



City of Cashmere  
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CASHMERE CITY COUNCIL MEETING  
MONDAY, DECEMBER 9, 2013 6:00 P.M., CITY HALL

## **AGENDA**

### CALL TO ORDER

### FLAG SALUTE

### EXCUSE ABSENCE

### ANNOUNCEMENTS & INFORMATION

- November Financial Reports are on the Website
- Certificate of Appreciation for Donna Wynne

### PUBLIC COMMENT PERIOD (For Items Not on the Agenda)

### APPROVAL OF AGENDA

### CONSENT AGENDA

1. Minutes of November 25, 2013 Regular Council Meeting
2. Payroll and Claims Packet Dated December 9, 2013

### BUSINESS ITEMS

1. Ordinance No. 1224 Revenue Bonds 2013
2. 2014 Emergency Management Agreement
3. Proposed amendment to Title 13 Public Utilities
4. Discuss proposed changes to delinquency and termination dates and fees

### PROGRESS REPORTS

### ADJOURNMENT

TO ADDRESS THE COUNCIL, PLEASE BE RECOGNIZED BY THE MAYOR AND STATE YOUR NAME WHEN YOU BEGIN YOUR COMMENTS  
**Americans with Disabilities Act (ADA) accommodations provided upon request (48-hour notice required)**

The City of Cashmere is an equal opportunity provider and employer.

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1406 Independence Avenue SW, Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202)720-6381 (TDD).

**MINUTES OF THE CASHMERE CITY COUNCIL MEETING  
MONDAY, NOVEMBER 25, 2013 AT CASHMERE CITY HALL**

OPENING

Mayor Jeff Gomes opened the regular city council meeting at 6:00 p.m. at City Hall. Clerk-Treasurer Kay Jones took minutes.

ATTENDANCE

	<u>Present</u>	<u>Not Present</u>
Mayor:	Jeff Gomes	
Council:	Skip Moore Jim Fletcher Donna Wynne Derek Knutsen John Bryant	
Staff:	Bob Schmidt, Director of Operations Kay Jones, Clerk-Treasurer Mark Botello, Dir of Planning/Building	

FLAG SALUTE

ANNOUNCEMENTS & INFORMATION

Councilor Fletcher represents Cashmere on the Link Board. He reported that Link Transit has changed Route 28 to include a stop at Martin's Market Place. Residents can now take the bus to the grocery store rather than calling Dial A Ride, which is much more cost effective for Link Transit.

Also, Link Transit is cutting ties with EBus. The technology for the electric powered buses with the lithium batteries is still not working. Link transit is not willing to be the guinea pigs any longer. The \$2.9 million in federal funds has already been spent for the electric powered buses. So the federal funds will have to be paid back or Ebus may have to buy Link Transit buses. The details in meeting the criteria for the federal funding and cutting ties with Ebus have not been worked out.

Mayor Gomes announced an opening on the Board of Health if any of the council members are interested. The current representative is from Leavenworth and he is stepping down at the end of the year.

He reported that he spoke with Leanne with the Senior Home Delivered Meal Program and got the answers to the council's questions after \$3500 in city funds were requested at the last council meeting. They receive both Federal and State funding, both of which have decreased due to budgets cuts. The program has delivered 2415 meals in the Cashmere area and of that 1420 have been delivered in the city. The number of people from inside the City that are on the program varies from 8 to 13 people a week.

PUBLIC COMMENT

No comments from the public.

APPROVAL OF AGENDA

MOVED by Councilor Wynne and seconded by Councilor Fletcher to approve the agenda as amended. Motion carried.

CONSENT AGENDA

Minutes of November 12, 2013 Regular Council Meeting  
Payroll and Claims Packet Dated November 25, 2013

Claim Check Nos. 33906, through 33935 and EFT #10-2013 totaling \$1,267,882.57  
Manual Check Nos. 33905 to replace #33904 a correction in payroll

Councilor Bryant asked that his statement on page one be amended to read that he is contemplating stepping down from council.

MOVED by Councilor Moore and seconded by Councilor Knutsen to approve the consent agenda with the correction to the minutes. Motion carried.

PUBLIC HEARING ON FINAL BUDGET FOR 2014

Mayor Gomes opened the Public Hearing at 6:11 p.m. to receive public comment on the Final Budget for 2014. Clerk-Treasurer Kay Jones summarized the few changes that were not in the preliminary budget.

Mayor Gomes proposed setting a policy that the exempt employees would receive the same wage increase as the union employees. The three exempt employees have received the same wage freeze or wage increase as the union employees every year. A policy would eliminate the need for the Mayor to make the request for the exempt employees each year.

The council didn't see the need for a policy since the annual process seemed to be working.

With no questions or comments from the public the Hearing was closed at 6:25 p.m.

ORDINANCE NO. 1222 ADOPTING THE BUDGET FOR 2014

MOVED by Councilor Fletcher and seconded by Councilor Bryant to adopt Ordinance No. 1222 adopting the budget for 2014. Motion carried.

ORDINANCE NO. 1223 AMENDING CHAPTER 6.24.010 ANIMAL LICENSES

MOVED by Councilor Bryant seconded by Councilor Fletcher to adopt Ordinance No. 1223 amending Chapter 6.24.010 Animal Licenses. Motion carried.

ORDINANCE NO. 1225 AMENDING TITLE 15 BUILDINGS AND CONSTRUCTION

Director Botello explained that the changes were made to keep consistent with the current versions of the International Building Codes and clarifying code language. Attorney Chuck Zimmerman has reviewed and approved the changes.

MOVED by Councilor Moore and seconded by Councilor Bryant to adopt Ordinance No. 1225 amending Title 15 Buildings and Construction. Motion carried.

RESOLUTION NO. 10-2013 SUPPORTING INITIATION OF PHASE II OF THE COORDINATED COST REIMBURSEMENT PROCESS FOR THE WENATCHEE WATER WORK GROUP

MOVED by Councilor Fletcher and seconded by Councilor Wynne to approve Resolution No. 10-2013 supporting initiation of Phase II of the Coordinated Cost Reimbursement process for the Wenatchee Water Work Group. Motion carried.

AUTHORIZE A WATER AND WASTEWATER SYSTEM DEVELOPMENT CHARGE STUDY

MOVED by Councilor Moore and seconded by Councilor Fletcher to authorize FCS Group to do a water and wastewater system development charge study. Motion failed with Councilors Wynne, Knutsen and Bryant voting no.

FINAL ACCEPTANCE OF THE SUNSET HIGHWAY ROADWAY IMPROVEMENT PROJECT

MOVED by Councilor Fletcher and seconded by Councilor Knutsen to accept the Sunset Highway Roadway Improvement project. Motion carried.

FINAL ACCEPTANCE OF THE PIONEER AVENUE PRESERVATION PROJECT

MOVED by Councilor Moore and seconded by Councilor Bryant to accept the Pioneer Avenue Preservation project. Motion carried.

FINAL ACCEPTANCE OF THE TIGNER ROAD PRESERVATION PROJECT

MOVED by Councilor Bryant and seconded by Councilor Wynne to accept the Tigner Road Preservation project. Motion carried.

PROGRESS REPORTS

Director Mark Botello reported that he will approve two building permits; one for the L.E. Wilson expansion next to Simpson Park. The employee parking is located on the property but access to the parking area is through Simpson Park. The other permit is for the project in the empty parking lot next to Clifford's Hardware for two commercial buildings with apartments on the second floor.

Botello also stated that the Christmas tree in Ardeta Park is decorated and looks really nice. The Christmas lights for the canopies will go up on Wednesday.

ADJOURNMENT

Mayor Gomes adjourned the meeting at 7:06 p.m.

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Jeff Gomes, Mayor

Attest:

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Kay Jones, Clerk-Treasurer

CITY OF CASHMERE, WASHINGTON  
ORDINANCE NO. 1224

AN ORDINANCE relating to the waterworks utility of the City; specifying, adopting and ordering the carrying out of a system or plan of additions to and betterments and extensions of the sewer system; providing for the issuance of \$13,690,000 aggregate principal amount of Water and Sewer Improvement and Refunding Revenue Bonds, 2013, of the City to (i) redeem the City's Water-Wastewater Utility Revenue Bond Anticipation Note, 2012 (Non-Revolving Line of Credit), and (ii) pay the costs of issuance and sale of the bonds; fixing the date, interest rates, form, maturities, terms, covenants and uses of the proceeds of the bonds; creating a bond fund; and providing for the sale and delivery of the bonds to the United States of America, acting through the Department of Agriculture.

Passed December 9, 2013

*Prepared by:*

*Foster Pepper PLLC  
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CITY OF CASHMERE, WASHINGTON  
ORDINANCE NO. 1224

AN ORDINANCE relating to the waterworks utility of the City; specifying, adopting and ordering the carrying out of a system or plan of additions to and betterments and extensions of the sewer system; providing for the issuance of \$13,690,000 aggregate principal amount of Water and Sewer Improvement and Refunding Revenue Bonds, 2013, of the City to (i) redeem the City's Water-Wastewater Utility Revenue Bond Anticipation Note, 2012 (Non-Revolving Line of Credit), and (ii) pay the costs of issuance and sale of the bonds; fixing the date, interest rates, form, maturities, terms, covenants and uses of the proceeds of the bonds; creating a bond fund; and providing for the sale and delivery of the bonds to the United States of America, acting through the Department of Agriculture.

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

**Section 1. Findings.** Capitalized terms have the meanings set forth in Section 2 of this ordinance. The City Council hereby makes the following findings and determinations.

A. The City pursuant to Ordinance No. 314 passed by the City Council and approved by the Mayor on March 24, 1952, combined the water distribution system and the system of sewerage of the City into a combined water-sewer system and those combined systems are maintained and operated jointly as the waterworks utility of the City.

B. Pursuant to Ordinance No. 1175, passed by the City Council on September 27, 2010, the City Council specified, adopted and ordered the carrying out of the Plan of Additions, including the Project.

C. Pursuant to Ordinance No. 1200, the City Council previously issued its Water-Wastewater Utility Revenue Bond Anticipation Note, 2012 (Non-Revolving Line of Credit) (the "Note") for the purpose of paying part of the cost of the Project (as defined herein) and to repay and redeem certain outstanding obligations of the City. In the Note Ordinance the City reserved the right to prepay the Note at any time, without penalty, at par plus accrued interest to the date of prepayment.

D. The Note is presently outstanding in the principal amount of \$12,852,816.77, matures on December 1, 2015, and bears interest at the rate of 60% of the Prime Rate (as defined in the Note Ordinance). It is anticipated that as of the date of delivery of the Bonds to the Purchaser, the amount outstanding on the Note will be \$13,690,000.

E. After due consideration, the City Council finds and determines that it is in the City's best interest to issue and sell the Bonds for the purpose of repaying the Note, and to establish a new lien position with new covenants to be effective following the delivery of the Bonds.

F. The USDA provided the City with a Letter of Conditions dated July 21, 2010, an amended Letter of Conditions dated November 1, 2010, and an amended Letter of Conditions



dated June 28, 2012, establishing the conditions under which the USDA would loan and grant money to the City to finance a plan of additions to the Waterworks Utility. The City Council adopted a Loan Resolution pursuant to the loan conditions established by the USDA. RCW 39.69.020 authorizes the City to enter into a loan agreement with the United States government and to evidence the City's obligation to repay the loan under the terms and conditions of such loan agreement. RCW 39.69.020 further authorizes such loan agreement to provide that the City repay the loan solely from revenues set aside in a special fund for the repayment of the loan.

G. Chapter 39.48 RCW authorizes the City to sell the Bonds to the USDA by private sale at a price of not less than par plus accrued interest and the USDA has offered to purchase the Bonds according to the terms set forth herein and in the Letter of Conditions. The City also is authorized to conduct proceedings and to issue revenue bonds pursuant to the terms and provisions of chapters 35.41, 35.92 and 39.46 RCW, to finance the acquisition, construction and installation of improvements to the Waterworks Utility.

H. The City Council finds and determines that the Gross Revenue and benefits to be derived from the operation and maintenance of the Waterworks Utility at the rates to be charged for service from the Waterworks Utility will be more than sufficient to meet all Maintenance and Operations Costs and to permit the setting aside into the Bond Fund of the of amounts of Net Revenue that, together with ULID Assessments, will be sufficient to pay the principal of and interest on the Parity Bonds when due. The Net Revenue and all ULID Assessments are pledged for the payment of the Bonds and all Future Parity Bonds. This pledge shall constitute a lien and charge upon the Net Revenue and ULID Assessments prior and superior to any other liens and charges whatsoever.

I. The City finds that it is necessary and in the best interests of the City to issue and sell the Bonds to: (i) redeem the City's Water-Wastewater Utility Revenue Bond Anticipation Note, 2012 (Non-Revolving Line of Credit) and (ii) pay the costs of issuance and sale of the Bonds.

**Section 2. Definitions.** As used in this ordinance the following words shall have the following meanings:

(1) **"1999 Bonds"** means the Water and Sewer Revenue Bonds, 1999, of the City issued in the principal amount of \$1,030,000, pursuant to Ordinance No. 950, previously refunded by proceeds of a loan draw on the Note.

(2) **"2001 Bond"** means the Water and Sewer Revenue Bond, 2001, of the City maturing on November 1, 2016, issued pursuant to Ordinance No. 996, previously refunded by proceeds of a loan draw on the Note.

(3) **"2010 Note"** means the Water-Wastewater Utility Revenue Bond Anticipation Note, 2010 (Non-Revolving Line of Credit) in the principal amount of not to exceed \$1,500,000, issued by the City pursuant to Purchaser's requirements and Ordinance No. 1175, to pay costs of the Project pending receipt of Bond proceeds, previously repaid by proceeds of a loan draw on the Note.

(4) “**Annual Debt Service**” means, for any calendar year, with respect to all Parity Bonds outstanding or maturing in that year, all amounts required to be paid in that year (including any such principal scheduled to be paid by means of mandatory redemption and sinking fund payment requirements) in respect of principal of and interest on those Parity Bonds.

(5) “**Average Annual Debt Service**” means, as of its date of calculation, the sum of Annual Debt Service with respect to all Parity Bonds outstanding (including all Parity Bonds maturing in the calendar year of calculation) for all calendar years during which those Parity Bonds are scheduled to remain outstanding, divided by the number of those calendar years (without regard to bond years).

(6) “**Bond Counsel**” means Foster Pepper PLLC or any firm of lawyers nationally recognized and accepted as bond counsel and so engaged by the City for that purpose.

(7) “**Bond Fund**” means the special fund, known as the “Water and Sewer Revenue Bond Fund,” created by this ordinance and established in the office of the Clerk-Treasurer for the purpose of paying and securing the principal of and interest on the Bonds and any Future Parity Bonds.

(8) “**Bond Registrar**” means the books or records maintained by the Bond Registrar on which are recorded the names and addresses of the Registered Owner of each of the Parity Bonds.

(9) “**Bond Registrar**” means (i) the Clerk-Treasurer, or (ii) upon a determination by the Clerk-Treasurer that the maintenance duties of the Bond Registrar are no longer convenient, the State fiscal agent or a bank or trust company organized under the laws of the State, or a national banking association, and having a capital and surplus aggregating at least \$20,000,000, if there be such a bank, trust company or national banking association willing and able to accept the duties of Bond Registrar on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this ordinance.

(10) “**Bonds**” means the \$13,690,000 aggregate principal amount of Water and Sewer Improvement and Refunding Revenue Bonds, 2013, authorized to be issued by this ordinance.

(11) “**City**” means the City of Cashmere, Washington, a code city of the State.

(12) “**Clerk-Treasurer**” means the Clerk-Treasurer of the City, and his or her successors in functions, if any.

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

(14) “**Construction Fund**” means the Wastewater Treatment Plant Construction Fund, a special fund established in the office of the Clerk-Treasurer under Ordinance No. 1175 for the purpose of paying the cost of the Project.

(15) **“Coverage Requirement”** means that, for any calendar year, Net Revenue in that calendar year, plus all ULID Assessments due in that year and not delinquent, plus all amounts on deposit in the Principal and Interest Account on the last business day prior to the commencement of that calendar year, shall be equal to at least 1.25 times the Average Annual Debt Service on all outstanding Parity Bonds.

(16) **“DOE Loan”** means Loan No. L9900032 from the United States Department of Ecology to the City to pay part of the costs of carrying out the Wastewater Treatment System Interim Improvements Projects, maturing on July 1, 2021, and entered into pursuant to Resolution No. 4-99, as amended by Resolution No. 7-99, previously repaid by proceeds of a loan draw on the Note.

(17) **“Future Parity Bonds”** means all revenue bonds and other obligations of the City for borrowed money (including, without limitation, financing leases) issued or incurred after the date of the issuance of the Bonds, the payment of which constitutes a lien and charge on the Net Revenue and ULID Assessments equal in rank with the lien and charge upon such revenue and assessments required to be paid into the Bond Fund to pay and secure the payment of the principal of and interest on the Bonds.

(18) **“Government Obligations”** means those obligations described under the definition of government obligations in RCW 39.53.010(4), as it now reads or hereafter may be amended, and which are otherwise lawful investments for the City at the time of such investment.

(19) **“Gross Revenue of the Waterworks Utility”** means all of the earnings and revenues received by the City from the maintenance and operation of the Waterworks Utility from any source whatsoever, including but not limited to: revenues from the sale, lease or furnishing of commodities, services, properties or facilities; earnings from the investment of money in any maintenance fund or similar fund; all connection and capital improvement charges collected for the purpose of defraying the cost of capital facilities of the Waterworks Utility; and withdrawals from the Rate Stabilization Fund. However, the Gross Revenue shall not include: (a) revenues from general *ad valorem* taxes; (b) principal proceeds of Parity Bonds or any other borrowings, or earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund obligations relating to the Waterworks Utility (until commingled with other earnings and revenues included in the Gross Revenue) or held in a special account for the purpose of paying a rebate to the United States Government under the Code; (c) income and revenue which may not legally be pledged for revenue bond debt service; (d) improvement district assessments; (e) federal or state grants, and gifts from any source, allocated to capital projects; (f) insurance or condemnation proceeds used for the replacement of capital projects or equipment; (g) proceeds from the sale of Waterworks Utility property; (h) earnings in any construction fund or bond redemption fund; (i) deposits to the Rate Stabilization Fund; or (j) revenue from any Separate System.

(20) **“Independent Utility Consultant”** means a professional consultant experienced with municipal utilities of comparable size and character to the Waterworks Utility.

(21) ***“Installment Payment”*** means the payment of principal and interest on the Bonds due on each Installment Payment Date.

(22) ***“Installment Payment Date”*** means the date that is twelve months after the dated date of the Bonds, then semiannually each year thereafter.

(23) ***“Interest Rate”*** means the per annum interest rate specified by the USDA for the Bonds pursuant to the USDA’s Water and Environmental Program. Such rate is expected to be the lower of (i) the applicable interest rate as of the date the USDA mails a signed copy of Form 1940-1 with regard to the Bonds to the City or (ii) the applicable interest rate on the date the Bonds are issued.

(24) ***“Letter of Conditions”*** means the letter from USDA to the City dated July 21, 2010 establishing the conditions under which the USDA would loan and grant money to the City to finance the Plan of Additions and the Refunding Plans, as amended by letter dated November 1, 2010 and letter dated June 28, 2012.

(25) ***“Loan Resolution”*** means collectively, the RD Form Loan Resolutions adopted by the City Council on December 13, 2010, pursuant to the loan conditions established by the USDA.

(26) ***“Maintenance and Operations Expenses”*** means all reasonable expenses incurred by the City in causing the Waterworks Utility to be operated and maintained in good repair, working order and condition, including without limitation payments of premiums for insurance on the Waterworks Utility; costs incurred in connection with the acquisition of water or the securing of water rights; payments to any public or private entity for water service, sewage treatment and disposal service or other utility service in the event that the City combines such service into the combined utility system and enters into a contract for such service, including pro-rata budget allocations or charges for the City’s administration expenses where those represent a reasonable distribution and share of actual costs; and any State-imposed taxes. Maintenance and Operations Costs shall exclude depreciation, taxes or charges in lieu of taxes levied or imposed by the City, payments-in-lieu-of-taxes paid to the City, capital additions and capital replacements to the Waterworks Utility.

(27) ***“Maximum Annual Debt Service”*** means, as of the date of calculation, the maximum amount of Annual Debt Service that will mature or come due in the current calendar year or any future calendar year with respect to all outstanding Parity Bonds.

(28) ***“Net Revenue of the Waterworks Utility”*** for any calendar year means the Gross Revenue for that calendar year less Maintenance and Operations Costs for that calendar year. In calculating Net Revenue, the City shall not take into account any non-cash gains or losses with respect to any real or personal property, investment or agreement that it may be required to recognize under generally accepted accounting principles, such as unrealized mark-to-market gains and losses.

(29) ***“Note”*** means the Water-Wastewater Utility Revenue Bond Anticipation Note, 2012 (Non-Revolving Line of Credit) in the principal amount of not to exceed \$13,690,000, issued by the City pursuant to Purchaser’s requirements and the Note Ordinance, to pay costs of

the Project pending receipt of Bond proceeds and to carry out the refunding of the 1999 Bonds and the 2001 Bond, and to repay the 2010 Note and the DOE Loan.

(30) ***Note Account*** means the debt service fund created by the Note Ordinance within the Construction Fund and established in the office of the Clerk-Treasurer for the purpose of the payment of the principal of and interest on the Note.

(31) ***Note Ordinance*** means Ordinance No. 1200 passed by the City Council on July 9, 2012.

(32) ***Note Repayment Plan*** means the deposit of proceeds of the Bonds, together with other money of the City, if necessary, into the Note Account in an amount sufficient to carry out the repayment in full of the of the Note, on or immediately after the date of issuance of the Bonds.

(33) ***Parity Bonds*** means the Bonds and any Future Parity Bonds.

(34) ***Permitted Investments*** means investments that are legal investments for the City at the time of such investment.

(35) ***Plan of Additions*** means the system or plan of additions to and betterments and extensions of the Waterworks Utility consistent of design and construction of a new wastewater treatment facility and associated improvements.

(36) ***Principal and Interest Account*** means the account of that name created in the Bond Fund by this ordinance for the purpose of securing the payment of the principal of and interest on the Parity Bonds.

(37) ***Project*** means the plan for making certain additions to and betterments and extensions of the Waterworks Utility consistent of the design and construction of a new wastewater treatment facility and associated improvements.

(38) ***Purchaser*** means the USDA.

(39) ***Rating Agencies*** means any nationally-recognized securities rating agency or agencies rating any of the Parity Bonds at the request of the City.

(40) ***Registered Owner*** means a person shown on the Bond Register as the owner of a Parity Bond.

(41) ***Registration Ordinance*** means City Ordinance No. 660 establishing a system of registration for the City's bonds and other obligations.

(42) ***Reserve Account*** means the account of that name created in the Bond Fund by this ordinance for the purpose of securing the payment of the principal of and interest on the Parity Bonds.

(43) “**Reserve Requirement**” means, as of any date of calculation, the lesser of Maximum Annual Debt Service on the outstanding Parity Bonds secured by the Reserve Account or 125% of Average Annual Debt Service on the outstanding Parity Bonds secured by the Reserve Account, but at no time shall the Reserve Requirement exceed 10% of the original principal amount of the Parity Bonds.

(44) “**Reserve Security**” means any bond insurance, security, letter of credit, guaranty, surety bond or similar credit enhancement device providing for or securing the payment of all or part of the principal of and interest on the Parity Bonds, issued by an institution which has been assigned a credit rating at the time of issuance of the device in one of the two highest rating categories of each of at least two Rating Agencies (without regard to any gradations within a rating category).

(45) “**SEC**” means the United States Securities and Exchange Commission.

(46) “**Separate System**” means any water supply, sewage collection or treatment, stormwater or other utility service or facilities that may be created, acquired or constructed by the City as provided in Section 15 of this ordinance.

(47) “**Short-Lived Asset Reserve Account**” means the account of that name created by Section 10 of this ordinance for the purpose of replacing Short-Lived Assets financed with Bond proceeds.

(48) “**Short-Lived Assets**” means those assets referenced in the Letter of Conditions.

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

(50) “**Term Bonds**” means Parity Bonds that are subject to mandatory redemption prior to their scheduled maturity date or dates.

(51) “**Term Bond Maturity Year**” means with respect to any one issue or series of Future Parity Bonds any calendar year in which Term Bonds are scheduled to mature (regardless of any reservation of prior redemption rights).

(52) “**ULID**” means any utility local improvement district of the City created for purposes of making improvements, extensions or additions to the Waterworks Utility that are financed by the issuance of any Future Parity Bonds, the assessments in which are pledged to be paid into the Bond Fund.

(53) “**ULID Assessments**” means all ULID assessments and installments thereof, plus interest and penalties thereon, in any ULID created to finance improvements to the Waterworks Utility and to secure the payment of any Parity Bonds.

(54) “**USDA**” means the United States of America, acting through the United States Department of Agriculture, Rural Development

(55) “*Waterworks Utility*” means the waterworks utility of the City, including the sewerage system as a part thereof, and all additions thereto and betterments and extension thereof at any time made.

**Section 3. Purpose and Authorization of Bonds.** The City shall issue the Bonds in the aggregate principal amount of \$13,690,000 for the purpose of paying the cost of repaying the Note and paying the costs of issuance of the Bonds.

**Section 4. Description of Bonds.** The Bonds shall be designated Water and Sewer Improvement and Refunding Revenue Bonds, 2013. The Bonds shall be numbered R-1, which shall be in the principal amount of \$8,690,000 and R-2, which shall be in the principal amount of \$5,000,000. The Bonds shall be dated their date of delivery; shall mature on December 19, 2053; and have any additional designation as the Bond Registrar deems necessary for purposes of identification.

The Bonds shall bear interest at the rate of 3.25% per annum (computed on the basis of a 365-day year for actual number of days elapsed). Interest only on the Bonds will be payable on the 12<sup>th</sup> month following the issue date of the Bonds (the first Installment Payment Date). Thereafter, principal of and interest on this Bond shall be payable in equal semi-annual amortized payments on each Installment Payment Date to maturity.

**Section 5. Appointment of Bond Registrar; Registration and Transfer of Bonds.**

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

B. Bond Registrar. The Clerk-Treasurer is appointed as the initial Bond Registrar for the Bonds. The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond Register shall contain the name and mailing address of the Registered Owner of each Bond and the principal amount and number of each of the Bonds held by each Registered Owner.

The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City’s paying agent for the Bonds and to carry out all of the Bond Registrar’s powers and duties under this ordinance and the City’s Registration Ordinance. The Bond Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bonds.

The Bonds may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall be without cost to the owner or transferee and shall be noted in the Bond Register. The Bond Register shall not be obligated to exchange or transfer the Bonds during the 15 days preceding any Installment Payment Date.

**Section 6. Form and Execution of Bonds.** The Bonds shall be prepared in a form consistent with the provisions of this ordinance and State law and shall be signed by the Mayor and City Clerk-Treasurer, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon.

Only Bonds bearing a Certificate of Authentication in the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance: "Certificate of Authentication. This Bond is one of the fully registered City of Cashmere, Washington, Water and Sewer Improvement and Refunding Revenue Bonds, 2013, described in the Bond Ordinance." The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

If any officer whose manual or facsimile signature appears on the Bonds ceases to be an officer of the City authorized to sign bonds before the Bond bearing his or her facsimile signature is authenticated or delivered by the Bond Registrar or issued by the City, those Bonds nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. Any Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bonds.

**Section 7. Payment of Bonds.** Installment Payments of principal and interest on the Bonds shall be payable in lawful money of the United States of America and shall be paid by checks or drafts of the Bond Registrar on the Installment Payment Date to the Registered Owner at the address appearing on the Bond Register; *provided*, if the Registered Owner of the Bonds is other than the Purchaser, then the last Installment Payment on the Bonds shall be payable only upon presentation and surrender of the Bonds by the Registered Owner at the office of the Bond Registrar. Notwithstanding the foregoing, the City shall engage in any payment program established by the USDA from time to time, including without limitation the Preauthorized Debit Payment process, so long as the City can lawfully engage in such program under State law. The Bond Registrar shall destroy the Bonds when surrendered for final payment and furnish the City a certificate of destruction within 30 days following the surrender and payment in full of the Bonds.

**Section 8. Failure to Pay Installments.** If any Installment Payment on the Bonds is not paid when due, the City shall be obligated to pay interest on that Installment Payment at the same rate provided in the Bonds from and after their Installment Payment Date until that Installment Payment, both principal and interest, is paid in full. Nothing herein shall prevent or limit the Purchaser from pursuing any other remedy that is lawfully available under the Loan Resolution.

**Section 9. Extra Payments; Prepayment.** To the extent the City's scheduled principal and interest payment obligation on the Bonds is current (or will be made current upon such payment), the City may make payments to the Registered Owner, on any Installment Payment Date, that are in addition to the regularly scheduled payments of principal and interest on the Bonds. The amount of such extra payment shall be applied first to interest on the Bonds accrued to the date of receipt of such extra payment, and shall be applied second to the outstanding principal of the Bonds. After such extra payment is received by the Registered Owner, the amount of the Installment Payments on the Bonds shall remain unchanged but shall be recalculated to reflect the reduction in the outstanding principal balance of the Bonds and the resulting increase in the portion of each future Installment Payment credited to the principal of



the Bonds. The final Installment Payment Date of the Bonds, and the amount payable on such date, shall be adjusted to reflect such extra payment and the increased amount of future Installment Payments that is applied to principal. Notice of any such extra payment shall be given at least 10 days prior to the Installment Payment Date by mailing to the Registered Owner a notice specifying the amount of such extra payment.

**Section 10. Payments into Bond Fund and Creation of Accounts.** The Bond Fund is created and established in the office of the Clerk-Treasurer as a special fund of the City, which fund shall be divided into two accounts, a Principal and Interest Account and a Reserve Account. The Clerk-Treasurer may create such additional accounts or subaccounts within the Bond Fund as she or he may deem appropriate for carrying out the purposes of this ordinance.

A. The Net Revenue and all ULID Assessments are pledged for the payment of the Bonds and all Future Parity Bonds. This pledge shall constitute a lien and charge upon the Net Revenue and ULID Assessments prior and superior to any other liens and charges whatsoever. So long as any Parity Bonds are outstanding against the Bond Fund, the City obligates and binds itself to set aside and pay into the Bond Fund all ULID Assessments and, out of the Net Revenue, certain fixed amounts without regard to any fixed proportion, namely:

(1) Into the Principal and Interest Account on or before each Installment Payment Date an amount which, together with ULID Assessments and other money on deposit therein, will be sufficient to pay the debt service coming due and payable on that next Installment Payment Date, including mandatory redemption amounts due on that date with respect to any Term Bonds; and

(2) Into the Reserve Account, either:

(a) on the second Installment Payment Date, and thereafter annually in regular installments, the City will deposit one-tenth of the average annual loan installment each year for ten years, which, together with other money and Reserve Securities on deposit therein, will equal the Reserve Requirement for the outstanding Parity Bonds.

(b) one or more Reserve Securities the value of which, together with any amount deposited under subsection (1), above, are equal to the Reserve Requirement for the outstanding Parity Bonds.

NOTWITHSTANDING THE ABOVE, FOR AS LONG AS THE PURCHASER IS THE REGISTERED OWNER OF THE BONDS, THE CITY AGREES NOT TO UTILIZE RESERVE SECURITIES TO PROVIDE FOR ANY PART OF THE RESERVE REQUIREMENT.

B. The City covenants and agrees that it will at all times maintain in the Reserve Account an amount (including the value of all Reserve Securities deposited therein) equal to the Reserve Requirement, except for withdrawals as authorized in this subsection, until there is a sufficient amount in the Principal and Interest Account and Reserve Account to pay the principal of and interest on all outstanding Parity Bonds, at which time the money in the Reserve Account may be used to pay any such principal and interest so long as the money remaining on deposit in the Reserve Account is not less than the Reserve Requirement calculated based on the remaining

outstanding Parity Bonds. If there are sufficient funds in the Bond Fund to pay all outstanding Parity Bonds and the Reserve Requirement as to those outstanding Parity Bonds is met, excess money in the Bond Fund may be used for any Waterworks Utility purpose.

In the event that the amounts in the Bond Fund are insufficient to make any debt service payment on any outstanding Parity Bonds, amounts shall be withdrawn from the Reserve Account to make up that deficiency. Any deficiency created in the Reserve Account by reason of such a withdrawal shall then be made up from Net Revenue and from ULID Assessment payments, but only after necessary provision has been made for Maintenance and Operations Costs and for the required payments into the Principal and Interest Account.

C. All money in the Bond Fund may be kept in cash; deposited with an institution (as permitted by law) in an amount in each institution not greater than the amount insured by any department or agency of the United States Government; or invested in Permitted Investments or other legal investments permitted to the City maturing not later than the date when needed (for investments in the Principal and Interest Account) or the last maturity of any outstanding Parity Bonds (for investments in the Reserve Account). Income from investments in the Principal and Interest Account shall be deposited in that account. Income from investments in the Reserve Account shall be deposited in that account until the amount therein is equal to the Reserve Requirements of all Parity Bonds, and thereafter shall be deposited in the Principal and Interest Account.

D. The City may create sinking fund accounts or other accounts in the Bond Fund for the payment or securing the payment of Parity Bonds as long as the maintenance of such accounts does not conflict with the rights of the owners of Parity Bonds.

E. The Short-Lived Asset Reserve Account is hereby created in the Bond Fund and is to be maintained for the purpose of replacing Short-Lived Assets. The City shall deposit a minimum of \$12,924 annually into the Short-Lived Asset Reserve Account until the final maturity or earlier prepayment of the Bonds. The first deposit into the Short-Lived Asset Reserve Account shall be made on the second Installment Payment Date. Amounts on deposit in the Short-Lived Asset Reserve Account are not pledged to the payment of the Bonds or any Future Parity Bonds.

If the City fails to set aside and pay into the Bond Fund the amounts set forth above, the owner of any of the outstanding Parity Bonds may bring action against the City and compel the setting aside and payment.

**Section 11. Rate Stabilization Fund.** The City reserves the right to create and establish in the office of the Clerk-Treasurer, a Rate Stabilization Fund. The City may at any time deposit into a Rate Stabilization Fund amounts from Gross Revenue and any other money received by the Waterworks Utility and available to be used for that purpose, excluding principal proceeds of any Future Parity Bonds. The City may at any time withdraw money from the Rate Stabilization Fund for inclusion in the Net Revenue for the current fiscal year of the Waterworks Utility, except that the total amount withdrawn from the Rate Stabilization Fund in any calendar year may not exceed the total debt service of the Waterworks Utility in that year. Such deposits

or withdrawals may be made up to and including the date 90 days after the end of the calendar year for which the deposit or withdrawal will be included as Net Revenue.

Earnings from investments in the Rate Stabilization Fund shall be deposited in that fund and shall not be included as Net Revenue unless and until withdrawn from that fund as provided in this Section. The Clerk-Treasurer may also deposit earnings from investments in the Rate Stabilization Fund into any Waterworks Utility fund as authorized by ordinance, and such deposits shall be included as Net Revenue in the year of deposit.

No deposit shall be made into the Rate Stabilization Fund to the extent that such deposit would prevent the City from meeting the Coverage Requirement in the relevant calendar year.

## **Section 12. Deposit of Bond Proceeds; Execution of Refunding Plan.**

A. Construction Fund. The Construction Fund has previously been established in the office of the Clerk-Treasurer. The proceeds of the Bonds remaining after a sufficient amount of the proceeds of the Bonds has been deposited in the Note Account to repay the Note and to pay the costs of issuance of the Bonds shall be deposited in the Construction Fund and used to carry out the Plan of Additions. Money on deposit in the Construction Fund may be invested and the investment earnings retained in the Construction Fund and used for the purposes of that fund.

B. Note Account. Bond proceeds allocated to repay the Note shall be deposited immediately upon the receipt thereof in the Note Account and used to discharge the obligations of the City relating to the Note under the Note Ordinance. In the event Bond proceeds remain in the Note Account after the repayment of the Note and provision for the costs of issuance and sale of the Bonds has been accomplished, such proceeds shall be transferred to the Bond Fund and used to pay principal of and/or interest on the Bonds.

C. Use of Bond Proceeds. The money deposited in the Note Account and any income therefrom shall be held by the Clerk-Treasurer (or a trustee designated by the Clerk-Treasurer) in trust, separate and apart from all other money of the City, and shall be irrevocably set aside for and pledged to the payment and redemption of the Note in accordance with the Note Ordinance. The Clerk-Treasurer is authorized and directed to cause the payments to be made from money in the Note Account in order to accomplish the repayment of the Note. All money deposited in the Note Account and any income therefrom shall be held irrevocably, invested and applied in accordance with the provisions of the Note Ordinance, this ordinance, chapter 39.53 RCW and other applicable statutes of the State.

D. Call for Redemption of the Note. The City calls the Note for redemption as soon as practicable on or after the Closing Date. Such call for redemption shall be irrevocable after the delivery of the Bonds to the Purchaser. The proper City officials may adjust the date of redemption of the Note as may be necessary to accomplish the repayment of the Note, and those officials are authorized and directed to give or cause to be given such notice as required, at the time and in the manner required, pursuant to the Note Ordinance in order to effect the redemption of the Note.

E. City Findings with Respect to the Repayment of the Note. The City Council finds and determines that the issuance and sale of the Bonds at this time will allow the City to enter

into new covenants regarding the Waterworks Utility and it is in the best interest of the City and in the public interest. In making such findings and determinations, the City Council has given consideration to the fixed maturities of the Bonds and the Note, the costs of issuance and sale of the Bonds and the known earned income from the investment of the proceeds of the issuance and sale of the Bonds and other money of the City used to accomplish the repayment of the Note pending payment and redemption of the Note. The City Council further finds and determines that the money to be deposited in the Note Account in accordance with this ordinance will discharge and satisfy the obligations of the City under the Note Ordinance with respect to the Note, and the pledges, charges, trusts, covenants and agreements of the City therein made or provided for as to the Note, and that the Note shall no longer be deemed to be outstanding under the Note Ordinance immediately upon the deposit of such money in the Note Account.

**Section 13. Covenants.** The City covenants and agrees with the owner of the Bonds as follows:

(1) It will establish, maintain, revise as necessary, and collect such rates and charges for the services furnished by the Waterworks Utility (including those furnished under contract with wholesale customers) as will at least equal the Coverage Requirement.

(2) It will at all times maintain and keep the Waterworks Utility in good repair, working order and condition, and also will at all times operate such utility and the business in connection therewith in an efficient manner and at a reasonable cost.

(3) It will promptly collect all ULID Assessments. Such assessments may be used to pay the principal or interest on any Parity Bonds without those assessments being particularly allocated to the payment of principal of or interest on any particular series of Parity Bonds.

(4) It will not sell, lease, mortgage or in any manner encumber or dispose of all the property of the Waterworks Utility unless provision is made for payment into the Bond Fund of a sum sufficient to pay the principal of and interest on all outstanding Parity Bonds. Furthermore, it will not sell, lease, mortgage, or in any manner encumber or dispose of any part of the property of the Waterworks Utility that is used, useful and material to its operation, unless provision is made (a) for the replacement of that portion of the Waterworks Utility, or (b) for the payment into the Bond Fund of an amount bearing the same ratio to the par amount of outstanding Parity Bonds as the amount of Net Revenue available for debt service derived during the preceding 12-month period from that portion of the Waterworks Utility bears to the total Net Revenue available for debt service for such bonds for the same period. Any such money so paid into the Bond Fund shall be used to retire outstanding Parity Bonds at the earliest possible date and may be invested to the same extent and in the same manner as provided for the investment of money in the Reserve Account until so used.

(5) While any of the Parity Bonds remain outstanding it will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the Waterworks Utility, and it will furnish the owner or owners of the Parity Bonds or any subsequent owner or owners thereof, at the written request of such owner or owners, complete operating and income statements of the Waterworks Utility in reasonable

detail covering any calendar year not more than ninety days after the close of such calendar year. It will grant any owner or owners of at least twenty-five percent of the outstanding Parity Bonds the right at all reasonable times to inspect the entire Waterworks Utility and all records, accounts and data relating thereto, and upon request of any owner of any of the Parity Bonds a copy of the most recently completed audit of the Waterworks Utility's accounts by the State Auditor of Washington.

(6) It at all times will carry fire and extended coverage and such other forms of insurance with responsible insurers and with policies payable to or on behalf of the City and any additional insureds on such of the buildings, equipment, works, plants, facilities and properties of the Waterworks Utility and against such claims for damages as are ordinarily carried by municipal or privately owned utilities engaged in the operation of like systems, or will implement and maintain a self insurance or an insurance pool program with reserves adequate, in the reasonable judgment of the City, to protect the Waterworks Utility and the owners of the Parity Bonds against loss. The premiums on such insurance policies are declared to be a normal part of Maintenance and Operations Costs.

(7) It will pay all Maintenance and Operations Costs and otherwise meet the obligations of the City as herein set forth.

(8) Except as provided in Section 10, the City will not create any special fund or funds for the payment of the principal of and interest on any other revenue obligations which will have any priority over or which will rank on a parity with the payments required by this ordinance to be made out of the Net Revenue and ULID Assessments.

#### **Section 14. Parity Provisions.**

A. The City may issue Future Parity Bonds only for lawful Waterworks Utility purposes and only if the following conditions are met and complied with at the time of the issuance of those Future Parity Bonds:

(1) There must be no deficiency in the Bond Fund;

(2) The ordinance providing for the issuance of such Future Parity Bonds must provide that all ULID Assessments (including interest on those assessments) imposed in any ULID created for the purpose of paying in whole or in part the principal of and interest on such Future Parity Bonds is to be paid directly into the Bond Fund;

(3) The ordinance authorizing those Future Parity Bonds must provide for the payment of the principal of and interest thereon out of the Bond Fund;

(4) The applicable ordinance authorizing those Future Parity Bonds must provide for the deposit into the Reserve Account of any combination of Future Parity Bond proceeds, Reserve Security or other money legally available, in the amount necessary (if any) to make the amount on deposit in the Reserve Account equal to the Reserve Requirement upon the issuance of those Future Parity Bonds.

(5) There shall be on file with the City a certificate (which may take into account the adjustments described in subsection B), either:

(a) of the City Clerk-Treasurer, demonstrating that the Coverage Requirement was satisfied during any twelve consecutive calendar months out of the immediately preceding 24 calendar months (assuming that (A) those Future Parity Bonds were outstanding and that the debt service payable on those Future Parity Bonds in that 12-month period was equal to the Average Annual Debt Service on those Future Parity Bonds, and (B) any Parity Bonds to be refunded by those Future Parity Bonds are not outstanding); or

(b) of an Independent Utility Consultant, stating that in his or her opinion (which opinion and underlying assumptions shall be set forth in the certificate), the Coverage Requirement will be satisfied (assuming that those Future Parity Bonds are outstanding and any Parity Bonds to be refunded by those Future Parity Bonds are not outstanding) (A) in each of the calendar years for the five calendar years next following the earlier of: (i) the year in which those Future Parity Bonds are issued (or, if interest is capitalized, the end of the period during which the interest on those Future Parity Bonds is fully capitalized), (ii) the date on which substantially all new facilities or improvements financed in substantial part by those Future Parity Bonds are expected to commence operations; and (B) in the calendar year in which those Future Parity Bonds are issued and any subsequent year prior to but not included in the years for which certification is provided.

B. In determining whether the City is able to comply with the terms of the parity conditions, the certificate required under subsection A(5), above, may take into account the following adjustments to the historical Net Revenue for the relevant 12-month period:

(1) Any rate change that has taken place or been adopted by ordinance or contract may be reflected, including any changes in the rates charged to any Significant Wholesale Customer in effect and being charged, or expected to be charged in accordance with a program of specific levels or increase (or decreases) in overall revenue.

(2) Revenue from customers added or projected to be added to the Waterworks Utility after the relevant 12-month period may be adjusted to reflect one year's Net Revenue allocable to those new customers.

(3) A full year's revenue may be included on a *pro forma* basis from any customer being served but who has not been receiving service for the full period of operation used as a basis for the certificate.

(4) Actual or reasonably anticipated changes in the Maintenance and Operations Costs subsequent to the relevant 12-month period shall be added or deducted, as is applicable.

(5) Net Revenue allocable to any person, firm, corporation or municipal corporation under any executed contract for water or other utility service, which revenue was not included in the historical Net Revenue, may be included in Net Revenue.

(6) Transfers into or out of the Rate Stabilization Fund pursuant to Section 11 may be taken into account, and those amounts may be added to or deducted from Net Revenues, as applicable.

C. If Future Parity Bonds are being issued for the sole purpose of refunding Parity Bonds (including costs of issuance and providing for the Reserve Requirement), no coverage certification is required under this Section 14 if, as result of the issuance of those Future Parity Bonds, (a) the Annual Debt Service on the Future Parity Bonds to be issued is not increased by more than \$5,000 over the Annual Debt Service for that year of the bonds being refunded, and (b) the various annual maturities of the refunding Future Parity Bonds will not extend more than one year longer than the Parity Bonds being refunded.

D. Nothing contained in this Section 14 shall prevent the City from issuing revenue bonds having a junior lien on the Net Revenue or from pledging the payment of assessments in any ULID into a bond redemption fund or account created to pay and secure the payment of the principal of and interest on such junior lien bonds as long as such assessments are levied to pay part or all of the cost of improvements being constructed out of the proceeds of the sale of such junior lien bonds.

NOTWITHSTANDING THE ABOVE, FOR AS LONG AS THE PURCHASER IS THE REGISTERED OWNER OF THE BONDS, THE CITY AGREES NOT TO ISSUE ANY FUTURE PARITY BONDS OR JUNIOR LIEN (SUBORDINATE) BONDS WITHOUT PRIOR WRITTEN APPROVAL OF THE PURCHASER.

**Section 15. Separate Utility Systems.** The City may create, acquire, construct, finance, own and operate one or more additional systems for water supply, sewer service, water, sewage or stormwater transmission, treatment or other commodity or utility service. The revenue of that Separate System, and any ULID Assessments payable solely with respect to improvements to a Separate System, shall not be included in the Gross Revenue and may be pledged to the payment of revenue obligations issued to purchase, construct, condemn or otherwise acquire or expand the Separate System. Neither the Gross Revenue nor the Net Revenue may be pledged to the payment of any obligations of a separate utility Separate System except that the Net Revenue may be pledged on a basis subordinate to the lien of the Parity Bonds.

**Section 16. Flow of Funds.** The Net Revenue shall be used for the following purposes only and shall be applied in the following order of priority:

A. To make when due the required payments into the Principal and Interest Account in respect of interest on the Parity Bonds.

B. To make when due the required payments into the Principal and Interest Account in respect of principal of and premium, if any, on the Parity Bonds, whether at maturity or pursuant to redemption prior to maturity.

C. To make when due all payments required to be made into the Reserve Account, all payments required to be made under any agreement relating to the provision of Reserve Security, and all payments required to be made under any reimbursement agreement with a

Reserve Security provider that requires those payments to be made on a parity with the payments required to be made into the Reserve Account.

D. To make when due all payments required to be made under any reimbursement agreement with a Bond Insurer other than payments to be made on a parity with the Parity Bonds, and all payments required to be made under any reimbursement agreement with a Reserve Security provider other than payments to be made on a parity with the payments to be made into the Reserve Account, in any priority not inconsistent with this ordinance that the City may hereafter establish by ordinance.

E. To make when due the required payments to be made into any revenue bond, note warrant or other revenue obligation redemption fund, debt service account or reserve account created to pay and secure the payment of any revenue bonds, warrants, notes or other obligations of the Waterworks Utility having a charge upon the Net Revenue junior and inferior to the charge thereon for the payment of the principal of and premium (if any), and interest on the Parity Bonds, and all payments required to be made into the Reserve Account under any ordinance authorizing an issue of Parity Bonds, in any priority not inconsistent with this ordinance, that the City may hereafter establish by ordinance.

F. For any other lawful Waterworks Utility purposes, in any priority not inconsistent with this ordinance that the City may hereafter establish by ordinance.

#### **Section 17. Federal Tax Matters.**

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

B. Written Policies and Procedures Authorized. The Clerk-Treasurer or other proper City official is authorized and directed to review and update the City's written procedures to facilitate compliance by the City with the covenants of this Section 17 and the applicable requirement of the Code that must be satisfied after the date of delivery of the Bonds to the Purchaser to maintain the tax treatment of the Bonds and the receipt of interest thereon.

**Section 18. Refunding or Defeasance of Parity Bonds.** The City may issue refunding bonds pursuant to the laws of the State or use money available from any other lawful source to pay when due the principal of and interest on the Bonds, or any portion thereof included in a refunding or defeasance plan, and to redeem and retire, refund or defease all of the



principal amount of the Bonds (hereinafter collectively called the “defeased Bonds”) and to pay the costs of the refunding or defeasance. If money and/or noncallable Government Obligations maturing at a time or times and bearing interest in amounts (together with money, if necessary) sufficient to redeem and retire, refund or defease the defeased Bonds in accordance with their terms are set aside in a special trust fund or escrow account irrevocably pledged to that redemption, retirement or defeasance of the defeased Bonds (hereinafter called the “trust account”), then all right and interest of any Registered Owner of the defeased Bonds in the covenants of this ordinance and in the funds obligated to the payment of the defeased Bonds shall cease and become void. Any Registered Owner of the defeased Bonds shall have the right to receive payment of the principal of and interest on the defeased Bonds from the trust account. The City shall include in the refunding or defeasance plan such provisions as the City deems necessary for notice of the defeasance to be given to any Registered Owner of the defeased Bonds and to such other persons as the City shall determine, and for any required replacement of a Bond certificate for the defeased Bonds. The defeased Bonds shall be deemed no longer outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the defeased Bonds to any lawful purposes as it shall determine.

NOTWITHSTANDING THE ABOVE, FOR AS LONG AS THE PURCHASER IS THE REGISTERED OWNER OF THE BONDS, THE CITY AGREES NOT TO DEFEASE THE BONDS.

**Section 19. Supplemental Ordinances.**

A. This ordinance shall not be modified or amended in any respect subsequent to the initial issuance of the Bonds, except as provided in and in accordance with and subject to the provisions of this section.

B. The City may from time to time and at any time, without the consent of or notice to the registered owners of the Parity Bonds, pass supplemental ordinances as follows:

(1) to cure any formal defect, omission, inconsistency or ambiguity in this ordinance;

(2) to impose upon the Bond Registrar (with its consent) for the benefit of the registered owner of the Bonds any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with this ordinance as previously in effect;

(3) to add to the covenants and agreements of, and limitations and restrictions upon, the City in this ordinance other covenants, agreements, limitations and restrictions to be observed by the City which are not contrary to or inconsistent with this ordinance as previously in effect;

(4) to confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by this ordinance of any other money, securities or funds;

(5) to authorize different denominations of the Bonds and to make correlative amendments and modifications to this ordinance regarding exchangeability of Bonds of different authorized denominations, redemptions of portions of Bonds of particular authorized denominations and similar amendments and modifications of a technical nature;

(6) to modify, alter, amend or supplement this ordinance in any other respect which is not materially adverse to the registered owner of the Bonds and which does not involve a change described in subsection 19.C of this section.

Before any supplemental ordinance pursuant to this subsection B shall become effective, there be delivered to the City and the Bond Registrar an opinion of Bond Counsel, stating that such supplemental ordinance is authorized or permitted by this ordinance and will, upon its effective date, be valid and binding upon the City in accordance with its terms and will not adversely affect the exemption from federal income taxation of interest on the Bonds.

C. (1) Except for any supplemental ordinance passed pursuant to subsection B of this section, subject to the terms and provisions contained in this subsection C and not otherwise, registered owners of not less than a majority of the aggregate principal amount of the Parity Bonds then outstanding shall have the right from time to time to consent to and approve the passage by the City Council of the City of any supplemental ordinance deemed necessary or desirable by the City for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in this ordinance.

However, unless approved in writing by each registered owner of each Parity Bond then outstanding, nothing contained in this section shall permit, or be construed as permitting:

(a) a change in the times, amounts or currency of payment of the principal of or interest on any outstanding Parity Bond, or a reduction in the principal amount or redemption price of any outstanding Parity Bond, or a change in the method or redemption price of any outstanding Parity Bond, or a change in the method of determining the rate of interest thereon;

(b) a preference or priority of any Parity Bond or Parity Bonds over any other Bond or Bonds, or

(c) a reduction in the aggregate principal amount of Parity Bonds the consent of the registered owners of Bonds of which is required for any such supplemental ordinance.

(2) If at any time the City shall pass any supplemental ordinance for any of the purposes of this subsection C, the Bond Registrar shall cause notice of the proposed supplemental ordinance to be given by first class United States mail to all Registered Owners of the then outstanding Bonds, to each Rating Agency that has provided a rating on an issue of the Parity Bonds, and to any Bond Insurer. Such notice shall briefly set forth the nature of the proposed supplemental ordinance and shall state that a copy thereof is on file at the office of the Bond Registrar for inspection by all Registered Owners.

(3) Within two years after the date of the mailing of such notice, the City may pass such supplemental ordinance in substantially the form described in such notice, but only if there shall have first been delivered to the Bond Registrar: (1) the required consents, in writing, of the Registered Owners, and (2) an opinion of Bond Counsel, stating that such supplemental ordinance is authorized or permitted by this ordinance and, upon the execution and delivery thereof, will be valid and binding upon the City in accordance with its terms [[and will not adversely affect the exclusion from federal income taxation of interest on the Bonds]].

(4) If the registered owners of not less than the percentage of Bonds required by this subsection C have consented to and approved the execution and delivery thereof as herein provided, no owner of the Bonds shall have any right to object to the passage of such supplemental ordinance, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the passage thereof, or to enjoin or restrain the City or the Bond Registrar from passing the same or from taking any action pursuant to the provisions thereof.

(5) Upon the execution and delivery of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City, the Bond Registrar and all Registered Owners shall thereafter be determined, exercised and enforced under this ordinance subject in all respects to such modifications and amendments.

**Section 20. General Authorization.** The Clerk-Treasurer of the City, and other appropriate officers of the City are severally authorized to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this ordinance, and to do everything necessary for the prompt delivery of the Bonds to the Purchaser and for the proper application, use and investment of the bond proceeds.

**Section 21. Severability; Ratification.** If any provision of this ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bonds. All actions heretofore taken by the City consistent with the provisions of this ordinance are ratified, confirmed and approved.

**Section 22. Effective Date.** This ordinance shall take effect and be in force from and after its passage and five days following its publication as provided by law.

PASSED by the City Council of the City of Cashmere, Washington, at a regular open public meeting thereof on the 9<sup>th</sup> day of December, 2013, and signed in authentication of its passage this 9<sup>th</sup> day of December, 2013.

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Mayor

AUTHENTICATED:

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City Clerk-Treasurer

APPROVED AS TO FORM:

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Foster Pepper PLLC, Bond Counsel

## CERTIFICATION

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

1. The attached copy of Ordinance No. 1224 (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on December 9, 2013, as that ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after the publication of its summary in the City's official newspaper; and

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

IN WITNESS WHEREOF, I have hereunto set my hand this 9<sup>th</sup> day of December, 2013.

CITY OF CASHMERE, WASHINGTON

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Kay Jones, City Clerk-Treasurer