Bonds to be redeemed, (4) that (unless the notice of redemption is a conditional notice, in which case the notice shall state that interest shall cease to accrue from the date fixed for redemption if and to the extent that funds have been provided to the Registrar for the redemption of Bonds) on the date fixed for redemption the redemption price will become due and payable upon each Bond or portion called for redemption, and that interest shall cease to accrue from the date fixed for redemption, (5) that the Bonds are to be surrendered for payment at the principal office of the Registrar, (6) the CUSIP numbers of all Bonds being redeemed, (7) the dated date of the Bonds being redeemed, (8) the rate of interest for each Bond being redeemed, (9) the date of the notice, and (10) any other information deemed necessary by the Registrar to identify the Bonds being redeemed.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

(g) *Effect of Redemption.* Unless the City has revoked a notice of redemption (or unless the City provided a conditional notice and the conditions for redemption set forth therein are not satisfied), the City shall transfer to the Registrar amounts that, in addition to other money, if any, held by the Registrar for such purpose, will be sufficient to redeem, on the date fixed for redemption, all the Bonds to be redeemed. If and to the extent that funds have been provided to the Registrar for the redemption of Bonds then such Bonds shall become due and payable on the

date fixed for redemption and interest on such Bond shall cease to accrue from and after such date.

(h) *Amendment of Notice Provisions.* The foregoing notice provisions of this section, including but not limited to the information to be included in redemption notices and the persons designated to receive notices, may be amended by additions, deletions and changes to maintain compliance with duly promulgated regulations and recommendations regarding notices of redemption of municipal securities.

Section 6. Revenue Fund; Priority of Payments from Revenue Fund; Coverage Stabilization Account.

(a) *Revenue Fund.* A special fund of the City known as "Fund 401 Public Works – Utilities Fund, including subaccounts therein (the "Revenue Fund") has heretofore been established in the office of the Designated Representative into which shall be deposited the Revenue of the System as collected, except the interest earned and income derived from investments of money in the Revenue Bond Fund and the accounts therein. The Revenue Fund shall be held separate and apart from all other funds and accounts of the City.

(b) *Priority of Payments from the Revenue Fund.* The Revenue of the System deposited in the Revenue 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;

Second, to make all payments required to be made into the Debt Service Account to pay the interest on any Parity Bonds, including reimbursements to the issuer of a Credit Facility if the Credit Facility secures the payment of interest on Parity Bonds and the ordinance authorizing such Parity Bonds provides for such reimbursement;

Third, to make all payments required to be made into the Debt Service Account to pay the principal of any Parity Bonds, including reimbursements to the issuer of a Credit Facility if the Credit Facility 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 any sinking fund account hereafter created to provide for the payment of the principal of term bonds or Balloon Maturity Bonds;

Fifth, to make all payments required to be made into the Reserve Account for Covered Bonds 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;

Sixth, to make all payments required to be made into any revenue debt redemption fund, debt service account, reserve account or sinking fund account created to pay and secure the payment of the principal of and interest on Government Loans and any revenue bonds, or revenue warrants or other revenue obligations 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 the Parity Bonds; and

Seventh, to retire by redemption or purchase any outstanding water and sewer 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 Revenue Bond Fund. Money in the Revenue Fund may be invested by the City in any investment that is a legal investment for the City.

(c) *Coverage Stabilization Account.* The Chief Financial Officer is hereby authorized to create a Coverage Stabilization Account within the Revenue Fund at the option of the Chief Financial Officer. The City hereby determines that the maintenance of a Coverage Stabilization Account will moderate 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 for purposes of measuring compliance with the Rate Covenant. 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 7. Payments into Revenue Bond Fund. A special account of the City known as the "Fund 401 – Public Works-Utilities – Bond Redemption Subaccount" (the "Revenue Bond Fund") has been created in the office of the Chief Financial Officer for the sole purpose of

paying and securing the payment of Parity Bonds. The City hereby irrevocably covenants and agrees to pay the ULID Assessments into the Revenue Bond Fund.

(a) *Payments into Revenue Bond Fund.* As long as the Bonds remain outstanding, the City hereby irrevocably obligates and binds itself to set aside and pay from the Revenue Fund into the Revenue Bond Fund on or before the date due those amounts necessary, together with ULID Assessments deposited and such other money as is on hand and available therefor in the Revenue Bond Fund, to pay the interest or principal and interest next coming due on the Bonds.

Notwithstanding anything in Section 7(d) hereof to the contrary, money in the Revenue Bond Fund may be used to pay any arbitrage rebate, if any, to the extent the rebate is attributable to earnings on money in the Revenue Bond Fund.

(b) *Payments into Reserve Account.*

(1) Establishment. The City hereby agrees that a special account to be known as the "Fund 401 – Public Works Utilities – restricted subaccount for bond reserves" (the "Reserve Account") shall be maintained for the purpose of securing the payment of the principal of and interest on all Covered Bonds.

The Designated Representative may decide to utilize a Surety Bond to satisfy all or a portion of the Reserve Requirement; provided that the Surety Bond meets the qualifications for Qualified Insurance. Upon such election, the Designated Representative is hereby authorized to execute and deliver a Surety Bond Agreement with a Surety Bond Issuer to effect the delivery of the Surety Bond. Any moneys released from the Reserve Account as a result of the acquisition of a Surety Bond shall be used by the City for capital improvements to the System.

(2) Maintenance of Reserve Requirement. The Reserve Account shall be maintained for the purpose of securing the payment of the principal of and interest on all

Covered Bonds. The Bonds shall be Covered Bonds, secured by the Reserve Account. The City hereby covenants that the Reserve Requirement for the Bonds will be fully funded as of the date of issuance of the Bonds, either with cash, Bond proceeds or Qualified Insurance. The City covenants and agrees that from and after the closing and delivery of the Bonds, it will at all times, subject to the foregoing funding requirements, 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 Covered 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.

Any Qualified Insurance shall not be cancelable on less than 30 days' notice to the City. In the event of any cancellation or termination of a Qualified Insurance or a Qualified Letter of Credit, the Reserve Account shall be funded as if the Covered 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 Covered 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.

(3) Withdrawals From Reserve 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 Revenue Bond Fund, including the Reserve Account to pay the principal of and interest on all outstanding Covered 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 Revenue Bond Fund and used to pay the principal of and interest on Covered 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 Parity Bonds from becoming "arbitrage bonds" under the Code.

If a deficiency in the Revenue Bond Fund for the payment of debt service on Covered 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 Covered 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 Covered 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.

(4) Replenishment. 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 by subparagraphs First through Fourth, inclusive, of Section 6(b) of this ordinance or may be made up with a policy or policies of Qualified Insurance or a Qualified Letter of Credit as provided above.

(5) Future Parity Bonds. In the event the City issues any Future Parity Bonds that are Covered Bonds, the City will provide in the ordinance authorizing the issuance of the same for payment into the Reserve Account out of proceeds of such Future Parity Bonds, Revenue of the System or ULID Assessments (or, at the option of the City, out of any other funds on hand and legally available therefor) approximately equal additional annual installments so that by five years from the date of issuance of such Future Parity Bonds there will have been paid into the Reserve Account an amount that, together with the money already on deposit therein, will be at least equal to the Reserve Requirement. Such annual payments into the Reserve Account shall be made not later than December 20 of each year.

(c) *Priority of Lien of Payments into Revenue Bond Fund.* The amounts so pledged to be paid into the Revenue Bond Fund from the Revenue Fund are hereby declared to be a lien and charge upon the Revenue of the System junior in lien to the Costs of Maintenance and Operation and equal to the lien of the charges upon such Revenue of the System and ULID Assessments that have heretofore been made to pay and secure the payment of the principal of and interest on the Outstanding Parity Bonds and which may hereafter be made upon the Revenue of the System and ULID Assessments to pay and secure the payment of the principal of

and interest on any Future Parity Bonds, and prior and superior to all other charges of any kind or nature whatsoever.

(d) *Application and Investment of Money in Revenue Bond Fund.* Money in the Revenue Bond Fund and the Reserve Account shall be invested in any legal investment for City funds. Investments in the Revenue Bond Fund shall mature prior to the date on which such money shall be needed for required interest or principal payments. Investments in any Reserve Account shall mature not later than the last maturity of the Parity Bonds secured thereby. All interest earned and income derived by virtue of such investments shall remain in the Revenue Bond Fund and be used to meet the required deposits into any account therein.

(e) *Sufficiency of Revenues.* The Council hereby finds and declares that in fixing the amounts to be paid into the Revenue Bond Fund 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 such Fund a greater amount of such Revenue than in its judgment will be available over and above the Costs of Maintenance and Operation.

(f) *Surety Bond Agreement.* The Designated Representative may solicit bids from surety bond issuers, and the Designated Representative is hereby authorized to select a proposal and to execute the Surety Bond Agreement(s), which may include such covenants and conditions as shall be approved by the Designated Representative.

Section 8. Bond Covenants.

(a) *Maintenance and Operation.* 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) *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.

(c) *Payment of Costs of Maintenance and Operation.* After making or providing for the payments from the Revenue Fund as required by Section 6(b) hereof, there shall be maintained in the Revenue Fund sufficient money to enable the City to meet the Costs of Maintenance and Operation of the System on a current basis.

(d) *Sale or Disposition 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 the payment into the Revenue Bond Fund of cash or Government Obligations sufficient together with interest to be earned thereon to pay the principal of and interest on the then Outstanding Parity Bonds, 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 Revenue Bond Fund of the greatest of the following:

(1) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Revenue Bond Fund and accounts therein) that the 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

(2) 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

(3) 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 of the System (to the extent required above) shall be paid into the Revenue Bond Fund.

Notwithstanding any other provision of this subsection (d), 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 Revenue Bond Fund.

(e) *Liens or 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 Revenue of the System, 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, or upon any funds in the hands of the City, prior to or superior to the lien of the Parity Bonds, or which might impair the security of the Parity Bonds.

(f) *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 private 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 holders of 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 any Reserve Account to the extent that such transfer shall be necessary to make up any deficiency in said Reserve Account and the balance, if any, shall, at the option of the City, be used either for repairs, renewals, replacements, or capital additions to the System, for the redemption of Parity Bonds, or for deposit into the Revenue Bond Fund.

(g) *Books and Accounts*. The City shall keep proper books of account in accordance with any applicable rules and regulations prescribed by the State of Washington. The City shall prepare, and any owner or holder of Parity Bonds may, upon written request, 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 such year, including the amounts paid into the Revenue Fund, the Revenue Bond 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.

(h) *No Free Service*. The City will not furnish or supply or permit the furnishing or supplying of any commodity, service or facility furnished by or in connection with the operation

of the System, free of charge to any person, firm or corporation, public or private, so long as any Bonds are outstanding and unpaid.

(i) *Additions and Improvements.* The City will not expend any of the revenues derived by it from the operation of the System or the proceeds of any indebtedness payable from the Revenue of the System for any extensions, betterments or 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.

(j) *Collection of Delinquent Accounts.* The City will, on or before April 1 of each calendar year, determine all accounts that are delinquent and will take all necessary action to enforce payment of such accounts including real property foreclosure actions pursuant to RCW Chapter 35.67, as amended, or its successor statute, if any, against those property owners whose accounts are delinquent.

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

(l) *Collection of Delinquent ULID Assessments.* The City will, on or before April 1 of each calendar year, determine all ULID Assessments or installments thereof that are delinquent and will take all necessary action to enforce payment of such ULID Assessments,

including real property foreclosure actions pursuant to RCW Chapter 35.50, as amended, or its successor statute, if any, against the property owners whose ULID Assessments are delinquent.

Section 9. Issuance of Future Parity Bonds.

(a) *Conditions to the issuance of Future Parity Bonds.* As long as any of Parity Bonds remain outstanding, the City hereby further covenants and agrees that it will not issue any Future Parity Bonds except that the City hereby reserves the right to issue additional water and sewer revenue bonds, which shall constitute a charge and lien upon the Revenue of the System equal to the lien thereon of the Bonds. Except as provided in subsection (b) below, the City shall not issue any series of Future Parity Bonds or incur any additional indebtedness with a parity lien or charge on Net 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, without regard to transfers from the Coverage Stabilization Account;

(2) The ordinance authorizing the issuance of such Future Parity Bonds shall include the covenants provided in Section 8(b) hereof; 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 Chief Financial Officer, 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 Chief Financial Officer) 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).

(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 Future Parity 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) *Junior Liens.* 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 Revenue Bond Fund and accounts therein to pay and secure the payment of any Outstanding Parity Bonds.

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

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

(a) *Arbitrage Covenant.* Without limiting the generality of the foregoing, the City covenants that it will not take any action or fail to take any action with respect to the proceeds of

sale of the Bonds or any other funds of the City which may be deemed to be proceeds of the Bonds pursuant to Section 148 of the Code and the regulations promulgated thereunder which, if such use had been reasonably expected on the dates of delivery of the Bonds to the initial purchasers thereof, would have caused the Bonds as "arbitrage bonds" within the meaning of such term as used in Section 148 of the Code.

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

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

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

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

The City further covenants that, if:

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

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

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

(B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use, then, (i) any Private Person Use of the projects financed or refinanced with the proceeds of the Bonds or Private Person Use payments described in subsection (4) hereof that is in excess of the five percent limitations described in such subsections (3) or (4) will be for a Private Person Use that is related to the state or local governmental use of the projects financed or refinanced with the proceeds of the Bonds, and (ii) any Private Person Use will not exceed the amount of Net Proceeds of the Bonds used for the state or local governmental use portion of the projects financed or refinanced with the proceeds of the Bonds to which the Private Person Use of such portion of the projects financed or refinanced with the proceeds of the Bonds relates. The City further covenants that it will comply with any limitations on the use of the projects by other than state and local governmental users that are necessary, in the opinion of its bond counsel, to preserve the tax exemption of the interest on the Bonds. The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bonds.

(c) *No Designation under Section 265(b) of the Code.* The Bonds are not "qualified tax exempt obligations" for investment by financial institutions under Section 265(b) of the Code.

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

Section 11. Form of Bonds. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. ____ $_____

STATE OF WASHINGTON

CITY OF EVERETT
WATER AND SEWER REVENUE REFUNDING BOND, 2016

Interest Rate: Maturity Date: CUSIP No.

Registered Owner: CEDE & Co.

Principal Amount: _____ AND NO/DOLLARS

THE CITY OF EVERETT, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington (the "City"), promises to pay to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, solely from the special fund of the City known as the "Fund 401 – Public Works-Utilities – Bond Redemption Subaccount" (the "Revenue Bond Fund") the Principal Amount indicated above and to pay interest thereon from the Revenue Bond Fund from _____, 2016, or the most recent date to which interest has been paid or duly provided for or until payment of this bond at the Interest Rate set forth above, payable on June 1, 2017, and semiannually thereafter on the first days of each June and December.

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

This bond is one of an issue of $_____ of bonds of the City of like date, tenor and effect, except as to number, amount, rate of interest and date of maturity and is issued pursuant to the Bond Ordinance to refund certain outstanding water and sewer revenue bonds.

The bonds of this issue are subject to redemption prior to their stated maturity as stated in the Approved Bid for the Bonds.

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

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

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

The City has further bound itself to maintain the System in good repair, working order and condition, to operate the same in an efficient manner and at a reasonable cost, and to establish, maintain and collect rates and charges for as long as any of the bonds of this issue are outstanding that will make available, for the payment of the principal thereof and interest thereon as the same shall become due, Net Revenue will be at least equal to the Rate Covenant, as described in the Bond Ordinance.

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

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

IN WITNESS WHEREOF, the City of Everett, Washington has caused this bond to be signed with the facsimile or manual signature of the Mayor, to be attested by the facsimile or manual signature of the City Clerk, and the corporate seal of the City to be reproduced hereon, all as of this ____ day of _____, 2016.

CITY OF EVERETT, WASHINGTON

By _____/s/ facsimile or manual_____
Mayor

(SEAL)

ATTEST:

_____/s/ facsimile or manual_____
City Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____, 2016

This bond is one of the bonds described in the within-mentioned Bond Ordinance and is one of the Water and Sewer Revenue Refunding Bonds, 2016 of the City of Everett, Washington, dated _____, 2016.

WASHINGTON STATE FISCAL
AGENCY, Registrar

By _____
Authorized Signer

Section 12. Execution of Bonds. The Bonds shall be executed on behalf of the City with the manual or facsimile signature of the signature of the Mayor and attested by the manual

or facsimile signature of the City Clerk, and the seal of the City shall be impressed or a facsimile thereof imprinted or otherwise reproduced on the Bonds.

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

In case either of the officers who shall have executed the Bonds shall cease to be an officer or officers of the City before the Bonds so signed shall have been authenticated or delivered by the Registrar, or issued by the City, such Bonds may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. Any Bond may also be signed and attested on behalf of the City by such persons who are at the actual date of delivery of such Bond the proper officers of the City although at the original date of such Bond any such person shall not have been such officer of the City.

Section 13. Defeasance. In the event that the City, in order to effect the payment, retirement or redemption of any Bond, sets aside in the Revenue Bond Fund or in another special account, cash or noncallable Government Obligations, or any combination of cash and/or noncallable Government Obligations, in amounts and maturities which, together with the known earned income therefrom, are sufficient to redeem or pay and retire such Bond in accordance with its terms and to pay when due the interest and redemption premium, if any, thereon, and such cash and/or noncallable Government Obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Revenue Bond Fund for the

payment of the principal of and interest on such Bond. The owner of a Bond so provided for shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive payment of principal, premium, if any, and interest from such special account, and such Bond shall be deemed to be not outstanding under this ordinance.

The Registrar shall provide notice of defeasance of Bonds to Registered Owners and to each party entitled to receive notice in accordance with Section 17 of this ordinance.

Section 14. Lost, Stolen or Destroyed Bonds. In case any Bond or Bonds shall be lost, stolen or destroyed, the Registrar may execute and deliver a new Bond or Bonds of like date, number and tenor to the Registered Owner thereof upon the Registered Owner's paying the expenses and charges of the City and the Registrar in connection therewith and upon his/her filing with the Chief Financial Officer and the Registrar evidence satisfactory to the Chief Financial Officer and the Registrar, respectively, that such Bond was actually lost, stolen or destroyed and of his/her ownership thereof, and upon furnishing the City and the Registrar with indemnity satisfactory to the Chief Financial Officer and the Registrar, respectively.

Section 15. Sale of Bonds.

(a) *Bond Sale.* The Bonds shall be sold at a competitive public sale. The Chief Financial Officer or her designee shall: (a) establish the date of the public sale; (b) establish the criteria by which the successful bidder will be determined; (c) request that a good faith deposit in an amount to be specified in the Notice of Sale accompany each bid; (d) cause notice of the public sale to be given (the "Notice of Sale"); and (e) provide for such other matters pertaining to the public sale as she deems necessary or desirable. The Chief Financial Officer shall cause notice of the public sale to be given and provide for such other matters pertaining to the public sale as she deems necessary or desirable.

Upon the date and time established for the receipt of bids for the Bonds, the Chief Financial Officer or her designee shall open the bids and shall cause the bids to be mathematically verified. The Bonds shall be sold to the bidder offering to purchase them at the lowest true interest cost to the City; *provided, however,* that the Chief Financial Officer reserves the right to reject any and all bids for the Bonds and also may waive any irregularity or informality in any bid

Subject to the terms and conditions set forth in this Section 15, the Chief Financial Officer is hereby authorized to approve the Refunded Bonds and accept an Approved Bid, upon her approval of the final interest rates, maturity dates, aggregate principal amounts, principal maturities and redemption rights set forth therein in accordance with the authority granted by this section so long as the aggregate principal amount of the Bonds does not exceed $82,500,000 and the Savings Target is met. Following the sale of the Bonds, the Chief Financial Officer shall provide a report to the Council, describing the final terms of the Bonds approved pursuant to the authority delegated in this section.

(b) *Delivery of Bonds; Documentation.* Upon the passage and approval of this ordinance, the proper officials of the City including the Chief Financial Officer, are authorized and directed to undertake all action necessary for the prompt execution and delivery of the Bonds to the successful bidder thereof and further to execute all closing certificates and documents required to effect the closing and delivery of the Bonds. In furtherance of the foregoing, the Chief Financial Officer is authorized to approve and enter into agreements for the payment of costs of issuance, including underwriter's discount, the fees and expenses specified in the Notice of Sale, including fees and expenses of underwriter and other retained services, including Bond Counsel, financial advisor, rating agencies, fiscal agency, escrow agent, verification agent, and

other expenses customarily incurred in connection with issuance and sale of bonds. The disbursement of Bond proceeds to pay certain costs of issuance shall be made by the Escrow Agent under the terms set forth in the Cost of Issuance Agreement.

(c) *Preliminary and Final Official Statements.* The Chief Financial Officer is hereby authorized to deem final the preliminary Official Statement relating to the Bonds for the purposes of the Rule. The Chief Financial Officer is further authorized to ratify and to approve for purposes of the Rule, on behalf of the City, the Official Statement relating to the issuance and sale of the Bonds and the distribution of the Official Statement pursuant thereto with such changes, if any, as may be deemed by her to be appropriate.

Section 16. Disposition of Bond Proceeds; Refunding Plan and Procedures.

(a) *Reserve Account.* The portion of the Bonds, if any, designated by the Chief Financial Officer shall be deposited into the Reserve Account which shall be, together with the balance therein, sufficient to meet the Reserve Requirement. In the alternative, the portion of Bond proceeds, if any, designated by the Chief Financial Officer may be used to pay all or a portion of the cost of purchasing the Surety Bond, if any, to satisfy the Reserve Requirement.

(b) *Designation of Refunded Bonds.* As outlined in the recitals to this ordinance, certain principal maturities of the 2009 Refunding Bond Candidates and the 2011 Refunding Bond Candidates may be called for redemption prior to their scheduled maturities. All or some of these bonds may be refunded and defeased with the proceeds of the Bonds authorized by this ordinance. As provided in Section 15, the Designated Representative may select some or all of the 2009 Refunding Bond Candidates and 2011 Refunding Bond Candidates and designate those 2009 Refunding Bond Candidates and/or 2011 Refunding Bond Candidates as the "Refunded Bonds" in the Official Statement.

(c) *Refunding Plan.* A portion of the proceeds of sale of the Bonds, together with other funds, if any, provided by the City shall be delivered to the Escrow Agent for the purpose of defeasing the Refunded Bonds and paying related costs of issuance. Money received by the Escrow Agent from Bond proceeds and other money provided by the City shall be used immediately by the Escrow Agent upon receipt thereof in accordance with the terms of the Escrow Agreement to defease the Refunded Bonds as authorized by the 2009 Bond Ordinance and the 2011 Bond Ordinance, respectively, and pay costs of issuance of the Bonds. The City shall defease the Refunded Bonds and discharge such obligations to purchase certain Government Obligations (which obligations so purchased, are herein called "Acquired Obligations"), bearing such interest and maturing as to principal and interest in such amounts and at such times which, together with any necessary beginning cash balance, will provide for the payment of:

(1) Interest on the Refunded Bonds as such becomes due on and prior to the Call Date; and

(2) The redemption price (100% of the principal amount) of the Refunded Bonds payable on the Call Date.

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

(d) *Escrow Agent/Escrow Agreement.* U.S. Bank National Association, Seattle, Washington, is hereby authorized to act as the escrow agent (the "Escrow Agent") for the Refunded Bonds. The Designated Representative is hereby authorized to designate an accounting firm to act as escrow verification agent. A beginning cash balance, if any, and

Acquired Obligations shall be deposited irrevocably with the Escrow Agent in an amount sufficient to defease the Refunded Bonds. The proceeds of the Bonds after acquisition of the Acquired Obligations and provision for the necessary beginning cash balance shall be utilized to pay expenses of the acquisition and safekeeping of the Acquired Obligations and expenses of the issuance of the Bonds.

In order to carry out the purposes of this section, the Chief Financial Officer is authorized and directed to execute and deliver to the Escrow Agent, an Escrow Deposit Agreement and a Cost of Issuance Agreement.

(e) *Implementation of Refunding Plan.* The City hereby irrevocably calls the Refunded Bonds for redemption on the Call Date in accordance with the provisions of the 2009 Bond Ordinance and the 2011 Bond Ordinance, respectively. Said defeasance and call for redemption of the Refunded Bonds shall be irrevocable after the final establishment of the escrow account and delivery of the Acquired Obligations to the Escrow Agent.

The Escrow Agent is hereby authorized and directed to provide for the giving of notices of the redemption of the Refunded Bonds in accordance with the applicable provisions of the 2009 Bond Ordinance and the 2011 Bond Ordinance, respectively. The Chief Financial Officer is authorized and requested to provide whatever assistance is necessary to accomplish such redemption and the giving of notices therefor. The costs of publication of such notices shall be an expense of the City.

The Escrow Agent is hereby authorized and directed to pay to the paying agent for the Refunded Bonds, sums sufficient to pay, when due, the payments specified in of subsection (c) above. All such sums shall be paid from the money and Acquired Obligations deposited with said Escrow Agent pursuant to this section, and the income therefrom and proceeds thereof.

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

Section 17. Undertaking to Provide Ongoing Disclosure. The Chief Financial Officer is hereby authorized to enter into a written undertaking for the benefit of the owners of the Bonds as required by Section (b)(5) of the Rule (the "Continuing Disclosure Agreement").

Section 18. Amendments.

(a) The Council from time to time and at any time may pass an ordinance or ordinances supplemental hereof, which ordinance or ordinances thereafter shall become a part of this ordinance, for any one or more or all of the following purposes:

(1) To add to the covenants and agreements of the City in this ordinance, other covenants and agreements thereafter to be observed, which shall not adversely affect the interests of the holders of any Parity Bonds, or to surrender any right or power herein reserved.

(2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this ordinance or any ordinance authorizing future Parity Bonds in regard to matters or questions arising under such ordinances as the Council may deem necessary or desirable and not inconsistent with such ordinances and which shall not adversely affect, in any material respect, the interest of the holders of Parity Bonds.

Any such supplemental ordinance may be adopted without the consent of the holders of any Parity Bonds at any time outstanding, notwithstanding any of the provisions of subsection (b) of this section.

(b) With the consent of the holders of not less than 65% in aggregate principal amount of the Parity Bonds at the time outstanding, the Council may pass an ordinance or

ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall:

(1) Extend the fixed maturity of any Parity Bonds, or reduce the rate of interest thereon, or extend the time of payment 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 holder of each bond so affected; or

(2) Reduce the aforesaid percentage of bondholders required to approve any such supplemental ordinance, without the consent of the holders of all of the Parity Bonds then outstanding.

It shall not be necessary for the consent of bondholders under this subsection (b) to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

For the purpose of consenting to amendments under this Section 18(b) except for amendments that alter the interest rate on any Parity Bonds, the maturity date, interest payment dates, purchase upon tender or redemption of any Parity Bonds, the issuer of a Credit Facility shall be deemed to be the sole Registered Owner of the Parity Bonds that are payable from such Credit Facility and that are then outstanding.

(c) Upon the passage 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 holders of Parity 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) Parity Bonds executed and delivered after the execution of any supplemental ordinance passed 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 holders of any affected Parity Bonds then outstanding, upon surrender for cancellation of such bonds with all unmatured coupons and all matured coupons not fully paid, in equal aggregate principal amounts.

Section 19. Severability. If any provision in this ordinance is 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 provision of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bonds.

Section 20. Effective Date. This ordinance shall be effective fifteen days after it becomes valid pursuant to Section 3.4 of the City Charter.

PASSED by the City Council of the City of Everett, Washington, at a regular meeting of said Council held this 2nd day of November, 2016.

CITY OF EVERETT, WASHINGTON

By _____
Mayor

Attest:

By _____
City Clerk

DATE OF PUBLICATION:

EFFECTIVE DATE:

CERTIFICATE

I, the undersigned, City Clerk of the City Council, of the City of Everett, Washington (the "City") and keeper of the records of the City Council (the "City Council"), DO HEREBY CERTIFY:

1. That the attached Ordinance is a true and correct copy of Ordinance No. _____ of the City Council (the "Ordinance"), duly passed at a regular meeting thereof held on the 2nd day of November, 2016.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the adoption of the Ordinance; that all other requirements and proceedings incident to the proper adoption of the Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2016.

_____
City Clerk

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Wholesale Water Delivery Contract with the Tulalip Tribes for 2016-2066

	Briefing	COUNCIL BILL #	
	Proposed Action	Originating Department	Public Works
	Consent	Contact Person	Jim Miller
X	Action	Phone Number	425-257-8880
	First Reading	FOR AGENDA OF	October 19, 2016
	Second Reading		
	Third Reading		
	Public Hearing		
	Budget Advisory		

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
Smith Island	2005 Agreement	Contract	Public Works, Legal

Amount Budgeted	-0-	Account Number:
Expenditure Required	-0-	
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The City of Everett and the Tulalip Tribes entered into a settlement agreement in 2005 that provided for the construction of a water pipeline and the delivery of water through this pipeline. The Tulalip Water Pipeline has been built in segments between Everett's water transmission lines (near Highway 2) and Quilceda Village on the Tulalip Reservation. Segment 2 is the last segment and it is scheduled for completion in November 2016.

The 2005 agreement also provided that the City shall be prepared to deliver up to an annual average of 30 Million Gallons per day to the Tulalip tribes under a long term water contract. This 50-year wholesale water delivery contract has been negotiated with the Tulalip Tribes.

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign a Wholesale Water Delivery Contract for 2016-2066 with the Tulalip Tribes.

CITY OF EVERETT AND THE TULALIP TRIBES

WHOLESALE WATER DELIVERY CONTRACT
2016 - 2066

THIS WHOLESALE WATER DELIVERY CONTRACT ("Contract,,) is made and entered into by and between the City of Everett, a municipal corporation of the State of Washington, hereinafter referred to as "City,, or "Everett," and THE TULALIP TRIBES OF WASHINGTON, successors-in-interest to the Snohomish, Snoqualmie, Skykomish and other allied Native American tribes and bands signatory to the 1855 Treaty of Point Elliott, a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, hereinafter referred to as "Tulalip". Each of Everett and Tulalip is a "Party,, and collectively, the "Parties,,.

WHEREAS, Everett owns and operates a water supply system located in Snohomish County, Washington; Said system has regional supply capability for domestic, commercial and industrial water consumption; and

WHEREAS, pursuant to RCW 35.92.170, RCW 35.92.200 and RCW 39.94, Everett is authorized to enter into contracts with other municipalities to supply said municipalities with water; Pursuant to WAC 248-54, Everett has prepared a Water System Plan identifying certain areas of Snohomish County as being within its long-range wholesale water supply service area; and

WHEREAS, Tulalip owns and operates a water supply system on the Tulalip Indian Reservation in Snohomish County, Washington, and distributes said water on a retail basis to domestic, commercial and industrial customers within a service area identified in its Water System Plan adopted pursuant to applicable law; and

WHEREAS, Tulalip and Everett entered a 2005 Agreement for Settlement, Water Supply and Water Delivery System ("2005 Agreement,,). The 2005 Agreement provides for the development of a 36-inch (now 36 and 42-inch) water transmission line for a new point of water delivery for Tulalip use ("Project,,). Subsequently, Everett and Tulalip entered a 2006 Interlocal Agreement to organize a Joint Board to oversee Project development. This Contract is to govern the terms of the relationship of the parties upon the availability of water to the Tribe from the Project; and

WHEREAS, this Contract is in addition to such other contracts that exist among Tulalip and Everett, such as the 2005 Agreement and the 1991 Everett and JOA Participants' Water

Supply Contract (the "1991 Contract,,). Except as otherwise set forth in this Contract, other agreements and contracts between the Parties remain in effect.

NOW, THEREFORE, for the mutual benefits to be derived, the parties agree as follows:

1. Delivery of Water. Everett hereby agrees to deliver water to Tulalip and Tulalip agrees to pay Everett for the delivery and treatment of water.

2. Point of Delivery. Everett shall deliver water to Tulalip at agreed connection point along Everett's Transmission Pipeline at Everett's master meter system on the south side of-Union Slough ("Point of Delivery,,). The actual point of delivery at the connection point shall be deemed to be the upstream flange of the valve downstream of the master meter and check valve.

3. Quantity of Water. Everett and Tulalip agree that each have made, and will continue to make, significant capital investments in water delivery facilities which are interdependent and that coordinated planning will be required throughout the term of this contract to maximize public benefits and minimize costs. Everett shall not be responsible for storage for Tulalip's reservation system storage except as it relates to Everett's existing storage at Lake Chaplain and uninterrupted delivery of water at the Point of Delivery in accordance with the 2005 agreement and Sections 6 and 10 of this contract. It is understood that Tulalip and consumers of water from Tulalip may reach an average annual demand of 30.0 million gallons per day (MGD) and peak period demand of 36.0 million gallons per day (MGD) before the expiration of this Contract. Estimated average daily demands and peak day demands of Tulalip and its major customers for the near future are shown on Exhibit A attached hereto. Everett's facilities have, or will have in the future, the capacity to deliver water for Tulalip's water quantity demands as shown in Exhibit A or updated projections to be provided by the Tulalips at least every five years after the effective date of this contract. Once the Tulalip Water Pipeline is connected to the City's transmission pipelines, the maximum amount of water to be delivered by the City to the Tulalip under this Contract will in no case exceed 30 MGD average annual rate or 36 MGD during peak periods.

Nothing herein, however, shall be construed as obligating Tulalip to take or purchase any minimum quantity of water from Everett at any time.

4. Quality of Water. Everett shall be responsible for meeting state and federal standards for safe, high-quality drinking water at the point of delivery. All water supplied by Everett for use or sale by Tulalip shall be delivered upon the express condition that after it has passed the point of delivery the same is under the exclusive control of Tulalip, and Everett shall not be liable for any damages or loss resulting from degradation of water quality which may occur beyond said point. Everett shall not be responsible for changes in water quality or operating problems which may result from mixing of different sources of water in Tulalip's system or in systems served by Tulalip. Tulalip shall provide means to assure that water will not backflow into the Everett water system.

Everett shall make available to Tulalip, during Everett's regular business hours, all test and monitoring data and reports of Everett drinking water quality. Everett shall send to Tulalip its periodic reports of drinking water quality, prepared by Everett in conformance with requirements of the Safe Drinking Water Act or State Department of Health regulations.

5. Rates and Charges. Rates for water delivery service under this Contract shall be established by Everett ordinance, as may be amended. Tulalip will receive water service under the Everett's "east of river,, ordinance rate or successor rate. (For purposes of reference, this rate for 2016 is set forth in Section 14.16.713.B.2.b(1) of the Everett Municipal Code.) All rates shall be based on accepted standard practice for public water utility rate-making, such as AWWA M1 Rate Manual or successor manual or other commonly-used industry standards, provided:

A. Unless Everett is mandated to pay or otherwise remit a State utility tax by Washington State law, no rate or charge under this Contract shall include State utility tax or adjustment for State utility tax.

B. As of the date of this Contract, Everett, in accordance with City Council Resolution 2285, charges the Everett utility an annual PILOT payment equal to 6% of utility revenues. This PILOT is included in the "east of river,, ordinance rate, as it is included in all other wholesale water rates. With respect to the Everett PILOT, the parties agree:

1. The rate charged under this Contract may include such an Everett PILOT, so long as it is the same percentage included in the rate of other wholesale customers and so long as the PILOT (alone or in combination with any successor tax or fee to the PILOT or any other Everett taxes or fees on Utility revenues) included in the rate charged to Tulalip during the initial 50-year term of this Contract does not exceed six percent (6%).

2. For the entire term of the Contract (including the initial 50-year term of this Contract and renewal term) and subject to Section 5.D below, neither Tulalip nor Everett will, so long as the PILOT included in the Tulalip rate does not exceed 6%, challenge the binding character of the provisions made in this Section 5.B addressing the PILOT or otherwise seek to either eliminate or reduce the PILOT from the Tulalip rate or change the 50-year 6% cap that this Section B imposes on it. If after the initial 50-year term of this Contract, Everett increases the PILOT in the Tulalip rate in excess of 6%, then Tulalip may challenge the PILOT, but the remedy allowed in the challenge to the PILOT by Tulalip shall be solely limited to the remedy of reducing the PILOT to 6%, and no retroactive remedy shall be available.

C. Everett's outside rate multiplier is a percentage surcharge on water service outside of Everett city limits. As of the date of this Contract, this multiplier is 20% for the "east of river,, rate. Regardless of whether such multiplier is later increased in the Everett Municipal Code or elsewhere, the rate charged to Tulalip, regardless of whether it is the "east of river,, rate or successor rate, will never include such a multiplier in excess of 20%.

D. Everett contracts with customers other than Tulalip for the provision of water supply and/or water delivery services. If after the day this Contract is signed, Everett allows a wholesale customer (whether current or future Everett customer) who was charged the "east of river,, or successor ordinance rate during the term of this Contract to receive service substantially similar to that under this Contract at a lower rate and/or charge than charged now or in the future under this Contract, then such lower rate shall apply to this Contract so that the rate and/or charge to Tulalip under this Contract is equal to or less than the rate charged to such other Everett customer(s).

E. Everett shall not charge an Everett tax to the Tulalip Tribes for water delivered under this contract. Everett charges on Everett utility revenues are covered by 5.B. above.

6. Payment. On a monthly basis, Everett shall bill Tulalip for water delivered to Tulalip through pipeline master meter. Said bills shall be payable within thirty (30) days after receipt of the invoice. Delinquent bills shall accrue interest at the rate of twelve percent (12%) per annum, but not to exceed 1% per month, for any delinquency greater than sixty (60) days. If payments are delinquent by greater than 180 days, the matter shall be submitted to dispute resolution. If payments are delinquent by more than one year, the City has the right to shut off service until paid in full.

7. Resale or Distribution of Water. After water has passed the points of delivery and has entered Tulalip's connection transmission pipeline, said water becomes subject to Tulalip's exclusive authority, except as otherwise provided in this Contract:

A. After the water has passed the point of delivery and has entered the Tulalip's portion of the pipeline, Tulalip may, at its sole discretion, use the water delivered by the City for any purpose allowed under applicable law in the Tribal Service Area as shown in Exhibit B, now existing or as may be amended in the future. Tulalip shall have sole discretion over resale to Tribal enterprises and other users within the Tribal Service Area. If a planned new connection is for delivery of water outside of the Tribal Service Area, greater than 12 inches, and supplies more than one million gallons per day (1 MGD), then the Tulalip shall first obtain approval from Everett for said connection. Everett's approval shall not be unreasonably withheld and shall be based on the water supply impacts to Everett water system caused by said connection.

B. Tulalip will provide information to the City of Everett as may be needed to meet the City's reporting requirements approved by the Washington State Department of Health, if appropriate.

8. Term of Contract. The term of this Contract shall be fifty (50) years from the date of its mutual acceptance by the parties to be automatically renewed for an additional fifty (50) years unless (a) the Parties agree mutually not to renew this water contract, or (b) the City fails to

substantially succeed in the water application for the permitting of a 200 cfs water right (water right application No. 13219, dated 15 December 1954).

9. Construction, Operation and Maintenance of Capital Improvements. Tulalip shall construct or cause to be constructed all capital improvements to its water system and shall individually own all capital improvements downstream from the points of delivery. Tulalip shall assume exclusive responsibility for the operation, maintenance and repair of the same; all construction, operation, and maintenance and repairs shall be in strict compliance with standards approved by the US Public Health Service as relevant and applicable regulatory Washington State Department of Health authority.

Tulalip shall annually provide to Everett a water system report to include number of customers, peak use and other information useful in optimizing joint operations.

10. Continuity of Service.

A. Continuity of service to Tulalip shall be maintained by Everett in the same manner as service to the Everett's businesses and residences. In the event of a general emergency or water shortage affecting the Everett Water Supply System requiring restrictions on the delivery of water, general restrictions placed upon deliveries to Tulalip shall be determined by a similar method to that used for restricting deliveries to Everett's retail consumers. In the event of localized emergency problems, temporary service interruptions may result.

B. It is recognized by both parties that emergency conservation measures may have to be implemented by Everett on a regional basis in order to meet an emergency condition. Tulalip shall assist and support such emergency conservation measures.

C. Everett shall provide oral and electronic mail notice to Tulalip, and may temporarily interrupt or reduce deliveries of water to Tulalip, if Everett determines that such interruption or reduction is necessary or reasonable in case of system emergencies or in order to install equipment, make repairs, replacements, investigations and inspections or perform other maintenance work on Everett's water system or those parts of the system supplying Tulalip. Except in cases of emergency, and in order that Tulalip's operations not be unreasonably interfered with, Everett shall give Tulalip reasonable written notice of any such interruption or reduction, the reason therefore, and the probable duration thereof. Any such service interruption shall be for the shortest possible period in order that the public health and welfare of Tulalip is not jeopardized.

11. Indemnity.

A. Nothing herein shall be interpreted to create indemnity or cross indemnity agreements between the parties. In the event of claim, loss or liability alleged to have arisen out of the ownership or operation of Everett's water supply system or Tulalip's water supply facilities,

the parties agree that their liability shall be borne in accordance with and as determined under federal and Washington State laws.

B. Notwithstanding any other provision of this Contract, neither Tulalip nor Everett shall be liable under or pursuant to this Contract for indirect, incidental, special, exemplary or consequential damages, including but not limited to damages for lost profits or benefits, even if such party has been advised of the possibility or existence of such damages.

12. Uncontrollable Forces or State or Federal Law Changes. Neither of the parties hereto shall be considered to be in default in respect to any obligations hereunder if prevented from fulfilling such obligations by reason of uncontrollable forces or material changes in state or federal law. Parties rendered unable to fulfill any obligation hereunder by reason of an uncontrollable force or material change in state or federal law shall exercise due diligence to deal with such uncontrollable force with all reasonable dispatch and to take actions consistent with the purpose of this Contract.

13. Assignment; Successors Bound. Neither this Contract nor any right or privilege herein shall be assigned by any party without the written consent of the other party.

14. Notice. Formal notice and official communications between the parties regarding this Contract shall be sent by first class mail as follows:

TO: Everett
Mayor, City of Everett
2930 Wetmore Avenue
Everett, WA 98201

TO: Tulalip
Chairman, Tulalip Tribes of Washington
6406 Marine Drive
Marysville, WA 98-271-4032

15. Relationship of the Parties. This Contract and the Agreement for Settlement, Water Supply, and Water Delivery System Between the Tulalip Tribes of Washington, and the City of Everett dated 16 September 2005 describes the entire relationship of the parties with regard to the subject matter herein concerned. Except as maybe explicitly provided otherwise herein, the Parties are independent entities and shall not be deemed to be partners, joint ventures, principals, or agents of each other for any purpose whatsoever. Each party shall have and maintain sole and complete control over all of its employees, agents, and operations. Except as may otherwise be explicitly provided herein, or in separate agreement, each and all of the obligations, responsibilities, and liabilities of the parties under and in connection with this Contract are several, and not joint, and no separate legal or administrative entity will be created to fulfill the purposes of this Contract.

16. Dispute Resolution. Any dispute under or in connection with this Contract shall be governed by the General Governmental Dispute Resolution Process of Part K of the Agreement for Settlement, Water Supply, and Water Delivery System Between the Tulalip Tribes of Washington, and the City of Everett dated 16 September 2005; provided, that should

either party file suit in any judicial forum pursuant to that Part K, that party shall have recourse first to the Federal District Court for the Western District of Washington, and only if that Court rules that it lacks subject matter jurisdiction will any party seek relief in an alternative judicial forum.

17. Miscellaneous.

A. 1991 Contract. The 1991 Contract remains in full force and effect under its terms. Water received by Tulalip from Everett, through the Marysville system, shall continue to be available for use by Tulalip consistent with and subject to the terms of the 1991 Contract.

B. 2005 Agreement. Except as otherwise provided in this Contract, the 2005 Agreement shall apply to and be integrated with this Contract.

C. 2006 Interlocal Agreement. The 2006 Interlocal Agreement shall remain in effect only until Project completion, consistent with the terms of that Agreement.

D. Contract Controls. In the event of conflict, ambiguity or inconsistency, the provisions of this Contract shall control over other agreements and contracts in which Everett and Tulalip are both parties.

E. Headings. The headings used herein are for convenience of reference only and shall not affect the meaning or interpretation of this Contract.

F. No Third Party Beneficiaries. Except as expressly set forth in this Contract; none of the provisions of this Contract shall inure to the benefit of or be enforceable by any third party.

G. Waivers. Except as otherwise provided herein or as agreed by the parities, no provision of this Contract may be waived except as documented or confirmed in writing. Any waiver at any time by a party of its right with respect to a default under this Contract, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter. Either party may waive any notice or agree to accept a shorter notice than specified in this Contract. Such waiver of notice or acceptance of shorter notice by a party at any time regarding a notice shall not be considered a waiver with respect to any subsequent notice required under this Contract.

H. Invalid Provision. The invalidity or unenforceability of any provision of this Contract shall not affect the other provisions hereof, and this Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

I. Amendment. No change, amendment or modification of any provision of this Contract shall be valid unless set forth in a written amendment to this Contract signed by

both parties.

J. Assignment and Subcontracts. Neither party may assign this Agreement, or assign or subcontract all or any part of such party's rights or obligations under this Contract, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Without in any way limiting the foregoing, this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

K. Further Assurances. Each party hereto covenants and agrees to do all things necessary or advisable, including but not limited to the preparation, execution, delivery and recording of any instruments or agreements, in order to confirm and better assure the intent and purposes of this Contract.

L. Counterparts. This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

M. Signature Authority. Each of the undersigned signatories represents and warrants that he or she has all necessary and proper authorization to execute and deliver this Contract on behalf of the party on behalf of which he or she is signing.

N. Rule of Construction. No provision of the Contract shall be construed in favor of or against either of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which such provision or any other provision or provisions of this Contract is or are inconsistent with any prior draft thereof.

Exhibits: A. Tulalip Water Demand Projections
B. Tulalip Tribal Service Area

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their proper officers on the _____ day of_____2016

CITY OF EVERETT,
a Washington municipal corporation

By: _____
Name: Ray Stephanson
Title: Mayor

Approved as to form:

_____
City Attorney

Attest:

_____
City Clerk

CITY OF EVERETT SIGNATURE PAGE

THE TULALIP TRIBES OF WASHINGTON

By: Melvin Sheldon
Name: Melvin Sheldon
Title: Chairman

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Resolution Naming the proposed Riverfront Park in the Riverfront Redevelopment Project "Eclipse Mill Park"

10-19-16	Briefing	COUNCIL BILL #	
10-26-16	Proposed Action	Originating Department	Planning
	Consent	Contact Person	Paul Popelka
	Action	Phone Number	425-257-7155
	First Reading	FOR AGENDA OF	October 19, 2016
	Second Reading		October 26, 2016
	Third Reading		
10-26-16	Public Hearing		

Initialed by:
Department Head
CAA
Council President

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Eclipse Mill Road at 36th Street	Board of Park Commissioners recommendation 06-14-16; Historical Commission recommendation 9-27-16	Resolution and Park Concept Plan	Planning

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The Riverfront Redevelopment Project includes a 3.5 acre park, now known as Riverfront Park, to be located south of the intersection of Eclipse Mill Road and 36th Street along the Snohomish River. The park will include a restroom, group picnic building, trails, play areas and an overlook with canoe/kayak access to the river.

Potential park names were solicited from the Lowell and Port Gardner Neighborhood Associations and the general public. The Historical Commission considered twelve suggestions. After holding a public hearing on September 27, 2016, the Board of Park Commissioners and the Historical Commission recommended the park be named "Eclipse Mill Park."

RECOMMENDATION (Exact action requested of Council):
Adopt a Resolution naming the proposed Riverfront Park in the Riverfront Redevelopment Project "Eclipse Mill Park."

RESOLUTION NO. _____

A Resolution Naming the Naming the Proposed Riverfront Park in the Riverfront Redevelopment Project "Eclipse Mill Park"

WHEREAS, the City proposes to construct a 3.5 acre park located south of the intersection of Eclipse Mill Road and 36th Street along the Snohomish River to include a restroom/group picnic building, trails, play areas, canoe/kayak access to the river, and an overlook with river and waterfront views; and

WHEREAS, this proposed park has not been officially named by the City of Everett; and

WHEREAS, in September 2012 City Council adopted Resolution No. 6537, A Resolution Establishing a Policy on Public Place Names and Name Changes, which authorizes City Council to designate the names of city buildings, streets, public places, facilities and natural features by resolution; and

WHEREAS, the criteria to be used by City Council in making a decision include criterion I, which states, "{A} proposed name…may reflect the geographical location, historical or cultural significance….”; and

WHEREAS, the Parks Board reviewed this proposal on June 16, 2016 and recommended naming the park "Eclipse Mill Road;" and

WHEREAS, on September 27, 2016 the Historical Commission held a public hearing on the proposed name and recommended that City Council name the park "Eclipse Mill Road;"

NOW, THEREFORE, BE IT RESOLVED:

1. The Everett City Council concurs with the Everett Historical Commission's recommendation to rename the proposed Riverfront Park located south of the intersection of Eclipse Mill Road and 36th Street along the Snohomish River "Eclipse Mill Park;" and

2. The proposed park shown in the Park Concept Plan attached hereto is hereby named "Eclipse Mill Park" in recognition of the historic and cultural and economic significance of the Eclipse Mill that formerly occupied this area.

_____
Councilmember Introducing Resolution

PASSED and APPROVED the _____day of October, 2016.

_____
Council President

36TH STREET
NEW PUMP STATION
12' WIDE PAVED TRAIL
SIGNAGE
ONE-WAY ENTRY
VISITOR/BOAT DROP-OFF
RESTROOM/ GROUP PICNIC BUILDING
10-STALL PARALLEL PARKING ON-STREET
UTILITY CORRIDOR UNDER PARKING LOT
36-STALL PARKING LOT
ONE-WAY EXIT
SIGNAGE
6' WIDE PAVED TRAIL
SCREEN PLANTING
PLAY AREA
OPEN LAWN
STABILIZED RIVERBANK
TRAIL CONNECTION TO NORTH
SNOHOMISH RIVER
VIEWPOINT/OVERLOOK AND FLOAT ACCESS
CANOE/KAYAK FLOAT

3-ACRE PARK