



**CITY OF WENATCHEE  
PUBLIC NOTICE**

**Re: Wenatchee City Council Meeting  
Thursday, February 25, 2021 @ 5:15 PM**

Due to the COVID-19 pandemic, and current legislative resolution extending the gubernatorial orders issued in response to the state of emergency, for the health and safety of the community and city staff and councilmembers, City Hall is closed to the public. The public may view the City Council meeting which is broadcast live on the city's YouTube channel "[Wenatchee TV](#)". Members of the public without internet access may listen to the City Council meeting and participate in any public hearings by calling **(509) 888-3298, passcode 66516**.

**En Español:**

POR FAVOR TOME NOTA, en consideración a la actual pandemia COVID-19, para la salud y seguridad de la comunidad y el personal de la ciudad y los miembros del Concejo, no tendremos público presente en la junta del Concejo de Wenatchee.

El público puede tener acceso a la junta en el canal de YouTube de la ciudad "Wenatchee TV". Los miembros del público sin acceso a Internet pueden escuchar esta junta llamando al **(509) 888-3298, passcode, 66516**.

Tammy Stanger, City Clerk  
301 Yakima Street, 3<sup>rd</sup> Floor • P.O. Box 519 • Wenatchee, WA 98807-0519  
Telephone: (509) 888-6204 • Facsimile: (509) 888-3636 • TTY: 711  
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**WENATCHEE CITY COUNCIL**  
**Thursday, February 25, 2021**  
Wenatchee City Hall Council Chambers  
301 Yakima Street, 2<sup>nd</sup> Floor  
Wenatchee, WA 98801  
**AGENDA**

Due to the COVID-19 pandemic, and current legislative resolution extending the gubernatorial orders issued in response to the state of emergency (SCR 8402), for the health and safety of the community and city staff and councilmembers, City Hall is closed to the public. The public may view the City Council meeting which is broadcast live on the city's YouTube channel "[Wenatchee TV](#)". Members of the public without internet access may listen to the City Council meeting and participate in any public hearings by calling **(509) 888-3298, passcode 66516**.

**5:15 p.m. Regular Meeting**

**1. Call to Order, Pledge of Allegiance, and Roll Call**

**2. Consent Items**

- Motion to approve agenda, vouchers, and minutes from previous meetings.

Vouchers:

Payroll distribution in the amount of \$3,245.57 for February 5, 2021

Payroll distribution in the amount of \$53.77 for February 5, 2021

Claim checks #198033 - #198073 in the amount of \$187,308.00 for February 11, 2021

Payroll distribution in the amount of \$357,760.00 for February 19, 2021

Payroll distribution in the amount of \$2,215.00 for February 19, 2021

Payroll distribution in the amount of \$13,500.66 for February 26, 2021

**3. Presentation**

- Red Cross Month Proclamation

**4. Action Items**

**A. Sewer Capital Project Budget Updates**

(a) Project No. 1908-Knowles Road Sanitary Sewer

(b) Project No. 2105- School Street Sanitary Sewer

(c) Project No. 2106 Wastewater Treatment Plant Blower Building Improvements

Presented by Deputy Public Works Director-Utilities Jessica Shaw

*Action Requested: Staff recommends the City Council approve the amended capital project budgets for the three projects listed above.*

- B. Ordinance #2021-11, authorizing the sale, issuance and delivery of not to exceed \$10,000,000 of the City's Water and Sewer Refunding Bonds  
Presented by Finance Director Brad Posenjak  
*Action Requested: Staff recommends the City Council adopt Ordinance No 2021-11 authorizing the sale, issuance and delivery of not to exceed \$10,000,000 of the City's Water and Sewer Refunding Bonds.*
- C. Code Enforcement Board Appointment – James Snyder  
Presented by Building/Fire Code Official Cliff Burdick  
*Action Requested: Staff recommends the City Council pass Resolution No. 2021-08, designating the appointment of James Snyder to the Code Enforcement Board for a two-year term ending December 31, 2022.*
- D. An amendment of the City budget for two funding changes to the Chelan-Douglas Homeless Program:  
  - A new grant award by the Washington State Department of Commerce to the City of Wenatchee for the administration of the Treasury Rent Assistance Program (T-RAP).
  - A funding increase amendment to the existing Eviction Rent Assistance Program (ERAP) grant between the Washington State Department of Commerce and the City of Wenatchee.Presented by Housing Programs Coordinator Oliver Crain and Community Development Director Glen DeVries  
*Action Requested: Staff recommends the City Council accept the Chelan-Douglas Homeless Housing Task Force's recommendations and authorize the Mayor to:*  
  - *Enter into a new grant agreement between the Department of Commerce and the City of Wenatchee for the Treasury Rent Assistance Program Grant (T-RAP).*
  - *Enter into a new Treasury Rent Assistance Program (T-RAP) sub grantee agreement with Chelan-Douglas Community Action Council.*
  - *Enter into an amended agreement to increase the funding for the existing Eviction Rent Assistance Program (ERAP) contract between the Department of Commerce and the City of Wenatchee.*
  - *Enter into an amended agreement for the existing Eviction Rent Assistance Program (ERAP) sub grant contract with the Chelan-Douglas Community Action Council.*
- E. Revisions to water and sewer utility credit policies  
Presented by Finance Director Brad Posenjak  
*Action Requested: Staff recommends the City Council adopt Ordinance No 2021-12, relating to water and sewer utility billing credit; amending WCC 4.08.060(5) and WCC 9.12.540(4); and adding WCC 9.12.540(5).*
- F. Rhinehart Ten Percent (10%) Annexation Petition for review, adjustment, approval or denial  
Presented by Neighborhood and Community Services Coordinator Brooklyn Holton  
*Action Requested: The ten percent (10%) annexation public meeting is required for the City Council to determine three items:*

- a. *Whether the City will accept, reject, or geographically modify the proposed annexation boundary;*
- b. *Whether it will require the simultaneous adoption of a proposed zoning regulation; and*
- c. *Whether it will require the assumption of all or any portion of existing city indebtedness by the area to be annexed.*

*If the legislative body requires the adoption of a proposed zoning regulation and/or the assumption of all or any portion of indebtedness as condition to annexation, it is to record this action in its minutes. Council acceptance is a condition precedent to circulation of the petition. There is no appeal from the council decision.*

## **5. Public Hearing Items**

The Mayor will call the Public Hearing to order and state the ground rules, the purpose of the hearing, the action that the hearing body may take on the matter, will address the appearance of fairness doctrine, and will state the manner in which the hearing will proceed. Staff will first give a report, followed by testimony of experts and/or the applicant, followed then by public testimony. All speakers must speak into the phone and clearly state their names and addresses. All comments should be addressed to the hearing body, should be relevant to the application, and should not be of a personal nature. Public testimony may be limited to three minutes, unless further time is granted by the Mayor. If there are a large number of speakers, a representative may be appointed to speak on behalf of the group.

- G. Public Hearing for Ordinance No. 2021-07 granting a franchise to Computer 5, Inc dba LocalTel Communications  
Presented by Executive Services Director Laura Merrill  
*No action requested. Staff recommends the City Council conduct a Public Hearing for Ordinance No. 2021-07 granting a franchise to LocalTel Communications for the purposes of authorizing the use of the City right-of-way for a cable service.*

## **6. Reports**

- a. Mayor's Report
- b. Reports/New Business of Council Committees

## **7. Announcements**

## **8. Adjournment**



**WENATCHEE CITY COUNCIL**  
**Thursday, February 11, 2021**  
Wenatchee City Hall Council Chambers  
301 Yakima Street, 2<sup>nd</sup> Floor  
Wenatchee, WA 98801  
**MINUTES**

**DRAFT**

**Present:** Mayor Frank Kuntz, Councilmember Position 1 Jose Cuevas, Councilmember Position 2 Jim Bailey, Councilmember Position 3 Ruth Esparza, Councilmember Position 4 Travis Hornby, Councilmember Position 5 Mark Kulaas, Councilmember At-Large "A" Linda Herald, Councilmember At-Large "B" Keith Huffaker

**Staff Present:** Executive Services Director Laura Merrill, City Attorney Steve Smith (via phone), City Clerk Tammy Stanger, IS Support Tim McCord, Community Development Director Glen DeVries, Finance Director Brad Posenjak, Parks, Building/Fire Code Official Cliff Burdick, City Engineer Gary Owen, Engineering Services Manager Jacob Huylar, Police Chief Steve Crown.

**5:15 p.m. Regular Meeting**

**1. Call to Order, Pledge of Allegiance, and Roll Call.** Mayor Frank J. Kuntz called the regular meeting to order at 5:15 p.m. Councilmember Linda Herald led the Pledge of Allegiance. All Councilmembers were present.

**2. Consent Items**

*Motion by Councilmember Mark Kulaas to approve agenda, removing agenda item J, vouchers, and minutes from previous meetings. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).*

**3. Action Items**

- A.** Memorandum of Agreement between the Port of Chelan County, Port of Douglas County, City of Wenatchee, and City of Rock Island for the Brownfields Assessment Coalition

Executive Services Director Laura Merrill presented the staff report. Council asked questions.

*Motion by Councilmember Travis Hornby for City Council to authorize the Mayor to sign the Memorandum of Agreement between the Port of Chelan County, Port of Douglas County, City of Wenatchee, and City of Rock Island for the Brownfields Assessment Coalition funded through the award of a \$600,000 Brownfields Assessment Grant from the Environmental Protection Agency. Councilmember Ruth Esparza seconded the motion. Motion carried (7-0).*

**B. Agreements to construct and maintain a new structure across the Wenatchee Reclamation District Canal at Maple Street**

City Engineer Gary Owen presented the staff report. Council asked questions.

*Motion by Councilmember Jim Bailey for City Council to approve the two agreements with the Wenatchee Reclamation District and authorize the Mayor's signature. Councilmember Mark Kulaas seconded the motion. Motion carried (7-0).*

**C. Springwater Avenue Improvements, City Project #2007 – Authorization to Negotiate**

Engineering Services Manager Jacob Huylar presented the staff report. Council asked questions.

*Motion by Councilmember Keith Huffaker for City Council to authorize the Mayor to negotiate with Perteet for design services on the Springwater Avenue Improvements (Project No. 2007) and further authorize the Mayor to sign a contract on behalf of the City. Councilmember Linda Herald seconded the motion. Motion carried. (7-0).*

**D. 2018 International Codes Adoption**

Building/Fire Code Official Cliff Burdick presented the staff report. Council asked questions.

*Motion by Councilmember Mark Kulaas for City Council to adopt Ordinance No. 2021-01 relating to the adoption of the 2018 International Codes as amended by the State of Washington. Councilmember Jose Cuevas seconded the motion. Motion carried (7-0).*

**E. 2018 International Fire Code Adoption**

Building/Fire Code Official Cliff Burdick presented the staff report. Council asked questions.

*Motion by Councilmember Ruth Esparza for City Council to adopt Ordinance No. 2021-02 relating to the adoption of the 2018 International Fire Code as amended by the State of Washington. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).*

**F. Repeal of portions of WCC Title 4, Health and Sanitation**

Building/Fire Code Official Cliff Burdick presented the staff report. Council asked questions.

Motion by Councilmember Travis Hornby for City Council to adopt Ordinance No. 2021-03 repealing portions of WCC Title 4, Health and Sanitation. Councilmember Mark Kulaas seconded the motion. Motion carried (7-0).

**G. Repeal of portions of WCC Title 5, Licenses and Taxation**

Building/Fire Code Official Cliff Burdick presented the staff report.

Motion by Councilmember Linda Herald for City Council to adopt Ordinance No. 2021-04 repealing portions of WCC Title 5, Licenses and Taxation. Councilmember Jose Cuevas seconded the motion. Motion carried (7-0).

**H. Repeal of WCC Section 6A.10.060, Abandoned, unused and discarded refrigerators, iceboxes and deep-freeze lockers**

Building/Fire Code Official Cliff Burdick presented the staff report.

Motion by Councilmember Travis Hornby for City Council to adopt Ordinance No. 2021-05, repealing WCC Section 6A.10.060 relating to abandoned, unused and discarded refrigerators, iceboxes and deep-freeze lockers. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).

**I. Amend WCC Chapter 2.06, Permits**

Building/Fire Code Official Cliff Burdick presented the staff report.

Motion by Councilmember Keith Huffaker for City Council to adopt Ordinance No. 2021-08 amending portions of WCC Chapter 2.06 relating to permits. Councilmember Jose Cuevas seconded the motion. Motion carried (7-0).

**J. Multi-Year Interlocal Agreement between Chelan County and the City of Wenatchee for the Housing of Inmates in the Chelan County Regional Justice Center**

Executive Services Director Laura Merrill and Finance Director Brad Posenjak presented the staff report. The Mayor provided the background information and history of the negotiations. City Attorney Steve Smith also commented. Council asked questions.

Motion by Councilmember Ruth Esparza for City Council to authorize the Mayor to approve a multi-year Interlocal Agreement between Chelan County and the City of Wenatchee for the Housing of Inmates in the Chelan County Regional Justice Center in substantially similar form and authorize the Mayor's signature. Councilmember Travis Hornby seconded the motion. Motion carried (7-0).

**K. First Amendment to the Convention Center Management Agreement with Coast Wenatchee, LLC**

Councilmember Linda Herald excused herself from this agenda item due to a conflict of interest.

Executive Services Director Laura Merrill presented the staff report. Council asked questions.

*Motion by Councilmember Keith Huffaker for City Council to authorize the Mayor to sign the First Amendment to the Convention Center Management Agreement for utilities reimbursement of up to \$100,000 or through January 1, 2022, whichever is sooner. Councilmember Travis Hornby seconded the motion. Motion carried (6-0; Herald conflict).*

**L. Adoption of Resolution No 2021-07 to ratify an action related to COVID-19**

Executive Services Director Laura Merrill presented the staff report. Council asked questions.

*Motion by Councilmember Jim Bailey for City Council to adopt Resolution No. 2021-07 to ratify an emergency order of the Mayor related to paid emergency supplemental leave in response to the COVID-19 pandemic. Councilmember Ruth Esparza seconded the motion. Motion carried (7-0).*

**4. Reports**

**a. Mayor's Report**

- (1) Pledge to Civility in Public Service. The Mayor requested this item on the agenda for the Council for discussion. Other local government agencies are also reviewing. While the current City Council is thankful for their civility, they are supportive of the pledge, and having something in writing for future Councilmembers would set a standard. City Attorney Steve Smith will take a look at the pledge and incorporate into current policy for adoption at a future meeting.
- (2) The Mayor participated in the Chamber's "State of the Cities" zoom meeting today.
- (3) He continues to watch for the transportation budgets in Washington D.C. and Olympia. He continues the conversation with staff and Senators Cantwell and Murray, and Congresswoman Schrier.

**b. Reports/New Business of Council Committees**

Councilmember Mark Kulaas mentioned his concern about the traffic near the new Winco store and the left turn lane into the store backing up on Maple Street.



Councilmember Keith Huffaker recently attended a Solid Waste meeting. He said that Chelan is moving forward with their glass grinding program. This will allow for folks to recycle glass as Waste Management is no longer accepting glass for recycling. He also mentioned that Linda Haglund is working hard trying to help restaurants and is looking at a program that Tacoma and Pierce County have done that provided discounts to patrons while providing reimbursement to restaurants through CARES Act funding. He is hopeful our region can do the same.

## 5. Announcements

The Mayor announced that next week's work session will include a presentation on "1590 funds," and a discussion regarding a 1/10 of 1% sales tax that can be used for operating costs. He said there is no way to have a low-barrier shelter in place using current funding for operating costs; it will take away from other needed and essential programs. While the City of East Wenatchee has said they would be interested in partnering with this, the two counties have said no.

**6. Adjournment.** With no further business the meeting adjourned at 6:30 p.m.

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Frank J. Kuntz, Mayor

Attest:

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Tammy L. Stanger, City Clerk



## American Red Cross

### AMERICAN RED CROSS MONTH 2021

#### A Proclamation

March is American Red Cross Month, a special time to honor the kindness of our neighbors who aid families in need every day in Wenatchee, across the United States and around the world. Their dedication touches millions of lives each year as they carry out the organization's 140-year mission of preventing and alleviating suffering.

During the trying times of the coronavirus pandemic, people have stepped up to help others in need, whether it was responding to this year's record-breaking disasters across the country or rolling up their sleeves to give blood when our country faced a severe blood shortage.

Here in Wenatchee and Central Washington, local families have relied on Greater Inland Northwest Chapter volunteers for comfort and hope while coping with home fires, wildfires, and other natural disasters. Last year, more than two dozen local Red Cross volunteers responded to historic wildfires that devastated parts of Central Washington. The Red Cross team met the immediate needs of the community by providing shelter, food, hygiene items, and other basic necessities to folks who were displaced from their homes. Red Cross mental health and spiritual care teams also helped those affected by the fire process what they experienced and find hope in the future.

Additionally, in 2020, local volunteers helped 37 people affected by 16 home fires in Chelan and Douglas counties by addressing their urgent needs like food, lodging and recovery support.

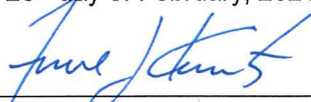
Greater Inland Northwest volunteers have supported local families in other ways too. Last year in Wenatchee, the Red Cross hosted 62 blood drives, collecting 1,811 units which could help save up to 5,433 lives.

This lifesaving work is vital to strengthening our community's resilience. Nearly 200 years since the birth of American Red Cross founder Clara Barton, we dedicate this month of March to all those who continue to advance her noble legacy, and we ask others to join in their commitment to care for people in need.

**NOW THEREFORE**, I, Frank J. Kuntz, Mayor of the City of Wenatchee, do hereby proclaim March 2021 as Red Cross Month, and I encourage all community members to reach out and support the humanitarian mission of the Red Cross.



**IN WITNESS WHEREOF**, I hereby set my hand and cause the seal of the City of Wenatchee to be affixed on this 25<sup>th</sup> day of February, 2021.

  
\_\_\_\_\_  
Frank J. Kuntz, Mayor



## CITY COUNCIL AGENDA REPORT

**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Jessica Shaw, Deputy Public Works Director-Utilities  
Public Works Department

**MEETING DATE:** February 25, 2021

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### **I. SUBJECT**

Sewer Capital Project Budget Updates

A. Project No. 1908-Knowles Road Sanitary Sewer

B. Project No. 2105- School Street Sanitary Sewer

C. Project No. 2106 Wastewater Treatment Plant Blower Building Improvements

### **II. ACTION REQUESTED**

Staff recommends the City Council approve the amended capital project budgets for the three projects listed above.

### **III. OVERVIEW**

Since last fall when the 2021 capital project budgets were developed, City staff have received new information regarding two proposed residential developments on Knowles Road which has led to the amended budget for the Knowles Road Sanitary Sewer project and the addition of the School Street Sanitary Sewer project.

- The budget amendment for Knowles Road sanitary sewer restores the construction funding that was originally cut from the budget in 2020.
- The proposed budget for a new sewer main on School Street will connect the main being built on Knowles Road to the intersection of Easy and School Streets. The section of main on School Street from the intersection to the elementary school is expected to be constructed this summer by private development.

The third proposed project budget is for an improvement project at the wastewater treatment plant. This project will replace oversized motors and outdated electrical equipment in the blower building. In addition, the project will include the replacement of the gates between the aeration basins and the secondary clarifiers.

### **IV. FISCAL IMPACT**

Funding for these projects will be from the 405 Sewer Utility Fund. Please refer to the attached budget proposal for more information.

**V. PROPOSED PROJECT SCHEDULE**

Design for all three projects will be started in 2021. Construction of the School Street sewer main between Easy Street and Knowles Road is anticipated later this year. The sewer main on Knowles Road will be constructed summer of 2022 in conjunction with the Chelan County road project. The wastewater treatment plant project will hopefully be constructed early in 2022.

**VI. REFERENCE(S)**

1. Capital Project Budgets:
  - A. Project No. 1908-Knowles Road Sanitary Sewer
  - B. Project No. 2105-School Street Sanitary Sewer
  - C. Project No. 2106- Wastewater Treatment Plant Blower Building Improvements
2. Project map of Knowles Road & School Street sanitary sewer extensions

**VII. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Laura Merrill, Executive Services Director  
Brad Posenjak, Finance Director  
Natalie Thresher, Financial Analyst  
Rob Jammerman, Public Works Director  
Anna Carr, Administrative Assistant



## Capital Project Budget

Date: February 9, 2021 Project Number: 1908

Project Name: Knowles Road Sanitary Sewer Dept/Category: Public Works - Sewer Project

**Project Description:**

Chelan County will be reconstructing Knowles Road from School Street to American Fruit Road, and the city will be installing sewer main in conjunction with the county's project.

<b>Project Lead:</b>	Jeremy Hoover	<b>Start Year:</b>	2021
<b>Assigned Department:</b>	Public Works	<b>End Year:</b>	2022
<b>Original Project Budget:</b>	\$50,000	<b>Total City Funding:</b>	\$600,000
<b>Budget Amendment:</b>	\$550,000	<b>Other Funding:</b>	\$0

**Project Notes:**

Original Budget is based on adopted 2020 City Budget.

Project Expenditures by Category	Original Budget	Amended Budget	Prior Years Spent	ESTIMATES			Project Total
				2021	2022	2023+	
Design Engineering	50,000	120,000	5,000	45,000			600,000
Construction Contract		440,000					
Construction Engineering		35,600					
Art Fund		4,400					
<b>Total Project Expenditures</b>	<b>50,000</b>	<b>600,000</b>	<b>5,000</b>	<b>45,000</b>			<b>600,000</b>

Project Revenues by Category		Original Budget	Amended Budget	Prior Years	ESTIMATES			Project Total
					2021	2022	2023+	
Fund:	405 - Sewer Utility	50,000	600,000	5,000	45,000			600,000
Fund:								
Fund:								
Fund:								
Fund:								
GRANTS:								
<b>Total Project Revenues</b>		<b>50,000</b>	<b>600,000</b>	<b>5,000</b>	<b>45,000</b>			<b>600,000</b>

Approved by City Council: \_\_\_\_\_ Date \_\_\_\_\_



## Capital Project Budget

Date: March 4, 2021 Project Number: 2105

Project Name: School Street Sanitary Sewer Extension Dept/Category: Public Works - Sewer Project

**Project Description:** In order to provide an outfall for the sewer being installed in Knowles road as part of a Chelan County-led, TIB grant-funded project, a segment of sanitary sewer is required in School St. from Knowles Rd. south to Easy Street in accordance with the 2017 Sewer Comprehensive Plan. This project will provide for the design and construction of those improvements to be built prior to the county project.

<b>Project Lead:</b>	Jeremy Hoover, P.E.	<b>Start Year:</b>	2021
<b>Assigned Department:</b>	Public Works	<b>End Year:</b>	2022
<b>Original Project Budget:</b>	\$366,590	<b>Total City Funding:</b>	\$366,590
<b>Budget Amendment:</b>		<b>Other Funding:</b>	\$0

**Project Notes:**  
The original budget for project 1908 - Knowles Road Sanitary Sewer, was reduced from \$600,000 to a \$50,000 design-only project on September 1, 2020. Construction of the sewer was planned to be deferred until a later date. The City now plans to extend sewer with the County-led project. This phase of the improvements, CPN 2105, represents a downstream segment of the original project scope with the understanding that an adjacent, private development will install additional sewer in School Street south of Easy St.

Project Expenditures by Category	Original Budget	Amended Budget	Prior Years Spent	ESTIMATES			Project Total
				2021	2022	2023+	
Design Engineering	77,000		-	72,000	5,000		77,000
Right of Way Acquisition	-				-		
Construction Contract	259,000			249,000	10,000		259,000
Construction Engineering	28,000			24,000	4,000		28,000
Miscellaneous					-		
					-		
Art Fund	2,590			2,490	100		2,590
<b>Total Project Expenditures</b>	<b>366,590</b>			<b>347,490</b>	<b>19,100</b>		<b>366,590</b>

Project Revenues by Category		Original Budget	Amended Budget	Prior Years	ESTIMATES			Project Total
					2021	2022	2023+	
Fund:	405 - Sewer Utility	366,590		-	347,490	19,100		366,590
Fund:								
Fund:								
Fund:								
Fund:								
GRANTS:								
<b>Total Project Revenues</b>		<b>366,590</b>			<b>347,490</b>	<b>19,100</b>		<b>366,590</b>

Approved by City Council: \_\_\_\_\_ Date \_\_\_\_\_



## Capital Project Budget

Date: March 4, 2021 Project Number: 2106

Project Name: WWTP Blower Improvements Dept/Category: Public Works - Sewer Project

**Project Description:** The air blowers that serve the WWTP aeration basin are antiquated, oversized, single-speed units that are difficult to effectively control, consume vast amounts of energy, and have been identified as a potentially cost-reimbursable improvement by the PUD. This project will replace oversized motors and outdated electrical equipment in the blower building. In addition, the project will include the replacement of the gates between the aeration basins and the secondary clarifiers.

<b>Project Lead:</b>	Jeremy Hoover, P.E.	<b>Start Year:</b>	2021
<b>Assigned Department:</b>	Public Works	<b>End Year:</b>	2022
<b>Original Project Budget:</b>	\$793,000	<b>Total City Funding:</b>	\$793,000
<b>Budget Amendment:</b>		<b>Other Funding:</b>	\$0

**Project Notes:**

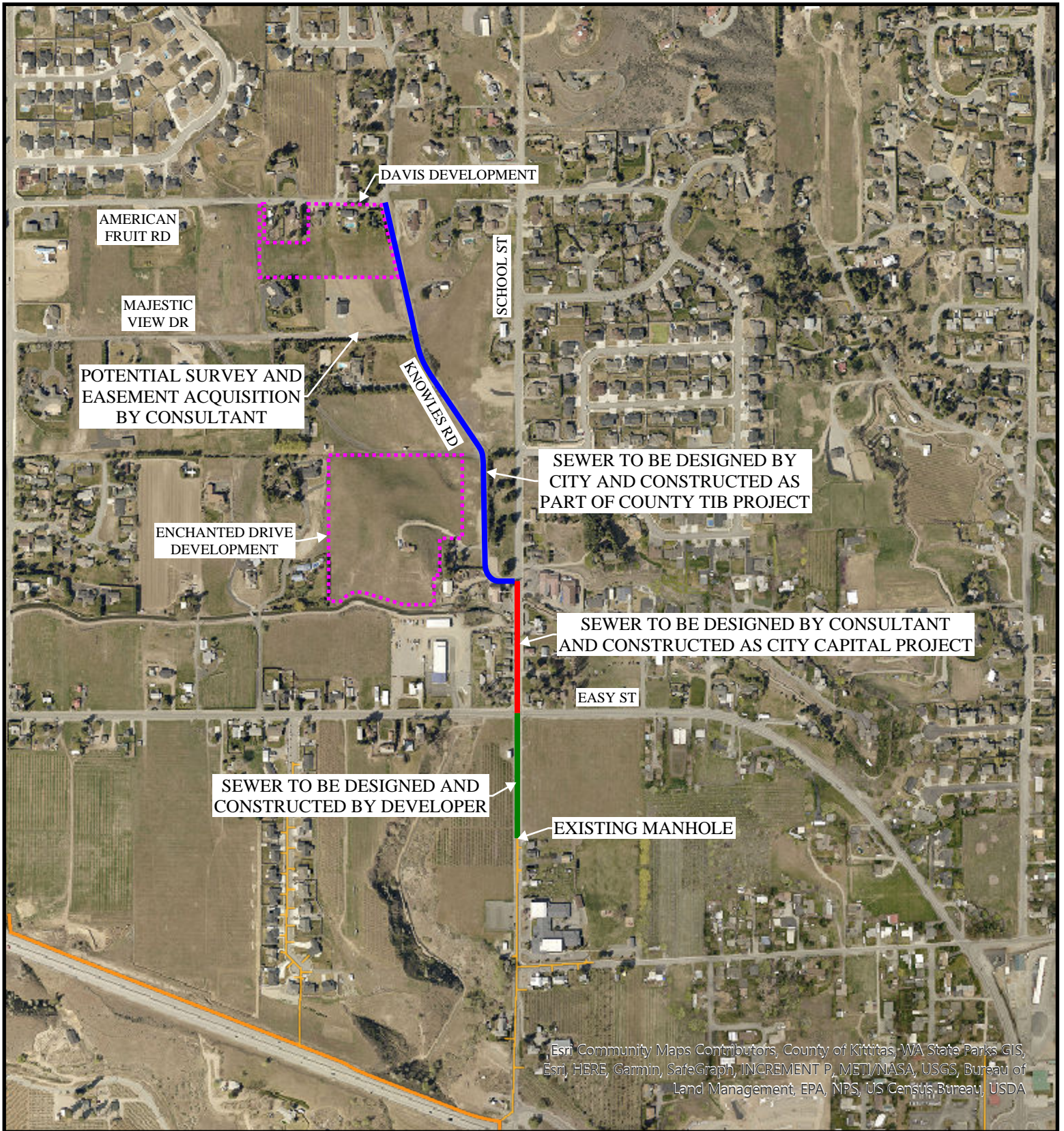
As originally designed, the blower and blower motor assemblies were intended to force air into equipment that is no longer present at the WWTP as well as aeration equipment that has been upgraded. They are oversized and causing failures of header piping because they cannot be throttled to meet current demands. The gate assemblies that historically allowed metering of flow between the secondary clarifiers and aeration basins were scrapped and need to be replaced to properly control treated effluent. New motorized gate assemblies will allow remote management and fine tuning via the SCADA system.

Project Expenditures by Category	Original Budget	Amended Budget	Prior Years Spent	ESTIMATES			Project Total
				2021	2022	2023+	
Design Engineering	127,000		-	122,000	5,000		127,000
Right of Way Acquisition	-				-		
Construction Contract	600,000			590,000	10,000		600,000
Construction Engineering	60,000			54,000	6,000		60,000
Miscellaneous					-		
					-		
Art Fund	6,000			5,900	100		6,000
<b>Total Project Expenditures</b>	<b>793,000</b>			<b>771,900</b>	<b>21,100</b>		<b>793,000</b>

Project Revenues by Category		Original Budget	Amended Budget	Prior Years	ESTIMATES			Project Total
					2021	2022	2023+	
Fund:	405 - Sewer Utility	793,000		-	771,900	21,100		793,000
Fund:								
Fund:								
Fund:								
Fund:								
GRANTS:								
<b>Total Project Revenues</b>		<b>793,000</b>			<b>771,900</b>	<b>21,100</b>		<b>793,000</b>

Approved by City Council: \_\_\_\_\_ Date \_\_\_\_\_

# VICINITY MAP



1 inch equals 1,000 feet  
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## CITY COUNCIL AGENDA REPORT

**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Brad Posenjak, Finance Director  
Finance Department

**MEETING DATE:** February 25, 2021

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**I. SUBJECT**

Ordinance #2021-11, authorizing the sale, issuance and delivery of not to exceed \$10,000,000 of the City's Water and Sewer Refunding Bonds.

**II. ACTION REQUESTED**

Staff recommends the City Council adopt Ordinance No 2021-11 authorizing the sale, issuance and delivery of not to exceed \$10,000,000 of the City's Water and Sewer Refunding Bonds.

**III. OVERVIEW**

In 2011, the City issued \$18,705,000 in Water and Sewer Revenue bonds to finance \$15,460,000 of capital projects for Water, Sewer and Storm utilities. The remaining \$3,245,000 was used to refund prior utility bonds. Of the 2011 bonds, \$9,825,000 of principal is still outstanding, and \$2,563,000 of interest is due over the next 10 years. The 2011 bond commitments allow these to be refunded after 10 years and these bonds are now eligible.

When the 2011 bonds were issued, interest rates of 4.0%-5.0% were required for 10-20 year debt. Refunding these bonds should allow us to pay interest rates in the 2% range.

In a refunding transaction, the proceeds of the 2021 bonds are placed in an escrow account that is used to repay the bondholders of the original 2011 bonds. This legally relieves the City of the prior debt. The City will then make principal and interest payments on the new 2021 bonds. While there are many steps in the process, the end result is simply lower interest payments.

The City's Bond Counsel, Kutak Rock prepared Ordinance 2021-11. City Staff, DA Davidson and Northwest Municipal Advisors have all reviewed the ordinance for compliance and accuracy.

**IV. FISCAL IMPACT**

Most of the debt issuance costs are included in the refinancing of the new bonds. A significant amount of interest savings is expected across the Water, Sewer, and Storm funds.

**V. REFERENCE(S)**

1. Ordinance 2021-11

**VI. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Laura Merrill, Executive Services Director  
Rob Jammerman, Public Works Director  
Jessica Shaw, Deputy Public Works Director - Utilities

**ORDINANCE NO. 2021-11**

**AN ORDINANCE OF THE CITY OF WENATCHEE, CHELAN COUNTY, WASHINGTON, AUTHORIZING THE SALE, ISSUANCE AND DELIVERY OF NOT TO EXCEED \$10,000,000 OF THE CITY'S WATER AND SEWER REVENUE REFUNDING BONDS, TO PAY, REDEEM AND RETIRE ALL OR A PORTION OF THE CITY'S OUTSTANDING WATER AND SEWER REVENUE AND REFUNDING BONDS, SERIES 2011; PROVIDING FOR THE DESIGNATION, DATE, TERMS, MATURITIES, FORM, PAYMENT AND REDEMPTION PROVISIONS OF THE BONDS; DESIGNATING A FISCAL AGENT; AUTHORIZING THE EXECUTION OF A REFUNDING TRUST AGREEMENT FOR USE IN THE PAYMENT OF THE REFUNDED BONDS; AUTHORIZING THE PURCHASE OF CERTAIN GOVERNMENT OBLIGATIONS; PROVIDING FOR THE CALL, PAYMENT AND REDEMPTION OF THE REFUNDED BONDS; PROVIDING FOR THE REGISTRATION AND AUTHENTICATION OF THE BONDS; CREATING AND ADOPTING CERTAIN FUNDS AND ACCOUNTS AND PROVIDING FOR DEPOSITS THEREIN; COVENANTING TO COMPLY WITH CERTAIN FEDERAL TAX AND SECURITIES LAWS; AUTHORIZING THE SALE OF THE BONDS; DELEGATING CERTAIN MATTERS TO THE MAYOR AND THE FINANCE DIRECTOR; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO**

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Exhibit “A”: Form of the Bond

Exhibit “B”: Form Summary of the Ordinance

Exhibit “C”: Form of the Refunding Trust Agreement

Exhibit “D”: Form of the Continuing Disclosure Undertaking

**ORDINANCE NO. 2021-11**

**AN ORDINANCE OF THE CITY OF WENATCHEE, CHELAN COUNTY, WASHINGTON, AUTHORIZING THE SALE, ISSUANCE AND DELIVERY OF NOT TO EXCEED \$10,000,000 OF THE CITY'S WATER AND SEWER REVENUE REFUNDING BONDS, TO PAY, REDEEM AND RETIRE ALL OR A PORTION OF THE CITY'S OUTSTANDING WATER AND SEWER REVENUE AND REFUNDING BONDS, SERIES 2011; PROVIDING FOR THE DESIGNATION, DATE, TERMS, MATURITIES, FORM, PAYMENT AND REDEMPTION PROVISIONS OF THE BONDS; DESIGNATING A FISCAL AGENT; AUTHORIZING THE EXECUTION OF A REFUNDING TRUST AGREEMENT FOR USE IN THE PAYMENT OF THE REFUNDED BONDS; AUTHORIZING THE PURCHASE OF CERTAIN GOVERNMENT OBLIGATIONS; PROVIDING FOR THE CALL, PAYMENT AND REDEMPTION OF THE REFUNDED BONDS; PROVIDING FOR THE REGISTRATION AND AUTHENTICATION OF THE BONDS; CREATING AND ADOPTING CERTAIN FUNDS AND ACCOUNTS AND PROVIDING FOR DEPOSITS THEREIN; COVENANTING TO COMPLY WITH CERTAIN FEDERAL TAX AND SECURITIES LAWS; AUTHORIZING THE SALE OF THE BONDS; DELEGATING CERTAIN MATTERS TO THE MAYOR AND THE FINANCE DIRECTOR; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO**

**CITY OF WENATCHEE  
Chelan County, Washington**

**WATER AND SEWER REVENUE REFUNDING BONDS, SERIES 2021  
PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000**

THE CITY COUNCIL OF THE CITY OF WENATCHEE, CHELAN COUNTY, WASHINGTON, DOES ORDAIN, as follows:

WHEREAS, the City of Wenatchee, Chelan County, Washington (the "City"), is a code city duly organized and existing under and by virtue of the Constitution and the laws of the state of Washington (the "State") now in effect;

WHEREAS, the City owns, maintains and operates a water supply and distribution system, a sewage collection and disposal system, and a storm drainage system, which water, sewer and storm drainage systems have been combined for financing purposes (the "System");

WHEREAS, the City is authorized by chapters 35.41, 39.46 and 39.53 RCW to issue revenue refunding bonds to redeem or retire the Refunded Bonds (as hereinafter defined);

WHEREAS, the City now has outstanding its "City of Wenatchee Water and Sewer Revenue and Refunding Bonds, 2011," authorized to be issued pursuant to Ordinance No.

2011-28, adopted by the City Council of the City (the “Council”) on May 26, 2011 (the “2011 Bonds”);

WHEREAS, Ordinance No. 2011-28 provides that the 2011 Bonds maturing on and after December 1, 2022, are subject to redemption prior to their stated dates of maturity in whole or in part at any time, on or after June 1, 2021, at the price of par, plus accrued interest to the date of redemption;

WHEREAS, after due consideration, the Council has determined that it is necessary, advisable and that it will be financially advantageous to the City and a substantial savings to the ratepayers of the City’s System to authorize the sale, issuance and delivery of not to exceed \$10,000,000 in principal amount of its Water and Sewer Revenue Refunding Bonds, Series 2021 (the “Bonds”) to redeem or retire all or a portion of the 2011 Bonds (the “Refunded Bonds”) if market conditions permit such refunding, and to pay the costs of issuing the Bonds including administrating the Escrow Account);

WHEREAS, in order to effect such refunding program in the manner that will be most advantageous to the City, the Council has determined that certain government obligations, bearing interest and maturing at such time or times as necessary to pay the principal of and interest on the Refunded Bonds as each shall become due and payable, and to refund and retire the Refunded Bonds, will be purchased out of a portion of the proceeds of the sale of the Bonds or from other funds of the City on hand and legally available therefor;

WHEREAS, pursuant to the provisions of RCW 43.80.120, the State Finance Committee from time to time designates certain financial institutions to act as the fiscal agent for the State and any political subdivisions thereof who so designate, and the City has established procedures pursuant to which such fiscal agent will carry out its duties with respect to the Bonds;

WHEREAS, pursuant to the provisions of RCW 39.44.130, the Washington State Fiscal Agent is hereby designated as the City’s legally designated fiscal agent;

WHEREAS, the Council has determined it to be in the best interest of the City to authorize the Mayor or the Finance Director to accept and execute the Bond Purchase Contract pursuant to chapter 39.46 RCW;

NOW, THEREFORE, IT IS HEREBY FURTHER FOUND, DETERMINED AND ORDAINED as follows:

**Section 1: Definitions**

As used in this Ordinance, the following terms have the meanings provided in this Section 1.

*Additional Bonds* shall mean 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 to pay the principal of and interest on the Outstanding Bonds and the Bonds.

*Annual Debt Service* shall mean the amount required in a given calendar year for the payment of: (1) the interest on all Outstanding Bonds, the Bonds and any Additional Bonds then Outstanding; (2) the principal of all Outstanding Bonds, the Bonds and any Additional Bonds then Outstanding, except Term Bonds; and (3) the payments required to be made in such year into the Sinking Fund Account for the amortization of Term Bonds.

*Assessment Income* shall mean the principal of and interest on assessments levied in ULIDs and pledged to be paid into the Bond Fund. Assessment Income shall be allocated to the years in which it would be received if the unpaid balance of each assessment roll were paid in the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance confirming the assessment roll.

*Assessments* shall mean all assessments levied in any ULID of the City created for the acquisition or construction of additions and improvements to and extensions of the System, if such assessments are pledged to be paid into the Bond Fund. Assessments include any installments of Assessments and any interest or penalties which may be due thereon.

*Average Annual Debt Service* shall mean the average amount of the Annual Debt Service which will become due on the Outstanding Bonds, the Bonds and any Additional Bonds for the period from the date of such calculation until the final maturity date of such Outstanding Bonds, the Bonds and any Additional Bonds then Outstanding.

*Bond Counsel* shall mean Kutak Rock LLP or such other nationally recognized bond counsel firm as designated by the Mayor.

*Bond Fund* shall mean the “City of Wenatchee Water, Sewer and Storm Drainage Revenue Bond Fund” created by Section 8 of Ordinance No. 2007-43, and referred to in Section 15 of this Ordinance.

*Bond Purchase Contract* shall mean the bond purchase contract between the City and the Purchaser containing the terms set forth in Section 4 of this Ordinance.

*Bond Register* shall mean the registration records of the City, maintained by the Registrar, on which shall appear the names and addresses of the Registered Owners of the Bonds.

*Bonds* shall mean the herein authorized Bonds designated as the “City of Wenatchee, Washington, Water and Sewer Revenue Refunding Bonds, Series 2021”.

*City* shall mean the City of Wenatchee, Chelan County, Washington, a code city duly organized and existing under and by virtue of the laws of the State.

*City Clerk* shall mean the Clerk of the City or other officer of the City who is the custodian of the records of the proceedings of the Council or her successor in functions, if any.

*Code* shall mean the Internal Revenue Code of 1986, as amended, and any treasury regulations promulgated thereunder or applicable thereto.

*Continuing Disclosure Undertaking* shall mean the Continuing Disclosure Undertaking substantially in the form attached hereto as Exhibit “D.”

*Costs of Maintenance and Operation* shall mean all necessary expenses of operating the System, current maintenance expenses, expenses of reasonable upkeep and repairs, insurance and administrative expenses and reasonable pro rata budget charges for services provided to the System by the City departments, but excludes depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the System, municipal taxes and payments to the City in lieu of taxes.

*Council* shall mean the City Council of the City as the same shall be duly and regularly constituted from time to time.

*Debt Service Account* shall mean the account of that name created in the Bond Fund by Section 8 of Ordinance No. 2007-43 and referred to in Section 15 of this Ordinance.

*District* shall mean the Public Utility District No. 1 of Chelan County, Washington.

*DTC* shall mean The Depository Trust Company, a limited purpose trust company.

*Escrow Account* shall mean the “City of Wenatchee Water and Sewer Revenue Refunding Bond Escrow Account” on deposit with the Refunding Trustee and created by Section 9 of this Ordinance to accomplish the refunding of the Refunded Bonds.

*Finance Director* shall mean the Finance Director of the City or his successor in functions, if any.

*Government Obligations* shall have the meaning set forth in RCW 39.53.010, as it now reads or is hereafter amended or recodified, and as further set forth in Sections 11 and 21 hereof.

*Letter of Representations* shall mean the Blanket Issuer Letter of Representations from the City to DTC, dated March 1, 1997.

*Maximum Annual Debt Service* shall mean an amount equal to the greatest Annual Debt Service with respect to the Outstanding Bonds, the Bonds and any Additional Bonds for the calendar year such calculation is made or for any future calendar year.

*Mayor* shall mean the Mayor of the City, or any presiding officer or titular head of the City, or his successor in functions, if any.

*Municipal Advisor* shall mean Northwest Municipal Advisors or such other independent municipal advisor registered with the SEC and MSRB as designated by the Mayor or the Finance Director.

*MSRB* shall mean the Municipal Securities Rulemaking Board or any successor in functions thereto.

*Net Revenue* shall mean the Revenue of the System less the Costs of Maintenance and Operation.

*Operating Fund* shall mean collectively the “Water and Sewer Fund,” the “Regional Water Fund” and the “Storm Drainage Fund” created in the treasury of the City and referred to in Section 14 of this Ordinance, into which all of the Revenue of the System is pledged to be deposited.

*Ordinance* shall mean this Ordinance No. 2021-11, adopted by the Council on February 25, 2021.

*Ordinance No. 2011-28* shall mean the ordinance of the City, adopted by the Council on May 26, 2011, and pursuant to which the 2011 Bonds were authorized.

*Ordinance No. 2018-10* shall mean the ordinance of the City adopted by the Council on May 10, 2018, and pursuant to which the 2018 Bonds were authorized.

*Outstanding*, when used with reference to an Outstanding Bond, a Bond, or an Additional Bond, as of any particular date, shall mean all such bonds that have been issued, executed, authenticated and delivered under this Ordinance or under any ordinance authorizing the issuance of the Outstanding Bonds or Additional Bonds, except (1) Outstanding Bonds, Bonds or Additional Bonds canceled because of payment or redemption prior to their stated dates of maturity, (2) any Bond (or portion thereof) deemed to have been paid within the meaning of Section 21 hereof, and (3) any Outstanding Bond or Additional Bond (or portion thereof) deemed to have been paid pursuant to the ordinance under which it was issued.

*Outstanding Bonds* shall mean the 2011 Bonds and the 2018 Bonds.

*Participants* shall mean those broker-dealers, banks and other financial institutions from time to time for which DTC holds the Bonds as securities depository.

*Purchaser* shall mean D.A. Davidson & Co., Seattle, Washington, as initial purchaser of the Bonds.

*Qualified Insurance* shall mean any noncancelable 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 service corporation, as of the time of issuance of such policy or surety bond, is rated in one of the two highest rating categories by either Moody’s Investors Service or S&P Global Ratings, or their comparably recognized business successors.

*Qualified Letter of Credit* shall mean any irrevocable letter of credit issued by a financial institution for the account of the City on behalf of the owners of any Outstanding Bonds, the Bonds or Additional 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 rated in one of the two highest rating categories by either Moody’s Investors Service or S&P Global Ratings, or their comparably recognized business successor.



*Rate Stabilization Account* shall mean the account of that name created in the Operating Fund by Section 6 of Ordinance No. 2007-43.

*Refunded Bonds* shall mean the “City of Wenatchee Water and Sewer Revenue and Refunding Bonds, 2011,” authorized pursuant to Ordinance No. 2011-28, and which mature on December 1 in the years 2022, 2023, 2026 and 2030 in an aggregate principal amount of \$8,905,000, unless modified pursuant to Section 7(D) of this Ordinance.

*Refunding Trust Agreement* shall mean the agreement of that name by and between the City and the Refunding Trustee providing for the refunding of the Refunded Bonds.

*Refunding Trustee* shall mean U.S. Bank National Association, Seattle, Washington, appointed herein by the Council to supervise the Escrow Account.

*Regional Facilities Operating Account* shall mean the account of that name created in the Operating Fund by Section 7 of Ordinance No. 2352.

*Regional Facilities Repair and Replacement Reserve Account* or *Repair and Replacement Reserve* shall mean the account of that name created in the Operating Fund by Section 7 of Ordinance No. 2352.

*Regional Water Fund* shall mean the “Wenatchee Regional Water Fund” created by Ordinance No. 2284 for the purpose of paying the costs of planning and constructing regional water facilities.

*Registered Owner* shall mean the person whose name and address shall appear on the Bond Register as the owner of a specific Bond.

*Registrar* shall mean the Washington State Fiscal Agent acting in the capacity as registrar, authenticating agent, paying agent and transfer agent of the Bonds, or its successors in functions, as now or hereafter designated.

*Reserve Account* shall mean the account of that name created in the Bond Fund pursuant to Section 8 of Ordinance No. 2007-43 and referred to in Section 15 of this Ordinance.

*Reserve Account Requirement* shall mean, with respect to any Additional Bonds secured by the Reserve Account, an amount equal to the least of (1) Maximum Annual Debt Service; (2) 125 percent of the Average Annual Debt Service; or (3) 10 percent of the net proceeds of the Bonds, any Outstanding Bonds and any Additional Bonds then Outstanding. The Reserve Account Requirement for the Bonds, if any, shall be set forth in the Bond Purchase Contract. The Reserve Account Requirement, which may be zero, with respect any issue of Additional Bonds will be specified in the ordinance authorizing the issuance of such Additional Bonds.

*Revenue of the System* shall mean all earnings, revenue and money received by the City from or on account of the operation of the System, including the income from contract payments by users of regional facilities of the System and income from investments of money in the Operating Fund and the Bond Fund or from any other investment of such earnings and

revenue except the income from investments irrevocably pledged to the payment of revenue bonds refunded pursuant to a plan of refunding now or hereafter adopted by the City. The words “Revenue of the System” shall also include federal, state or municipal reimbursements of operating expenses to the extent such expenses are part of the Costs of Maintenance and Operation of the System.

*Rule* shall mean the SEC’s Rule 15c2-12 under the Securities and Exchange Act of 1934, as the same may be amended from time-to-time.

*SEC* shall mean the Securities and Exchange Commission.

*Sinking Fund Account* shall mean the account of that name created in the Bond Fund to amortize the principal of Term Bonds.

*System* shall mean the existing water transmission and distribution system of the City as it now exists and as it may later be added to, extended and improved, and the existing sanitary sewer 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, for as long as the Outstanding Bonds, the Bonds or any Additional Bonds remain Outstanding. The System includes regional facilities used jointly with other public agencies.

*Term Bonds* shall mean the Bonds specifically designated as such in Ordinance No. 2011-28, the Bond Purchase Contract or pursuant to any ordinance authorizing the issuance of Additional Bonds.

*ULID* shall mean a utility local improvement district in which Assessments have been or will be levied for improvements financed in whole or in part from proceeds of any Outstanding Bonds or Additional Bonds.

*2011 Bonds* shall mean the “City of Wenatchee Water and Sewer Revenue and Refunding Bonds, 2011,” authorized to be issued pursuant to Ordinance No. 2011-28.

*2018 Bonds* shall mean the “City of Wenatchee Water and Sewer Revenue and Refunding Bonds, Series 2018,” authorized to be issued pursuant to Ordinance No. 2018-10.

## **Section 2: Interpretation**

For all purposes of this Ordinance, except as otherwise expressly provided or unless the context otherwise requires:

A. *Internal References.* All references in this Ordinance to designated “Sections” and other subdivisions are to the designated sections and other subdivisions of this Ordinance. The words “herein,” “hereof,” “hereto,” “hereby,” “hereunder” and other words of similar import refer to this Ordinance as a whole and not to any particular section or other subdivision.

B. *Persons.* 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.

C. *Headings.* Any headings preceding the texts of the several sections of this Ordinance and the table of contents 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.

D. *Writing Requirement.* Every “notice,” “certificate,” “consent” or similar action hereunder by the City shall, unless the form thereof is specifically provided, be in writing signed by an authorized representative of the City.

E. *Time.* In the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and each of the words “to” and “until” means “to but excluding.”

F. *Redemption.* Words importing the redemption or redeeming of a Bond or the calling of a Bond for redemption do not include or connote the payment of such Bond at its stated maturity or the purchase of such Bond.

G. *Payment Terms.* References to the payment of the Bonds shall be deemed to include references to the payment of interest thereon.

H. *Gender.* Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and vice-versa. Words imparting the singular number shall include the plural number and vice-versa unless the context shall otherwise indicate.

### **Section 3: The Purpose of the Bonds**

The Bonds are being issued to provide money to: (1) refund the Refunded Bonds, if market conditions permit such refunding, and (2) pay the issuance costs of the Bonds including the cost of administrating the Escrow Account.

### **Section 4: Authorization of the Bonds**

A. *General Terms.* Water and sewer system revenue bonds of the City, designated “City of Wenatchee, Washington, Water and Sewer Revenue Refunding Bonds, Series 2021,” are hereby authorized to be sold, issued and delivered in the maximum aggregate principal amount of not to exceed \$10,000,000 pursuant to chapters 35.41, 39.46 and 39.53 RCW. The Bonds shall be issued in fully registered form; shall be in the denomination of \$5,000 each or any integral multiple thereof within a single maturity; and shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification. The Bonds shall be in substantially the form of Exhibit “A” attached hereto and by this reference incorporated herein.

B. *Negotiated Sale.* The Mayor or the Finance Director is hereby authorized to execute a Bond Purchase Contract and cause the Bonds to be delivered to the Purchaser at such time as the following conditions are satisfied:

- (1) the final maturity of the Bonds shall not be later than December 1, 2030;
- and

(2) the net present value savings due to the refunding of the Refunded Bonds shall not be less than 5.00 percent.

Prior to executing the Bond Purchase Contract, the Mayor or the Finance Director shall cause the following information to be included in the Bond Purchase Contract:

- (1) the date of the Bond Purchase Contract;
- (2) the principal amount of the Bonds maturing on each maturity date and the purchase price for the Bonds and its components;
- (3) the principal and interest payment dates of Bonds is issued;
- (4) the interest rates of the Bonds, which rates shall not exceed 5.00 percent per annum;
- (5) the date the Bonds are to be delivered to the Purchaser, which shall be no later than December 31, 2021;
- (6) the yield and price for each maturity of the Bonds, which price shall be not less than 98 percent nor more than 140 percent of the principal amount of the Bonds; and
- (7) the optional and mandatory redemption provisions pertaining to the Bonds; provided that the first date the Bonds may be optionally redeemed at par shall not be later than 10.5 years after the date of the Bonds.

C. *Findings.* The Council hereby finds that the determinations made in this Ordinance are the determinations set forth in RCW 39.46.040; and as such, the Council has fully and properly authorized the sale, issuance and delivery of the Bonds.

D. *Negotiable Instruments.* The Bonds shall be negotiable instruments to the extent provided by chapter 62A.3 RCW.

### **Section 5: Redemption Prior to Maturity**

A. *Optional Redemption.* The Bonds shall be subject to redemption prior to their stated dates of maturity at the times and prices and in the manner specified in the Bond Purchase Contract.

B. *Mandatory Redemption.* The Bond Purchase Contract shall specify which, if any, maturity or maturities of the Bonds are Term Bonds, and shall further specify the mandatory Sinking Fund Account deposits necessary to accomplish the mandatory redemption of such Term Bonds.

C. *Partial Redemption.* In accordance with the preceding two subsections, portions of the principal amount of any Bond, in installments of \$5,000 or any integral multiple of \$5,000 within a maturity, may also be redeemed. If less than all the principal amount of any Bond is redeemed, upon surrender of such Bond at the designated corporate trust office of the Registrar there shall be issued to the Registered Owner, without charge therefor, for the then

unredeemed balance of the principal amount thereof, a new Bond or Bonds, at the option of the Registered Owner, with like maturity and interest rate, in any denomination authorized by this Ordinance. To the extent the City partially redeems Term Bonds, the City may, at its discretion, reduce the amount of any mandatory Sinking Fund Account deposit or deposits by an aggregate principal amount equal to the principal amount of the Term Bonds so redeemed.

D. *Notice of Redemption.* Except as set forth in subsection E below, and unless waived by the Registered Owner of any Bond to be redeemed, notice of any such redemption shall be sent by the Registrar by first-class mail, postage prepaid, not less than 20 nor more than 60 days prior to the date fixed for redemption to the Registered Owner of each Bond to be redeemed at the address shown on the Bond Register, or at such other address as may be furnished in writing by such Registered Owner to the Registrar. The requirements of this subsection D shall be deemed to be complied with when notice is mailed as herein provided, regardless of whether or not it is actually received by the Registered Owner of any Bond to be redeemed. The Mayor and the Finance Director are hereby each individually authorized to agree to redemption provisions they deem to be in the best interest of the City within the limitations provided by this Ordinance.

Any notice given pursuant to this subsection D may be rescinded by written notice given to the Registrar prior to the date specified for redemption. The Registrar shall give notice of such rescission as soon thereafter as practicable, and to the same Registered Owners, as notice of such redemption was given pursuant to this subsection D.

E. *Special Notice of Redemption to DTC.* For so long as DTC is the securities depository for the Bonds, the Registrar shall send redemption and defeasance notices to DTC in the manner required by the Letter of Representations.

F. *Continuing Disclosure Undertaking.* Redemption notice shall also be given in the manner specified in the Continuing Disclosure Undertaking; provided, neither any defect in such notice nor any failure to give all or any portion of such notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed in subsection D above.

G. *Effect of Redemption.* When so called for redemption, the Bonds shall cease to accrue interest on the specified redemption date, provided money for redemption is on deposit at the place of payment at that time, and shall not be deemed to be Outstanding as of such redemption date.

H. *Voluntary Redemption Notice.* In addition to the notice required by subsection D of this Section 5, further notice may be given by the Registrar as set out below, but neither any defect in such further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed in such subsection D.

(1) Each further notice of redemption given hereunder may contain the following information: (a) the redemption date; (b) the redemption price; (c) if fewer than all Bonds Outstanding are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed; (d)

notification that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after such date; (e) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the designated corporate trust office of the Registrar; (f) the CUSIP numbers, if any, of all Bonds being redeemed; (g) the date of issue of the Bonds as originally issued; (h) the rate of interest borne by each Bond being redeemed; (i) the maturity date of each Bond being redeemed; and (j) any other descriptive information needed to identify accurately the Bonds being redeemed.

(2) Each further notice of redemption may be sent at least 20 days before the redemption date by registered or certified mail or overnight delivery service to: (a) all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds, such depository now being DTC; and (b) one or more national information services that disseminate notices of redemption of obligations such as the Bonds (such as Moody's Municipal and Government).

(3) Each such further notice may be published one time in *The Bond Buyer* of New York, New York, or, if such publication is impractical or unlikely to reach a substantial number of the Registered Owners, in some other financial newspaper or journal which regularly carries notices of redemption of other obligations similar to the Bonds, such publication to be made at least 20 days prior to the date fixed for redemption.

I. *Open Market Purchase and Cancellation.* The City hereby reserves the right and option to purchase any or all of the Bonds on the open market at any time and at any price. To the extent the City partially redeems Term Bonds, pursuant to this Ordinance, the City may, at its discretion, reduce the amount of any mandatory Sinking Fund Account deposit or deposits by an aggregate principal amount equal to the principal amount of the Term Bonds so redeemed. All Bonds purchased or redeemed under this Section 5 shall be canceled.

## **Section 6: Place, Manner and Medium of Payment**

A. *Payment Medium.* Both principal of and interest on the Bonds are payable in lawful money of the United States to the Registered Owners thereof.

B. *Payment of Interest.* Payment of each installment of interest shall be made to the Registered Owner whose name appears on the Bond Register at the close of business on the fifteenth day of the calendar month preceding the interest payment date. Each installment of interest shall be paid by check or draft of the Registrar mailed to such Registered Owner on the due date at the address appearing on the Bond Register, or at such other address as may be furnished in writing by such Registered Owner to the Registrar. Interest installments may be paid by wire transfer to a Registered Owner of at least \$1,000,000 in principal amount of the Bonds, upon written request of such Registered Owner submitted to the Registrar at least 15 days prior to the interest payment date; provided, the costs of such wire transfer shall be paid by such Registered Owner.

C. *Payment of Principal.* Principal of each Bond shall be payable to the Registered Owner, upon presentation and surrender of the Bonds on or after the date of maturity or prior redemption, whichever occurs first, at the designated corporate trust office of the Registrar. Upon the payment of the Bonds at maturity of any Bond being redeemed, each check or other transfer of money issued for such purpose shall bear the CUSIP number, if any, and identify by issue and maturity the Bonds being paid with the proceeds of such check or other transfer.

D. *Interest on Delinquent Amounts.* If any Bond is not redeemed when properly presented at its maturity date, the City shall pay interest on that Bond at the same rate provided in the Bond from and after its maturity date until the principal of and interest on that Bond is paid in full or until sufficient money for its payment in full is on deposit in the Debt Service Account and the Bond has been called for payment by giving notice to the Registered Owner of that unpaid Bond.

E. *Ownership of Bonds.* The City and the Registrar may deem and treat the Registered Owner of each Bond as the absolute owner of such Bond for the purpose of receiving payments of principal and interest due on such Bond and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

F. *Unclaimed Money.* The Finance Director may submit a written request to the Registrar that the Registrar return to the Finance Director all money previously remitted to the Registrar for the payment of the Bonds that has not been distributed by the Registrar as of one year after the final maturity of all of the Bonds. The Finance Director shall deposit such money into a separate account to be held solely for the benefit of the Registered Owners of Bonds which have not been presented for payment, and which shall be used solely for paying the principal of such Bonds and the interest which had accrued thereon to the date of maturity. Interest earnings on the money in such account may be deposited into the Debt Service Account to pay the principal of and interest on any Bonds that are Outstanding.

**Section 7: The Refunding Plan**

A. *Description of the Refunded Bonds.* The City is desirous of paying, redeeming and retiring the Refunded Bonds, if market conditions permit such refunding. The Refunded Bonds mature on the dates and bear interest at the rates set forth in the following schedule:

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>
December 1, 2022	\$ 505,000	5.000%
December 1, 2022	455,000	4.000
December 1, 2023	1,005,000	4.000
***	***	***
December 1, 2026	2,715,000	4.375
***	***	***
December 1, 2030	4,225,000	4.750

B. *Payments on the Refunded Bonds.* The City shall, at such time as the Bonds are delivered, irrevocably deposit Government Obligations in a sufficient amount to pay the interest on the Refunded Bonds to and including June 1, 2021, or such other date as determined by the Finance Director, and to redeem and retire the Refunded Bonds on June 1, 2021, or such

other date as determined by the Finance Director, at the price of par. Any amounts necessary to pay and retire the Refunded Bonds that are not provided for in full by the purchase and deposit of the Government Obligations shall be provided for by an irrevocable deposit of cash from the proceeds of the Bonds or from other legally available money of the City.

C. *Notice of Redemption.* The Refunding Trustee is hereby directed to give notice of the call and redemption of the Refunded Bonds in substantially the form set forth as Attachment II to the Refunding Trust Agreement and in the manner required by Ordinance No. 2011-28.

D. *Modification of Refunding Plan.* The Finance Director is hereby authorized with the advice of the Municipal Advisor and Purchaser if he deems it to be in the best financial interest of the City to modify the refunding plan.

### **Section 8: The Refunding Trustee; Refunding Trust Agreement**

The City hereby appoints U.S. Bank National Association to serve as Refunding Trustee with respect to the Refunded Bonds. In order to carry out the purposes of this Ordinance, the Mayor, the City Clerk and the Finance Director are authorized and directed to execute and deliver to the Refunding Trustee a Refunding Trust Agreement substantially in the form marked Exhibit "C" attached hereto and by this reference incorporated herein. The Refunding Trust Agreement shall set forth the duties, obligations and responsibilities of the Refunding Trustee in connection with the refunding of the Refunded Bonds as provided herein, and the Refunding Trustee shall state therein that such provisions for the payment of the fees, compensation and expenses of such Refunding Trustee are satisfactory to it. The Refunding Trustee shall be entitled to the fees provided in the Refunding Trust Agreement and no other fees.

### **Section 9: Creation of the Escrow Account**

A. *Creation of the Escrow Account.* The Refunding Trustee is hereby authorized and directed to establish a special account for the City designated the "Water and Sewer Revenue and Refunding Bonds Escrow Account," or such other designation conforming to accounting principles and banking practices.

B. *Deposits into the Escrow Account.* The City shall deposit the net proceeds of the Bonds other than: (1) accrued interest, if any, received from the sale of the Bonds, which shall be deposited into the Debt Service Account; (2) amounts paid to the Purchaser as Purchaser's discount, which shall be retained by the Purchaser; (3) amounts, if any, received due to rounding the principal amount of the Bonds to the next denomination of \$5,000 and to pay for any contingencies, which shall be deposited into the Debt Service Account; and (4) amounts used to pay the costs of issuance for the Bonds and of administrating the Escrow Account; into the Escrow Account and use such proceeds to acquire Government Obligations and to pay the costs of issuing the Bonds and of administrating the Escrow Account on the issue date of the Bonds. Such Government Obligations, together with any cash balance remaining after the Government Obligations are purchased and the costs of issuing the Bonds have been paid, shall be irrevocably deposited into the Escrow Account. The Government Obligations and money to be deposited into the Escrow Account shall be held by the Refunding



Trustee in trust. All Government Obligations, all proceeds thereof, and all money credited to the Escrow Account shall be deemed so credited to and held in the Escrow Account notwithstanding the fact that such Government Obligations, proceeds and money therein are held by the Refunding Trustee in trust for the owners of the Refunded Bonds.

C. *Use of Money in the Escrow Account.* The Refunding Trustee, on behalf of the City, is hereby authorized and directed to use the proceeds of the Bonds, together with other legally available money of the City, to purchase Government Obligations in the amounts, of the type, bearing interest and maturing in such amounts as are necessary to make the payments described in Section 7 of this Ordinance. The investment income from and maturing principal of the Government Obligations and money to be deposited into the Escrow Account shall be transmitted to the Washington State Fiscal Agent, as registrar for the City, for the sole purpose of paying the principal of and interest on the Refunded Bonds as herein provided.

D. *Surplus Money.* Any money remaining on deposit in the Escrow Account after the payment in full of the Refunded Bonds and the costs of issuing the Bonds, as herein set forth, shall be transferred by the Refunding Trustee to the City and deposited into the Debt Service Account.

#### **Section 10: Irrevocable Call**

A. *Irrevocable Call for Redemption.* In accordance with Ordinance No. 2011-28, the City hereby calls, at such time as the Bonds are delivered, the Refunded Bonds for redemption on June 1, 2021, or such other date as determined by the Finance Director. Such call for redemption shall be irrevocable upon the delivery of the Bonds to the Purchaser.

B. *Irrevocable Pledge of Amounts in the Escrow Account.* The City hereby irrevocably pledges, at such time as the Bonds are delivered, the Government Obligations and amounts on deposit in the Escrow Account to pay the interest on the Refunded Bonds up to and including June 1, 2021, or such other date determined by the Finance Director, and to redeem and retire the Refunded Bonds on such date at the price of par. Such Government Obligations are hereby irrevocably pledged to be set aside to effect such payment, redemption and retirement.

C. *Findings Regarding Defeasance of the Refunded Bonds.* The City hereby finds that, as of the date the Bonds are issued and the money and Government Obligations are deposited into the Escrow Account: (1) no further payments need to be made into the Debt Service Account for the payment of the principal of and interest on the Refunded Bonds; (2) the Refunded Bonds and the interest accrued thereon shall cease to be entitled to any lien, benefit or security of Ordinance No. 2011-28 except the right to receive the funds so set aside and pledged; and (3) the Refunded Bonds and the interest accruing thereon shall no longer be deemed to be Outstanding under Ordinance No. 2011-28. The Council hereby further finds and determines that the issuance and sale of the Bonds will benefit the City through a reduction in the debt service requirement, and will thereby effect a savings to the City. In making such finding and determination, the Council has given consideration to the interest to maturity of the Bonds and the Refunded Bonds, the costs of issuance of the Bonds and the known earned income from the Government Obligations pending the redemption and retirement of the Refunded Bonds.

## **Section 11: Sufficiency of the Government Obligations**

A. *Purpose of the Government Obligations.* The Government Obligations shall be used for the sole purpose of making the payments described in Section 10 above. The Government Obligations, the earnings thereon and the proceeds therefrom may be used for no other purpose, nor may any of such investments be liquidated prior to maturity without the written opinion of nationally recognized bond counsel that such redemption would not cause the interest on the Refunded Bonds and the Bonds to become includable in gross income for federal income tax purposes.

B. *Sufficiency of the Government Obligations.* Prior to the delivery of the Bonds, the City shall receive an opinion of a nationally recognized independent certified public accounting firm, stating, in substance, that the money and Government Obligations to be deposited with the Refunding Trustee for the payment of the Refunded Bonds will discharge and satisfy the City's obligations under Ordinance No. 2011-28 to make payments on the Refunded Bonds.

C. *Substitution of the Government Obligations.* The City hereby reserves the right to substitute Government Obligations for investments in the Escrow Account in the event it may do so pursuant to Section 103 of the Code, provided that at all times the money and Government Obligations in the Escrow Account shall be sufficient to refund and retire the Refunded Bonds as provided herein. Prior to each such substitution, the City shall obtain:

(1) a supplemental verification addressed to the City and the Refunding Trustee from a nationally recognized independent certified public accounting firm, which shall be satisfactory to nationally recognized bond counsel, that the money and Government Obligations on deposit in the Escrow Account after such substitution will be sufficient to effect the refunding of the Refunded Bonds and that such substitute Government Obligations are noncallable; and

(2) a written opinion addressed to the City from nationally recognized bond counsel that such substitution will not cause the interest on the Refunded Bonds and the Bonds to become includable in gross income for federal income tax purposes.

## **Section 12: Rates and Charges**

The City has established, may from time to time revise, and shall maintain and collect from the users of the System, lawful rates and charges for the use of the services and facilities and all commodities sold, furnished or supplied by the System to such users thereof. Such rates and charges are, and shall continue to be, uniform as to all persons or properties which are of the same class.

## **Section 13: Pledge of Net Revenue**

All of the Net Revenue is pledged for the payment of the Bonds, as a prior first charge and lien thereon equal to and on parity with the charge or lien of the Outstanding Bonds, and Revenue of the System shall be used and applied in the order of priority provided in Section 14 of this Ordinance.

## **Section 14: The Operating Fund and Other Funds and Accounts**

A. *Operating Fund.* There has heretofore been created a special fund of the City known as the Operating Fund. The Revenue of the System, except income from the investment of money in the Bond Fund, shall be deposited in the Operating Fund as collected, and the Operating Fund shall be held separate and apart from all other funds and accounts of the City. The money in the Operating Fund shall be used only for the following purposes and in the following order of priority:

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

*Second,* to make all payments required to be made into the Debt Service Account to pay the interest on the Outstanding Bonds, the Bonds and any Additional Bonds for which money shall not have been provided by income from the investment of money in the Bond Fund;

*Third,* to make all payments required to be made into the Debt Service Account to pay the principal of the Outstanding Bonds, the Bonds and any Additional Bonds, for which money shall not have been provided by income from the investment of money in the Bond Fund;

*Fourth,* to make all payments required to be made into any Sinking Fund Account under any schedule for the amortization of Term Bonds;

*Fifth,* to make all payments required to be made into the Reserve Account to secure the payment of the Outstanding Bonds, the Bonds and any Additional Bonds, including any payments required in connection with obtaining or maintaining Qualified Insurance or a Qualified Letter of Credit to fund all or a portion of the Reserve Account;

*Sixth,* to make all payments required to be made into the Regional Facilities Repair and Replacement Reserve Account or into any future repair, replacement or contingency reserve which may be required by the covenants of any ordinance authorizing the issuance of Additional Bonds;

*Seventh,* to make all payments required to be made into any other revenue bond redemption fund or revenue warrant redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or revenue warrants of the City having a lien upon the Revenue of the System and the money in the Operating Fund junior and inferior to the lien thereon for the payment of the principal of and interest on the Outstanding Bonds, the Bonds and any Additional Bonds;

*Eighth,* to retire by redemption or purchase in the open market any outstanding water and sewer revenue bonds or revenue warrants of the City or to make necessary additions, betterments, improvements, extraordinary repairs, extensions and replacements of the System, deposit funds into the Rate Stabilization Account or any other lawful City purposes.

B. *Regional Water Fund.* A separate fund of the City has been established and is known as the Regional Water Fund. All costs of maintenance and operation of the regional water supply facilities, as such costs are defined in the contract between the City and the

District dated February 13, 1979, and all costs of debt service on bonds issued to pay for regional water supply facilities shall be charged to such fund and all payments chargeable pursuant to such contract for the delivery of water from the regional water supply facilities to the City, the District and any future public agency users thereof and all income received from the investment of money derived from such payments shall be credited to such fund. The Regional Water Fund was established for the purpose of separately accounting for the costs of such regional facilities as between the City, the District and any future public agency user of the regional water supply facilities, and the establishment and maintenance of such fund shall not alter or impair the deposit of Revenue of the System into the Operating Fund or the priority of use of money in the Operating Fund as otherwise provided in this section.

C. *Regional Facilities Repair and Replacement Reserve Account.* A separate account of the City has been established and is known as the Regional Facilities Repair and Replacement Reserve Account. The City has set aside and paid into such Account the sum of \$250,000. All costs of replacements of and extraordinary repairs to regional water supply facilities which the City determines for any reason should not be paid from money in the Regional Water Fund shall be paid out of the Regional Facilities Repair and Replacement Reserve Account. The Repair and Replacement Reserve was established for the purpose of insuring continuity of water supply for the City, the District and any future public agency user of regional water supply facilities. In the event money is withdrawn from the Repair and Replacement Reserve Account any such withdrawal shall be made up either forthwith from money available on hand in the Water and Sewer Fund and credited to the Regional Water Fund, or within 12 months following such withdrawal from the proceeds of future revenue bonds of the City, or by approximately equal monthly payments out of money to be paid into the Water and Sewer Fund and credited to the Regional Water Fund within a period of not more than two calendar years commencing with the first calendar year after such withdrawal.

D. *Rate Stabilization Account.* A special account of the City has been established within the Operating Fund and is known as the Rate Stabilization Account. The Rate Stabilization Account was established to cope with future increases in revenue requirements of the System. The City may from time to time appropriate or budget amounts in the Operating Fund after making the deposits described in subparagraphs *First* through *Eighth* in Section 14A hereof for deposit in the Rate Stabilization Account and may from time to time withdraw amounts therefrom to prevent or mitigate rate increases or for other lawful purposes of the District related to the System. Amounts withdrawn from the Rate Stabilization Account shall increase Revenue of the System for the period for which they are withdrawn, and amounts deposited in the Rate Stabilization Account shall reduce Revenue of the System for the period for which they are deposited. Credits to or from the Rate 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 Rate Stabilization Account shall be credited to the Operating Fund.

## **Section 15: The Bond Fund and Accounts**

A. *Bond Fund.* There has heretofore been created a special fund of the City, known as the “City of Wenatchee Water, Sewer and Storm Drainage Revenue Bond Fund” solely for the purpose of paying the principal of, premium, if any, and interest on the Outstanding Bonds,

the Bonds and any Additional Bonds. The Bond Fund shall consist of a Debt Service Account, Sinking Fund Accounts and a Reserve Account, as hereinafter described.

The City shall deposit any Assessments into the Bond Fund for payment of the principal of and interest on the Outstanding Bonds, the Bonds and any Additional Bonds without allocation to any particular series of bonds payable from the Bond Fund.

B. *Debt Service Account.* A Debt Service Account has heretofore been created in the Bond Fund for the purpose of paying the interest on the Outstanding Bonds, the Bonds and any Additional Bonds, and the principal of and premium, if any, on the Outstanding Bonds, the Bonds and any Additional Bonds except Term Bonds.

As long as any Outstanding Bond, Bond or Additional Bond remains Outstanding, the City hereby irrevocably obligates, pledges and binds itself to set aside and pay from the Operating Fund into the Debt Service Account, those amounts necessary, together with such other funds as are on hand and available in the Debt Service Account, to pay: (1) the interest on all Outstanding Bonds, Bonds and any Additional Bonds, and (2) the principal of all Outstanding Bonds, the Bonds and any Additional Bonds except Term Bonds, as such interest and principal respectively become due and payable.

C. *Sinking Fund Accounts.* If the City issues Term Bonds, it will provide in each ordinance authorizing the issuance of the same for a schedule of payments to be made from the Operating Fund into the Sinking Fund Account sufficient to amortize the principal of such Term Bonds on or before the maturity date thereof. The City may merge the Sinking Fund Account into the Debt Service Account.

D. *Reserve Account.* A Reserve Account has heretofore been created in the Bond Fund for the purpose of securing the payment of the principal of and interest on the Outstanding Bonds, the Bonds and any Additional Bonds. The City will deposit an amount into the Reserve Account simultaneously with the issuance and delivery of the Bonds that, together with the money already on deposit therein, will be at least equal to the Reserve Account Requirement. As of the date of this Ordinance, the Outstanding Bonds are secured by the Reserve Account.

The City further covenants and agrees that in the event it issues any Additional Bonds, it will provide in each ordinance authorizing the issuance of the same that payments will be made into the Reserve Account so that on the date of the issuance and delivery of such Additional Bonds the total amount in the Reserve Account, with the money already on deposit therein, will be at least equal to the Reserve Account Requirement.

The City hereby further covenants and agrees that when the required deposits have been made into the Reserve Account, it will at all times maintain therein an amount which, with the money already on deposit therein, will be at least equal to the Reserve Account Requirement. The City hereby reserves the right to recalculate the Reserve Account Requirement from time to time, and at any time.

Whenever there is a sufficient amount in the Bond Fund to pay the Annual Debt Service on all Outstanding Bonds, Bonds and Additional Bonds then Outstanding, the money in the Reserve Account may be used to pay such Annual Debt Service.

Money in the Reserve Account may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, on any Outstanding Bonds, Bonds or Additional Bonds, as long as the money left remaining on deposit in the Reserve Account is at least equal to the Reserve Account Requirement. If at any time the amount in the Reserve Account exceeds the Reserve Account Requirement, such surplus may be deposited into the Debt Service Account.

In the event there shall be a deficiency in the Debt Service Account to meet maturing installments of principal of and interest on the Outstanding Bonds, Bonds or Additional Bonds, or a deficiency in the Sinking Fund Account to meet the required schedule of payments for the amortization of Term Bonds, such deficiency shall be made up from the Reserve Account by the withdrawal of money therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up out of Revenue of the System after making the necessary provision for the payments required to be made by subparagraphs *First*, *Second*, *Third* and *Fourth* of Section 14 hereof.

Notwithstanding anything in this Section 15 to the contrary, the City may obtain Qualified Insurance or a Qualified Letter of Credit to fund all or a portion of the Reserve Account. Such Qualified Insurance or Qualified Letter of Credit shall not be cancellable on less than five years' notice. In the event of any cancellation, the Reserve Account shall be funded in not more than 18 approximately equal consecutive monthly installments.

Anything herein to the contrary notwithstanding, the City may establish within the Bond Fund one or more separate debt service reserve accounts other than the Reserve Account to secure one or more series of Additional Bonds, in which case such Additional Bonds will not be secured by the Reserve Account. If the City establishes any such debt service reserve account, the definition of "Reserve Account Requirement", which may be zero, shall be as set forth in the ordinance establishing such debt service reserve account, and such debt service reserve account shall be administered in accordance with the provisions, which may be zero, set forth in the ordinance establishing such debt service reserve account. The Reserve Account Requirement for the Bonds, if any, shall be set forth in the Bond Purchase Contract.

E. *Priority of Lien of Payments into the Bond Fund.* The amounts so pledged to be paid into the Bond Fund from the Operating Fund are hereby pledged and declared to be a prior lien and charge thereon superior to all other charges of any kind or nature whatsoever except the Costs of Maintenance and Operation of the System, and except that the amounts so pledged are of equal lien upon such Revenue of the System for the payment of the principal of and interest on the Outstanding Bonds and any Additional Bonds.

F. *Application and Investment of Money in the Bond Fund.* Money in the Bond Fund may be invested as permitted by law and the investment policy of the City. Investments of money in the Debt Service Account shall mature prior to the date on which such money shall be needed for required interest or principal payments. Investments of money in the Sinking Fund Account shall mature prior to the date on which such money shall be needed for required principal payments on Term Bonds. Investments of money in the Reserve Account shall be available to pay any deficiencies that may occur in the Debt Service Account and shall mature not later than the last maturity of any Outstanding Bond, Bond or Additional Bond then Outstanding. All interest earned and income derived by virtue of such investments shall remain

in the Bond Fund and be used to meet the required deposits into any account therein. Subject to the other provisions of this paragraph, money in the Debt Service Account, the Sinking Fund Account and the Reserve Account may be combined for the purpose of purchasing investments; *provided*, the records of the City shall show to which Account the respective portions of any such combined investments are credited.

G. *Sufficiency of Revenues.* The Council hereby finds that in fixing the amounts to be paid into the 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 Bond Fund a greater amount of such Revenue of the System that in its judgment will be available over and above the Costs of Maintenance and Operation and the amounts of Revenue of the System previously pledged.

### **Section 16: Execution and Authorization of the Bonds**

A. *Execution of the Bonds.* Without unreasonable delay, the City shall cause definitive Bonds to be prepared, executed, and delivered, which Bonds shall be lithographed or printed with steel engraved or lithographed borders. The Bonds shall be executed on behalf of the City by the manual or facsimile signature of the Mayor, shall be attested by the manual or facsimile signature of the City Clerk and shall have the seal of the City impressed or imprinted thereon.

B. *Authentication of the Bonds.* The executed Bonds shall be delivered to the Registrar for authentication. The Bonds shall be numbered separately in the manner and with any additional designation as the Registrar deems necessary for purposes of identification. Only those Bonds that bear a Certificate of Authentication substantially in the form set forth in Exhibit "A" attached hereto and manually executed by an authorized representative of 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.

C. *Temporary Bonds.* Until the definitive Bonds are prepared, the City may, if deemed necessary by the City Clerk, utilize a temporary Bond which shall be typewritten, and which shall be delivered to the Purchaser in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds. Such temporary Bond shall be dated as of the date of the Bonds, shall be in the denomination of not to exceed \$10,000,000, shall be numbered T-1, shall be substantially of the tenor of such definitive Bonds, but with such omissions, insertions and variations as may be appropriate to temporary bonds, and shall be manually signed by the Mayor and the City Clerk and shall have the seal of the City impressed or imprinted thereon. The Finance Director shall be the Registrar in the event and for so long as a temporary Bond is utilized.

D. *Validity of Signatures.* In case any of the officers who shall have signed or attested any of the Bonds shall cease to be such officer or officers of the City before the Bonds so signed or attested 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 issue, shall be as binding upon the City as though those who signed

and attested 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 as at the actual date of execution of such Bond shall be 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 17: The Registrar**

A. *Registrar Appointed.* The Finance Director has designated the Washington State Fiscal Agent as the City's legally designated fiscal agent with respect to the Bonds pursuant to RCW 39.44.130. The Council hereby confirms such designation with respect to the Bonds and appoints the Washington State Fiscal Agent as Registrar, authenticating agent, paying agent and transfer agent with respect to the Bonds, subject to the terms and conditions set forth in this Section 17.

B. *Delegated Duties.* The Registrar is hereby authorized and directed, on behalf of the City, to authenticate and deliver Bonds initially issued or transferred or exchanged in accordance with the provisions of the Bonds and this Ordinance and to carry out all of the Registrar's powers and duties under this Ordinance and the Washington State Fiscal Agency Agreement between the Washington State Finance Committee and the Registrar (as the same may be amended or readopted from time to time).

C. *Bond Register.* The Bonds shall be issued only in registered form as to both principal and interest. The Registrar shall keep, or cause to be kept, at its designated corporate trust office, the Bond Register which shall at all times be open to inspection by the City. The City hereby specifies and adopts the system of registration for the Bonds approved by the Washington State Finance Committee.

D. *Fees and Costs.* The City shall pay to the Registrar from time to time reasonable compensation for all services rendered under this Ordinance together with reasonable expenses, charges, fees of counsel, accountants and consultants and other disbursements, including those of its attorneys, agents and employees, incurred in good faith in and about the performance of their powers and duties under this Ordinance. The administrative fees provided for in this subsection D may be paid from the Bond Fund.

E. *Representations.* The Registrar shall be responsible for its representations contained in the Registrar's Certificate of Authentication on the Bonds.

F. *Ownership Rights.* The Registrar may become the Registered Owner of Bonds 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 a member of, or in any other capacity with respect to, any committee formed to protect the rights of Registered Owners of the Bonds.

G. *Cancellation of Surrendered Bonds.* Bonds surrendered to the Registrar for payment, redemption, transfer or exchange, as well as Bonds surrendered by the City for cancellation, shall be canceled immediately by the Registrar and returned to the City. Such Bonds thereafter shall be destroyed.



## **Section 18: Book-Entry System Authorized**

A. The Bonds shall be initially issued in the form of a separate, single-certificated, fully registered Bond for each maturity set forth in the Bond Purchase Contract, in the aggregate principal amount of such maturity. Upon initial issuance, the ownership of each Bond shall be registered in the Bond Register in the name of Cede & Co., as nominee of DTC, the securities depository for the Bonds. Except as provided in subsection D of this Section 18 all of the Bonds shall be registered in the Bond Register in the name of Cede & Co., as nominee of DTC.

B. With respect to Bonds registered in the Bond Register in the name of Cede & Co., as nominee of DTC, the City and the Registrar shall have no responsibility or obligation to any Participant or to any person on behalf of which a Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Registrar shall have no responsibility or obligation with respect to: (1) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest in the Bonds, (2) the delivery to any Participant or any other person, other than a Registered Owner, of any notice with respect to the Bonds, including any notice of redemption, or (3) the payment to any Participant or any other person, other than a Registered Owner, of any amount with respect to principal of, premium, if any, or interest on the Bonds. The City and the Registrar may treat and consider the Registered Owner of each Bond as the absolute owner of such Bond for the purpose of payment of principal, premium, if any, and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Registrar shall pay all principal of, premium, if any, and the interest on the Bonds as provided in this Ordinance, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sums so paid. No person other than a Registered Owner shall receive a certificated Bond evidencing the obligation of the City to make payments of principal, premium, if any, and interest pursuant to this Ordinance. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to the transfer and payment of the Bonds, the phrase "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

C. The City heretofore has delivered a Letter of Representations to the Registrar and DTC. The delivery of the Letter of Representations shall not in any way limit the provisions of subsection B of this Section 18 or in any other way impose upon the City any obligation whatsoever with respect to persons having interests in the Bonds other than the Registered Owner. The Registrar shall take all action necessary for all representations of the City in the Letter of Representations with respect to the Registrar, to at all times be complied with.

D. (1) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the City and to the Registrar, and discharging its responsibilities with respect thereto under applicable law.

(2) The City, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the Bonds if the City determines that: (a) DTC is unable to discharge its responsibilities with respect to the Bonds or (b) a continuation of the requirement that all of the Bonds be registered in the Bond Register in the name of Cede & Co., or any other nominee of DTC, is not in the best interest of the beneficial owners of the Bonds.

(3) Upon termination of the services of DTC with respect to the Bonds pursuant to subsection D(2)(b) of this Section 18, or upon the discontinuance or termination of the services of DTC with respect to the Bonds pursuant to subsection D(1) or subsection D(2)(a) of this Section 18 after which no substitute securities depository willing to undertake the functions of DTC hereunder can be found that, in the opinion of the City, is willing and able to undertake such functions upon reasonable and customary terms, the City shall deliver certificated Bonds at the expense of the City, as described in this Ordinance, and the Bonds shall no longer be restricted to being registered in the Bond Register in the name of Cede & Co. as nominee of DTC, but may be registered in the names that the Registered Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

E. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal or premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Letter of Representations.

### **Section 19: Transfer and Exchange of the Bonds**

A. *Transfer of Bonds.* Each Bond shall be transferable by the Registered Owner thereof in person, or by its attorney duly authorized in writing, upon due completion of the assignment form appearing thereon and upon surrender of such Bond at the designated corporate trust office of the Registrar for cancellation and issuance of a new Bond registered in the name of the transferee, in exchange therefor.

B. *Exchange of Bonds.* Each Bond shall be exchangeable by the Registered Owner thereof in person, or by its attorney duly authorized in writing, for one or more new Bonds, upon surrender of such Bond at the designated corporate trust office of the Registrar for cancellation.

C. *Authentication and Delivery of New Bonds.* Whenever a Bond shall be surrendered for transfer or exchange, the Registrar shall authenticate and deliver to the transferee or exchangee, in exchange therefor, a new fully registered Bond or Bonds of any authorized denomination or denominations, of the same maturity and interest rate as, and for the aggregate principal amount of, the Bond being surrendered. Notwithstanding the foregoing sentence, the Registrar is not required to transfer or exchange any Bond during the 15 days preceding any principal or interest payment date.

D. *Payment of Fees and Costs.* The Registrar shall require the payment by the Registered Owner requesting such transfer or exchange of any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

## **Section 20: Mutilated, Destroyed, Lost or Stolen Bonds**

A. *Issuance of Substitute Bonds.* If any Bond shall become mutilated, destroyed, lost or stolen, the affected Registered Owner shall be entitled to the issuance of a substitute Bond only as follows:

(1) in the case of a lost, stolen or destroyed Bond, the Registered Owner shall (a) provide notice of the loss, theft or destruction to the City and the Registrar within a reasonable time after the Registered Owner receives notice of the loss, theft or destruction, (b) request the issuance of a substitute Bond, (c) provide evidence, satisfactory to the City and the Registrar, of the ownership and the loss, theft or destruction of the affected Bond, and (d) file in the offices of the Finance Director and the Registrar a written affidavit specifically alleging on oath that such Registered Owner is the proper owner, payee or legal representative of such owner or payee of the Bond that has been lost, stolen or destroyed, giving the date the Bond was issued, the number, principal amount of such Bond, and stating that the Bond has been lost, stolen or destroyed, and has not been paid and has not been received by such Registered Owner;

(2) in the case of a mutilated Bond, the Registered Owner shall surrender the Bond to the Registrar for cancellation; and

(3) in all cases, the Registered Owner shall provide indemnity against any and all claims arising out of or otherwise related to the issuance of substitute Bonds pursuant to this Section 20 satisfactory to the City and the Registrar.

Upon compliance with the foregoing, a new Bond of like tenor and denomination, bearing the same number as the mutilated, destroyed, lost or stolen Bond, and with the word "DUPLICATE" stamped or printed plainly on its face, shall be executed by the City, authenticated by the Registrar and delivered to the Registered Owner, all at the expense of the Registered Owner to whom the substitute Bond is delivered. Notwithstanding the foregoing, the Registrar shall not be required to authenticate and deliver any substitute Bond for a Bond which has been called for redemption or which has matured or is about to mature and, in any such case, the principal or redemption price and interest then due or becoming due shall be paid by the Registrar in accordance with the terms of the mutilated, destroyed, lost or stolen Bond without substitution therefor.

B. *Notation on the Bond Register.* Upon the issuance and authentication of any substitute Bond under the provisions of this Section 20, the Registrar shall enter upon the Bond Register a notation that the original Bond was cancelled and a substitute Bond was issued therefor.

C. *Rights of Registered Owners of Substitute Bonds.* Every substituted Bond issued pursuant to this Section 20 shall constitute an additional contractual obligation of the

City and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Bonds duly issued hereunder unless the Bond alleged to have been destroyed, lost or stolen shall be at any time enforceable by a bona fide purchaser for value without notice. In the event the Bond alleged to have been destroyed, lost or stolen shall be enforceable by anyone, the City may recover the substitute Bond from the Registered Owner to whom it was issued or from anyone taking under the Registered Owner except a bona fide purchaser for value without notice.

D. *Exclusive Rights.* All Bonds shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds, and shall preclude any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or of investment or other securities without their surrender.

### **Section 21: Defeasance of the Bonds**

In the event that money and/or Government Obligations, maturing or having guaranteed redemption prices at the option of the owner at such times and bearing interest to be earned thereon, in such amounts as are sufficient (together with any resulting cash balances) to redeem and retire part or all of the Bonds in accordance with their terms, are hereafter irrevocably set aside in a special account and pledged to effect such redemption and retirement, then no further payments need be made into the Bond Fund or any account therein for the payment of the principal of and interest on the certain Bonds so provided for, and such Bonds and interest accrued thereon shall no longer be deemed to be Outstanding hereunder.

If the principal or redemption price of any Bonds becoming due, at maturity or otherwise, together with all interest accruing thereon to the due date, has been paid or provision therefor made in accordance with this Section 21, all interest on such Bonds shall cease to accrue on the due date and all liability of the City with respect to such Bonds shall likewise cease, except as hereinafter provided. Thereafter the Registered Owners of such Bonds shall be restricted exclusively to the funds so deposited for any claim of whatsoever nature with respect to such Bonds, and the Registrar shall hold such funds in trust for such Registered Owners uninvested and without interest.

### **Section 22: Bond Covenants**

A. 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 such properties of the System and the business in connection therewith in an efficient manner and at a reasonable cost.

B. The City shall establish, maintain and collect lawful rates and charges for the use of the services and facilities and all commodities sold, furnished or supplied by the System,

which shall be fair and nondiscriminatory and shall adjust such rates and charges from time to time so that:

(1) the Revenue of the System will at all times be sufficient (a) to pay the Costs of Maintenance and Operation, (b) to make any payments required to be made on account of the Outstanding Bonds, the Bonds and any Additional Bonds, as and when the same shall become due and payable, (c) to make adequate provision for the payment on account of any Term Bonds as and when the same shall become due and payable, (d) to make when due all payments which the City is obligated to make into the Reserve Account and all other payments which the City is obligated to make pursuant to this Ordinance, and (e) to pay all taxes, assessments or other governmental charges lawfully imposed on the System or the revenue therefrom or payments in lieu thereof and any and all other amounts which the City may now or hereafter become obligated to pay from the Revenue of the System by law or contract; and

(2) the Net Revenue together with Assessment Income in each calendar year will equal at least the sum of (a) 125 percent of the amounts required in such calendar year to be paid as Annual Debt Service on all Outstanding Bonds, Bonds and Additional Bonds then Outstanding minus the amount of Assessments collected in such year and (b) 100 percent of the amount of Assessments collected in such year.

C. The City will not sell or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition provision is made for payment into the Bond Fund of cash or Government Obligations sufficient (taking into account interest to be earned on any such Government Obligations) to pay the principal of and interest on all the Outstanding Bonds, Bonds and Additional Bonds then Outstanding, nor will it sell or otherwise dispose of any part of the useful operating properties of the System in excess of 5 percent unless such facilities are replaced or provision is made for payment into the Bond Fund of the greatest of the following:

(1) an amount which will be in the same proportion to the net amount of the Outstanding Bonds, Bonds and Additional Bonds then Outstanding (defined as the total principal amount of Outstanding Bonds, Bonds and Additional Bonds less the amount of cash and investments in the 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 Revenue of the System for such period; or

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

The proceeds of any such sale or disposition of a portion of the properties and facilities of the System (to the extent required above) shall be paid into the Bond Fund.

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

D. The City will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the System or the Net Revenue, or any part thereof, prior or superior to the lien thereon for the payment of the Outstanding Bonds, the Bonds and any Additional Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Revenue of the System, or any part thereof, prior to or superior to the lien of the Outstanding Bonds, the Bonds and any Additional Bonds, or which might impair the security of the Outstanding Bonds, the Bonds and any Additional Bonds.

E. The City will keep the works, plants and facilities comprising the System insured, and will carry such other insurance, with responsible insurers, with policies payable to the City, against risks, accidents or casualties, at least to the extent that insurance is usually carried by municipal corporations operating like properties, or will implement a self-insurance program with reserves adequate, in the judgment of the Council, to protect the City and the Registered Owners of the Outstanding Bonds and the Bonds against loss. In the event of any loss or damage, the City will promptly repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy for that purpose; or in the event the City should determine not to repair or reconstruct such damaged portion of the properties of the System, the proceeds of such insurance shall be paid into the Reserve Account to the extent that such transfer shall be necessary to make up any deficiency in such 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 Outstanding Bonds, the Bonds or Additional Bonds, or for deposit into the Reserve Account.

F. The City will keep and maintain proper books and accounts with respect to the operations, income and expenditures of the System that are in accordance with proper and legal accounting procedures. After each fiscal year of the City's operation of the System it will prepare or cause to be prepared an operating statement of the System for such preceding fiscal year. Each such statement shall contain a statement in detail of the Revenue of the System, necessary and current expenses of operation and maintenance, repairs, administrative expenses and expenditures for capital purposes of the System for such fiscal year and shall contain a statement as of the end of such year showing the status of all the funds and accounts created by the various ordinances pertaining to the operation of the System and authorizing the issuance of outstanding bonds payable from the Revenue of the System. Copies of such statement shall be placed on file in the office of the City Clerk and shall be open to inspection at any reasonable time by any owner or holder of Outstanding Bonds and the Bonds. All expenses incurred in the maintenance of such books and accounts and the preparation of such statement may be regarded and paid as an expense of operation of the System.

G. The City will not furnish or supply or permit the furnishing or supplying of any service or facility furnished by or in connection with the operation of the System, free of charge to any person, firm or corporation, public or private, so long as any Outstanding Bonds and the Bonds are Outstanding and unpaid.

H. The City shall promptly take action to enforce the payment of delinquent service charges or contract payments by such means as legally available.

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

J. Notwithstanding any other provision of this Ordinance to the contrary, (1) upon the City's failure to observe or refusal to comply with the covenants set forth in this Ordinance, the Registered Owners, or any trustee acting on their behalf, shall be entitled to the rights and remedies provided to the Registered Owners under this Ordinance, other than the right to declare the principal of all Bonds then Outstanding, and the interest accrued thereon, to be due and payable; and (2) neither the holder or registered owner of bonds of any series other than the Bonds, nor any trustee acting on their behalf, shall be entitled to exercise any right or remedy provided to the Registered Owners under this Ordinance based upon the City's failure to observe, or refusal to comply with, the covenants set forth in this Ordinance.

### **Section 23: Tax Covenants**

A. The City covenants to comply with each requirement of the Code necessary to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes. In furtherance of the covenant contained in the preceding sentence, the City covenants to comply with the provisions of the Tax Certificate executed by the City on the date of initial issuance and delivery of the Bonds, as such Tax Certificate may be amended from time to time.

B. The City covenants to make any and all payments required to be made to the United States Department of the Treasury in connection with the Bonds pursuant to Section 148(f) of the Code.

C. Notwithstanding any other provision of this Ordinance to the contrary, so long as necessary in order to maintain the exclusion from gross income of interest on the Bonds for federal income tax purposes, the covenants contained in this Section 23 shall survive the payment of the Bonds and the interest thereon, including any payment or defeasance thereof pursuant to Section 21 of this Ordinance.

### **Section 24: Issuance of Additional Bonds**

The City hereby further covenants and agrees with the Registered Owners of the Bonds for as long as any of the same remain Outstanding as follows:

The City will not issue any bonds having a greater or equal priority of lien upon the Revenue of the System to pay and secure the payment of the principal of and interest on such

bonds than the priority of lien created on such Revenue of the System to pay and secure the payment of the principal of and interest on the Outstanding Bonds and the Bonds except that the City may issue bonds having an equal lien as follows:

A. The City reserves the right to issue Additional Bonds for the purposes of:

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

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

Upon the occurrence of (1) or (2) above, the City shall pledge that payments will be made out of the Operating Fund and into the Debt Service Account and the Reserve Account to pay and secure the payment of the principal of and interest on such Additional Bonds on a parity with the payments required herein to be made out of the Operating Fund into such accounts to pay and secure the payment of the principal of and interest on any Outstanding Bonds and the Bonds then Outstanding, upon compliance with the following conditions:

(1) at the time of the issuance of any Additional Bonds there is no deficiency in the Bond Fund or any of the accounts therein.

(2) the principal of and interest on any Additional Bonds shall be payable out of the Bond Fund and the required deposits into or provision for the Reserve Account in Section 15 hereof shall be accomplished.

(3) if Term Bonds are to be issued, the ordinances authorizing their issuance shall provide for a schedule of payments to be made from the Operating Fund into the Sinking Fund Account sufficient to amortize the principal of such Term Bonds on or before the maturity date thereof.

(4) prior to the delivery of any Additional Bonds, the City shall have on file in the office of the City Clerk a certificate of an independent engineer experienced in the design, construction and operation of municipal utilities showing that the Adjusted Net Revenue for each calendar year after the issuance of such Additional Bonds, together with Assessment Income, will equal at least the sum of (a) 125 percent of the amounts required in each calendar year to be paid as Annual Debt Service on all Outstanding Bonds, Bonds and Additional Bonds then Outstanding and on such proposed Additional Bonds, minus the amount of Assessments due in each year, and (b) 100 percent of the amount of Assessments due in each year (the "Coverage Requirement").

The "Adjusted Net Revenue" shall be the Net Revenue for a period of any 12 consecutive months out of the 24 months immediately preceding the date of delivery of such proposed Additional Bonds as adjusted by such engineer to take into consideration changes in Net Revenue estimated to occur under one or more of the following conditions for each year after such delivery for so long as any Outstanding



Bonds, Bonds and Additional Bonds, including the Additional Bonds to be issued, shall be Outstanding:

(a) the additional Net Revenue which would have been received if any change in rates and charges adopted prior to the date of such certificate and subsequent to the beginning of such 24 month period had been in force during the full 24 month period;

(b) the additional Net Revenue which would have been received if any facility of the System which became fully operational after the beginning of such 24 month period had been so operating for the entire period;

(c) the additional Net Revenue estimated by such engineer to be received as a result of any additions, betterments and improvements to and extensions of any facilities of the System which (i) are under construction at the time of such certificate or (ii) will be constructed from the proceeds of the Additional Bonds to be issued; and

(d) the additional Net Revenue which would have been received if any customers added to the System during such 24 month period were customers for the entire period.

Such engineer may rely upon, and his certificate shall have attached thereto, financial statements of the System certified by the Finance Director showing income and expenses for the period upon which the same is based. The certificate of such engineer shall be conclusive and the only evidence required to show compliance with the provisions and requirements of this subsection 4.

In lieu of such certificate of an engineer, prior to the issuance of Additional Bonds the City may have on file a certificate of an appropriate financial officer of the City stating that the Coverage Requirement will be met based on the Net Revenues for a period of any 12 consecutive months out of the 24 months preceding the delivery of such bonds for any future year on all Outstanding Bonds, Bonds, and Additional Bonds then Outstanding and the Additional Bonds to be issued.

Notwithstanding the foregoing requirement, if Additional Bonds are to be issued for the purpose of refunding at or prior to their maturity any part or all of the Outstanding Bonds, Bonds, or Additional Bonds then Outstanding, and the issuance of such refunding Additional Bonds will result in a debt service savings and does not require an increase of more than \$5,000 in any fiscal or calendar year for principal of and interest on such refunding Additional Bonds over and above the amount required in such year for the principal of and interest on the bonds being refunded thereby, the condition stated in subsection A(4) of this section need not be met.

B. Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations which are a charge upon the Revenue of the System junior or inferior to the payments required by this Ordinance to be made out of such revenue into the Bond Fund and

accounts therein to pay and secure the payment of the Outstanding Bonds, the Bonds and any Additional Bonds.

C. Nothing herein contained shall prevent the City from issuing revenue bonds to refund maturing Outstanding Bonds, Bonds or Additional Bonds for the payment of which money is not otherwise available.

### **Section 25: Amendments to Ordinance**

A. The Council may adopt at any time ordinances supplemental hereto, which ordinances thereafter shall become a part of this Ordinance, for any one or more of all of the following purposes:

(1) to add to or delete from the covenants and agreements of the City in this Ordinance, so long as the covenants and agreements thereafter to be observed shall not adversely affect the interests of the Registered Owners of any Bonds, or surrender any right or power herein reserved; or

(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 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 interests of the Registered Owners of the Bonds.

Any such supplemental ordinance may be adopted without the consent of the Registered Owners of any Bonds at any time Outstanding, notwithstanding any of the provisions of subsection B of this Section 25.

B. With the consent of not less than 65 percent in aggregate principal amount of the Bonds at the time Outstanding, the Council may adopt 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 Bonds, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Registered Owner of each Bond so affected; or

(2) reduce the aforesaid percentage of Registered Owners of Bonds required to approve any such supplemental ordinance, without the consent of the Registered Owners of all of the Bonds then Outstanding.

It shall not be necessary for the consent of Registered Owners of Bonds 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.

C. Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section 25, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this Ordinance and all Registered Owners of Bonds Outstanding hereunder shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

D. Bonds executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this Section 25 may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new Bonds so modified as to conform in the opinion of the Council to any modification of this Ordinance contained in any such supplemental ordinance, may be prepared and delivered without cost to the Registered Owners of any affected Bonds then Outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

### **Section 26: Bonds Designated “Qualified Tax-Exempt Obligations”**

The City hereby designates the Bonds as a “qualified tax-exempt obligation” pursuant to and as defined in Section 265(b) of the Code. The City covenants that it shall not designate more than \$10,000,000 of tax-exempt obligations during the calendar year 2021. The City does not reasonably anticipate that it will issue in the aggregate more than \$10,000,000 principal amount of tax-exempt obligations during the calendar year 2021. In applying this \$10,000,000 limitation, the City has taken into account: (A) tax-exempt obligations that it has issued and anticipates issuing; (B) tax-exempt obligations that any “subordinate entity” has issued or anticipates issuing; (C) tax-exempt obligations that any entity that issues obligations on behalf of the City has issued or anticipates issuing; and (D) tax-exempt obligations that an entity formed to avoid this \$10,000,000 limitation has issued or anticipates issuing. However, in applying this \$10,000,000 limitation, the City has not taken into account any private activity bond (other than qualified 501(c)(3) bonds) or any obligation issued to refund (other than in an advance refunding) another obligation to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation.

### **Section 27: Bonds Not General Obligations**

The Bonds are payable solely from amounts deposited into the Bond Fund, and shall not constitute general obligations of the City and are not payable from ad valorem taxes collected within the City. Accordingly, the full faith and credit of the City is not pledged for the payment of the principal of and interest on the Bonds.

### **Section 28: Sale and Delivery of the Bonds and Taking of Other Actions Authorized**

The Council hereby authorizes and directs each of the Mayor, the Finance Director, the City Clerk and Bond Counsel to prepare, execute and deliver the Bonds to the Purchaser, to execute all other documents, and to take all such further action for the proper application and use of the proceeds of the sale thereof, including:

- A. preparing the final official statement regarding the Bonds; and
- B. executing such certificates and receipts as may be necessary to properly document the issuance of the Bonds.

In addition, the Mayor, the Finance Director, the City Clerk and Bond Counsel are hereby authorized by the Council to execute and deliver such other certificates, agreements and documents, and to take such other actions on behalf of the City as may be reasonable and necessary:

- A. to facilitate the issuance and sale of the Bonds;
- B. to meet all provisions of the Code in order to maintain tax-exempt status of the Bonds; and
- C. in connection with any matters related thereto, until the final maturity date of the Bonds or redemption, whichever occur first.

### **Section 29: The Preliminary Official Statement**

The Council hereby delegates authority to the Mayor or the Finance Director to determine all acts to be undertaken by the City's officers, employees and agents with respect to the preparation and distribution of the preliminary official statement regarding the Bonds, including any action taken to deem such preliminary official statement final as of its date except for the omission of information dependent upon the pricing of the issue and the completion of the underwriting agreement, such as offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates and other terms of the Bonds dependent on the foregoing matters. The City agrees to cooperate with the Purchaser to deliver or cause to be delivered, within seven business days from the date of the Bond Purchase Contract and in sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, copies of a final official statement in sufficient quantity to comply with the rules of the MSRB and paragraph (b)(4) of the Rule.

### **Section 30: Covenant to Provide Continuing Disclosure**

The City covenants to execute and deliver at the time of issuance of the Bonds a Continuing Disclosure Undertaking in substantially the form set forth in Exhibit "D" attached hereto and by this reference incorporated herein. The Mayor or the Finance Director are each individually authorized and directed to execute and deliver a Continuing Disclosure Undertaking upon the sale, issuance and delivery of the Bonds with such terms and provisions as such officer shall deem appropriate and in the best interest of the City, upon consultation with Bond Counsel. The City hereby reserves the right to comply with this Section 29 by meeting its annual disclosure requirements through any system approved by the SEC. All required filings shall be made in an electronic format as prescribed by the MSRB.

### **Section 31: Ratification**

All actions not inconsistent with the provisions of this Ordinance heretofore taken by the Council and the City's employees with respect to the adoption of this Ordinance and the issuance, sale and delivery of the Bonds, are hereby in all respects ratified, approved and confirmed.

### **Section 32: Contract; Severability**

The covenants contained in this Ordinance and in the Bonds shall constitute a contract between the City and the holder of each and every Bond. All the covenants, promises and agreements in this Ordinance contained by or on behalf of the City, or by or on behalf of the Registrar, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

If any one or more of the covenants or agreements provided in this Ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenants or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements in this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of any Bonds.

Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon or give to any person other than the City, the Registrar and the Registered Owners any rights, remedies or claims under or by reason of this Ordinance or any covenant, condition or stipulation thereof; and all of the covenants, stipulations, promises and agreements in this Ordinance contained by or on behalf of the City shall be for the sole and exclusive benefit of the City, the Registrar and the Registered Owners.

### **Section 33: Repealer**

All ordinances or resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and shall have no further force or effect.

### **Section 34: No Personal Recourse**

No recourse shall be had for any claim based on this Ordinance or Bonds against any Council member, officer or employee, past, present or future, of the City or of any successor body as such, either directly or through the City or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

**Section 35: Effective Date**

This Ordinance shall be effective from and after its adoption and five days after its publication, or a publication of its summary in substantially the form set forth in Exhibit "B" hereto, in the official newspaper of the City.

ADOPTED by the Council of the City of Wenatchee, Chelan County, Washington, at a regular meeting thereof, held this 25<sup>th</sup> day of February, 2021.

CITY OF WENATCHEE  
Chelan County, Washington

---

Frank Kuntz, Mayor

ATTEST:

---

Tammy L. Stanger, City Clerk

( S E A L )

\* \* \* \* \*

**C E R T I F I C A T E**

I, Tammy L. Stanger, the City Clerk of the City of Wenatchee, Chelan County, Washington, hereby certify as follows:

1. The foregoing ordinance is a full, true and correct copy of an ordinance duly adopted at a regular meeting of the City Council duly and regularly held at the regular meeting place thereof;

2. That such meeting was duly convened and held in all respects in accordance with the law; that a quorum was present throughout the meeting through telephonic, electronic, internet or other means of remote access, and a majority of the Council so present voted in the proper manner for the adoption of such ordinance;

3. That in accordance with Proclamation 20-28 by the Governor of the state of Washington, dated March 24, 2020: (a) such meeting was not conducted in person, (b) one or more options provided for the public to attend the meeting remotely, including by telephone access, which mean(s) of access provided the ability for all persons attending the meeting remotely to hear each other at the same time and (c) adoption of such ordinance is necessary and routine action of the Council; and

4. Such ordinance was adopted by the following vote:

AYES, and in favor thereof:

NAYS:

ABSENT:

ABSTAIN:

I further certify that I have carefully compared the same with the original ordinance on file and of record in my office; that such ordinance is a full, true and correct copy of the original ordinance adopted at such meeting; and that such ordinance has not been amended, modified or rescinded since the date of its adoption and shall be in full force and effect five days after the publication of its summary in the City's official newspaper.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of the City on the 25<sup>th</sup> day of February, 2021.

CITY OF WENATCHEE  
Chelan County, Washington

\_\_\_\_\_  
Tammy L. Stanger, City Clerk

( S E A L )

**EXHIBIT “A”**

[Face of Bond]

**UNITED STATES OF AMERICA  
STATE OF WASHINGTON  
COUNTY OF CHELAN**

**CITY OF WENATCHEE**

**WATER AND SEWER REVENUE REFUNDING BONDS, SERIES 2021**

*(“Qualified Tax-Exempt Obligations”)*

*Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the Registrar for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co., or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co., or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein*

INTEREST RATE:

MATURITY DATE:

CUSIP NO.:

See Pages 2 through \_\_  
for Additional Provisions

The CITY OF WENATCHEE, Washington (the “City”), an optional municipal code city duly organized and existing under and by virtue of the Constitution and laws of the state of Washington (the “State”) now in force, acknowledges itself to owe and, for value received, promises to pay from the City’s “Wenatchee Water, Sewer and Storm Drainage Bond Fund” (the “Bond Fund”), referred to in Ordinance No. 2021-11, adopted by the City Council of the City (the “Council”) on February 25, 2021 (the “Ordinance”), to

**CEDE & CO.**

or registered assigns, on the Maturity Date set forth above, the principal sum of

**AND NO/100 DOLLARS**

and to pay interest thereon from the Bond Fund from \_\_\_\_\_, 2021, or from the most recent date to which interest has been paid or duly provided for, whichever is later, at the Interest Rate per annum set forth above, payable commencing on \_\_\_\_\_ 1, 2021, and semiannually thereafter on each June 1 and December 1, to the Maturity Date set forth above. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. Any capitalized term used in this Bond and not otherwise defined herein shall have the same meaning as in the Ordinance.



The principal of and interest on this Bond are payable in lawful money of the United States of America to the Registered Owner hereof, whose name and address shall appear on the registration books of the City (the "Bond Register") maintained by the Washington State Fiscal Agent (the "Registrar"). Interest shall be paid to the Registered Owner whose name appears on the Bond Register at the close of business on the fifteenth day of the calendar month preceding the interest payment date, and shall be paid by check or draft of the Registrar mailed to such Registered Owner on the due date at the address appearing on the Bond Register, or at such other address as may be furnished in writing by such Registered Owner to the Registrar. Interest installments may be paid by wire transfer to a Registered Owner of at least \$1,000,000 in principal amount of the Bonds, upon written request of such Registered Owner submitted to the Registrar at least 15 days prior to the interest payment date; provided, the costs of such wire transfer shall be paid by such Registered Owner. Principal of this Bond shall be paid to the Registered Owner upon presentation and surrender of this Bond on or after the Maturity Date set forth above or the date of prior redemption, whichever occurs first, at the designated corporate trust office of the Registrar.

Notwithstanding any other provision of this Bond to the contrary, so long as this Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of or premium, if any, and interest on this Bond shall be made in the manner provided in the Letter of Representations.

Reference is hereby made to the Additional Provisions of this Bond set forth on page 2 hereof, and such Additional Provisions shall for all purposes have the same effect as if set forth in this space.

The City and the Registrar may deem and treat the Registered Owner of this Bond as the absolute owner of this Bond for the purpose of receiving payments of principal and interest due on this Bond and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things essential to the validity of this Bond and the Bonds of this series do exist, have happened, been done and been performed and that every requirement of the Constitution and the laws of the State now in force and the ordinances and resolutions of the City, particularly the Ordinance, affecting the issue hereof has been duly complied with; and that the Net Revenue to be derived from the operation of the System, including any future improvements, additions or extensions thereto, have been pledged and will be set aside into the Bond Fund to be used for the payment of principal of and interest on this Bond in the order of priority provided in the Ordinance.

IN WITNESS WHEREOF, City of Wenatchee, Washington, has caused this Bond to be executed by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of its City Clerk and impressed with its seal on \_\_\_\_\_, 2021.

CITY OF WENATCHEE  
Chelan County, Washington

*[manual of facsimile signature]*  
Mayor

ATTEST:  
*[manual or facsimile signature]*  
City Clerk  
( S E A L )

---

**CERTIFICATE OF AUTHENTICATION**

Date of Authentication:

This Bond is one of the City of Wenatchee Water and Sewer Revenue Refunding Bonds, Series 2021, dated \_\_\_\_\_, 2021, and described in the within-mentioned Ordinance.

WASHINGTON STATE FISCAL AGENT, as  
Registrar

By \_\_\_\_\_  
Authorized Signatory

---

**ADDITIONAL PROVISIONS**

This Bond is one of a duly authorized series of Bonds of like date, tenor, and effect, except for variations required to state denominations, numbers, interest rates, redemption provisions and dates of maturity, aggregating the principal sum of \$\_\_\_\_\_. The Bonds are issued in fully registered form, in denominations of \$5,000 each or any integral multiple thereof within a single maturity, mature on December 1 of the years 20\_\_ through 20\_\_, inclusive, and are special obligations of the City payable solely from the Bond Fund. For a more particular description of the Bond Fund, the revenues to be deposited therein, and the nature and extent of the security afforded thereby, reference is made to the provisions of the Ordinance. This Bond is not a general obligation of the City, and its full faith and credit are not pledged for payment of the principal hereof and interest hereon.

The Bonds constitute a prior lien and charge upon the Net Revenue superior to all other charges of any kind or nature, and are equal to the charges necessary to pay the principal of and interest on the Outstanding Bonds or any Additional Bonds.

The Bonds are issued by the City pursuant to and in full compliance with the Constitution and laws of the State now in force, particularly chapters 35.41, 39.46 and 39.53 RCW, and proceedings duly adopted and authorized by the Council, more particularly the Ordinance, for the Exhibit "A"

purpose of redeeming the Refunded Bonds if market conditions permit such redemption, paying the Costs of the Project, and paying certain expenses incurred in connection with the issuance of the Bonds, all as more particularly described in the Ordinance.

The Bonds maturing on December 1, 20\_\_ through December 1, 20\_\_ are not subject to redemption prior to their stated maturity dates. The Bonds maturing on or after December 1, 20\_\_, are subject to optional redemption, as a whole or in part (and if in part, with maturities to be selected by the City), on any date on or after \_\_ 1, 20\_\_, at a price of par plus accrued interest, if any, to the date fixed for redemption.

The Bonds maturing in the year 20\_\_ are Term Bonds and are subject to mandatory sinking fund redemption prior to maturity, in part, randomly in such manner as the Registrar shall determine, on December 1 in the years 20\_\_ through 20\_\_, inclusive, at 100 percent of the principal amounts set forth in the following schedule (subject to any partial optional redemptions made in accordance with the preceding paragraph), plus accrued interest to the date of redemption, from mandatory sinking fund deposits into the Bond Fund in the principal amounts set forth below:

Mandatory Sinking Fund Redemption Dates	Mandatory Sinking Fund Redemption Amounts
December 1, ____	\$
December 1, ____	
December 1, ____	
December 1, ____*	

\* Maturity.

In accordance with the preceding two paragraphs, any Bond in the principal amount of greater than \$5,000 may be redeemed partially in any integral multiple of \$5,000. In such event, upon surrender of such Bond at the designated corporate trust office of the Registrar, a new Bond (or Bonds at the option of the Registered Owner) of the same interest rate and maturity shall be issued to the Registered Owner, without charge, in any of the denominations authorized by the Ordinance in the aggregate principal amount remaining unredeemed. To the extent the City partially redeems Term Bonds, pursuant to the Ordinance, the City may, at its discretion, reduce the amount of any mandatory sinking fund deposit or deposits by an aggregate principal amount equal to the principal amount of the Term Bonds so redeemed.

So long as the Bonds are in book-entry only form, the Registrar will notify DTC of a redemption, not less than 20 days and not more than 60 days prior to the date fixed for redemption, and will provide such information as required by the operational arrangements of DTC referenced in the Blanket Letter of Representations from the City to DTC.

During any period in which the Bonds are not in book-entry only form, unless waived by any Registered Owner of the Bonds to be redeemed, notice of any redemption of Bonds will be given by the Registrar on behalf of the City by mailing a copy of a redemption notice by first-class mail, postage prepaid, not less than 20 days nor more than 60 days prior to the date fixed for redemption, to the Registered Owners of each Bond to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owners to the Registrar.

Such requirements shall be deemed to be complied with when notice is mailed as herein provided, regardless of whether or not it is actually received by the Registered Owner of any Bond to be redeemed. Interest on any Bond so called for redemption shall cease to accrue on the date fixed for redemption, and the Bonds shall not be deemed to be Outstanding as of such redemption date, provided funds for redemption are on deposit at the place of payment at that time. Any notice of redemption given may be rescinded by written notice from the City to the Registrar prior to the date specified for redemption. The Registrar shall give notice of such rescission as soon thereafter as practicable, and to the same Registered Owners, as notice of such redemption was given. Any notice of redemption that is so rescinded shall be of no effect, and the Bonds for which the notice of redemption has been rescinded shall remain Outstanding.

The City has reserved the right to purchase any or all of the Bonds on the open market at any time and at any price. To the extent the City purchases Term Bonds on the open market, the City may reduce, at its discretion, the amount of any mandatory sinking fund deposit or deposits by an aggregate principal amount equal to the principal amount of the Term Bonds so purchased. Any Bonds so purchased or redeemed shall be canceled.

This Bond is transferable or exchangeable by the Registered Owner hereof in person, or by its attorney duly authorized in writing, upon due completion of the Assignment appearing hereon and upon presentation and surrender of this Bond at the designated corporate trust office of the Registrar. Upon such transfer or exchange, a new Bond or Bonds of any authorized denomination, of the same maturity and interest rate, and for the same aggregate principal amount of the Bond being surrendered will be issued to the transferee or exchangee, in exchange therefor. The Registrar is not required to transfer or exchange any Bond during the 15 days preceding any principal or interest payment date.

The City has covenanted and agreed with the Registered Owners of the Bonds that it will keep and perform all of the covenants of this Bond and of the Ordinance to be by it kept and performed. The City has further covenanted 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 lawful rates and charges for service furnished by or through the System, sufficient in amount, for as long as any of the Bonds of this series are Outstanding, to make available from Revenue of the System, after Costs of Maintenance and Operation, all amounts required to be paid into the Bond Fund in any year hereafter to pay the principal of and interest on the Outstanding Bonds, the Bonds and any Additional Bonds.

Reference is hereby made to the Ordinance for the covenants and declarations of the City and other terms and conditions under which this Bond and the Bonds of this series have been issued. The covenants contained herein and in the Ordinance, as such may pertain to this Bond, may be discharged by making provision, at any time, for the payment of the principal of and interest on this Bond in the manner provided in the Ordinance.

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**BOND COUNSEL OPINION**

It is hereby certified that the following is a true and complete copy of the bond counsel opinion of Kutak Rock LLP, on file in my office, which opinion is dated the date of delivery of and payment for the Bonds described therein, an original of which was delivered to me on such date, and is a part of the permanent records of the City.

CITY OF WENATCHEE  
Chelan County, Washington

*[manual or facsimile signature]*

City Clerk

[Insert Bond Counsel Opinion of Kutak Rock LLP]

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common	UNIF GIFT MIN ACT – under Uniform Transfer to Minors Act	_____
TEN ENT - as tenants by the entireties	(Cust)	(Minor)
JT TEN - as joint tenants with right of survivorship and not as tenants in common	_____	(State)

Additional abbreviations may also be used although not in the above list.

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto:

Name of Transferee: \_\_\_\_\_

Address: \_\_\_\_\_

Tax Identification No.: \_\_\_\_\_

the within Bond and hereby irrevocably constitutes and appoints \_\_\_\_\_

to transfer such Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Registered Owner

NOTE: The signature on this Assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED:

\_\_\_\_\_  
Bank, Trust Company or Member  
Firm of the New York Stock Exchange

\_\_\_\_\_  
Authorized Officer

**EXHIBIT “B”**

**FORM SUMMARY OF ORDINANCE NO. 2021-11**

The following is a summary of the principal provisions of Ordinance No. 2021-11 of the City of Wenatchee, Chelan County, Washington, adopted on February 25, 2021. A full text of the Ordinance will be mailed upon request.

**AN ORDINANCE OF THE CITY OF WENATCHEE, CHELAN COUNTY, WASHINGTON, AUTHORIZING THE SALE, ISSUANCE AND DELIVERY OF NOT TO EXCEED \$10,000,000 OF THE CITY’S WATER AND SEWER REVENUE REFUNDING BONDS, TO PAY, REDEEM AND RETIRE ALL OR A PORTION OF THE CITY’S OUTSTANDING WATER AND SEWER REVENUE AND REFUNDING BONDS, SERIES 2011; PROVIDING FOR THE DESIGNATION, DATE, TERMS, MATURITIES, FORM, PAYMENT AND REDEMPTION PROVISIONS OF THE BONDS; DESIGNATING A FISCAL AGENT; AUTHORIZING THE EXECUTION OF A REFUNDING TRUST AGREEMENT FOR USE IN THE PAYMENT OF THE REFUNDED BONDS; AUTHORIZING THE PURCHASE OF CERTAIN GOVERNMENT OBLIGATIONS; PROVIDING FOR THE CALL, PAYMENT AND REDEMPTION OF THE REFUNDED BONDS; PROVIDING FOR THE REGISTRATION AND AUTHENTICATION OF THE BONDS; CREATING AND ADOPTING CERTAIN FUNDS AND ACCOUNTS AND PROVIDING FOR DEPOSITS THEREIN; COVENANTING TO COMPLY WITH CERTAIN FEDERAL TAX AND SECURITIES LAWS; AUTHORIZING THE SALE OF THE BONDS; DELEGATING CERTAIN MATTERS TO THE MAYOR AND THE FINANCE DIRECTOR; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO**

**EXHIBIT “C”**

**CITY OF WENATCHEE  
Chelan County, Washington**

**WATER AND SEWER REVENUE REFUNDING BONDS  
PRINCIPAL AMOUNT OF \$10,000,000**

**REFUNDING TRUST AGREEMENT**

This REFUNDING TRUST AGREEMENT is made and entered into as of \_\_\_\_\_, 2021, by and between the City of Wenatchee, Chelan County, Washington (the “City”), a code city and political subdivision created under the Constitution and laws of the state of Washington (the “State”), and U.S. Bank National Association, Seattle, Washington (the “Refunding Trustee”), with respect to the redemption of certain bonds, as provided for in Ordinance No. 2021-11 of the City, adopted on February 25, 2021 (the “Ordinance”). Unless otherwise defined in this Refunding Trust Agreement, all capitalized terms shall have the meanings set forth in Section 1 of the Ordinance.

**W I T N E S S E T H**

WHEREAS, the City Council of the City (the “Council”) authorized this Refunding Trust Agreement to be executed pursuant to Section 9 of the Ordinance;

WHEREAS, pursuant to Ordinance No. 2011-28, adopted by the Council on May 26, 2011, the City issued bonds designated the “City of Wenatchee Water and Sewer Revenue and Refunding Bonds, 2011” (the “2011 Bonds”);

WHEREAS, Ordinance No. 2011-28 provides that the 2011 Bonds maturing on or after December 1, 2022, are subject to redemption prior to their stated dates of maturity in whole or in part at any time, on or after June 1, 2021, at the price of par, plus accrued interest to the date of redemption; and

WHEREAS, after due consideration, the Council has determined that it is necessary, advisable and that it will be financially advantageous to the City and a substantial savings to the ratepayers of the City’s System to redeem or retire the 2011 Bonds that mature on December 1 in the years 2022, 2023, 2036 and 2030 in an aggregate principal amount of \$8,905,000 (the “Refunded Bonds”), with a portion of the bond proceeds from the sale, issuance and delivery of \$10,000,000 principal amount of its Water and Sewer Revenue Refunding Bonds (the “Bonds”).

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows:

Section 1. *Acceptance of Refunding Trustee Duties.* U.S. Bank National Association, Seattle, Washington, hereby accepts its appointment by the City as the Refunding Trustee with respect to the Refunded Bonds.



Section 2. *City Representations.* The City represents to the Refunding Trustee that: (i) the City is a code city organized and existing under and by virtue of the Constitution and laws of the State; and (ii) the City is authorized to enter into this Refunding Trust Agreement.

Section 3. *Refunding Trustee Representations.* The Refunding Trustee represents to the City that: (i) the Refunding Trustee is a trust company or state or national bank having the powers of a trust company within or without the State; and (ii) the Refunding Trustee is authorized to enter into this Refunding Trust Agreement.

Section 4. *The Escrow Account.* The Refunding Trustee hereby agrees to establish, hold, invest and otherwise administer the Escrow Account in the manner provided by Section 9 of the Ordinance. In the furtherance of the foregoing, the Refunding Trustee will, on behalf of the City, use the Bond proceeds and other money, if any, deposited with the Refunding Trustee to purchase Government Obligations in the amounts, of the type, bearing interest and maturing as set forth in the following schedule:

<u>Type of Obligation</u>	<u>Par Amount</u>	<u>Interest Rate</u>	<u>Delivery Date</u>	<u>Maturity Date</u>
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Section 5. *Receipt of Certain Money.* Execution of this Refunding Trust Agreement by the Refunding Trustee shall constitute written acknowledgment by the Refunding Trustee of its receipt from the City of \$\_\_\_\_\_, \$\_\_\_\_\_ of which will be invested in Government Obligations, \$\_\_\_\_\_ of which will be held as an initial cash balance and the balance of \$\_\_\_\_\_ will be used to pay costs of issuance of the Bonds and of administrating the Escrow Account.

Section 6. *Sufficiency of Government Obligations.* Based on the opinion of \_\_\_\_\_, the City represents that the Government Obligations and the maturing principal thereof and the interest thereon, if paid when due, together with a beginning cash balance of \$\_\_\_\_\_, will be sufficient to make the payments described in Section 7 hereof.

Section 7. *Payments on the Refunded Bonds.* The Refunding Trustee will transfer money from the Escrow Account to the Washington State Fiscal Agent in the amounts, and at the times, necessary to enable the Washington State Fiscal Agent to make the payments described in the following schedule:

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
06/01/21	\$	\$	\$
12/01/21*			

\* Redemption Date

Section 8. *The Government Obligations.* The Refunding Trustee will purchase the Government Obligations described in Section 4 above, on behalf of the City, from the Bond proceeds and other money, if any, deposited with the Refunding Trustee on the date the Bonds are issued. The Refunding Trustee will use such Government Obligations, and the earnings thereon, for the sole purpose of making the transfers to the Washington State Fiscal Agent described in Section 7 hereof. The Refunding Trustee will not allow any Government Obligations to be liquidated prior to maturity without: (i) the City’s written consent; (ii) receiving a supplemental verification addressed to the City and the Refunding Trustee of a nationally recognized independent certified public accounting firm, which shall be satisfactory to nationally recognized bond counsel, that the money and Government Obligations on deposit after such liquidation will be sufficient to effect the refunding of the Refunded Bonds; and (iii) receiving the written opinion of nationally recognized bond counsel that such redemption would not cause the interest on the Refunded Bonds or the Bonds to become includable in gross income for federal income tax purposes.

Section 9. *Safekeeping of Money and Investments.* All Government Obligations, money and investment income deposited with or received by the Refunding Trustee pursuant to this Refunding Trust Agreement shall be subject to the trust created by this Refunding Trust Agreement, and the Refunding Trustee shall be liable for the safekeeping thereof. All money deposited with the Refunding Trustee or received by the Refunding Trustee as maturing principal or interest on the Government Obligations prior to the times the Refunding Trustee is required to make the payments described in Section 7 of this Refunding Trust Agreement shall be held uninvested, in cash, by the Refunding Trustee.

Section 10. *Substitution of the Government Obligations.* The Refunding Trustee acknowledges the City’s right to substitute Government Obligations for investments in the Escrow Account. The Refunding Trustee will cooperate with the City in making any such substitution, so long as such substitution is made in accordance with Section 11 of the Ordinance.

Section 11. *Transfer of Surplus Money Prior to Full Redemption.* The Refunding Trustee will transfer to the City any money remaining on deposit in the Escrow Account prior to the payment in full of the Refunded Bonds if the City furnishes to the Refunding Trustee: (i) a supplemental verification addressed to the City and the Refunding Trustee of a nationally recognized independent certified public accounting firm, which shall be satisfactory to nationally recognized bond counsel, that the money and Government Obligations on deposit after such transfer will be sufficient to effect the refunding of the Refunded Bonds; and (ii) an opinion addressed to the City and to the Refunding Trustee from nationally recognized bond

counsel that such transfer will not cause the interest on the Refunded Bonds or the Bonds to become includable in gross income for federal income tax purposes.

Section 12. *Transfer of Surplus Money After Full Redemption.* The Refunding Trustee will transfer to the City any money remaining on deposit in the Escrow Account after the payment, redemption and retirement in full of all of the Refunded Bonds.

Section 13. *Notices of Defeasance and Redemption.* The Refunding Trustee will cause notice of the defeasance of the Refunded Bonds to be given, substantially in the form set forth in Attachment I hereto, not later than 10 days after the Bonds are delivered to the Purchaser by the City. The notice of defeasance shall be given to the MSRB. The Refunding Trustee will direct the Washington State Fiscal Agent to give notice, or cause notice to be given, at the expense of the City, of the redemption of the Refunded Bonds in the form and manner required by Ordinance No. 2011-28. Such notice of redemption shall be substantially in the form set forth in Attachment II hereto, and shall be given not less than 30 nor more than 60 days prior to the redemption date.

Section 14. *Limitation of Refunding Trustee's Duties.* The duties and obligations of the Refunding Trustee shall be prescribed by the provisions of this Refunding Trust Agreement and Sections 7 through 11 of the Ordinance, and the Refunding Trustee shall not be liable except for the performance of its duties and obligations as specifically set forth herein or therein and the duty to act in good faith in the performance thereof and no implied duties or obligations shall be incurred by such Refunding Trustee other than those specified herein and therein. Nothing contained herein shall require the Refunding Trustee to advance its own money or otherwise to incur any financial liability to carry out its obligations hereunder. The Refunding Trustee shall not be responsible or liable for: (i) the sufficiency, correctness, genuineness or validity of the Government Obligations; (ii) the performance or compliance by any party other than the Refunding Trustee with the terms or conditions of any such instruments; or (iii) any loss which may occur by reason of forgeries, false representations or the exercise of the Refunding Trustee's discretion in any particular manner, unless such exercise is negligent or constitutes willful misconduct.

Section 15. *Interpleader.* If any controversy arises between the City and any third person, the Refunding Trustee shall not be required to determine the same or to take any action in the premises, but it may institute, in its discretion, an interpleader or other proceedings in connection therewith as it may deem proper, and in following either course, it shall not be liable.

Section 16. *Reporting Requirements.* For as long as any of the Refunded Bonds are Outstanding, the Refunding Trustee shall render a statement as of the last day of the preceding month to the City's Finance Director setting forth: (i) the Government Obligations which have matured and the amounts received by the Refunding Trustee by reason of such maturity; (ii) the amounts paid to the Washington State Fiscal Agent pursuant to Section 7 of this Refunding Trust Agreement and the dates of such payments, for payments on the Refunded Bonds; and (iii) any other transactions of the Refunding Trustee pertaining to its duties and obligations as set forth herein.

Section 17. *Compensation of the Refunding Trustee.* The Refunding Trustee hereby acknowledges receipt of payment from the City for services rendered and to be rendered by it pursuant to the provisions of this Refunding Trust Agreement in payment of all fees, compensation and expenses of the Refunding Trustee. The Refunding Trustee hereby agrees that such compensation has been made to the satisfaction of the Refunding Trustee. Such amount does not take into consideration any extraordinary fees and expenses of the Refunding Trustee. The Refunding Trustee represents that it has incurred no extraordinary fees and expenses pertaining to this Refunding Trust Agreement. The Refunding Trustee shall comply with the requirements of the following paragraph before incurring any extraordinary fees and costs to be billed to the City. The Refunding Trustee acknowledges that it is not entitled to a lien on any Government Obligations or other obligations or money of the City held by it pursuant to this Refunding Trust Agreement or any other agreement.

The Refunding Trustee shall provide the City with a good faith estimate of its fees and costs if and when it is requested by the City to: (i) render any service that is not provided for in this Refunding Trust Agreement; (ii) amend this Refunding Trust Agreement; or (iii) substitute securities under this Refunding Trust Agreement. The City will pay the Refunding Trustee reasonable compensation for such unanticipated services, provided the City is first provided with such estimate and approves thereof in writing.

Section 18. *Amendments to this Refunding Trust Agreement.* The Refunding Trustee and the City recognize that the owners of the Refunded Bonds have a beneficial interest in the money and the Government Obligations to be held in trust by the Refunding Trustee pursuant to this Refunding Trust Agreement. Therefore, this Refunding Trust Agreement shall be subject to amendment only in writing executed by the City and the Refunding Trustee for the purposes of: (i) clarifying an ambiguity in the duties and obligations set forth hereunder; or (ii) altering the reporting or other ministerial obligations of the Refunding Trustee to the City. The parties will not amend this Refunding Trust Agreement in such a manner as to permit the Refunding Trustee to invest in or deposit in the Escrow Account any obligations other than noncallable, nonprepayable obligations of, or obligations unconditionally guaranteed by, the United States of America. Each amendment to this Refunding Trust Agreement shall be accompanied by an opinion addressed to the City and to the Refunding Trustee from nationally recognized bond counsel that such amendment will not cause the interest on the Refunded Bonds or the Bonds to become includable in gross income for federal income tax purposes. In addition, if such amendment results in any change of the maturities, interest earnings or redemption features of the Government Obligations, then such amendment shall also be accompanied by a supplemental verification addressed to the City and to the Refunding Trustee from a nationally recognized independent certified public accounting firm, which shall be satisfactory to nationally recognized bond counsel, that the money and Government Obligations on deposit after the amendment will be sufficient to effect the refunding of the Refunded Bonds.

Section 19. *Notification of Deficiency.* The Refunding Trustee will give the City prompt notice if the Refunding Trustee shall determine there are or will be insufficient money or Government Obligations to make the payments specified in Section 7 of this Refunding Trust Agreement, and the City shall promptly deposit with the Refunding Trustee additional sums of money required to correct such deficiencies. This Section 19 is not intended to create an obligation on the part of the Refunding Trustee to calculate or in any way verify the sufficiency

or projected future sufficiency of the maturing principal of and interest on the Government Obligations and other money held by the Refunding Trustee pursuant to this Refunding Trust Agreement to pay the debt service on the Refunded Bonds.

Section 20. *Successor Refunding Trustee.* The Refunding Trustee shall, upon receiving a written request from the City, or may, upon providing 30 days prior written notice to the City, be removed as Refunding Trustee hereunder; provided, the Refunding Trustee will not relinquish its duties hereunder until a qualified successor accepts its appointment. The City shall promptly appoint a successor Refunding Trustee upon the removal of the Refunding Trustee; *provided*, the Refunding Trustee may petition a court of competent jurisdiction for the appointment of a successor Refunding Trustee if the successor Refunding Trustee appointed by the City does not accept its appointment within 45 days after the giving of notice described in the preceding sentence. Any successor Refunding Trustee shall meet the requirements of RCW 39.53.070, as now in effect or hereafter amended, and shall assume all the obligations of the Refunding Trustee under this Refunding Trust Agreement. All the Government Obligations and money then held by the Refunding Trustee pursuant to this Refunding Trust Agreement shall thereafter be transferred to such successor.

Any corporation or association into which the Refunding Trustee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger, consolidation or reorganization to which the Refunding Trustee may be a party, or any corporation or association to which the Refunding Trustee may sell or transfer all or substantially all of its corporate trust business, shall be the successor to the Refunding Trustee without the execution or filing of any paper or any further act on the part of the City or the Refunding Trustee.

Section 21. *Receipt of Statements.* The Refunding Trustee hereby acknowledges receipt from the City of statements setting forth the interest payment schedules and maturity schedules of the Refunded Bonds by number, amount, date of maturity and interest rates, the amount of interest to be paid on each semiannual interest payment date of such bonds, if any, and the amount of the principal to be paid on the date that the Refunded Bonds are to be redeemed.

Section 22. *Holidays.* If the date for making any payment or the last date for performance of any act or the exercising of any right or duty, as provided in this Refunding Trust Agreement, shall be a legal holiday, a day on which banking institutions in Seattle, Washington, and New York, New York, are authorized by law to remain closed, or a day on which the New York Stock Exchange is closed, such payment may be made, such act performed, or such right exercised on the next succeeding day, with the same force and effect as if done on the nominal date provided in this Refunding Trust Agreement.

Section 23. *Term.* The term of this Refunding Trust Agreement shall commence on the date the Bonds are delivered to the Purchaser and shall expire on the later of: (i) the date the final payment is made pursuant to Section 7 hereof; (ii) the date any surplus money remaining in the Escrow Account is transferred to the City pursuant to Section 12 hereof; and (iii) the date the final statement required by Section 16 hereof is received by the City. Notwithstanding the

expiration of this Refunding Trust Agreement, the Refunding Trustee shall not be relieved of any liability for a breach of this Refunding Trust Agreement occurring during the term hereof.

Section 24. *Writings Required.* Any notice, authorization, request or demand required or permitted to be given in accordance with the terms of this Refunding Trust Agreement shall be in writing.

Section 25. *Governing Law.* This Refunding Trust Agreement shall be governed by and construed in accordance with the laws of the State, without regard to conflict of law principles.

Section 26. *Severability.* In the event any one or more of the provisions contained in this Refunding Trust Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Refunding Trust Agreement, and this Refunding Trust Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. If any portion of this Refunding Trust Agreement is amended, severed or revoked, the City agrees to notify any rating agency with a current rating on the Bonds prior to such action.

Section 27. *Counterparts.* This Refunding Trust Agreement may be executed in several counterparts, each of which shall be regarded as the original and all of which shall constitute one and the same Refunding Trust Agreement.

CITY OF WENATCHEE  
Chelan County, Washington

\_\_\_\_\_  
Frank Kuntz, Mayor

ATTEST:

\_\_\_\_\_  
Tammy L. Stanger, City Clerk

( S E A L )

U.S. BANK NATIONAL  
ASSOCIATION, Seattle, Washington, as  
Refunding Trustee

\_\_\_\_\_  
Carolyn Morrison, Vice President

**ATTACHMENT "I"**

**NOTICE OF DEFEASANCE**

**CITY OF WENATCHEE  
Chelan County, Washington**

**WATER AND SEWER REVENUE BONDS, SERIES 2011**

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Ordinance No. 2011-28, adopted on May 26, 2011, by the City Council of the City of Wenatchee, Washington (the "City"), the City has defeased its outstanding Water and Sewer Revenue Bonds, Series 2011, as set forth below, by depositing certain Government Obligations in an escrow account held by U.S. Bank National Association of Seattle, Washington, as Refunding Trustee.

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>CUSIP Nos.</u>
December 1, 2022	\$ 505,000	5.000%	950511
December 1, 2022	455,000	4.000	950511
December 1, 2023	1,005,000	4.000	950511
***	***	***	***
December 1, 2026	2,715,000	4.375	950511
***	***	***	***
December 1, 2030	4,225,000	4.750	950511

The Bonds will become due and will be redeemed and paid on \_\_\_\_\_, at the redemption price of par, together with interest accrued to such date. Interest on the Bonds shall cease to accrue on and after \_\_\_\_\_, whether or not such Bonds are presented for redemption.

U.S. BANK NATIONAL ASSOCIATION,  
Seattle, Washington, as Refunding Trustee

By:

\_\_\_\_\_  
Trust Officer

Dated: \_\_\_\_\_, 2021.

**ATTACHMENT “II”**

**NOTICE OF REDEMPTION**

**CITY OF WENATCHEE  
Chelan County, Washington**

**WATER AND SEWER REVENUE BONDS, SERIES 2011**

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Ordinance No. 2011-283, adopted on May 26, 2011, by the City Council of the City of Wenatchee, Washington (the “City”), the City has called for redemption on June 1, 2021, the outstanding \$8,905,000 principal amount of its Water and Sewer Revenue and Refunding Bonds, Series 2011, dated \_\_\_\_\_, 2011, that mature on December 1 in the years 2021 through 2030, inclusive, (the “Bonds”), as set forth below:

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>CUSIP Nos.</u>
December 1, 2022	\$ 505,000	5.000%	950511
December 1, 2022	455,000	4.000	950511
December 1, 2023	1,005,000	4.000	950511
***	***	***	***
December 1, 2026	2,715,000	4.375	950511
***	***	***	***
December 1, 2030	4,225,000	4.750	950511

The Bonds will become due and will be redeemed and paid on June 1, 2021, at the redemption price of par, together with interest accrued to such date. Interest on the Bonds shall cease to accrue on and after June 1, 2021, whether or not such Bonds are presented for redemption.

On June 1, 2021, the Bonds designated will become due and payable at the specified redemption price at the following address:

In Person or By Mail: [Washington State Fiscal Agent]  
[address]  
\_\_\_\_\_ [ZIP Code]

U.S. Bank National Association, as Refunding Trustee, shall not be held responsible for the selection or use of the CUSIP numbers, nor is any representation made as to their correctness indicated in this Redemption Notice. They are included solely for convenience of the Registered Owners.

[insert relevant federal and state law tax consequences of redemption payments]



No representation is made as to the correctness of the numbers either as printed on the Bonds or as contained in any notice of redemption and reliance may be placed only on the identification numbers printed on the Bonds.

WASHINGTON STATE FISCAL AGENT

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2021.

**EXHIBIT “D”**

**CITY OF WENATCHEE, WASHINGTON**

**WATER AND SEWER REVENUE AND REFUNDING BONDS, SERIES 2021  
PRINCIPAL AMOUNT OF \$10,000,000**

**FORM OF CONTINUING DISCLOSURE UNDERTAKING**

A. *Limitation of Rights.* The City of Wenatchee, Washington (the “City”), intends that this Continuing Disclosure Undertaking constitute the City’s undertaking to provide the information and notices described by 17 CFR § 240.15c2-12(b)(5) with respect solely to the above-referenced bonds (the “Undertaking”). Notwithstanding any other provision of Ordinance No. 2021-11, adopted by the City Council of the City (the “Council”) on February 25, 2021 (the “Ordinance”) to the contrary, neither the Registered Owner or holder of bonds of any series other than the above-referenced bonds the “Bonds”), nor any trustee acting on their behalf, shall be entitled to any right or to exercise any remedy provided to the Holders under this Undertaking based upon the City’s failure to observe, or refusal to comply with, the covenants contained in this Undertaking.

B. *Definitions for Purposes of this Undertaking.* Solely for the purposes of this Undertaking, the following terms shall have the following meanings unless the context otherwise requires:

“Annual Financial Information” shall mean: (i) annual financial statements prepared (except as noted in the financial statements) in accordance with applicable generally accepted accounting principles applicable to Washington state local governmental units, as such principles may be changed from time to time, which statements shall not be audited, except, however, that if and when audited financial statements are otherwise prepared and available to the City they will be provided; (ii) the outstanding principal amount of the Outstanding Bonds, Bonds and Additional Bonds; (iii) the debt service coverage for Outstanding Bonds, Bonds and Additional Bonds for the prior year; and (iv) the rates for the System;

“Audited Financial Statements” shall mean financial statements prepared and audited pursuant to the laws of the State (presently RCW 43.09.200 through 43.09.285), as such laws may be amended from time to time and with respect to Obligated Persons, financial statements prepared and audited in such manner as is described in the Annual Financial Information regarding the Obligated Person, if such Obligated Person exists in the future. Presently, there are no Obligated Persons (other the City) with respect to the Bonds.

“Debt Obligation” includes: (1) any short-term or long-term debt obligation of the City or Obligated Person under the terms of an indenture, loan agreement, lease or similar contract; (2) a direct purchase of municipal securities by an investor; (3) a direct loan by a bank; and (4) generally, lease arrangements entered into by the City and Obligated Persons that operate as vehicles to borrow money.

“EMMA” shall mean the MSRB’s Electronic Municipal Market Access system, which shall receive all required filings under Rule 15c2-12.

“Financial Obligation” means a: (1) Debt Obligation; (2) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned Debt Obligation; or (3) guarantee of (1) or (2). The term “Financial Obligation” does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12.

“Holder” shall mean any Registered Owner of a Bond and any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares: (i) voting power which includes the power to vote, or to direct the voting of, a Bond; and/or (ii) investment power which includes the power to dispose, or direct the disposition of, a Bond.

“MSRB” shall mean the Municipal Securities Rulemaking Board or any successor in functions thereto.

“Obligated Person” shall have the meaning specified in Rule 15c2-12.

“Official Statement” shall mean the City’s final official statement relating to the Bonds, together with any amendments thereto.

“Required Filings” shall mean any filing made pursuant to subsections C, D, E and F of this Continuing Disclosure Undertaking.

“Rule 15c2-12” shall mean Rule 15c2-12 of the SEC, as amended.

“SEC” shall mean the Securities and Exchange Commission or any successor in functions thereto.

C. *Annual Financial Information.* The City will provide to EMMA within nine months after the end of each fiscal year of the City, commencing on or before September 30, 2022, Annual Financial Information for the City. Presently, the City’s fiscal year commences on January 1. All or any portion of the Annual Financial Information may be incorporated in the Annual Financial Information by cross reference to any other documents which have been filed with: (i) EMMA; (ii) the SEC; or (iii) if the document is a final official statement, with the MSRB.

Annual Financial Information for any fiscal year containing any modified operating data or financial information for such fiscal year shall explain, in narrative form, the reasons for such modification and the effect of such modification on the Annual Financial Information being provided for such fiscal year. If a change in accounting principles is included in any such modification, the initial Annual Financial Information after such modification shall present a comparison between the financial statements or information prepared on the basis of the modified accounting principles and those prepared on the basis of the former accounting principles. The City will provide notice of the modification of operating data or financial information or change in accounting principles to EMMA.

D. *Audited Financial Statements.* To the extent the City's Audited Financial Statements are not submitted as part of the Annual Financial Information under subsection C of this Continuing Disclosure Undertaking, the City will provide to EMMA the Audited Financial Statements of the City (commencing with the audited financial statements for the fiscal year ending December 31, 2021), when and if such Audited Financial Statements are available. Although the City may submit a comprehensive annual financial report (a "CAFR") together with such Audited Financial Statements, there is no requirement to do so hereunder, and the dissemination of a CAFR in any year shall not be construed as a requirement to disseminate a CAFR in any subsequent year.

E. *Event Notices.*

(1) The City will provide to EMMA, within 10 business days of the occurrence, notice of any of the following events with respect to the Bonds:

(a) principal and interest payment delinquencies;

(b) unscheduled draws on debt service reserves reflecting financial difficulties;

(c) unscheduled draws on credit enhancements reflecting financial difficulties;

(d) substitution of credit or liquidity providers, or their failure to perform;

(e) defeasances;

(f) rating changes;

(g) tender offers;

(h) bankruptcy, insolvency, receivership or similar proceeding of an obligated person, if any;

(i) adverse tax opinions, the issuance by the Internal Revenue Service of a proposed or final determination of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other notice of determination with respect to the tax status of the Bonds, or other events affecting the tax status of the Bonds;

(2) The City will provide to EMMA, within 10 business days of the occurrence, notice of any of the following events with respect to the Bonds, if material:

(a) non-payment related defaults;

(b) modifications to rights of Bond holders;

(c) Bond calls (optional, contingent or unscheduled Bond calls other than scheduled mandatory sinking fund redemptions of Term Bonds);

(d) release, substitution, or sale of property securing repayment of the Bonds;

(e) consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; and

(f) the appointment of a successor or additional trustee or the change of name of a trustee.

F. *Notice of Late Filing.* The City will provide to EMMA in a timely manner, notice of a failure of the City to provide the required Annual Financial Information on or before the date specified in subsection C of this Continuing Disclosure Undertaking.

G. *Term of this Undertaking.* The term of this Undertaking shall commence on the date of closing and initial delivery of the Bonds to the Registered Owners, and shall terminate when the Bonds shall have been paid in full or defeased in accordance with this Ordinance. The City shall provide notice of such defeasance to EMMA; provided, such notice shall not be a condition to such defeasance.

H. *Amendments.* Notwithstanding any provision of this Ordinance to the contrary, the City may amend this Undertaking in conformity with Rule 15c2-12, as interpreted from time to time by the courts of competent jurisdiction, the SEC, or the SEC staff. Upon the adoption of any amendment to the Rule, this Undertaking shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City and all Holders under this Undertaking 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 amendment shall be deemed to be part of the terms and conditions of this Undertaking for any and all purposes. If the consent of Holders is necessary for such amendment, only the Holders of the Bonds shall be considered for purposes of determining whether such consent has been rendered.

I. *Additional Information.* Nothing in this Undertaking shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Undertaking or any other means of communication, or including any other information in any Required Filing, in addition to that which is required by this Undertaking. If the City chooses to include any information in any Required Filing in addition to that which is specifically required by this Undertaking, the City shall have no obligation under this Undertaking to update such information or include it in any future Required Filing.

J. *Defaults of this Undertaking.* If the City shall fail to comply with any provision of this Undertaking, then any Holder may enforce, for the equal benefit and protection of all

Holders similarly situated, by mandamus or other suit or proceeding at law or in equity, such provision against the City and any of the officers, agents and employees of the City, and may compel the City or any such officers, agents or employees to perform and carry out their duties under this Undertaking; provided, that the sole and exclusive remedy for breach of this Undertaking shall be an action to compel specific performance of the obligations of the City hereunder and no person or entity shall be entitled to recover monetary damages hereunder under any circumstances.

K. *Rescission Rights.* The City hereby reserves the right to rescind this Undertaking without the consent of the Holders in the event Rule 15c2-12 is repealed by the SEC or is ruled to be invalid by a federal court and the time to appeal from such decision has expired. In the event of a partial repeal or invalidation of Rule 15c2-12, the City hereby reserves the right to rescind those provisions of this Undertaking that were required by those parts of Rule 15c2-12 that are so repealed or invalidated.

L. *EMMA.* Any filing under this Continuing Disclosure Undertaking may be made solely by transmitting such filing to EMMA as provided at <http://emma.msrb.org>.

Dated as of \_\_\_\_\_, 2021.

CITY OF WENATCHEE  
Chelan County, Washington

\_\_\_\_\_  
\_\_\_\_\_



## CITY COUNCIL AGENDA REPORT

**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Cliff Burdick, Building/Fire Code Official

**MEETING DATE:** February 25, 2021

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**I. SUBJECT**

Code Enforcement Board Appointment-James Snyder

**II. ACTION REQUESTED**

Staff recommends the City Council pass Resolution No. 2021-08, designating the appointment of James Snyder to the Code Enforcement Board for a two-year term ending December 31, 2022.

**III. OVERVIEW**

The City of Wenatchee Code Enforcement Board consists of 5 members appointed by a majority of the Wenatchee City Council. Board members serve a two-year term. Currently the Board has two vacant positions. Board Chair, Emilka Furmanczyk has reviewed Mr. Snyder's application and is recommending that City Council appoint James Snyder to Code Enforcement Board.

**IV. FISCAL IMPACT**

None, the Code Enforcement Board is made up of volunteer members.

**VI. REFERENCE(S)**

1. Resolution 2021-08
2. James Snyder-Board Application

**VII. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Laura Merrill, Executive Services Director

## RESOLUTION NO. 2021-08

**A RESOLUTION,** appointing a member to the Wenatchee Code Enforcement Board for a two (2) year term.

**WHEREAS,** James Snyder has expressed an interest to serve as a member of the Wenatchee Code Enforcement Board for a two-year term.

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF WENATCHEE** makes the following appointment to the Wenatchee Code Enforcement Board for the term noted:

**NAME & ADDRESS**

James Snyder  
34 Jennings St.  
Wenatchee, WA 98801

**TERM EXPIRES**

December 31, 2022

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE** at a regular meeting thereof this 25th day of February, 2021.

CITY OF WENATCHEE, a Municipal  
Corporation

By \_\_\_\_\_  
FRANK J. KUNTZ, Mayor

ATTEST:

By \_\_\_\_\_  
TAMMY L. STANGER  
City Clerk



APPROVED:

By \_\_\_\_\_  
STEVE D. SMITH  
City Attorney



City of Wenatchee  
Volunteer Commission and Board Application

CITY OF WENATCHEE  
FEB 05 2021

**COMMISSION/BOARD INFORMATION**

Board (s) I would like to be considered for: (If more than one, please rank them in order of preference)

- |  |   |
|--|---|
| <input type="checkbox"/> Arts, Recreation & Parks Commission | <input type="checkbox"/> Greater Wenatchee Regional Events Center PFD Board |
| <input type="checkbox"/> Cemetery Advisory Board             | <input type="checkbox"/> Historic Preservation Board                        |
| <input type="checkbox"/> Civil Service Board                 | <input type="checkbox"/> Lodging Tax Advisory Committee                     |
| <input checked="" type="checkbox"/> Code Enforcement Board   | <input type="checkbox"/> Planning Commission                                |
| <input type="checkbox"/> Diversity Advisory Committee        | <input type="checkbox"/> Tourism Promotion Area Board                       |

**APPLICANT INFORMATION**

City of Wenatchee Resident  Yes  No

*Residency Requirement: Applicants must reside within the City Limits of Wenatchee except the Arts Commission, Diversity Advisory Committee, Historic Preservation Board, and the Parks & Recreation Advisory Board*

Last Name: Snyder First Name: James Initial: A

Physical Address: 34 Jennings St. City: Wenatchee Zip: 98801

Mailing Address: 34 Jennings St. City: Wenatchee Zip: 98801

Day Phone: 509 860-4985 Evening Phone: same

E-mail: Jasnyder34@gmail.com Years lived in Wenatchee Valley: 45

Occupation: Fruit tree nursery sales Years of Experience: 28

Work Address: 34 Jennings St. City: Wenatchee Zip: 98801

Education and Formal Training: BS Industrial/Organizational Psych Have sat on other boards (Art on Ave's)

Have you ever been convicted of a felony or released from prison?  Yes  No  
(A conviction record will not necessarily bar you from serving. Factors such as the nature and gravity of the crime, the length of time that has passed since the conviction and/or completion of any sentence, and the nature of the position for which you have applied will be considered.)

**Volunteer/Community Experience:**

Organization and Duties: Wen. Downtown Assoc. Design Committe Length of Service: 1

Organization and Duties: Initiated updated sign ordinance in Wenatchee Length of Service: 2

Organization and Duties: Beauty of Bronze Program In Wenatchee Help kids learn about art Length of Service: 2

Organization and Duties: Make a Difference day Paint over graffiti on ferry street Length of Service: 4

Organization and Duties: pick up garbage in parks for years Length of Service: ?

Skills/Special Interests: Creating a more appealing environment for our community and visitors

Work very well with business people and public Awarness of existing sign ordinance Ferry street corridor clean up

Experience related to the Commission/Board: I brought the concept of Art on the Avenues to the head of the Arts Commission to Adele Wolford, who took the idea and ran with it. I also initiated the new sign ordinance of 1/21. Beginning in the late nineties, along with another community member Rod Shult, I worked to limit business sign height and worked to stop new billboards from being erected in the city.  
I have on three occasions painted over walls of graffiti on the south end of the city.

Why are you seeking this appointment? I would like to help with the process of determining best practices in managing a contested fraction. I have always enjoyed doing projects for the city. I will continue to do so. I enjoy ways to give back to Wenatchee and our citizens, with the intent of making our city environment better for all.

Would any conflict of interest be created as a result of your appointment?  Yes  No

If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_

**REFERENCES**

Name: Linda Haglund  
Address: 103 Palouse St. #35 City: Wenatchee Zip: 98801  
Phone: 509 662 0059 Email: wendowntown.org  
Occupation: \_\_\_\_\_ Years known: 3

Name: Frank Kuntz  
Address: \_\_\_\_\_ City: Wenatchee Zip: 98801  
Phone: 509 888 3600 Email: \_\_\_\_\_  
Occupation: Mayor Years known: 10

Name: Adele Wolford  
Address: \_\_\_\_\_ City: Wenatchee Zip: 98801  
Phone: 509 663 9011 Email: artontheavenues.org  
Occupation: Home Interior design Years known: 15

**AFFIDAVIT OF APPLICANT**

I, James Snyder, do hereby certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief. I also understand that this completed application may be made available for public inspection.

James Snyder  
(Signature)  
Date: 2/4/21



## City of Wenatchee Volunteer Board, Commission and Committee Responsibilities

To be selected and serve as a City of Wenatchee volunteer Board, Commission or Committee Member is a high honor and provides an unusual opportunity for genuine public service. Although the specific duties of each of the City's Boards vary widely with the purpose for which they are formed, there are certain responsibilities that are common to all members. As a volunteer Board, Commission or Committee representative of the City of Wenatchee, I agree to:

1. Understand my role and scope of responsibility. I will be informed of the individual group's scope of responsibility and operating procedures.
2. Represent the majority views of the group. Individual "opinions" to the public and press are discouraged, and, if given, must be identified as such.
3. Practice open and accountable government. I will be as open as possible about my decisions and actions, and also protect confidential information.
4. Represent the public interest and not special interest groups.
5. Not make decisions in order to gain financial or other benefits for myself, my family, or friends.
6. Serve as a liaison between the City and its citizens and can help reconcile contradictory viewpoints and to build a consensus around common goals and objectives. I will serve as a communication link between community, staff, and City, representing City programs and recommending and providing a channel for citizen expression.
7. Understand my role as a supportive relationship with the City Council and City staff and to follow the proper channel of communication through the designated staff person providing support for the group.
8. Do my homework and be thorough in recommendations. I will review agenda items under consideration prior to the meeting in order to be fully prepared to discuss, evaluate, and act on all matters scheduled for consideration. My conclusions will be based on careful preparation to strengthen the value of the group's recommendation.
9. Adhere to the highest standards of integrity and honesty in all endeavors and strive to safeguard the public trust. I shall announce any direct or remote conflict of interests prior to the discussion (RCW 42.36).
10. Understand that my authority is limited to decisions made by the group, and that in most cases, the decisions are advisory.
11. Understand that in my role I recommend policy while administrators and staff carry out approved policy.
12. Establish a good working relationship with fellow group members. I will respect individual viewpoints and allow other members time to present their views fully before making comments. I will be open and honest and welcome new members.
13. Not use or involve my membership in the conduct of political activities. However, I am not restricted from participating in political activities outside of my involvement in the group.

I hereby pledge to be positive in my role as a volunteer with the City and accept responsibility for my participation.

Signed: James Snyder

Date: 2/4/21



## CITY COUNCIL AGENDA REPORT

**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Oliver Crain, Housing Programs Coordinator  
Glen DeVries, Community Development Director

**MEETING DATE:** February 25, 2021

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### I. SUBJECT

An amendment of the City budget for two funding changes to the Chelan-Douglas Homeless Program:

- A new grant award by the Washington State Department of Commerce to the City of Wenatchee for the administration of the Treasury Rent Assistance Program (T-RAP).
- A funding increase amendment to the existing Eviction Rent Assistance Program (ERAP) grant between the Washington State Department of Commerce and the City of Wenatchee.

### II. ACTION REQUESTED

Staff recommends the City Council accept the Chelan-Douglas Homeless Housing Task Force's recommendations and authorize the Mayor to:

- Enter into a new grant agreement between the Department of Commerce and the City of Wenatchee for the Treasury Rent Assistance Program Grant (T-RAP).
- Enter into a new Treasury Rent Assistance Program (T-RAP) sub grantee agreement with Chelan-Douglas Community Action Council.
- Enter into an amended agreement to increase the funding for the existing Eviction Rent Assistance Program (ERAP) contract between the Department of Commerce and the City of Wenatchee.
- Enter into an amended agreement for the existing Eviction Rent Assistance Program (ERAP) sub grant contract with the Chelan-Douglas Community Action Council.

### III. OVERVIEW

The City of Wenatchee is responsible for administering the Ten-Year Plan to Reduce Homelessness in Chelan and Douglas Counties, pursuant to an interlocal agreement with Chelan County, Douglas County, and the City of East Wenatchee. This includes the distribution of local homeless funds collected by county auditors from recording surcharge fees and funds distributed by the Washington State Department of Commerce through the Consolidated Homeless Grant and the Emergency Solutions Grant, as well as other new emerging funding sources.

The homeless planning and fund distribution processes are guided by the Chelan-Douglas Homeless Housing Task Force (HTF). The HTF is comprised of community representatives and local elected officials from all jurisdictions in Chelan and Douglas Counties.

**Item 1: Treasury Rent Assistance Program (T-RAP)**

The Department of Commerce has allocated new funding through the T-RAP grant for the administration, operation and distribution of rent assistance to landlords and tenants impacted by the COVID-19 pandemic in Chelan and Douglas counties.

Commerce has not released an award chart at this time. City staff have prepared estimates based on previous awards. These estimates will be revised at a future date with the actual award amounts.

The HTF recommends that this funding be awarded through a sub grant to the Chelan-Douglas Community Action Council as outlined below:

<b>Table 1: T-RAP Grant Award (3/1/21 - 12/31/21)</b>		
<b>Grant Program</b>	<b>Estimated Total Funding</b>	<b>Description</b>
T-RAP Award	\$1-4.5 million	Funds used to provide rent assistance and cover rental arrears for eligible tenants and landlords
<b>Subtotal</b>	<b>\$1-4.5 million</b>	
City Administration	(\$20,000 - \$90,000)	2% of grant award for grant administration activities
<b>Total Available Subgrant Funding</b>	<b>\$980,000 – 4.41 million</b>	

<b>Table 2: Recommended T-RAP Grant Sub Award</b>	
<b>Agency/Service Type</b>	<b>Estimated Allocation</b>
Community Action Council: Treasury Rent Assistance Program	\$980,000 – 4.41 million
<b>Total</b>	<b>\$980,000 – 4.41 million</b>

**Item 2: ERAP Amendment:**

The Department of Commerce is allocating additional funding through the existing Eviction Rent Assistance Program (ERAP) grant. The HTF recommended allocations as listed in Tables 2 and 3 below.

<b>Table 3: ERAP Grant Award (2/22/21 – 6/30/2021)</b>		
<b>Grant Program</b>	<b>Estimated Additional Funding Award</b>	<b>Description</b>
ERAP 2.0 Grant Award	\$678,442	Funds used to provide rent assistance and cover rental arrears for eligible tenants and landlords.
City Administration	(\$13,568)	2% of grant award for grant administration activities
<b>Total Available Subgrant Funding</b>	<b>\$664,874</b>	

<b>Table 4: Recommended ERAP Grant Sub Award</b>	
<b>Agency/Service Type</b>	<b>Estimated Allocation</b>
Community Action Council: Eviction Rent Assistance Program 2.0	\$664,874
<b>Total</b>	<b>\$664,874</b>

**IV. FISCAL IMPACT Submitted to the Finance Committee Yes - X No**

The sources of funds being made available include state and federal funding specifically restricted to homeless and low-income housing eligible activities. Additional funds have been set-aside for City homeless program management activities including administration.

Fiscal impacts to the City include administration and program management costs associated with administering these programs. A certain percentage of grant funds may be spent on City administration and program management expenses. An estimate of these expenses has been submitted for inclusion in the 2020 budget for fund 117 and the Community Development Department. These expenses are reimbursable activities. Chelan Douglas Homeless Program cost impacts to the City's budget are evaluated for indirect costs and then directly for general fund impacts. Minor budget amendments are expected throughout the respective grant terms.

**VI. REFERENCE(S)**

None

**VII. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
 Laura Merrill, Executive Services Director  
 Brad Posenjak, Finance Director



## CITY COUNCIL AGENDA REPORT

**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Brad Posenjak, Finance Director  
Finance Department

**MEETING DATE:** February 25, 2021

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I. **SUBJECT**

Revisions to water and sewer utility credit policies.

II. **ACTION REQUESTED**

Staff recommends the City Council adopt Ordinance No 2021-12, relating to water and sewer utility billing credit; amending WCC 4.08.060(5) and WCC 9.12.540(4); and adding WCC 9.12.540(5).

III. **OVERVIEW**

Recent customer concerns were brought to the attention of several City Council members. Council requested staff review and propose updated utility credit policies to assist customers who face unexpected financial hardship due to extraordinary utility consumption.

**Water Credits.** Prior policy provided water credits for leaks in the water supply line to residential customers only, and limited the amount of credit to 50% of their excess consumption. Ordinance 2021-12 provides water credits for leaks in the water supply line to both residential and commercial customers, and the amount of credit is increased to 80% of their excess consumption. The amount of credit is being increased to 80% because the City's wholesale water rate is roughly 20% of the regular rate.

**Sewer Credit.** Prior policy provided sewer credits for excessive water consumption or flowmeter issues, but limited the credit to 50% of their excess consumption. It also required that the customer be able to prove the excess consumption did not go down the sewer system. The proposed policy in Ordinance 2021-12 provides sewer credits up to 50% for any excessive water consumption, and up to 100% for any excessive water consumption that was proven to not go through the sewer system.

These two code changes should remedy most customer complaints regarding the City's utility credit policies. Even so, the City is aware that occasional utility billing issues will arise that are not covered by these policies. Ordinance 2021-12 also includes a provision to address other utility consumption credit issues that will certainly be valid exceptions to the rule. When these exceptions arise, the Finance Committee will be charged with reviewing and making a determination as to the necessity of the consumption credit.



**IV. FISCAL IMPACT**

The impact of increasing the limits and occasions for utility credits is foregone revenue, expected to be in the range of \$10,000 to \$50,000 per year. These revenues are not anticipated in the rate studies, and therefore, should not impact the long-term sustainability of each utility.

**V. REFERENCE(S)**

1. Ordinance 2021-12
2. Sewer and Water Credit – Tracked Changes

**VI. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Laura Merrill, Executive Services Director  
Rob Jammerman, Public Works Director  
Jessica Shaw, Deputy Public Works Director-Utilities  
Denise Pearce, Accounting Supervisor

## **ORDINANCE NO. 2021-12**

**AN ORDINANCE**, of the City Council of the City of Wenatchee relating to water and sewer utility billing credits; amending WCC 4.08.060(5) and WCC 9.12.540(4); and adding WCC 9.12.540(5).

**WHEREAS**, water leaks or unexpected consumption of water or sewer can be a financial hardship upon utility customers and should be mitigated to the extent the City is able, without negatively impacting the City's operations and finance;

**WHEREAS**, unanticipated billing revenue from leaks and unexpected utility consumption is not an element of the City's planned rate structure;

**WHEREAS**, the City Council requested staff develop City utility credit policies to help relieve financial burdens on sewer and water utility customers where current policy does not allow;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE DO ORDAIN** as follows:

### **SECTION I**

Subsection 4.08.060(5) WCC, shall be and hereby is, amended and restated to read in its entirety as follows:

- (5) Credits for Commercial/Industrial Customers. When a customer classified as commercial/industrial under WCC 4.08.040(2) requests a sewer credit due to unintentional water usage, the customer must complete a credit request form and provide evidence to the city finance department that there has been extraordinary unintentional water usage and that the problem has been remedied. Commercial/industrial customers requesting a credit due to a wastewater flow metering issue must also complete a credit request form and provide evidence of the problem and that the problem has been repaired. The director will make a factual determination of the unintentional water usage or wastewater flow metering problem and its repair and make a recommendation to the finance department as to whether a credit shall be given. When a commercial/industrial customer demonstrates to the satisfaction of the director that the unintentional water usage or wastewater flow metering problem occurred and was repaired within 30 days or in a reasonable timeline approved by the director, the city may allow a sewer credit of up

to one-half of the excess sewer consumption. If the customer can show that the unintentional water usage did not reach the sewer system or that the wastewater flow metering problem did not impact the sewer system, the city may allow a sewer credit of up to 100% of the excess sewer consumption. For purposes of this section, excess sewer consumption is calculated as all consumption above the customer's average sewer consumption for the same period or the average of the customer's available history when less than 12 months of consumption history is available. Adjustments to a specific account at the request of the customer may not be made more than once in a two-year period unless approved by the director and credits shall not be given for consumption that is less than 50 percent over the average consumption for the same period.

## **SECTION II**

Subsection 9.12.540(4) WCC, shall be and hereby is, amended and restated to read in its entirety as follows:

- (4) Credit for Water Leaks. When a water customer requests credit due to a water leak, the customer must complete a credit request form and provide evidence to the city finance department that there has been a leak in the customer's water supply line and the leak has been repaired. The city water division will make a factual determination of the leak and its repair, and make a recommendation to the finance department as to whether a credit shall be given. When a customer demonstrates to the satisfaction of the city water division that the water leak occurred and action was taken within 30 days of the leak notice, the city may allow a credit of up to eighty percent of the water consumption above the customer's average water consumption for the same period or the average of the customer's available history when less than 12 months of relative consumption history is available. Credits will not be given for water consumption that is less than 50 percent over the average water consumption for the same period of time. Adjustments to a specific account at the request of the customer may not be made more than once in a two-year period unless approved by the director.

## **SECTION III**

A new subsection 9.12.540(5) WCC, shall be added to read in its entirety as follows:

- (5) Credits – Unique Circumstances. The City recognizes that extraordinary utility consumption may occur in unique circumstances that have not been anticipated in WCC 9.12.540(4) or WCC 4.08.060(5). When these unique circumstances cause excessive financial hardship on customers, the Finance Director may request that the Finance Committee review the issue and impartially determine if the customer should receive a credit.

**SECTION IV**

The provisions of this Ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, section or portion of this Ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this Ordinance, or the validity of its application to other persons or circumstances.

**SECTION V**

This Ordinance shall take effect thirty (30) days from and after its passage, and publication as provided by law.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE**, at a regular meeting thereof, this 25th day of February, 2021.

CITY OF WENATCHEE, a Municipal  
Corporation

By: \_\_\_\_\_  
FRANK KUNTZ, Mayor

ATTEST:

By: \_\_\_\_\_  
TAMMY L. STANGER, City Clerk

APPROVED

By: \_\_\_\_\_  
STEVE D. SMITH, City Attorney

## Sewer Credit Changes- Commercial Only

### 4.08.060 Special provisions.

(5) Credits for Commercial/Industrial Customers. When a customer classified as commercial/industrial under WCC 4.08.040(2) requests a sewer credit due to unintentional water usage ~~a water leak~~, the customer must complete a credit request form and provide evidence to the city finance department that there has been extraordinary unintentional water usage ~~a water leak in the customer's water line that did not reach the sewer system~~ and that the problem ~~leak~~ has been remedied ~~repaired~~. Commercial/industrial customers requesting a credit due to a wastewater flow metering issue must also complete a credit request form and provide evidence of the problem and that the problem has been repaired. The director will make a factual determination of the unintentional water usage ~~leak~~ or wastewater flow metering problem and its repair and make a recommendation to the finance department as to whether a credit shall be given. When a commercial/industrial customer demonstrates to the satisfaction of the director that the unintentional water usage ~~water leak~~ or wastewater flow metering problem occurred and was repaired within 30 days or in a reasonable ~~accordance with an alternate~~ timeline approved by the director, the city may allow a sewer credit of up to one-half of the excess sewer consumption. If the customer can show that the unintentional water usage did not reach the sewer system or that the wastewater flow metering problem did not impact the sewer system, the city may allow a sewer credit of up to 100% of the excess sewer consumption. For purposes of this section, excess sewer consumption is calculated as all consumption above the customer's average sewer consumption for the same period or the average of the customer's available history when less than 12 months of consumption history is ~~not~~ available. Adjustments to a specific account at the request of the customer may not be made more than once in a two-year period unless approved by the director and credits shall not be given for consumption that is less than 50 percent over the average consumption for the same period.

## Water Credit Changes– Commercial and Residential

### 9.12.540 Meter rates – Exceptions.

(4) Credit for Water Leaks ~~—Residential Customers~~. When a ~~residential~~ water customer requests credit due to a water leak, the customer must complete a credit request form and provide evidence to the city finance department that there has been a leak in the customer's water supply line and the leak has been repaired. The city water division will make a factual determination of the leak and its repair, and make a recommendation to the finance department as to whether a credit shall be given. When a ~~residential~~ customer demonstrates to the satisfaction of the city water division that the water leak occurred and action was taken ~~was repaired~~ within 30 days of the leak notice, the city may allow a credit of up to eighty percent ~~one-half~~ of the water consumption above the customer's average water consumption for the same period or the average of the customer's available history when less than 12 months of relative consumption history is available ~~if resided at the address less than 12 months~~. Credits will not be given for water consumption that is less than 50 percent over the average water consumption for the same period of time. Adjustments to a specific account at the request of the customer may not be made more than once in a two-year period unless approved by the director.

(5) Credits – Unique Circumstances. The City recognizes that extraordinary utility consumption may occur in unique circumstances that have not been anticipated in WCC 9.12.540(4) or WCC 4.08.060(5). When these unique circumstances cause excessive financial hardship on customers, the Finance Director may request that the Finance Committee review the issue and impartially determine if the customer should receive a credit.

## CITY COUNCIL AGENDA REPORT

**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Brooklyn Holton, Neighborhood and Community Services Coordinator  
Community Development

**MEETING DATE:** February 25, 2021

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### I. **SUBJECT**

Rhinehart Ten Percent (10%) Annexation Petition for review, adjustment, approval or denial.

### II. **ACTION REQUESTED**

1. The ten percent (10%) annexation public meeting is required for the City Council to determine three items:
  - a. **Whether the City will accept, reject, or geographically modify the proposed annexation boundary;**
  - b. **Whether it will require the simultaneous adoption of a proposed zoning regulation; and**
  - c. **Whether it will require the assumption of all or any portion of existing city indebtedness by the area to be annexed.**

If the legislative body requires the adoption of a proposed zoning regulation and/or the assumption of all or any portion of indebtedness as condition to annexation, it is to record this action in its minutes.

Council acceptance is a condition precedent to circulation of the petition. There is no appeal from the council decision.

### III. **OVERVIEW**

A ten percent (10%) annexation petition was submitted on October 8, 2021 with the signature representing the owner of Parcel Number 222009705814. The proposed area, located at 1495 Skyline Drive, is bordered to the east by parcels in the city and to the west by the urban growth area boundary and unincorporated parcels. The signatures on the petition represent 47.3% of the assessed value, meeting the 10% requirement at this phase.

City staff reached out to surrounding property owners to identify interest in being included in the annexation. At time of this report, staff are continuing their due diligence towards finalize all interested parties and the assessed value each signature contributes towards a sixty percent (60%) petition. Staff will bring a recommendation to the council for approval of one of the following options:

- Option 1: As demonstrated in Reference #1, includes 2 properties, that of the applicant (Rhinehart) and the adjacent property owner to the south (DeCamp).

- Option 2: As demonstrated in Reference #2, includes 8 properties, that of the applicant (Rhinehart) along with three properties to the north (Rosvold x 2 and McIntosh), and four properties to the south (DeCamp, Myrmoe, Pope, City) including one owned by the City of Wenatchee.

Following a ten percent (10%) annexation meeting, a petition will be circulated for the approved option. If applicants return a sufficient petition and it is certified by the Chelan County Assessor, a date will be scheduled by resolution for the sixty percent (60%) public hearing.

**IV. FISCAL IMPACT**

There are no estimated budget impacts as a direct result of the annexation and its process.

**V. PROPOSED PROJECT SCHEDULE**

February 25 (today) – approve the recommended annexation boundary

March 25 – bring to council a Resolution for 60% petition

April 8 – bring to council ordinance for adoption

April 14 – Inform interested parties of new city boundaries

**VI. REFERENCE(S)**

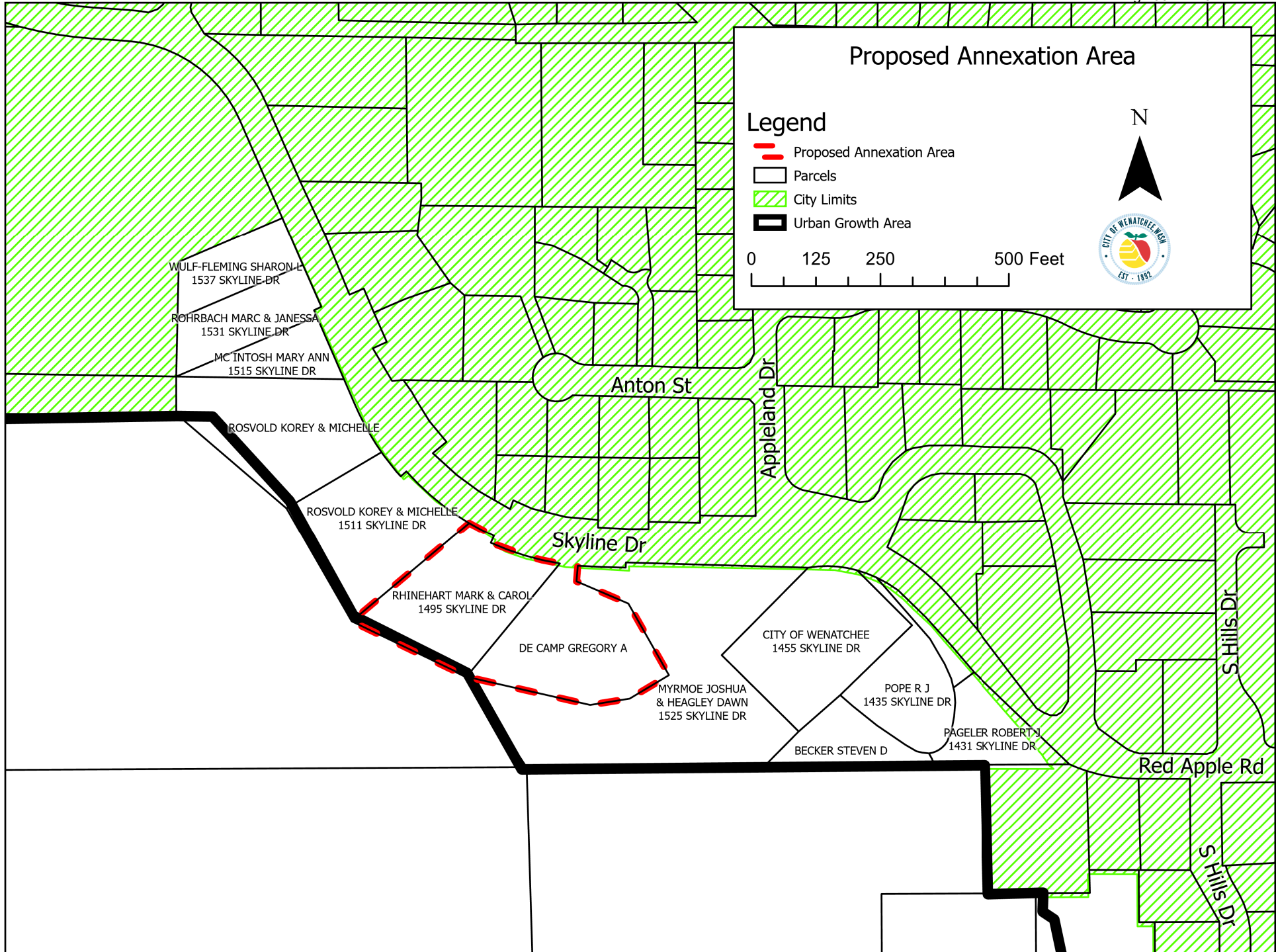
1. Map of Annexation Area Option 1
2. Map of Annexation Area Option 2
3. Application Materials

**VII. ADMINISTRATIVE ROUTING**

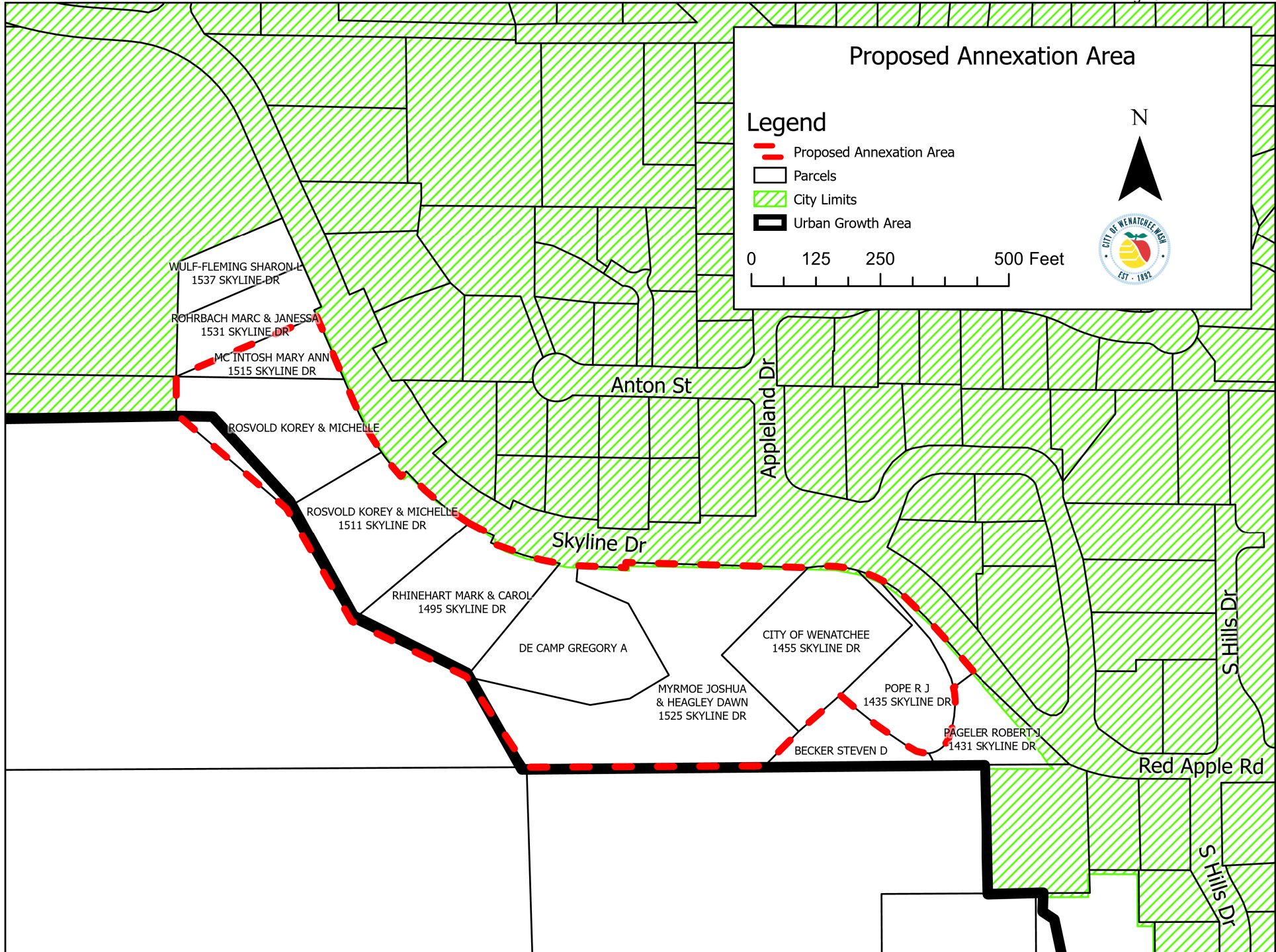
Tammy Stanger, City Clerk

Laura Merrill, Executive Services Director

Brad Posenjak, Finance Director







### Proposed Annexation Area

#### Legend

- Proposed Annexation Area
- Parcels
- City Limits
- Urban Growth Area

N



0 125 250 500 Feet

WULF-FLEMING SHARON-L  
1537 SKYLINE DR

ROHRBACH MARC & JANESEA  
1531 SKYLINE DR

MC INTOSH MARY ANN  
1515 SKYLINE DR

ROSVOLD KOREY & MICHELLE

ROSVOLD KOREY & MICHELLE  
1511 SKYLINE DR

RHINEHART MARK & CAROL  
1495 SKYLINE DR

DE CAMP GREGORY A

MYRMOE JOSHUA  
& HEAGLEY DAWN  
1525 SKYLINE DR

CITY OF WENATCHEE  
1455 SKYLINE DR

POPE R J  
1435 SKYLINE DR

PAGELER ROBERT J  
1431 SKYLINE DR

BECKER STEVEN D

Anton St

Appleland Dr

Skyline Dr

Red Apple Rd

S Hills Dr

S Hills Dr



**CITY OF WENATCHEE**  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
 PLANNING DIVISION  
 1350 MCKITTRICK STREET  
 PO BOX 519, WENATCHEE, WA 98807-0519  
 Phone: (509) 888-3261 Fax: (509) 888-3201

**PETITION TO ANNEX REVIEW APPLICATION -- \$250 FEE**

PAID: \$ <u>250.00</u>	PAYMENT #: <u>10845</u>	RECEIPT #: <u>PL20-00028</u>
CITY OF WENATCHEE		
DATE STAMP: <u>OCT 08 2020</u>	FILE #: ANNEX - <u>20</u> - <u>01</u>	<u>Year</u> <u>Numeric d Or der</u>

Applicant Name (First/Last): Mark & Carol Rhinehart Date: 10/1/2020  
 Applicant Phone: (509) 740-7050 Applicant Email: rcc5653@gmail.com  
 Applicant Address: P.O. Box 819 Winthrop, WA 98862

**PROPOSED ANNEXATION AREA:**

Address: 1495 Skyline Dr. Wenatchee, WA 98801  
 Parcel Number(s): 22 20 09 705 814  
 Additional Identifying Information: Lot 2, Streib SP# 1418, Chelan Co.

**TEN PERCENT CERTIFICATION**

The undersigned, constituting not less than 10% in value according to the assessed valuation for general taxation of property described in the attached exhibit, incorporated herein by reference, hereby notify the Wenatchee City Council of the undersigned's intention to commence annexation proceedings. The undersigned requests that the City Council of the City of Wenatchee set a date for a meeting with the undersigned party(ies) to determine whether the City of Wenatchee will accept the proposed annexation and whether it will require the assumption of existing indebtedness by the area to be annexed and/or the adoption of a proposed zoning regulation.

**WARNING:** Every person who signs this petition with any other than their true name, or who knowingly signs more than one of these petitions, or signs a petition when they are otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

	<u>Name</u>	<u>Address</u>	<u>Signature</u>	<u>Date</u>
1.	<u>Mark &amp; Carol Rhinehart</u>	<u>1495 Skyline Dr.</u>	<u>Carol Rhinehart</u>	<u>10/1/2020</u>
2.	<u>City of Wenatchee</u>	<u>1455 Skyline Drive</u>	<u>[Signature]</u>	<u>2/22/2021</u>
3.				
4.				



**City of Wenatchee**  
1350 McKittrick, Suite A  
Wenatchee, WA 98801

**Receipt Number: PL20-00028**

**Payer/Payee:** RHINEHART MARK & CAROL  
PO BOX 819  
WINTHROP WA 98862

**Cashier:** MARIA REYES  
**Payment Type:** CHECK (10845)

**Date:** 10/08/2020

**ANNEX-20-01    ANNEXATION 60% DIRECT PETITION    1495 SKYLINE DR**

**Fee Description**

Petition for Annexation

	<u>Fee Amount</u>	<u>Amount Paid</u>	<u>Fee Balance</u>
	\$250.00	\$250.00	\$0.00
<b>ANNEX-20-01 TOTALS:</b>	<b>\$250.00</b>	<b>\$250.00</b>	<b>\$0.00</b>
<b>TOTAL PAID:</b>		<b>\$250.00</b>	



## CITY COUNCIL AGENDA REPORT

**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Laura Merrill, Executive Services Director  
Mayor's Office

**MEETING DATE:** February 25, 2021

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**I. SUBJECT**

Public Hearing for Ordinance No. 2021-07 granting a franchise to Computer 5, Inc dba LocalTel Communications

**II. ACTION REQUESTED**

No action requested. Staff recommends the City Council conduct a Public Hearing for Ordinance No. 2021-07 granting a franchise to LocalTel Communications for the purposes of authorizing the use of the City right-of-way for a cable service.

**III. OVERVIEW**

The City of Wenatchee has a franchise agreement for cable service with Computer 5, Inc dba as Localtel (LocalTel) which began in 2005 and expired in 2020. Staff began discussions with LocalTel staff in the fall of 2020 for the subsequent renewal. The changes to the proposed franchise agreement mainly serve to align this franchise agreement with other recently approved cable service franchises relating to the Public, Educational, and Governmental (PEG) Access programming and application fees, and provide for a new ten-year term. Staff recommends holding a public hearing and taking any comment. This item must be heard and then subsequently approved at a City Council meeting no earlier than five days after the initial introduction. The item will be brought forth for final adoption on March 11, 2021.

**IV. FISCAL IMPACT**

Cable Service Franchise Agreements allow the City to collect a cable service franchise fee; Localtel remits approximately \$115,000 annually.

**VI. REFERENCE(S)**

1. Ordinance 2021-07

**VII. ADMINISTRATIVE ROUTING**

Rob Jammerman, Public Works Director  
Tammy Stanger, City Clerk  
Brad Posenjak, Finance Director

**ORDINANCE NO. 2021-07**

AN ORDINANCE GRANTING A NON-EXCLUSIVE CABLE FRANCHISE TO PROVIDE CABLE SERVICE IN THE CITY OF WENATCHEE, WASHINGTON, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE.

**WHEREAS**, Computer 5, Inc., dba LocalTel Communications, (Grantee) has requested a Cable Franchise from the City of Wenatchee (“City”) to authorize the use of the City Rights-of-Way for the Grantee to provide Cable Service; and

**WHEREAS**, the Grantee intends to utilize transmission capacity acquired through a permit or license agreement on the Chelan County Public Utility District’s (“District”) Broadband System to provide Cable Service to the City; and

**WHEREAS**, the City entered into a Communications Infrastructure Right-of-Way Use Agreement with the District dated January 27, 2005 that requires, inter alia, that any retail internet service provider providing cable services over the District’s Broadband System to obtain a cable franchise from the City; and

**WHEREAS**, Washington law, as well as the federal Cable Act of 1984, as amended, authorize the City to grant a Cable Franchise for the use and occupancy of Rights-of-Way for the provision of Cable Service; and

**WHEREAS**, the City is authorized to and has established standards in Chapter 5.04, Wenatchee City Code, Ordinance No. 3125 (hereinafter referred to as the “Cable Code”) to grant and renew one or more nonexclusive revocable Cable Franchises in the City; and

**WHEREAS**, the City seeks to promote the development of Cable Services on a competitive basis within the City, while at the same time ensuring high quality customer service; and

**WHEREAS**, the City, after due evaluation of the Grantee's application for a Franchise, has determined that the Grantee meets the City's requirements for a cable franchise.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE, WASHINGTON, DO ORDAIN** as follows:

**SECTION 1. DEFINITIONS**

For the purpose of this Franchise, unless otherwise provided herein, the terms, phrases, words, abbreviations and their derivations shall have the meaning given in Chapter 5.04 of the Wenatchee City Code ("Cable Code"). Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

"Basic Cable Service" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Cable Code or this Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

"Broadband System" means the District's high-speed, high capacity, fiber optic system that is being utilized by the Grantee to provide Cable Service in the City.

"Communications Infrastructure Right-Of-Way Use Agreement" or "District Use Agreement" means the agreement, as it now exists or as it hereafter may be amended, between

the City and the District under which the District is authorized to install, maintain and operate its Broadband System in the City's rights-of-way on a wholesale basis.

“Direct Incremental Costs” means the costs actually incurred by the Grantee in meeting an obligation under its Franchise, including payment to the District, which it would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

“District” means Public Utility District No. 1 of Chelan County, Washington.

“Franchise Area” means the entire geographic area within the City of Wenatchee as it is now constituted or may in the future be constituted.

“Grantee” means Computer 5, Inc., dba LocalTel Communications, or the lawful successor(s), transferee(s), or assignee(s) thereof.

“Gross Revenues” shall have the meaning as given in Chapter 5.04 of the City Cable Code.

“Rights-of-Way” means the surface of and the space above and below any street, road, highway, path, sidewalk, alley, court, or easement, now or hereafter dedicated for utility or other similar public use compatible with cable system operations.

## **SECTION 2. GRANT OF FRANCHISE**

### 2.1 Grant.

- A. Grantee is hereby granted a Cable Service Franchise, subject to the terms and conditions of this Cable Service Agreement and Franchise Ordinance (hereinafter referred to as the “Franchise”).
- B. This grant provides Grantee the individual authority, right and privilege, to provide Cable Services within the City of Wenatchee, Washington, as it is now or may in the future be constituted.

2.2 Right of City to Grant Franchise.

Grantee acknowledges and accepts the right of City to grant this Franchise by passage of an ordinance.

2.3 Term.

The initial Franchise granted by this Ordinance shall commence upon its acceptance pursuant to Section 8.5, and shall expire ten (10) years thereafter, unless extended, renewed, revoked or terminated sooner as provided for in this Franchise.

2.4 Application.

Grantee has satisfied, or the City hereby waives, the requirements of Sections 5.04.110 through 5.04.140 of the Cable Code, with respect to the application for and granting of this Franchise, except Grantee shall pay City an application fee pursuant to WCC 5.04.140(2) in the amount of \$5000.

2.5 Franchise Not Exclusive.

A. The Franchise granted herein is not exclusive, and shall not be construed as any limitation upon the right of City, through its proper offices, and in accordance with applicable law, to grant to other persons or corporations rights, privileges or authority similar to or different from the rights, privileges and authority herein set forth, in the same or other Rights-of-Ways or public places or other places the Grantee is entitled to occupy by this Franchise Ordinance.

B. The Grantee's use of the District's Broadband System shall be in accordance with the District's Communications Infrastructure Right-Of-Way Use Agreement with the City, and shall be conducted so as not to unreasonably interfere with other uses of the Rights-of-Way.



2.6 Binding Contract.

- A. This Franchise Ordinance (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof shall constitute a legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed without the mutual consent of the parties in any manner whatsoever, provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.
- B. This Franchise Ordinance shall be construed in a manner consistent with all applicable federal and State laws.
- C. Grantee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power.
- D. The provisions of Chapter 5.04 of the City Code, "Cable Code," as in effect on the effective date of this Franchise Ordinance, are hereby incorporated herein by reference as if set out in full, and form part of the terms and conditions of this Franchise, unless otherwise provided for in this Franchise. In the event of any conflict between the terms and conditions of this Franchise and the provisions of the Cable Code, the Franchise shall control.
- E. In the event of a change in state or federal law which by its terms would require the City to amend this Agreement, the Parties shall negotiate in good faith to modify the Franchise in a mutually agreed upon manner. In the event of a dispute

concerning any matter within the scope of the Agreement, the Parties agree to immediately meet and confer in good faith in an attempt to resolve the dispute. In the event the dispute cannot be resolved within ninety (90) days, or whatever longer period may be mutually acceptable, either Party may call for arbitration pursuant to RCW Chapter 7.04, et. seq. except as herein modified. If the Parties agree to arbitration, such arbitration shall be before one disinterested arbitrator, if one can be agreed upon, otherwise before three disinterested arbitrators, one named by the City, one by the Grantee, and one by the two thus chosen. If all arbitrators have not been appointed within three (3) business days after written notice of demand for arbitration is given by one Party to the other, then either Party may apply to the Chelan County Superior Court, upon not less than three (3) business days written notice to the other, for appointment of the necessary arbitrators remaining to be appointed, and the judicial appointment shall be binding and final. If arbitration is selected by the Parties, the arbitrator or arbitrators shall resolve all matters of disagreement in accordance with the laws of the State of Washington as applied to the facts found by him/her or them, if applicable. The arbitrator or arbitrators shall resolve all disputes between the Parties and the decision of the arbitrator or arbitrators shall be final, conclusive and binding on the Parties. The Parties agree to share equally in the costs of arbitration and each Party shall be responsible for its own attorney's fees and costs.

F. This Franchise shall be construed and enforced in accordance with the substantive laws of the State of Washington. If the parties don't agree to arbitration as set forth herein, venue shall lie in the Superior Court of Chelan County, Washington.

2.7 Franchise Renewal.

Renewal of this Franchise shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. City and Grantee may enter into renewal negotiations at any time during the term of the Franchise.

2.8 Competitive Neutrality.

In the event the City grants an overlapping franchise for Cable Services within the Cable Service Territory under terms and conditions materially different from those terms applied to the Grantee pursuant to this Franchise that puts the Grantee at a competitive disadvantage and substantially impairs the value of this Franchise Agreement to the Grantee, then the Grantee may elect within six (6) months of the grant of such overlapping franchise agreement to negotiate with the City in good faith to modify the terms of the Agreement relative to said overlapping area, and if the Parties fail to reach an agreement, the Grantee may elect to obtain a new franchise agreement pursuant to the renewal provisions of this Agreement, the Cable Code, and the then applicable provisions of state and federal law.

**SECTION 3. GENERAL REQUIREMENTS**

3.1 Annual Franchise Fee.

As compensation for this Franchise and in consideration of permission to use the Rights-of-Way of the City for the provision of Cable Service, and to defray the costs of Franchise obligations, the Grantee shall pay to the City on an annual basis throughout the

term of this Franchise, a sum totaling five percent (5%) of the Grantee's Gross Revenues derived from the provision of Cable Services, or the maximum percentage of Gross Revenues allowed by the Cable Communications Act of 1984, as it may be amended. Consistent with federal law, such franchise fees shall not be applicable to Gross Revenues for non-Cable Services, including but not limited to Internet access and telecommunications services as defined under federal law.

- A. Payments due City under this Section shall be computed and paid by Grantee as set forth in the City Cable Code, Sections 5.04.170(2),(3) and (4) as now exist or as may be hereafter amended. Each payment shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence.
- B. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further sums payable under the provisions of this Franchise. City's right to audit, and Grantee's obligations to retain records related to the franchise fee audit, shall expire three (3) years from the date on which each Franchise Fee payment by the Grantee is due.

### 3.2 Liability Insurance.

- A. Upon the effective date of this Franchise, the Grantee shall, at its sole expense, take out and maintain during the life of this Franchise commercial general liability insurance with a company licensed to do business in the State of Washington that

shall protect the Grantee, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Franchise, whether such operations are by the Grantee, its officers, directors, employees and agents, or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all of Grantee's operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be two million dollars (\$2,000,000.00) per occurrence and five million dollars (\$5,000,000.00) in the annual aggregate. The following endorsements shall attach to the liability policy:

- (1) The policy shall cover Personal Injury as well as Bodily Injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad Form property damage liability shall be afforded.
- (4) The City shall be named as an additional insured on the policy.
- (5) An endorsement stating that the policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

Grantee shall provide City with a certificate of insurance verifying the above coverages at the commencement of this franchise and thereafter upon reasonable request of the City.

3.3 Indemnification.

- A. Except as otherwise provided herein, the Grantee shall, at its sole cost and expense, indemnify, hold harmless, release and defend City, its officials, boards, commissions, agents, and employees from and against any and all lawsuits, claims, actions, demands, damages, disability, losses, expenses including reasonable attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person, from any cause whatsoever, arising out of or in any way connected with the operations, expressly authorized herein, the exercise of the Franchise pursuant to this Franchise, and/or the activities of Grantee, its subcontractors, employees and agents hereunder, including copyright infringement or other program related liability.

The indemnification obligation of Grantee shall not be limited in any way by the application of any workmen's compensation acts, disability benefit acts or other employee benefit acts and the Franchisee expressly waives the protection afforded by such laws. The foregoing indemnification obligations are a material inducement to the City to grant this Franchise and it has been mutually negotiated.

- B. City does not, and shall not, waive any rights against Grantee which it may have by reason of this indemnification, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.

- C. This indemnification obligation of Grantee shall apply to all damages and claims for damages of any kind suffered by reason of any of the operations referred to in this Section, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- D. Grantee shall not be required to indemnify City for damages to the extent arising from or caused by the sole negligence or gross negligence or willful misconduct of the City or its officials, agents, or employees.
- E. With respect to any claims which are subject to indemnity hereunder, Grantee shall immediately notify the City's Executive Services Director of any such claims which have been filed against the Grantee or Grantee and City jointly, and shall provide the City with a copy of the same. City shall give the Grantee written notice of its obligation to indemnify the City within a reasonable time of City's receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

#### 3.4 Procedure for Remediating Franchise Violations.

- A. The City shall provide the Grantee with a detailed written notice of any Franchise violation upon which it proposes to take action. Unless the nature of the violation requires a more rapid cure, the Grantee shall have sixty (60) days within which to demonstrate to the City's reasonable satisfaction that a violation does not exist, cure such violation, or, if the violation cannot be corrected in sixty (60) days, to submit a plan satisfactory to the City to correct the violation. Said sixty (60) day cure period shall not apply to the payment of franchise fees.

- B. If the Grantee fails to cure the violation within the applicable time period, or the Grantee's plan of correction is not reasonably effective, the City may pursue any remedy available to it at law or in equity; provided, however, that any revocation or termination of the Franchise shall be governed by Section 5.04.220 of the Cable Code.
- C. The Grantee shall have thirty (30) days to appeal any final decision of the City to the Chelan County Superior Court.
- D. All notices, reports or demands required to be given in writing under this Franchise Agreement shall be deemed to be given when delivered personally to the Person designated below, or when five (5) days have elapsed after it is deposited in United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to City: Mayor  
City of Wenatchee  
129 S. Chelan  
Wenatchee, WA 98801

If to Grantee: LocalTel Communications  
341 Grant Road  
Wenatchee, WA 98801

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.



## **SECTION 4. SYSTEM CAPABILITIES**

### 4.1 System Capabilities

- A. The Grantee's Cable Service shall be delivered via the District's Broadband System. The System shall provide for a minimum bandwidth capacity of 50-870 MHz.
- B. The Grantee shall comply with all customer service obligations with respect to customers whose premises are passed by portions of the District's Broadband System which are fully activated, tested and available for Service.
- C. Grantee agrees to cooperate with City from time to time in a periodic review, relating to change in law, technology, and services and agrees to furnish City with information relating to services and technological changes including plans and developments within the industry.

### 4.2 Periodic Evaluation, Review and Modification.

City and Grantee acknowledge and agree that the field of cable service is a rapidly changing one that may experience many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, to provide for the maximum degree of flexibility in this Franchise, and to help achieve a continued, advanced and modern System, the following evaluation and review provisions will apply:

- A. The City may request evaluation and review sessions at any time sixty (60) months after the acceptance of the Franchise, and every two (2) years thereafter during the term of this Franchise, and Grantee shall cooperate in such review and evaluation. The City shall use its best efforts to coordinate such evaluation and

review sessions with other municipalities in the metropolitan area which are receiving Cable Service from Grantee.

- B. Cable Service topics which may be discussed at any evaluation and review session include, but are not limited to, channel capacity, system performance, programming, PEG access, node capacity, high definition television, local office, technology, trends in industry, changes in the multi-channel video market, municipal uses of cable, subscriber complaints, judicial rulings, FCC rulings and any other relevant topics that may arise.
- C. During an evaluation and review session, Grantee shall fully cooperate with the City and shall provide without cost such reasonable information and documents which are in the possession of Grantee as the City may reasonably request to perform the evaluation and review.
- D. As a result of an evaluation and review session, Grantee and the City shall, in good faith, review the terms of any proposed change and any proposed amendment to this Franchise and seek to reach agreement on such change or amendment.
- E. The City and Grantee shall act in good faith during such negotiations and shall be obligated to agree to the reasonable requests of the other party for changes in the Cable Services or amendment to the Franchise when the change or amendment is not inconsistent with the other terms of the Franchise or with applicable law or regulations; and, is technically feasible and economically reasonable; and, will not result in a material alteration of the rights and duties of the parties under the Franchise or rights of the District. Any changes requiring a modification of

District's Broadband System will require the District's consent in its agreement with the Grantee as well as a possible amendment of the District's Use Agreement.

## **SECTION 5. SERVICES AND PROGRAMMING**

### 5.1 Programming.

- A. Grantee shall not delete or change the mix, level, or quality of programming and services, or so limit as to effectively eliminate any broad category of programming within its control without complying with the modification procedures required under federal law, including notice requirements.
- B. In the event of a modification proceeding under federal law, the mix, level, and quality of services provided by the Grantee during its first year of actively providing Cable Service under this Franchise shall be deemed the mix and quality of services required under this Franchise throughout its term.

### 5.2 Leased Commercial Access.

Grantee shall make available to the public in a manner consistent with 47 U.S.C. §532 and associated FCC Rules and Regulations, a Channel or portion of a Channel of the Cable System for commercial use by persons other than Grantee, for a fee or charge.

## **SECTION 6. SUPPORT FOR LOCAL CABLE RELATED NEEDS**

### 6.1 Public, Educational and Governmental Access.

- A. Access Channels. The Grantee shall provide two (2) Access Channels for use by the City for original, non-commercial video programming for Public, Educational and Governmental (PEG) Access programming and subject to the conditions set forth below.

B. Additional Channel. In addition to the two (2) PEG Access Channels described above, if desired by the City, the Grantee shall make one (1) additional PEG Access Channel available to the City within one hundred eighty (180) days of a written request by the City for either educational, governmental or public access purposes. Any such request for an additional PEG Access Channel must meet the following conditions:

- (1) The City has made a determination, after notice and opportunity for public comment, that the use of the first two dedicated Access Channels is consistent with community needs and interests, and that an additional dedicated PEG Access Channel is required to meet more fully such community needs and interests.
- (2) The first two dedicated PEG Access Channels provided under this Franchise are in use and programmed with PEG Access programming during at least eighty percent (80%) of the time during any consecutive thirteen (13) hour period for ten (10) consecutive weeks. For purposes of this computation, all time allocated to character generated or similar programming shall be excluded from the determination of the aggregate time such channel is in use and programmed with PEG Access programming during the period in question.
- (3) At least one-third (1/3) of the programming presented during such ten (10) week period is produced within or relates directly to the City.

- (4) At least two-thirds (2/3) of the aggregate hours utilized for PEG Access programming on any one of the two (2) existing channels during such ten (10) week period represents programming that is not repeat programming.
- C. Grantee Use of Additional Channel. Upon thirty (30) days written notice to the City, the Grantee may make use of such additional PEG Access Channel for its own programming purposes if at any time after one hundred eighty (180) days of its operation the City cannot meet the above criteria justifying the need for said channel for a period of ten (10) consecutive weeks.
- D. Unused Channels. If demand for use of the PEG Access Channels does not warrant activation of any or all such channels, City and Grantee (upon the mutual written agreement of City and Grantee), reserve the right to have the PEG Access Channel(s) returned to the Grantee for the Grantee's use if the City shall provide consent in writing to the Grantee. In such event, the Grantee shall notify its customers of Grantee's intention to utilize the PEG Access Channel by providing Subscribers with a thirty (30) day prior written notice. Subject to the above circumstances, the Grantee may in any manner use the PEG Access Channel during those hours that the City or other governmental, public or educational entity is not using the channels(s).
- E. Access Channel Designations. Grantee acknowledges and agrees that it will use reasonable efforts to retain the same channel number designations for Access Channels as those that are currently utilized as of the acceptance date of this Franchise. Subject to subsection 6.1(G), Grantee reserves all rights under the Cable Act to specify channel locations.

F. Non-Commercial Use. PEG Access Channels shall be non-commercial, not-for-profit, and non-competitive. The PEG Access Channels shall not be used for commercial purposes, such as leasing capacity, advertising, or any use whatsoever that may generate revenue (subject to the permissible uses as outlined in this subsection) for the Grantor or any other Person, or compete with current or future services provided by the Grantee, its designee or assignee. Notwithstanding the foregoing, City and Grantee agree that the City may receive and acknowledge financial support for the provision of PEG Programming for charitable, educational or governmental access purposes with a fifteen (15) second video and/or audio acknowledgment window at the beginning and end of the sponsored program. This window may only contain the name and logo of each sponsor.

G. Analog or Digital Format. Grantee has the option to air the PEG Access Channels in analog, digital or other format, provided that the PEG Access Channels shall be kept in analog format if Grantee has a tier or service in analog format. The PEG Access Channels may be placed on any tier or service available to all Subscribers, including the digital tier provided, however, that PEG Access Channels shall be carried on the lowest tier or service, as distinguished from premium service tiers. Each PEG Access Channel shall contain distinct content not aired on other channels.

6.2 Indemnification and Restrictions. The City shall indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the City's use of the two-way insertion points under subsection 6.3 and the aforementioned PEG channels whether City operates the PEG Channels from a third party's Facilities or from Grantee's

Facilities. Grantee shall not be responsible for operating and managing the PEG Channels including approving any PEG programming and/or for obtaining releases from programmers for any PEG programming. City reserves the right to permit a third party to operate and manage the PEG Channels on the City's behalf.

6.3 Insertion Points. Upon written request, Grantee shall provide, at no cost to the City, up to seven (7) insertion points at City Hall, City Planning Department, Police Station, up to two fire stations, the City library and the City Public Works Department, provided that users of such insertion points shall hold the Grantee harmless from any and all liability or claims arising out of their use. City shall provide the addresses of the foregoing insertion points to Grantee. Grantee shall not be required to provide an insertion point to such buildings where the drop line between the building and City's feeder cable exceed two hundred (200) feet, unless the City agrees to pay the Direct Incremental Cost of extending such drop line beyond two hundred (200) feet. The City shall not request the Grantee to provide any insertion point unless the same is required of all Cable Operators in the Service Area. If, at any time, the City requests that the insertion point be moved from its original location to another location, City shall pay the entire cost for the move.

6.4 Technical Support from Grantee. Upon receipt of a call or other communication from the City to Grantee identifying a technical problem and requesting assistance, Grantee shall provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible, and if so, Grantee shall take corrective action. If the problem persists and there is a dispute about the cause, then the parties shall convene a meeting or telephone call with personnel from Grantee and City in order to determine the course of action to remedy the problem.

6.5 Financial Support for PEG Access. Grantee formerly made a one-time capital contribution to the City in the amount of one hundred thousand dollars (\$100,000), and Grantee shall continue to collect from and bill each Subscriber an amount of eight cents (\$0.08) per month per Subscriber for recovery of the one-time capital contribution. Grantee shall, annually and at the request of the City, provide the City with the amount of capital contribution collected and the amount remaining to be collected. Once the Grantee has been fully reimbursed for the one hundred thousand dollar (\$100,000) capital contribution, Grantee shall continue collecting the amount of eight cents (\$0.08) per month per Subscriber, and the amount shall be remitted to the City, payable on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. In the event of a dispute, the City, if it so requests, shall be furnished a statement of said payment, reflecting the PEG capital support collected from Subscribers. At any time, the Grantee may request a report of how the capital dollars are being used. City and Grantee acknowledge that PEG funds are only to be used for capital costs and not for operational costs. PEG capital support shall be for the exclusive use of the City and shall not be used for purposes other than as described under Section 13 herein. The City shall be responsible for installing, operating, maintaining and replacing the equipment purchased as necessary.

6.6 Free Drops. Subject to the availability of the District's Broadband System to the Grantee, Grantee may provide on a voluntary basis, without charge and within the Service Area, one drop activated for Basic Cable Service to all elementary and secondary public school classrooms and public libraries. Additionally, Grantee shall provide, without charge, one drop of Basic Cable Service, at a location designated by the City, so that City may view



and monitor PEG Access programming. The drop shall be within one hundred twenty-five (125) feet of Grantee's feeder cable.

- 6.7 PEG Fees Not Franchise Fees. Grantee agrees that the PEG Fee in Section 6 in no way modifies or otherwise affects Grantee's obligation to pay Franchise Fees to the City. Grantee agrees that although the sum of Franchise Fees and PEG Fee may total more than five percent (5%) of Grantee's Gross Revenues in any twelve-month period, the PEG Fee is not to be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise.

### **SECTION 7. CONSTRUCTION AND SERVICE PROVISIONS**

- 7.1 Obligations of District

The City and the Grantee recognize and agree that the Grantee intends to provide Cable Service utilizing the fiber optic transport facilities of the District's Broadband System and therefore the Grantee will have no direct control over the installation, operation or maintenance of the physical facilities located within the City's Rights-of-Way. In order to meet the City's construction and operational requirements the Grantee agrees to include within its use or license agreement with the District service level provisions and obligations, including compliance with all applicable FCC technical standards, as set out in Sections 4 and 5 of the District's Communications Infrastructure Right-Of-Way Use Agreement. The Grantee agrees that the failure of the District to reasonably meet these standards will constitute a default of this Franchise subject to the remedial provisions of this Franchise Ordinance.

7.2 Construction Schedule

It is understood and agreed by the parties that construction of the District's Broadband System is subject to the budget and planning process of the District.

7.3 Line Extension

Subject to the availability of the District's Broadband System to the Grantee, the Grantee agrees to extend service at no additional cost to all areas within the City having a density of twenty-five (25) or more homes per linear mile. In less dense areas lines will be extended upon request of the home owners at the incremental cost of all Parties seeking to have the distribution line so extended, and subject to the availability of the District's Broadband System to the Grantee in that area.

7.4 Customer Service Standards.

The Grantee shall at all times comply will all applicable FCC customer service standards and the service standards set out in the City's Cable Code. To the extent that specific customer service standards require the District to perform work on its Broadband System, such as responding to and remedying service disruptions, the Grantee agrees to include within its use or license agreement with the District service level provisions and obligations that would require compliance with such standards, as set out in Section 5 of the District's Communications Infrastructure Right-Of-Way Use Agreement. The Grantee agrees that the failure of the District to reasonably meet these standards will constitute a default of this Franchise subject to the remedial provisions of this Franchise.

## **SECTION 8. REGULATION**

### 8.1 Franchise Regulation.

This Franchise shall be subject to regulation by City in accordance with all of the lawful provisions of the Cable Code.

### 8.2 Transfer or Sale.

- A. The Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of this Cable Franchise or its Cable Service without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable Service so as to perform its obligations under this Franchise. This Section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Grantee.
- B. In the case of any sale or transfer of ownership of an interest in or control of this Franchise or Cable Service, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Code. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the

City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.

8.3 Force Majeure.

In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise or the Cable Code is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond Grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, severe weather, unavailability of equipment or facilities during the initial construction of the Cable System, untimely delivery of equipment, or the inability of a Grantee to obtain access to an individual's property.

8.4 Severability.

If any material section, sentence, phrase, provision, paragraph or term of this Franchise is held void or otherwise rendered unenforceable by any court of competent jurisdiction, such provision shall be deemed severable from this Franchise, and the remainder of this Franchise shall continue in full force and effect.

8.5 Acceptance.

Grantee shall, within 15 days after the effective date of this Ordinance, file with the City Clerk of the City its acceptance in writing of the provisions, terms and conditions of this Ordinance. If Grantee shall fail to so file its written acceptance of the same within such

period, then the rights and privileges granted hereunder shall be deemed forfeited and null and void with respect to Grantee.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE,**

**WASHINGTON** this \_\_\_\_ day of \_\_\_\_\_, 2021.


CITY OF WENATCHEE, a municipal  
corporation,

By: \_\_\_\_\_  
FRANK J. KUNTZ, Mayor

ATTEST:

By: \_\_\_\_\_  
TAMMY L. STANGER, City Clerk

APPROVED:

By:   
STEVE D. SMITH, City Attorney

ACCEPTED AND APPROVED BY GRANTEE:

**Grantee Name:** Computer 5\*, Inc. dba LocalTel Communications  
**Type of Entity:** Corporation  
**State of formation:** Washington  
**Address for Notice Purposes:** 341 Grant Road, Wenatchee, WA 98802  
**Phone No.:** (509) 884-0611  
**Fax No.:** (509) 884-3557  
**E-mail Address:** John@clandt.com

By: \_\_\_\_\_  
John J. Seabeck, Vice President

Date: \_\_\_\_\_