



ORDINANCE NO. 28295

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AN ORDINANCE relating to Tacoma Power, Department of Public Utilities, Light Division (d.b.a. "Tacoma Power"); authorizing a new issue of bonds to be known as the City of Tacoma Electric System Subordinate Revenue Bonds, and fixing the terms and provisions thereof and the covenants of the City with respect thereto, and addressing certain other matters in connection therewith.

WHEREAS the City, by Ordinance No. 23514, passed on November 20, 1985 (as amended, supplemented and restated, the "Senior Bond Ordinance"), authorized Electric System Revenue Bonds of the City (the "Senior Bonds") to be issued in series having a parity of lien and charge on the Revenues after the payment of Operating Expenses (as those terms are defined herein) if certain conditions are met and complied with, made covenants in connection with the issuance of such Senior Bonds and authorized the sale and issuance of a first series of such Senior Bonds to refund all of the City's then-outstanding light and power revenue bonds, and

WHEREAS the City has issued and there are currently outstanding approximately \$508,000,000 aggregate principal amount of the Senior Bonds; and

WHEREAS, the Senior Bond Ordinance permits the City to issue obligations that are junior and subordinate to the payment of the Senior Bonds and that are payable out of revenues derived by the City from its ownership and operation of the City's Electric System, after payment of the expense of operating and maintaining the Electric System, only after the prior payment of all amounts required to be paid or set aside under the Senior Bonds Ordinance



1 for the Senior Bonds, as the same shall become due at the times and in the
2 manner as required in the Senior Ordinance, and

3 WHEREAS the City Council hereby determines that it is in the best
4 interests of the City to authorize a new issue of revenue bonds of the City junior
5 and subordinate to the Senior Bonds to be known as the City of Tacoma
6 Electric System Subordinate Revenue Bonds (defined as the "Subordinate
7 Bonds") in one or more series to finance costs of the Electric System; Now,
8 Therefore,

9 BE IT ORDAINED BY THE CITY OF TACOMA:

10
11 **ARTICLE I**

12 **DEFINITIONS AND GENERAL PROVISIONS**

13 **Section 1.1. Definitions.** As used in this Subordinate Ordinance, the
14 following words shall have the following meanings:

15 "Accreted Value" means, with respect to any Capital Appreciation Bonds,
16 the principal amount thereof plus the interest accrued thereon from its delivery
17 date, compounded at the accretion rate thereof on each date specified therein,
18 to the date of calculation.

19
20 "Annual Debt Service" for any Fiscal Year means the amount equal to:

21 (a) the interest due during such Fiscal Year on all outstanding
22 Subordinate Bonds, excluding interest to be paid from the proceeds of sale of
23 Subordinate Bonds or other moneys which have been irrevocably deposited in
24 the Interest Account for that purpose; and
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1 (b) the maturing principal of all outstanding Bonds due in such Fiscal
Year; and

2 (c) the mandatory sinking fund redemptions of Term Bonds due in
3 such Fiscal Year.
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5 For purposes of this definition:

6 (i) The interest due in each Fiscal Year shall be reduced by the
7 amount of any Federal subsidy received by the City in such Fiscal Year
8 specifically for the payment of such interest;

9 (ii) the interest rate on Variable Rate Bonds to be issued shall be
10 assumed to be 80 percent of the 30-year Revenue Bond Index published in *The*
11 *Bond Buyer* on such date of calculation (or, if *The Bond Buyer* ceases to be
12 published or ceases to publish such index, any comparable successor
13 nationally recognized financial publication or index designated by the City);

14 (iii) if a Payment Agreement is in effect pursuant to which the City is
15 obligated to pay a fixed rate with respect to any Variable Rate Bonds, the
16 interest rate on such Variable Rate Bonds during the period such Payment
17 Agreement is scheduled to be in effect shall be assumed to be the fixed rate
18 specified in such Payment Agreement;

19 (iv) if a Payment Agreement is in effect with respect to any Bonds
20 pursuant to which the City receives a fixed rate in exchange for paying a
21 variable rate, the interest rate on such Bonds during the period such Payment
22 Agreement is scheduled to be in effect shall be assumed to be the sum of
23 (A) the interest rate on such Bonds determined as if such Bonds were Variable
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1 Rate Bonds, and (B) the difference, if any, between the fixed rate of interest
2 borne by such Bonds and the fixed rate the City receives pursuant to such
3 Payment Agreement;

4 (v) the principal of any Balloon Bonds shall be assumed to become
5 due and payable in each Fiscal Year in an amount that would be sufficient to
6 fully amortize such principal, together with interest thereon at the rate such
7 Bonds are otherwise assumed to bear for purposes of this definition (using
8 semi-annual compounding and a year of 360 days), on a level debt service
9 basis over a period commencing on the first day of the Fiscal Year next
10 preceding the date of calculation and ending 30 years thereafter; and

11 (vi) debt service with respect to the Senior Bonds shall be calculated
12 in the same manner set forth above for the Subordinate Bonds.

13 "Balloon Bonds" means the principal amount of Subordinate Bonds of a
14 series (including Capital Appreciation Bonds) that becomes due and payable,
15 either at scheduled maturity, by Sinking Fund Requirement or by mandatory
16 tender for purchase, in any Fiscal Year that constitutes 25 percent or more of
17 the initial aggregate principal amount of such series of Bonds.

18 "Beneficial Owner" means, for any Bond held by a nominee, the owner of
19 the beneficial interest in such Bond.

20 "Board" means the Public Utility Board of the City.

21 "Bond Counsel" means an attorney at law or a firm of attorneys, selected
22 by the City, of nationally recognized standing in matters pertaining to bonds
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issued by states and their political subdivisions and the tax-exempt status

1 thereof.

2 "Bond Fund" means the Electric System Subordinate Bond Fund created
3 by Section 8.2.

4 "Bond Register" means the books or records maintained by the Bond
5 Registrar for the purpose of identifying ownership of the Subordinate Bonds.

6 "Bond Registrar" means initially the Paying Agent, or any successor
7 bond registrar selected by the City.

8 "Bond Retirement Account" means the Subordinate Bond Retirement
9 Account established pursuant to Section 8.2.

10 "Book-Entry Bonds" means Bonds for which a Securities Depository or
11 its nominee is the Owner.

12 "Business Day" means any day other than (a) a Saturday, Sunday, or a
13 day on which banking institutions in the State or the State of New York are
14 authorized or obligated by law or executive order to be closed, (b) a day upon
15 which the principal office of the City or the Trustee is authorized or required by
16 law to be closed, or (c) with respect to a series of Subordinate Bonds, any day
17 so specified in the Supplemental Ordinance authorizing the issuance of such
18 series of Subordinate Bonds.

19 "Capital Appreciation Bonds" means any Subordinate Bonds as to which
20 interest accretes rather than being payable on a current basis.

21 "Certified Public Accountant" means an independent certified public
22 accountant (or firm of certified public accountants) selected by the City and



1 having widely recognized experience and expertise with respect to the audit
2 and accounting of municipal electric utilities comparable to the Electric System.

3 "City" means the City of Tacoma, Washington, a home-rule charter
4 municipal corporation duly organized and existing under and by virtue of the
5 Constitution and laws of the State of Washington.

6 "City Payment" means any regularly scheduled payment required to be
7 made by or on behalf of the City under a Payment Agreement and which is
8 determined according to a formula set forth in the Payment Agreement.

9 "City Payment Date" means any date specified in the Payment
10 Agreement on which a City Payment is due and payable under the Payment
11 Agreement.
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13 "Code" means the Internal Revenue Code of 1986, as amended,
14 together with corresponding and applicable final, temporary, or proposed
15 regulations and revenue rulings issued or amended with respect thereto by the
16 United States Treasury Department or the Internal Revenue Service, to the
17 extent applicable to the Subordinate Bonds.
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19 "Construction Fund" means the Subordinate Construction Fund
20 established pursuant to Section 8.4 hereof.
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22 "Consulting Engineer" means an independent licensed professional
23 engineer (or firm of licensed professional engineers) selected by the City and
24 having widely recognized expertise and experience with electric systems of
25 comparable size and character to the Electric System.
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1 "Contract Resource Obligation" means an obligation of the Electric
2 System to pay costs for electric power, energy, capacity, reserves or
3 transmission services from specified facilities, including from a separate electric
4 utility system of the City, as an Operating Expense of the Electric System,
5 regardless of whether or not such power, energy, capacity, reserves or
6 transmission services are made available to or utilized by the Electric System,
7 which such costs may include costs of operation and maintenance, debt
8 service, and renewals, replacements, additions and betterments to such
9 facilities.
10

11 "City Council" means the City Council of the City as the same shall be
12 duly and regularly constituted from time to time.

13 "Credit Facility" means a credit agreement, liquidity agreement, standby
14 bond purchase agreement, reimbursement agreement, direct purchase
15 agreement, bond or note purchase agreement, insurance policy, surety policy
16 or other similar agreement or instrument under which a Person undertakes to
17 provide funds to pay the principal of and interest on or the purchase price of a
18 series of Subordinate Bonds; but excluding any Reserve Account Facility.
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20 "Credit Provider" means the provider of Credit Facility.

21 "DTC" means The Depository Trust Company or its successor.

22 "Electric System" means the electric utility properties, rights and assets,
23 real and personal, tangible and intangible, now owned and operated by the City
24 and used or useful in the generation, transmission, distribution and sale of
25 electric energy and the business incidental thereto, and all properties, rights
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1 and assets, real and personal, tangible and intangible, hereafter constructed or
2 acquired by the City as additions, betterments, improvements or extensions to
3 said electric utility properties, rights and assets, including the provision of
4 telecommunication services to customers of the Electric System, but shall not
5 include any generation, transmission, and distribution facilities that may
6 hereafter be purchased, constructed, or otherwise acquired by the City and
7 declared by the City Council to be a separate utility system the revenues of
8 which may be pledged to the payment of revenue obligations issued to finance
9 such separate utility system. The City may, by ordinance, elect to combine with
10 and include as a part of the Electric System any other separate utility system of
11 the City; provided, that full provision for the payment of any outstanding
12 indebtedness of such separate system shall first be made in substantially the
13 manner set forth in Section 13.2.

15 "Event of Default" means those events described as Events of Default in
16 Section 11.1.

18 "Finance Director" means the Director of the Department of Finance of
19 the City, or the City official who succeeds to substantially all of the
20 responsibilities of that office.

22 "Fiscal Year" means the Fiscal Year used by the City at any time. At the
23 time of the passage of this Subordinate Ordinance, the Fiscal Year is the 12-
24 month period beginning January 1 of each year.

25 "Fitch" means Fitch Ratings, Inc., and its successors and assigns, except
26 that if such organization shall be dissolved or liquidated or shall no longer



perform the functions of a securities credit rating agency, then the term "Fitch" shall be deemed to refer to any other nationally recognized securities credit rating agency selected by the City.

"Government Obligations" means non-callable direct obligations of or obligations the principal of and interest on which are unconditionally guaranteed as to timely payment by the United States of America.

"Interest Account" means the Subordinate Bonds Interest Account established pursuant to Section 8.2.

"Letter of Representations" means the a letter of representations executed by the City and delivered to DTC and any amendments thereto or successor agreements between the City and any successor Securities Depository, relating to a system of Book-Entry Bonds to be maintained by the Securities Depository with respect to the Subordinate Bonds.

"Moody's" means Moody's Investors Service, Inc., and its successors and assigns, except that if such organization shall be dissolved or liquidated or shall no longer perform the functions of a securities credit rating agency, then the term "Moody's" shall be deemed to refer to any other nationally recognized securities credit rating agency selected by the City.

"Net Revenues" means, for any period, the excess of Revenues over Operating Expenses for such period.

"Operating Expenses" means all the City's expenses for operation and maintenance of the Electric System, including all operation and maintenance expenses included in the Uniform System of Accounts. Operating Expenses



1 shall include (a) payments with respect to Contract Resource Obligations, and
2 (b) payments to the City for services rendered to the Electric System by other
3 departments or offices of the City. Operating Expenses shall not include any
4 extraordinary, non-recurring expenses, any costs or expenses for new
5 construction, interest, amortization, any allowance for depreciation or any taxes
6 payable to the City (or payments in lieu of taxes) upon the properties or
7 earnings of the Electric System or the earnings of any separate electric utility
8 system derived from payments by the Electric System.

9 "Option Bonds" means Subordinate Bonds that the Owner thereof may at
10 his, her or its option demand the purchase of such Subordinate Bonds by or on
11 behalf of the City in advance of the scheduled dates for the payment of principal
12 and interest thereon.

13 "Outstanding" means, as of any date, all Subordinate Bonds
14 authenticated and delivered under this Subordinate Ordinance, except
15 (a) Bonds theretofore cancelled or delivered to the Trustee for cancellation
16 pursuant to Section 4.6, (b) Subordinate Bonds in substitution for which other
17 Subordinate Bonds have been authenticated and delivered pursuant to
18 Article IV, (c) Subordinate Bonds that are deemed to be no longer outstanding
19 in accordance with Article XIII, (d) Subordinate Bonds that are deemed to be no
20 longer outstanding in accordance with the Supplemental Ordinance pursuant to
21 which such Subordinate Bonds were issued, and (e) Subordinate Bonds held by
22 or on behalf of the City.
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1 "Owner" means the person in whose name a Subordinate Bond is
2 registered.

3 "Paying Agent" means the Paying Agent or any bank or banks
4 designated as Paying Agent by the City in accordance with applicable laws of
5 the State of Washington now or hereinafter in effect.

6 "Payment Agreement" means a written contract or agreement between
7 the City and a Reciprocal Payor:

8 (a) that is entered into with respect to specified Subordinate Bonds;

9 (b) that is for a term not later than the final maturity date of such
10 Subordinate Bonds;

11 (c) under which the City is obligated to pay, on one or more specified
12 City Payment Dates, City Payments in exchange for the Reciprocal Payor's
13 obligation to pay or cause to be paid to the City, on specified City Payment
14 Dates, Reciprocal Payments;

15 (d) for which the City's obligations to make City Payments is secured
16 by Revenues on a parity basis with the Subordinate Bonds;

17 (e) under which City Payments are made at a fixed or variable rate
18 based on a notional amount which does not exceed the principal amount of
19 such Subordinate Bonds;

20 (f) under which Reciprocal Payments are made at a variable or fixed
21 rate based on the same notional amount; and

22 (g) which is formally designated by the City as a Payment Agreement
23 with respect to such Subordinate Bonds.
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1 "Permitted Investments" means investments that are now or may
hereafter be permitted to the City by the laws of the State of Washington.

2 "Person" means any individual, corporation, not for profit corporation,
3 partnership, limited liability company, joint venture, association, professional
4 association, joint stock company, trust, unincorporated organization,
5 government or any agency or political subdivision thereof or any other form of
6 entity.
7

8 "Principal Account" means the Subordinate Bonds Principal Account
9 established pursuant to Section 8.2.
10

11 "Rate Stabilization Fund" means the fund of that name previously
12 established by the City and existing with respect to the Electric System.

13 "Rating Agencies" means Moody's, S&P and Fitch and any other
14 nationally recognized credit rating agency selected by the City.

15 "Reciprocal Payment" means each regularly scheduled payment to be
16 made to or for the benefit of the City under a Payment Agreement by the
17 Reciprocal Payor.
18

19 "Reciprocal Payor" means the party to a Payment Agreement that is
20 obligated to make Reciprocal Payments thereunder and that has or whose
21 obligations are unconditionally guaranteed by a party that has (as of the date of
22 the Payment Agreement) a rating in one of the three highest rating categories
23 (without regard to sub-categories) from at least two Rating Agencies.

24 "Reserve Account" means the Electric System Subordinate Reserve
25 Account established pursuant to Section 8.3.
26



1 "Reserve Account Facility" means (a) an irrevocable letter of credit
2 issued by a financial institution which maintains an office, agency, or branch in
3 the United States; and (b) a non-cancelable municipal bond insurance policy or
4 surety bond issued by an insurance provider licensed to conduct an insurance
5 business in any state of the United States, in each case which is used to fund
6 all or a part of the Reserve Account Requirement and the provider of which (or
7 such instrument) is rated in one of the two highest long-term rating categories
8 (without regard to sub-categories) by both Moody's and S&P.

9 "Reserve Account Facility Provider" means the provider of a Reserve
10 Account Facility.
11

12 "Reserve Account Requirement" means, with respect to any Subordinate
13 Bonds, an amount equal to the lesser of (a) maximum Annual Debt Service in
14 any Fiscal Year, and (b) 125 percent of average Annual Debt Service, in each
15 case following the date of computation, or such other amount (which may be
16 zero) as set forth in the Supplemental Ordinance authorizing the issuance of
17 such Subordinate Bonds. A Supplemental Ordinance authorizing Subordinate
18 Bonds may establish a separate reserve account for such Subordinate Bonds
19 or provide that such Subordinate Bonds be secured by a common reserve
20 account.
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23 "Revenue Fund" means the fund of that name previously established by
24 the City and existing with respect to the Electric System.

25 "Revenues" means all income (including investment income), receipts,
26 and revenues received by the City through the ownership and operation of the



1 Electric System, including any income derived by the City through the
2 ownership and operation of any facilities that may hereafter be purchased,
3 constructed, or otherwise acquired and operated by the City as a separate utility
4 system, which income is available after meeting all requirements of the
5 obligations of such separate system and is paid into the Revenue Fund.

6 Revenues shall not include income from investment of money in any
7 construction fund and other investment income restricted to a particular purpose
8 inconsistent with its use for the payment of debt service on the Subordinate
9 Bonds.

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11 "S&P" means Standard & Poor's Ratings Services and its successors
12 and assigns, except that if such organization shall be dissolved or liquidated or
13 shall no longer perform the functions of a securities credit rating agency, then
14 the term "S&P" shall be deemed to refer to any other nationally recognized
15 securities credit rating agency selected by the City.

16
17 "Securities Depository" means DTC and any substitute nationally
18 recognized securities depository selected by the City.

19 "Senior Bonds" means all bonds issued and at any time outstanding
20 under the Senior Bond Ordinance.

21
22 "Senior Bond Ordinance" means Ordinance No. 23514, adopted on
23 November 20, 1985, as supplemented and amended, including as amended
24 and restated by Ordinance No. 28146, adopted on April 30, 2013.

25 "Senior Lien Bond Fund" means the Bond Fund created by Section 7.2 of
26 the Senior Bond Ordinance for the Senior Bonds.



"Serial Bonds" means Subordinate Bonds other than Term Bonds.

1 "Sinking Fund Requirement" means, for any Fiscal Year, the amount
2 required on account of any Term Bonds to be deposited in the Bond Retirement
3 Account and applied in such Fiscal Year to the mandatory redemption thereof
4 prior to maturity as established by the Supplemental Ordinance authorizing the
5 issuance of such Term Bonds.
6

7 "State" means the State of Washington.

8 "Subordinate Ordinance" means this Ordinance No. _____, adopted on
9 April __, 2015.
10

11 "Subordinate Bonds" means the bonds, notes, warrants, certificates of
12 indebtedness or any other evidence of indebtedness issued pursuant hereto.

13 "Supplemental Ordinance" means any ordinance amending, modifying,
14 or supplementing the provisions of this Subordinate Ordinance or any
15 Supplemental Ordinance in each case which is adopted pursuant to the terms
16 hereof.
17

18 "Tax-Exempt Bonds" means Subordinate Bonds, the interest on which in
19 the opinion of Bond Counsel as of the date of issuance thereof is not includable
20 in gross income for federal income tax purposes under Section 103(a) of the
21 Code.
22

23 "Term Bonds" means Subordinate Bonds which are subject to mandatory
24 redemption prior to maturity from Mandatory Sinking Fund Payments.

25 "Trustee" means the trustee with respect to the Bonds appointed
26 pursuant to this Subordinate Ordinance.



1 "Uniform System of Accounts" means the Federal Energy Regulatory
2 Commission (or its successor in function) Uniform System of Accounts
3 prescribed for Class A and Class B Public Utilities and Licenses, as the same
4 may be modified, amended, or supplemented from time to time.

5 "Variable Rate Bonds" means Subordinate Bonds the interest on which is
6 not fixed to the maturity date thereof.

7 **Section 1.2. Rules of Interpretation.** For purposes of this Subordinate
8 Ordinance, except as otherwise expressly provided or the context otherwise
9 requires:
10

11 (a) The words "herein," "hereof" and "hereunder" and other similar
12 words refer to this Subordinate Ordinance as a whole and not to any particular
13 Article, Section or other subdivision.

14 (b) The definitions in this Article are applicable whether the terms
15 defined are used in the singular or the plural.
16

17 (c) All accounting terms that are not defined in this Subordinate
18 Ordinance have the meanings assigned to them in accordance with generally
19 accepted accounting principles applicable to municipalities, including municipal
20 electric utilities.

21 (d) Any pronouns used in this Subordinate Ordinance include both
22 the singular and the plural and cover both genders.

23 (e) Any terms defined elsewhere in this Subordinate Ordinance have
24 the meanings attributed to them where defined.
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1 (f) The captions or headings herein are for convenience of reference
2 only and in no way define, limit or describe the scope or intent, or control or
3 affect the meaning or construction, of any provisions or Sections hereof.

4 (g) Any references to Section numbers are to Sections of this
5 Subordinate Ordinance unless stated otherwise.

6 (h) The terms "include" and "including" when used in this Subordinate
7 Ordinance mean "without limitation."

8 **Section 1.3. Content of Certificates and Opinions.** Every certificate
9 or opinion provided for in this Subordinate Ordinance with respect to
10 compliance with any provision hereof shall include (a) a statement that the
11 person making or giving such certificate or opinion has read such provision and
12 the definitions herein relating thereto; (b) a brief statement as to the nature and
13 scope of the examination or investigation upon which the certificate or opinion is
14 based; (c) a statement (i) that, in the opinion of such person, such person has
15 made or caused to be made such examination or investigation as is necessary
16 to enable such person to express an informed opinion with respect to the
17 subject matter and (ii) that such person has made or caused to be made such
18 person's examination or investigation with respect to the subject matter in
19 accordance with any applicable professional standards; and (d) a statement as
20 to whether, in the opinion of such person, such provision has been complied
21 with. Any such certificate or opinion made or given by an officer or employee of
22 the City may be based, insofar as it relates to legal or accounting matters, upon
23 a certificate or opinion of or representation by counsel, an accountant or an
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1 independent consultant, unless such officer or employee knows, or in the
2 exercise of reasonable care should have known, that the certificate, opinion or
3 representation with respect to the matters upon which such certificate or
4 statement may be based is erroneous. Any such certificate or opinion made or
5 given by counsel, an accountant or an independent consultant may be based,
6 insofar as it relates to factual matters (with respect to which information is in the
7 possession of the City) upon a certificate or opinion of or representation by an
8 officer or employee of the City, unless such counsel, accountant or independent
9 consultant knows, or in the exercise of reasonable care should have known,
10 that the certificate or opinion or representation with respect to the matters upon
11 which such person's certificate or opinion or representation may be based is
12 erroneous. The same officer or employee of the City, or the same counsel or
13 accountant or independent consultant, as the case may be, need not certify to
14 all of the matters required to be certified under any provision of this Subordinate
15 Ordinance, but different officers, employees, counsel, accountants or
16 independent consultants may certify to different matters, respectively.

19 ARTICLE II

20 THE SENIOR BONDS

21 **Section 2.1. Senior Bonds.** The pledge, lien and charge of the Senior
22 Bonds on Revenues and the obligation of the City to deposit Revenues into the
23 Senior Lien Bond Fund established by the Senior Bond Ordinance have priority
24 over the pledge, lien and charge of the Subordinate Bonds on Revenues.

25 Notwithstanding anything to the contrary contained in this Subordinate
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1 Ordinance, any separate money, assets or security other than Revenues
2 pledged to or provided for Subordinate Bonds shall be security only for such
3 Subordinate Bonds and shall not be available for payment of the Senior Bonds
4 or any other series of Bonds issued pursuant to the terms of this Subordinate
5 Ordinance except as may be provided in any Supplemental Ordinance.

6 **ARTICLE III**

7 **AUTHORIZATION OF SUBORDINATE BONDS**

8 **Section 3.1. Authorization of Subordinate Bonds.** There is hereby
9 created and established an issue of revenue bonds of the City designated
10 generally as "City of Tacoma, Washington, Electric System Subordinate
11 Revenue Bonds" (the "Subordinate Bonds"), which may be issued for any lawful
12 purpose of the Electric System. The maximum principal amount of Subordinate
13 Bonds that may be issued hereunder is not limited except as provided herein.
14 Each series of Subordinate Bonds shall bear such separate or additional
15 designation as may be necessary or appropriate to distinguish such series from
16 other series of Subordinate Bonds. The Subordinate Bonds shall be issued in
17 such series as from time to time shall be authorized by the City Council
18 pursuant to a Supplemental Ordinance, subject to the covenants, provisions
19 and conditions contained therein and herein.
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Section 3.2. Series of Bonds; Terms of Supplemental Ordinances.

1 The Supplemental Ordinance authorizing a series of Subordinate Bonds shall
2 specify (or provide the method for specifying) for such Subordinate Bonds,
3 among other things:
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5 (a) The purposes of the Subordinate Bonds and the application of
6 proceeds thereof;

7 (b) The principal amount of the Subordinate Bonds;

8 (c) The dated date or dates, maturity date or dates and interest
9 payment date or dates of the Subordinate Bonds;
10

11 (d) The authorized denominations and series designation of the
12 Subordinate Bonds;

13 (e) The interest rate or rates on such Subordinate Bonds, which may
14 be fixed or variable, and/or the method for determining such rates, and whether
15 the Subordinate Bonds are Serial Bonds, Term Bonds or Capital Appreciation
16 Bonds;
17

18 (f) Any provisions for optional or mandatory redemption of the
19 Subordinate Bonds, including the date or dates and price or prices thereof, and
20 any Sinking Fund Requirements;

21 (g) The method and places for payment of the Subordinate Bonds;

22 (h) The form or forms of the Subordinate Bonds;

23 (i) The terms and conditions, if any, for the optional or mandatory
24 tender for purchase of the Subordinate Bonds, including the purchase date or
25 dates, the purchase price or prices and other applicable terms;
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1 (j) The authorization of and any terms and conditions with respect to
any Credit Facility or Reserve Account Facility for the Subordinate Bonds; and

2 (k) The tender agents, remarketing agents, or other similar parties
3 with respect to the Subordinate Bonds; and
4

5 (l) Any other provisions which the City deems necessary or desirable
6 in connection with the Subordinate Bonds and not inconsistent with the terms of
7 this Subordinate Ordinance.

8 **ARTICLE IV**

9 **GENERAL TERMS AND PROVISIONS OF SUBORDINATE BONDS**

10 **Section 4.1. Form; Execution and Authentication of Subordinate**

11 **Bonds.** The Subordinate Bonds of each series shall be in such form or forms
12 as shall be provided in the Supplemental Ordinance authorizing the issuance
13 thereof. The Subordinate Bonds shall be executed on behalf of the City with
14 the manual or facsimile signature of the Mayor and attested with the manual or
15 the manual or facsimile signature of the Mayor and attested with the manual or
16 facsimile signature of the City Clerk and the seal of the City shall be imprinted
17 or impressed thereon.
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19 Only Subordinate Bonds bearing a Certificate of Authentication in the
20 form set forth in the Supplemental Ordinance authorizing the execution thereof,
21 manually signed by the Bond Registrar, shall be valid or obligatory for any
22 purpose or entitled to the benefits of the Subordinate Ordinance. The
23 authorized execution of the Certificate of Authentication shall be conclusive
24 evidence that the Subordinate Bond so authenticated has been duly executed,
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1 authenticated, and delivered and is entitled to the benefits of this Subordinate
2 Ordinance.

3 In case any of the officers who shall have signed or attested any of the
4 Subordinate Bonds shall cease to be such officers before the Subordinate
5 Bonds so signed or attested shall have been actually delivered, such
6 Subordinate Bonds shall be valid nevertheless and may be issued by the City
7 with the same effect as though the persons who had signed or attested such
8 Subordinate Bonds had not ceased to be such officers.

9 **Section 4.2. Temporary Bonds.** Prior to the preparation of definitive
10 Subordinate Bonds the City may issue and deliver temporary Subordinate
11 Bonds in registered form and in such denominations as the City may determine
12 but otherwise in substantially the form provided for such definitive Subordinate
13 Bonds with appropriate variations, omissions and insertions. The City shall
14 promptly prepare, execute and deliver to the Trustee definitive Subordinate
15 Bonds and, upon presentation and surrender of Subordinate Bonds in
16 temporary form, the Trustee shall authenticate and deliver in exchange therefor
17 definitive Subordinate Bonds of the same maturity for the same aggregate
18 principal amount. Until exchanged for definitive Subordinate Bonds,
19 Subordinate Bonds in temporary form shall be entitled to the lien and benefit of
20 this Subordinate Ordinance and the Supplemental Ordinance authorizing the
21 issuance thereof.

22 **Section 4.3. Registration, Transfer and Exchange, and Payments.**
23 The following provisions shall apply to each series of Subordinate Bonds unless
24



1 otherwise provided in the Supplemental Ordinance authorizing the issuance
2 thereof.

3 (a) Bond Registrar and Bond Register. The Bond Registrar shall
4 keep, or cause to be kept, at its principal corporate trust office, sufficient
5 records for the registration and transfer of the Subordinate Bonds (the "Bond
6 Register"), which shall be open to inspection by the City. The Bond Registrar is
7 authorized, on behalf of the City, to authenticate and deliver Subordinate Bonds
8 transferred or exchanged in accordance with the provisions of such Subordinate
9 Bonds and this Subordinate Ordinance and to carry out all of the Bond
10 Registrar's powers and duties under this Subordinate Ordinance. The Bond
11 Registrar shall be responsible for its representations contained in the Bond
12 Registrar's Certificate of Authentication on the Subordinate Bonds.

14 (b) Registered Ownership. The City and the Bond Registrar may
15 deem and treat the registered Owner of each Subordinate Bond as shown on
16 the Bond Register as the absolute owner thereof for all purposes, and neither
17 the City nor the Bond Registrar shall be affected by any notice to the contrary.
18 Payment of any such Subordinate Bond made as provided herein shall be valid
19 and shall satisfy the liability of the City upon such Subordinate Bond to the
20 extent of the amount so paid.

23 (c) Bond Registrar's Ownership of Subordinate Bonds. The Bond
24 Registrar may become the registered owner of any Subordinate Bond with the
25 same rights it would have if it were not the Bond Registrar, and to the extent
26 permitted by law, may act as depository for and permit any of its officers or



1 directors to act as member of, or in any other capacity with respect to, any
2 committee formed to protect the rights of the registered owners of the
3 Subordinate Bonds.

4 (d) Transfer or Exchange of Registered Ownership; Change in
5 Denominations. The registered ownership of any Subordinate Bond may be
6 transferred or exchanged, but no transfer of any Subordinate Bond shall be
7 valid unless it is surrendered to the Bond Registrar with an assignment in a
8 form satisfactory to the Bond Registrar duly executed by the Owner or such
9 Owner's duly authorized agent in a manner satisfactory to the Bond Registrar.
10 Upon such surrender, the Bond Registrar shall cancel the surrendered
11 Subordinate Bond and shall authenticate and deliver, without charge to the
12 Owner or transferee, a new Subordinate Bond (or Subordinate Bonds at the
13 option of the new Owner) of the same series, date, maturity, and interest rate
14 and for the same aggregate principal amount in any authorized denomination,
15 naming as Owner the person or persons listed as the assignee on the
16 assignment form, in exchange for such surrendered and canceled Subordinate
17 Bond. Any Subordinate Bond may be surrendered to the Bond Registrar and
18 exchanged, without charge, for an equal aggregate principal amount of
19 Subordinate Bonds of the same series, date, maturity, and interest rate in any
20 authorized denomination. The Bond Registrar shall not be obligated to transfer
21 or exchange any Subordinate Bond during a period beginning at the opening of
22 business on the 15th day of the month next preceding any interest payment
23 date and ending at the close of business on such interest payment date, or, in
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1 the case of any proposed redemption of the Subordinate Bonds, after the
2 mailing of notice of the call of such Subordinate Bonds for redemption.

3 (e) Place and Medium of Payment. Both principal of and interest on
4 the Subordinate Bonds shall be payable in lawful money of the United States of
5 America. Interest on the Subordinate Bonds shall be paid by checks or drafts
6 mailed by the Bond Registrar on the interest payment date to the registered
7 Owners at the addresses appearing on the Bond Register on the 15th day of
8 the month preceding the interest payment date or, at the request of an owner of
9 \$1,000,000 or more in aggregate principal amount of Bonds, by wire transfer to
10 an account in the United States designated in writing by such owner prior to the
11 record date. Principal of the Subordinate Bonds shall be payable upon
12 presentation and surrender of the Subordinate Bonds by the registered Owners
13 at the principal office of the Bond Registrar at the option of the owners.
14 Notwithstanding the foregoing, as long as the Subordinate Bonds are registered
15 in the name of DTC or its nominee, payment of principal of and interest on the
16 Subordinate Bonds shall be made in the manner set forth in the Letter of
17 Representations.
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20 **Section 4.4. Securities Depository Provisions.** The following
21 provisions shall apply to each series of Subordinate Bonds unless otherwise
22 provided in the Supplemental Ordinance authorizing the issuance thereof.
23

24 (a) Each series of Subordinate Bonds shall be Book-Entry Bonds
25 initially registered in the name of Cede & Co., as nominee of DTC.
26



1 (b) All payments of principal, premium, if any, and interest on the
2 Book-Entry Bonds and all notices with respect thereto, including notices of full
3 or partial redemption, shall be made and given at the times and in the manner
4 set forth in the Letter of Representations. The terms and provisions of the
5 Letter of Representations shall govern in the event of any inconsistency
6 between the provisions of this Subordinate Ordinance and the Letter of
7 Representations. The Letter of Representations may be amended without
8 Owner consent.

9 (c) The book-entry registration system for a series of Book-Entry
10 Bonds may be terminated and certificates delivered to and registered in the
11 name of the Beneficial Owners, under either of the following circumstances: (i)
12 the Securities Depository notifies the City and the Trustee that it is no longer
13 willing or able to act as Securities Depository for such series of Book-Entry
14 Bonds and a successor Securities Depository for such series of Book-Entry
15 Bonds is not appointed by the City prior to the effective date of such
16 discontinuation; or (ii) the City determines that continuation of the book-entry
17 system through the Securities Depository is not in the best interest of the City or
18 the Beneficial Owners of such series of Subordinate Bonds.

19 (d) In the event a successor Securities Depository is appointed by the
20 City, such series of Book-Entry Bonds will be registered in the name of such
21 successor Securities Depository or its nominee. In the event certificates are
22 required to be issued to Beneficial Owners, the Trustee and the City shall be
23 fully protected in relying upon a certificate of the Securities Depository or any
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1 participant of the Securities Depository as to the identity of and the principal
2 amount of Book-Entry Bonds held by such Beneficial Owners.

3 (e) The Beneficial Owners will not receive physical delivery of
4 certificates except as provided herein. All Book-Entry Bonds shall be registered
5 in the name of the Securities Depository or its nominee, all transfers of
6 beneficial ownership interests in Book-Entry Bonds will be made in accordance
7 with the rules of the Securities Depository, and no Person purchasing, selling or
8 otherwise transferring beneficial ownership interests in Book-Entry Bonds will
9 receive, hold or deliver any certificate representing such beneficial ownership
10 interests. The City and the Trustee shall have no responsibility or liability for
11 transfers of beneficial ownership interests in Book-Entry Bonds.

12 (f) The City and the Trustee will recognize the Securities Depository
13 or its nominee as the Owner of Book-Entry Bonds for all purposes, including
14 receipt of payments, notices and voting; provided, that the Trustee may
15 recognize votes by or on behalf of Beneficial Owners as if such votes were
16 made by Owners of a related portion of the Subordinate Bonds when such
17 votes are received in compliance with an omnibus proxy of the Securities
18 Depository or otherwise pursuant to the rules of the Securities Depository or the
19 provisions of the Letter of Representations or other comparable evidence
20 delivered to the Trustee.

21 (g) Neither the City nor the Trustee shall have any responsibility or
22 obligation with respect to (i) the accuracy of the records of any Securities
23 Depository or any other Person with respect to any ownership interest in Book-



1 Entry Bonds, (ii) the delivery to any Person, other than an Owner, of any notice
2 with respect to Book-Entry Subordinate Bonds, including any notice of
3 redemption or refunding, (iii) the selection of the particular Subordinate Bonds
4 or portions thereof to be redeemed or refunded in the event of a partial
5 redemption or refunding of part of the Subordinate Bonds Outstanding or
6 (iv) the payment to any Person, other than an Owner, of any amount with
7 respect to the principal, premium, if any, or interest on Book-Entry Bonds.

8 **Section 4.5. Mutilated, Lost or Destroyed Bonds.** If any Subordinate
9 Bonds are mutilated, lost, stolen or destroyed, the City shall execute and the
10 Bond Registrar shall authenticate and deliver a new Subordinate Bond or
11 Subordinate Bonds of like series, amount, maturity and tenor to the Owner upon
12 the Owner paying the expenses and charges of the Bond Registrar and the City
13 in connection therewith and upon his or her filing with the Bond Registrar and
14 the City evidence satisfactory to both that such Subordinate Bond or
15 Subordinate Bonds were actually mutilated, lost, stolen or destroyed and of his
16 or her ownership thereof, and upon furnishing the City and the Bond Registrar
17 with indemnity satisfactory to both.

20 **Section 4.6. Cancellation and Disposition of Bonds.** The City may
21 deliver Bonds to the Trustee for cancellation at any time and for any reason and
22 the Trustee is hereby authorized to cancel such Bonds. All Bonds that have
23 been paid or delivered to the Trustee for cancellation shall not be reissued.

25 **Section 4.7. Disposition of Unclaimed Funds.** Notwithstanding any
26 provisions of this Subordinate Ordinance, and subject to applicable unclaimed



1 property laws, any money deposited with the Trustee in trust for the payment of
2 the principal, purchase price or redemption premium of or interest on the
3 Subordinate Bonds remaining unclaimed for two (2) years after the payment
4 thereof, to the extent permitted by applicable law, shall be paid to City for credit
5 to the Electric System, whereupon all liability of the Trustee with respect to such
6 money shall cease, and the Owners of such Subordinate Bonds shall thereafter
7 look solely to the City for payment of any amounts then due. All moneys held
8 by the Trustee and subject to this Section shall be held uninvested without
9 liability for interest thereon.
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11 ARTICLE V

12 REDEMPTION OF SUBORDINATE BONDS

13 **Section 5.1. Terms of Redemption.** Subordinate Bonds may be called
14 for redemption by the City as provided herein or in the Supplemental Ordinance
15 authorizing the issuance thereof.
16

17 **Section 5.2. Selection of Subordinate Bonds for Redemption;**
18 **Partial Redemption.** If less than all of a series of Subordinate Bonds are
19 called for redemption, they shall be redeemed from maturities in such order as
20 determined by the City, and by lot within any maturity subject to selection by the
21 Trustee as provided below. The portion of any Subordinate Bond to be
22 redeemed shall be an authorized denomination and in selecting Subordinate
23 Bonds for redemption, each Subordinate Bond shall be considered as
24 representing that number of Subordinate Bonds which is obtained by dividing
25 the principal amount of such Subordinate Bond by the minimum authorized
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denomination thereof. If less than all of the outstanding principal amount of any Subordinate Bond is redeemed, upon surrender of that Subordinate Bond to the Bond Registrar, there shall be issued to the Owner, without charge, a new Subordinate Bond (or Subordinate Bonds, at the option of the Owner) of the same series, maturity and interest rate in any authorized denomination in the aggregate principal amount remaining unredeemed. The principal portion of any Subordinate Bond registered in the name of the Securities Depository which is to be partially redeemed shall be selected in accordance with the Letter of Representations. If a Subordinate Bond ceases to be held in book-entry form, the portion to be partially redeemed shall be selected randomly in such manner as the Bond Registrar shall determine.

Section 5.3. Notice of Redemption.

(a) Notice of Redemption. When Subordinate Bonds (or portions thereof) are to be redeemed, the City shall give or cause to be given notice of the redemption of such Subordinate Bonds to the Bond Registrar no later than 40 days prior to the date fixed for redemption or such shorter time as may be acceptable to the Trustee. While a Subordinate Bond is registered in the name of the Securities Depository, notice of redemption shall be given as required in accordance with the Letter of Representations. If a Subordinate Bond ceases to be held in book-entry form, unless waived by the Owner of the Subordinate Bond to be redeemed, the City shall cause notice of an intended redemption of Subordinate Bonds to be given by the Bond Registrar not less than 20 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage



1 prepaid, to the Owner of each Subordinate Bond to be redeemed at the address
2 appearing on the Bond Register. The requirements of the preceding sentence
3 shall be satisfied when notice has been mailed as so provided, whether or not it
4 is actually received by an Owner of any Subordinate Bond. In addition, the
5 redemption notice shall be mailed or sent electronically within the same period
6 to (i) the Rating Agencies, (ii) nationally recognized clearing agencies for
7 municipal bonds, and (iii) nationally recognized information services with
8 respect to municipal bond redemptions, but these additional notices shall not be
9 a condition precedent to the redemption of a Subordinate Bond.
10

11 (b) Contents of Notice. The redemption notice shall contain with
12 respect to each Subordinate Bond being redeemed: (i) the CUSIP number, if
13 any, (ii) the date of issue, (iii) the interest rate, (iv) the maturity date, (v) the
14 redemption date, (vi) the principal amount being redeemed, and (vii) any other
15 descriptive information as determined by the Trustee.
16

17 (c) Rescission of Optional Redemption Notice. In the case of an
18 optional redemption, the notice of redemption may state that the City retains the
19 right to rescind the redemption notice and the optional redemption of those
20 Subordinate Bonds by giving a notice of rescission to the affected Owners at
21 any time on or prior to the scheduled redemption date. Any notice of optional
22 redemption that is so rescinded shall be of no effect, and a Subordinate Bond
23 for which a notice of optional redemption has been rescinded shall remain
24 outstanding.
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Section 5.4. Effect of Redemption. Interest on Subordinate Bonds

called for redemption shall cease to accrue on the date fixed for redemption, unless either the notice of redemption is rescinded as set forth above, or money sufficient to effect such redemption is not on deposit in the Bond Fund (or in an irrevocable escrow account established to refund or defease the Subordinate Bonds redeemed).

Section 5.5. Open Market Purchases. The City reserves the right to

purchase any or all of the Subordinate Bonds in the open market at any time at any price acceptable to the City. The principal amount of Term Bonds purchased and delivered to the Trustee for cancellation pursuant to this Section may be credited against future Sinking Fund Requirements as the City shall specify in writing to the Trustee.

ARTICLE VI

CONDITIONS FOR ISSUANCE OF SUBORDINATE BONDS; PAYMENT AGREEMENTS

Section 6.1. Conditions for Issuance of Subordinate Bonds.

(a) No Default. Subordinate Bonds may be issued pursuant to this Subordinate Ordinance only if at the time of the issuance of such Subordinate Bonds, (i) there is no deficiency in the Bond Fund, and (ii) no Event of Default has occurred and is continuing.



(b) Additional Bonds Certificate. Prior to the issuance of any

1 Subordinate Bonds there shall be on file with the Trustee either:

2 (i) A certificate of the Finance Director stating that Net

3 Revenues in any 12 consecutive months out of the most recent 24 months

4 preceding the authentication and delivery of the Subordinate Bonds then

5 proposed to be issued, as determined from the audited financial statements of

6 the Electric System, were not less than 100 percent of maximum Annual Debt

7 Service in any future Fiscal Year on all outstanding Senior Bonds and

8 Subordinate Bonds and the Subordinate Bonds then proposed to be issued;

9 provided, that in the event that any revision in the rates, fees and charges

10 collected by the City for the services of the Electric System shall be effective at

11 any time from the first day of such 12-month period through the date of

12 authentication and delivery of the Subordinate Bonds then proposed to be

13 issued, the Finance Director shall set forth in the certificate the change in Net

14 Revenues he or she estimates would have occurred for such 12-month period if

15 such revised rates, fees, and charges had been in effect for the entire such 12-

16 month period; or

17 (ii) A certificate of a Consulting Engineer stating that projected

18 Net Revenues for each Fiscal Year for the period beginning with the first Fiscal

19 Year following the earlier of (A) the date to which interest has been capitalized

20 or (B) the weighted average date of initial operation of the facilities to be

21 financed by such Subordinate Bonds, and ending with the fifth Fiscal Year after

22 such date, are at least equal to 100 percent of projected maximum Annual Debt

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1 Service in any future Fiscal Year on all outstanding Senior Bonds and
2 Subordinate Bonds and the Subordinate Bonds then proposed to be issued.

3 (c) Refunding Bonds. Subordinate Bonds may also be issued from
4 time to time for the purpose of providing proceeds, together with any other
5 available funds, for refunding and defeasing at or prior to their stated maturity or
6 maturities any Outstanding Senior Bonds or Subordinate Bonds, including
7 interest and any redemption premium thereon, and any expenses incident to
8 the issuance of such Subordinate Bonds and the defeasance of such refunded
9 Senior Bonds or Subordinate Bonds. Subordinate Bonds shall not be issued
10 under this subsection unless the proceeds thereof, together with other available
11 funds, and interest from the investment thereof, shall be sufficient to pay the
12 principal of and the redemption premium, if any, on the bonds to be refunded
13 and the interest which will become due and payable on and prior to the date of
14 their payment or redemption, and the expenses incident to the issuance of such
15 Subordinate Bonds. If Subordinate Bonds are to be issued under this
16 subsection, there shall be filed with the Trustee a certificate signed by the
17 Finance Director showing that the maximum Annual Debt Service in any Fiscal
18 Year thereafter shall not be increased by more than \$5,000 by reason of the
19 issuance of such Subordinate Bonds.
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23 (d) Consulting Engineer Projections. (i) The Consulting Engineer
24 may base its projection of Net Revenues in each Fiscal Year on such factors as
25 he, she or it shall consider reasonable.
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1 (ii) The Consulting Engineer shall base its projection of Annual
2 Debt Service in each Fiscal Year on the then Outstanding Senior Bonds and
3 Subordinate Bonds plus any Senior Bonds or Subordinate Bonds which are
4 projected to be issued during the period covered by such certificate to complete
5 construction of facilities financed by such Outstanding Senior Bonds and
6 Subordinate Bonds and the Subordinate Bonds proposed to be issued.

7 (e) Refunding of All Subordinate Obligations; Junior Lien Obligations.
8 Nothing contained herein shall prevent the City from refunding at one time all of
9 the Subordinate Bonds then outstanding. Nothing contained herein shall
10 prevent the City from issuing obligations payable from a pledge, lien and charge
11 on Revenues that is junior and subordinate to the Subordinate Bonds.

12 **Section 6.2. Additional Conditions for Issuance of Subordinate**
13 **Bonds.** Each series of Subordinate Bonds shall be executed by the City and
14 delivered to the Trustee and thereupon authenticated by the Trustee only upon
15 receipt by the Trustee of the following additional items:
16

17 (a) A copy of this Subordinate Ordinance, including the Supplemental
18 Ordinance authorizing the issuance of such series of Subordinate Bonds,
19 certified by the City Clerk;
20

21 (b) A written opinion of Bond Counsel to the effect that (i) such series
22 of Subordinate Bonds are valid and binding limited obligations of the City, and
23 (ii) the Subordinate Ordinance, including the Supplemental Ordinance
24 authorizing the issuance of such series of Subordinate Bonds, has been duly
25 passed and is a valid and binding obligation of the City;
26



1 (c) An Order of the City as to the delivery of such series of
2 Subordinate Bonds;

3 (d) A Certificate of the City stating that (i) no Event of Default, nor any
4 event or condition which with notice and/or the passage of time would constitute
5 an Event of Default, has occurred and is continuing under this Subordinate
6 Ordinance as of the date of issuance of such series of Subordinate Bonds and
7 (ii) the issuance of such series of Bonds, in and of itself, will not cause an Event
8 of Default under this Subordinate Ordinance; and

9 (e) The deposit into the Reserve Account or other reserve account for
10 such series of Subordinate Bonds of money, Permitted Investments, or a
11 Reserve Account Facility or any combination of the foregoing in an aggregate
12 amount equal to the Reserve Account Requirement or other reserve account
13 requirement, if any, for such series of Subordinate Bonds.

14 (f) The Finance Director and the Consulting Engineer, as
15 appropriate, shall include in any Certificate delivered pursuant to this Section a
16 description of the assumptions, analyses, methodologies, and statistical and
17 other information from the City or third persons used in producing its projections
18 of Net Revenues.
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21 **Section 6.3. Payment Agreements.**

22 (a) The City may enter into a Payment Agreement with respect to
23 Subordinate Bonds if the City delivers to the Trustee:

24 (i) the certificate required by Section 6.1(b)(i) or (ii), taking into
25 account the City Payments and Reciprocal Payments obligated to be made
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thereunder with respect to such Subordinate Bonds as adjustments to the
1 interest payable on such Subordinate Bonds; and

2 (ii) an opinion of Bond Counsel to the effect that the Payment
3 Agreement has been duly authorized by the City, is authorized and permitted by
4 this Subordinate Ordinance, and is a valid and binding obligation of the City,
5 and will not adversely affect the excludability for federal income tax purposes of
6 the interest on any Tax-Exempt Bonds.
7

8 (b) If the City enters into a Payment Agreement with respect to
9 Subordinate Bonds, any net City Payments shall be made from the Interest
10 Account in the Bond Fund and Reciprocal Payments shall be deposited in the
11 Interest Account in the Bond Fund.
12

13 (c) Payments by the City under the Payment Agreement other than
14 City Payments, including any termination payments, shall be payable and
15 secured on a basis junior and subordinate to the Subordinate Bonds.
16

17 ARTICLE VII

18 CONTRACT RESOURCE OBLIGATIONS

19 **Section 7.1. Creation of Separate Systems.** The City may create,
20 acquire, construct, finance, own and operate one or more additional electric
21 utility systems for the generation or transmission of electric power and energy.
22 The City may declare any such system to be a separate utility system the
23 revenues of which may be pledged to the payment of revenue obligations
24 issued to finance such separate utility system. The City may provide by
25 Supplemental Ordinance that the costs associated with any such separate utility
26



1 system shall, upon compliance with Section 7.2, constitute a Contract Resource
2 Obligation.

3 **Section 7.2. Contract Resource Obligations.** The City may enter into
4 or undertake a Contract Resource Obligation if the following requirements are
5 met at the time the Contract Resource Obligation is incurred:

6 (a) No Event of Default has occurred and is continuing.

7 (b) There shall be on file with the Trustee a certificate of the
8 Consulting Engineer in the form provided in Section 6.1(b)(ii) with respect to
9 such Contract Resource Obligation.

10 (c) There shall be on file with the Trustee a written opinion of the
11 Consulting Engineer to the following effects:

12 (i) If the Contract Resource Obligation is for power, energy,
13 capacity or reserves, that (A) such Contract Resource Obligation is sound from
14 a power supply planning standpoint, and is technically and economically
15 feasible in accordance with prudent utility practice; and (B) the estimated cost
16 thereof is reasonable.

17 (ii) If the Contract Resource Obligation is for transmission
18 services, that (A) such Contract Resource Obligation will be necessary or
19 desirable within a reasonable time after the estimated date of commercial
20 operation of the related transmission facilities; and (B) the estimated cost
21 thereof is reasonable.

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ARTICLE VIII

SPECIAL FUNDS AND ACCOUNTS

Section 8.1. Revenue Fund.

(a) The City of Tacoma Electric System Revenue Fund has heretofore been created and shall be continued. The City covenants and agrees that it will pay or cause to be paid all Revenues into the Revenue Fund as promptly as practicable after receipt thereof. The Revenues in the Revenue Fund shall be held by the City in trust for the equal and ratable benefit of Owners of the Senior Bonds and the Subordinate Bonds subject to application thereof in accordance with the provisions of the Senior Bond Ordinance and this Subordinate Ordinance. The City will hold the Revenue Fund separate and distinct from all other funds of the City.

(b) There have heretofore been created and there shall be continued in the Revenue Fund two accounts known as (i) the General Account and (ii) the Operating Account, which accounts shall be held and used for the purposes hereinafter described. The Revenues paid into the Revenue Fund shall first be credited to the General Account and thereafter applied and used only for the following purposes and in the following order of priority:

First, to make all payments required to be made into the Operating Account to pay Operating Expenses;

Second, to make all payments required to be made into the Bond Fund established by the Senior Bond Ordinance with respect to the Senior Bonds;



1 *Third*, to make all payments required to be made pursuant to a Qualified
2 Letter of Credit or Qualified Insurance with respect to the Senior Bonds, unless
3 such payments are contractually obligated to be paid under *Second*, above;

4 *Fourth*, to make all payments required to be made into the Interest
5 Account in the Bond Fund for the payment of accrued interest on the next
6 interest payment date;

7 *Fifth*, to make all payments required to be made into the Principal
8 Account in the Bond Fund for the payment of the maturing principal amount of
9 Bonds next coming due, and into the Bond Retirement Account in the Bond
10 Fund for the mandatory redemption of Term Bonds;

11 *Sixth*, to make all payments required to be made to pay or reimburse a
12 Credit Provider pursuant to the terms of any Credit Facility with respect to such
13 Subordinate Bonds, unless such payments are obligated to be paid under
14 *Fourth* through *Fifth*, above;

15 *Seventh*, to make all payments required to be made into the Reserve
16 Account in the Bond Fund created to secure the payment of the Subordinate
17 Bonds, including any amounts necessary to pay or reimburse a Reserve
18 Account Facility Provider pursuant to a Reserve Account Facility;

19 *Eighth*, to make all payments required to be made into any special fund
20 or account created to pay or secure the payment of the principal of and interest
21 on any revenue bonds, warrants, or other revenue obligations of the City having
22 a lien upon Net Revenues and money in the Revenue Fund and accounts
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1 therein junior and inferior to the lien thereon for the payment of the principal of
2 and interest on the Subordinate Bonds;

3 *Ninth*, to pay any taxes (or payments in lieu of taxes) upon the properties
4 or earnings of the Electric System payable to the City;

5 *Tenth*, to deposit into the Rate Stabilization Fund the amounts budgeted
6 or appropriated to be deposited therein; and

7 *Eleventh*, for any other lawful purpose of the City related to the Electric
8 System.

9 Notwithstanding the foregoing, so long as any Senior Bonds are
10 Outstanding, the obligation of the City to deposit Revenues into the bond funds
11 established under the Senior Bond Ordinance shall have priority over the
12 foregoing obligation of the City to deposit Revenues into the Bond Fund.

13
14 **Section 8.2. Bond Fund.**

15 (a) Creation. There is hereby created a special fund of the City
16 designated as the "Electric System Subordinate Revenue Bond Fund" (the
17 "Bond Fund"). The Bond Fund shall be used solely for the purposes of paying
18 the principal of, premium, if any, and interest on Subordinate Bonds, and
19 retiring Subordinate Bonds prior to maturity in the manner provided herein or in
20 any Supplemental Ordinance. The Bond Fund shall contain four accounts: the
21 Interest Account, the Principal Account, the Bond Retirement Account, and the
22 Reserve Account. At the option of the City, separate subaccounts may be
23 created in the Bond Fund for the purpose of paying or securing the payment of
24 principal of, premium, if any, and interest on any Subordinate Bonds.
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1 (b) Deposits from Revenues. The City hereby obligates and binds
2 itself irrevocably to set aside and to pay into the Bond Fund out of the
3 Revenues certain fixed amounts, without regard to any fixed proportion of such
4 Revenues, sufficient (together with other available funds on hand and paid into
5 the Bond Fund) to pay the principal of, premium, if any, and interest on all
6 Subordinate Bonds from time to time Outstanding as the same respectively
7 become due and payable, either at the maturity thereof or in accordance with
8 the terms of any Sinking Fund Requirement established for the retirement of
9 Term Bonds. The fixed amounts to be paid into the Bond Fund, to the extent
10 that such payments are not made from bond proceeds or from other money that
11 may legally be available therefor, shall be as follows and in the following order
12 of priority:

14 (i) No later than the day on which an installment of interest
15 falls due on any Subordinate Bonds, the City shall pay into the Interest Account
16 in the Bond Fund (together with such other money as is on hand and available
17 in such account) an amount equal to the installment of interest then falling due
18 on all outstanding Subordinate Bonds.

20 (ii) No later than the date upon which maturing principal of
21 Subordinate Bonds comes due, the City shall pay into the Principal Account in
22 the Bond Fund an amount (together with such other money as is on hand and
23 available in such account) equal to the principal then coming due on all
24 outstanding Subordinate Bonds.
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1 (iii) No later than the date upon which a sinking fund
2 installment on Term Bonds falls due, the City shall pay into the Bond
3 Retirement Account in the Bond Fund an amount (together with such other
4 money as is on hand and available in such account) equal to the Sinking Fund
5 Requirement for such date.

6 (c) Application. The City shall apply all the money paid into the Bond
7 Retirement Account to the redemption of Term Bonds on the next ensuing
8 Sinking Fund Requirement due date pursuant to the terms of the applicable
9 Supplemental Ordinance. The City may apply the money paid into the Bond
10 Retirement Account for the purpose of retiring Term Bonds by the purchase of
11 such Bonds in the open market at a purchase price (including any brokerage
12 charge) not in excess of the principal amount thereof, in which event the
13 principal amount of such Term Bonds so purchased shall be credited against
14 any Sinking Fund Requirement next coming due.

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16
17 Money in the Bond Fund shall be transmitted to the Paying Agent in
18 amounts sufficient to pay the principal of, premium, if any, and interest on the
19 Subordinate Bonds when due. All money remaining in the Bond Fund after
20 provision for the payment in full of the principal of, premium, if any, and interest
21 on all Outstanding Subordinate Bonds shall be returned to the Revenue Fund.

22
23 The Bond Fund shall be drawn upon solely for the purpose of paying the
24 principal of, premium, if any, and interest on Subordinate Bonds or paying or
25 reimbursing Credit Providers for such payments if so provided in the
26 Supplemental Ordinance with respect to a series of Subordinate Bonds. Money



1 set aside from time to time with the Paying Agent for such payment shall be
2 held in trust for the Owners of the Subordinate Bonds in respect of which the
3 same shall have been so set aside. Until so set aside, all money in the Bond
4 Fund shall be held in trust for the benefit of the Owners of all Subordinate
5 Bonds at the time outstanding equally and ratably.

6 Notwithstanding any provision of this Subordinate Ordinance to the
7 contrary, if and to the extent provided in a Supplemental Ordinance, (i) deposits
8 may be made by the City into the Bond Fund and the accounts therein for the
9 purpose of providing for City Payments with respect to Subordinate Bonds of a
10 series, (ii) Reciprocal Payments may be deposited into the Bond Fund and the
11 accounts therein, (iii) City Payments may be made out of the Bond Fund and
12 the accounts therein, (iv) City Payments may be secured by amounts in the
13 Reserve Account, and (v) the Reciprocal Payor may be granted a pledge of,
14 lien on and security interest in such Bond Fund to secure such City Payments.
15

16
17 Notwithstanding any provision of this Subordinate Ordinance to the
18 contrary, so long as any Senior Bonds are Outstanding, the obligation of the
19 City to deposit Revenues into the bond funds established under the Senior
20 Bond Ordinance shall have priority over the obligation of the City to deposit
21 Revenues into the Bond Fund.
22

23 **Section 8.3. Reserve Account.**

24 (a) Funding of Reserve Account. Except as otherwise provide in the
25 Supplemental Ordinance authorizing the issuance of Subordinate Bonds,
26 following the issuance of such Subordinate Bonds the City shall make



1 approximately equal monthly payments into the Bond Fund for credit to the
2 Reserve Account from the money in the Revenue Fund so that by no later than
3 five years from the date of issuance of such Subordinate Bonds there will be
4 credited to the Reserve Account an amount, together with amounts already on
5 deposit therein, equal to the Reserve Account Requirement. The Supplemental
6 Ordinance authorizing the issuance of such Subordinate Bonds may provide for
7 deposit into the Bond Fund for credit to the Reserve Account from the proceeds
8 of such Subordinate Bonds or from any other money lawfully available therefor
9 to fund some portion or all of the increase in the Reserve Account Requirement,
10 if any, as a result the issuance of such Subordinate Bonds.
11

12 (b) Valuation. Subject to the preceding paragraphs of this
13 subsection, the money and value of Permitted Investments in the Reserve
14 Account shall be determined as of the last Business Day of each Fiscal Year
15 and maintained at an amount at least equal to the Reserve Account
16 Requirement, except where it is necessary to make a transfer therefrom to the
17 Interest Account, Principal Account, or Bond Retirement Account because of an
18 insufficiency of money therein to make any required payment of principal of,
19 premium, if any, or interest on any Subordinate Bonds when due.
20

21 If at any time the money and value of Permitted Investments in the
22 Reserve Account exceed the amount of money and value of Permitted
23 Investments then required to be maintained therein, such excess may be
24 transferred to the City for deposit in the General Account in the Revenue Fund.
25
26



1 For the purpose of determining the amount credited to the Reserve
2 Account, obligations in which money in the Reserve Account shall have been
3 invested shall be valued at the market value thereof. If the value of the amount
4 in the Reserve Account is less than the Reserve Account Requirement the City
5 shall transfer from the General Account an amount necessary to fully fund the
6 Reserve Account Requirement.

7 (c) Reserve Account Facilities. The City may satisfy all or any portion
8 of the Reserve Account Requirement by the deposit in the Reserve Account of
9 a Reserve Account Facility. Upon the expiration of any Reserve Account
10 Facility, the Reserve Account shall be replenished in accordance with the first
11 two paragraphs of this Section, as if the Subordinate Bonds that remain
12 Outstanding had been issued on the date of such expiration.

14 (d) Deficiencies. If there is a deficiency in the Interest Account,
15 Principal Account, or Bond Retirement Account in the Bond Fund, the City shall
16 promptly deposit amounts therein from the Reserve Account sufficient to make
17 up any such deficiency. The City shall withdraw moneys in the Reserve
18 Account to make up any such deficiency prior to drawing on any Reserve
19 Account Facility in sufficient amount to make up the deficiency. The City shall
20 replenish any withdrawal from the Reserve Account for payment into the
21 Interest Account, Principal Account or Bond Retirement Account from money in
22 the Revenue Fund first available after providing for the required deposits into
23 such Interest, Principal, and Bond Retirement Accounts.
24
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1 **Section 8.4. Construction Fund.** There is hereby created a special
2 fund named the “City of Tacoma Electric System Subordinate Bonds
3 Construction Fund” (the “Construction Fund”), and a separate account therein
4 for each series of Subordinate Bonds. The Construction Fund shall be held and
5 administered by the City. Immediately upon the issuance, sale and delivery of a
6 series of the Subordinate Bonds, the City shall pay or cause to be paid into the
7 account in the Construction Fund for such series such amount of the proceeds
8 derived from the sale of such series of Subordinate Bonds as shall be
9 designated pursuant to the Supplemental Ordinance authorizing the issuance
10 thereof. Money so deposited in the account in the Construction Fund shall be
11 applied to the costs of issuance of such series of Bonds and to the costs of
12 acquiring and constructing the additions, betterments and improvements to, and
13 repairs, renewals and replacements of, the Electric System or other lawful
14 purposes of the Electric System to be funded out of the proceeds of such series
15 of Subordinate Bonds.
16
17

18 **Section 8.5. Investment of Funds.** Money in the Funds and Accounts
19 established and held pursuant to this Subordinate Ordinance shall be invested
20 in accordance with the City’s investment policy. Money held in the Revenue
21 Fund, the Construction Fund, the Rate Stabilization Fund, and the Interest
22 Account, Principal Account, and Bond Retirement Account in the Bond Fund
23 shall be invested and reinvested at the direction of the City solely in, and
24 obligations deposited in such accounts shall consist of, Permitted Investments
25 which shall mature on or prior to the respective dates when the money held for
26



1 the credit of such Funds and Accounts will be required for the purposes
2 intended. Money in the Reserve Account in the Bond Fund not required for
3 immediate disbursement for the purposes for which such Account is created
4 shall be invested and reinvested at the direction of the City solely in Permitted
5 Investments maturing or subject to redemption at the option of the owner
6 thereof within 5 years from the date of such investment. Except to the extent
7 there are deficiencies in any account in the Bond Fund, all income received
8 from the investment of money in any account in the Bond Fund, shall from time
9 to time be deposited in the Revenue Fund, or credited against the monthly
10 amount required to be deposited in such account.
11

12 **ARTICLE IX**

13 **PLEDGE OF REVENUES; COVENANTS TO SECURE SUBORDINATE** 14 **BONDS**

15 The City covenants and agrees with the Owners of the Subordinate
16 Bonds from time to time Outstanding as follows:
17

18 **Section 9.1. Security for Subordinate Bonds.**

19 (a) The Subordinate Bonds and all other amounts due under any
20 Credit Facilities are special limited obligations of the City payable from and
21 secured solely by Revenues after the payment of Operating Expenses on a
22 basis junior and subordinate to the Senior Bonds, and by other money and
23 assets specifically pledged hereunder or under a Supplemental Ordinance for
24 the payment thereof. There are hereby pledged as security for the payment of
25 the principal of, premium, if any, and interest on all Subordinate Bonds and all
26



1 other amounts due any under Credit Facilities in accordance with the provisions
2 of this Subordinate Ordinance, subject only to the provisions of this Subordinate
3 Ordinance restricting or permitting the application thereof for the purposes and
4 on the terms and conditions set forth herein: (i) the proceeds of the sale of the
5 Subordinate Bonds to the extent held in funds established by this Subordinate
6 Ordinance (but only to the Subordinate Bonds) , (ii) Revenues, and (iii) the
7 money and investments, if any, credited to the Revenue Fund and the Bond
8 Fund (but only to the Subordinate Bonds), and the income therefrom. The
9 pledge of and lien and charge on Revenues herein made shall be irrevocable
10 until there are no Subordinate Bonds Outstanding and all amounts owing under
11 any Credit Facilities have been paid. The Revenues and other money and
12 securities hereby pledged shall immediately be subject to the lien of this pledge
13 without any physical delivery thereof or further act, and the lien of this pledge
14 shall be valid and binding as against all parties having claims of any kind in tort,
15 contract, or otherwise against the City regardless of whether such parties have
16 notice thereof.

19 (b) All Subordinate Bonds now or hereafter outstanding and all other
20 amounts due under any Credit Facilities, respectively, shall be equally and
21 ratably payable and secured hereunder without priority by reason of date of
22 adoption of the ordinance providing for their issuance or by reason of their
23 series, number or date of sale, issuance, execution or delivery, or by the liens,
24 pledges, charges, trusts, assignments, and covenants made herein, except as
25 otherwise expressly provided or permitted in this Subordinate Ordinance.
26



1 Except as otherwise provided herein, the pledge of and lien and charge on the
2 Revenues to pay and secure the payment of Subordinate Bonds and all other
3 amounts due under any Credit Facilities are hereby declared to be junior and
4 subordinate to the pledge, lien and charge thereon to pay and secure the
5 payment of the Senior Bonds and prior and superior to all other liens and
6 charges of any kind or nature.

7 (c) No money may be removed from the Revenue Fund for transfer to
8 any fund of the City not described in this Subordinate Ordinance while any
9 deficiency exists and is continuing in any payment required by this Subordinate
10 Ordinance into the Bond Fund or any account therein including the Reserve
11 Account.

12 (d) The Subordinate Bonds shall not in any manner or to any extent
13 constitute general obligations of the City or of the State of Washington, or any
14 political subdivision of the State of Washington, or a charge upon any general
15 fund or upon any money or other property of the City or of the State of
16 Washington, or of any political subdivision of the State of Washington, not
17 specifically pledged thereto by this Subordinate Ordinance. Neither the full faith
18 and credit nor the taxing power of the City, the State of Washington, or any
19 political subdivision of the State of Washington, is pledged to the payment of
20 the Subordinate Bonds. The Subordinate Bonds shall not constitute
21 indebtedness of the City within the meaning of the constitutional and statutory
22 provisions and limitations of the State of Washington.
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1 **Section 9.2. Rate Covenant — General.** The City shall establish,
2 maintain and collect rates and charges for services, facilities and commodities
3 sold, furnished or supplied through the facilities of the Electric System that shall
4 be adequate to provide Revenues sufficient for the punctual payment of the
5 principal of, premium, if any, and interest on the Senior Bonds and the
6 Subordinate Bonds for which the payment has not otherwise been provided, for
7 all payments which the City is obligated to make into the Senior Bond Fund and
8 the Bond Fund, and for the proper operation and maintenance of the Electric
9 System, including payment of all Contract Resource Obligations included in the
10 Electric System's Operating Expenses pursuant hereto, and all necessary
11 repairs, replacements, and renewals thereof, including the payment of all taxes,
12 assessments, or other governmental charges lawfully imposed on the Electric
13 System or the Revenues therefrom, or payments in lieu thereof, and the
14 payment of all other amounts that the City may now or hereafter become
15 obligated to pay from the Revenues by law or contract.
16
17

18 **Section 9.3. Rate Covenant — Debt Service Coverage.** The City shall
19 also establish, maintain and collect rates and charges which shall be adequate
20 to provide, in each Fiscal Year, Net Revenues in an amount equal to at least
21 100 percent of Annual Debt Service for such year on the Senior Bonds and the
22 Subordinate Bonds.
23

24 Solely for purposes of calculating the coverage requirement set forth
25 above, there shall be added to Revenues in any Fiscal Year any amount
26 withdrawn from the Rate Stabilization Fund in such Fiscal Year and deposited



1 in the Revenue Fund, and there shall be subtracted from Revenues in any
2 Fiscal Year any amount withdrawn from the Revenue Fund and deposited in the
3 Rate Stabilization Fund.

4 **Section 9.4. Restrictions on Obligations Secured by Revenues.**

5 (a) Except for Senior Bonds and as otherwise provided herein, the
6 City will not hereafter create any other special fund or funds for the payment of
7 revenue bonds, warrants, or other revenue obligations, or issue any bonds,
8 warrants, or other obligations or create any additional indebtedness that will
9 rank prior to the pledge of and charge and lien on the Revenues or properties of
10 the Electric System created herein to secure the payment of the principal of and
11 interest on the Subordinate Bonds.

12 (b) Except as otherwise provided herein, the City will not hereafter
13 create any other special fund or funds for the payment of revenue bonds,
14 warrants or other revenue obligations, or issue any bonds, warrants or other
15 obligations or create any additional indebtedness that will rank on a parity with
16 the charge and lien on the Revenues or properties of the Electric System for the
17 payments into the Bond Fund.

18 (c) The City may issue bonds, notes, warrants, or other obligations
19 payable from and secured by a pledge of and charge and lien on the Revenues
20 of the Electric System that is junior and subordinate or inferior to the lien on
21 such Revenues securing the Subordinate Bonds and may create a special fund
22 or funds for payment of such obligations.
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1 **Section 9.5. Covenant to Maintain System in Good Condition.** The
2 City shall at all times maintain, preserve, and keep, or cause to be maintained,
3 preserved, and kept, the properties of the Electric System and all additions and
4 betterments thereto and extensions thereof and every part and parcel thereof,
5 in good repair, working order and condition, and will from time to time make, or
6 cause to be made, all necessary and proper repairs, renewals, replacements,
7 extensions and betterments thereto so that at all times the business carried on
8 in connection therewith shall be properly and advantageously conducted. The
9 City will at all times operate such properties and the business in connection
10 therewith or cause such properties and business to be operated in an efficient
11 manner and at a reasonable cost.
12

13 **Section 9.6. Covenant to Comply with Licenses.** The City shall at all
14 times comply with the terms and conditions of any permits or licenses for the
15 Electric System, or any property or facilities constituting a part thereof, issued
16 by any federal or state governmental agency or body having jurisdiction thereof
17 and with the power to issue orders with respect thereto and enforce the same,
18 and with any federal or state law or regulation applicable to the construction,
19 operation, maintenance and repair of the Electric System. The City shall use its
20 best efforts to obtain renewals of such permits or licenses or obtain new permits
21 or licenses unless such renewals or new permits or licenses are not, in the
22 judgment of the Board, in the best interests of the City.
23
24

25 **Section 9.7. Covenants Concerning Disposal of Properties of**
26 **Electric System.** The City shall not sell, mortgage, lease, or otherwise dispose



of the properties of the Electric System except as provided by law and subject
1 to such additional restrictions as are provided in this Section.

2 (a) The City will not sell or otherwise dispose of the Electric System in
3 its entirety unless simultaneously with such sale or other disposition, provision
4 is made for the payment, redemption, or other retirement of all Subordinate
5 Bonds then outstanding and all other amounts due under any Credit Facilities.

7 (b) Except as provided in subsection (c) below, the City will not sell or
8 otherwise dispose of any part of the Electric System in excess of 5 percent of
9 the value of the net utility plant of the Electric System unless provision is made
10 for the payment, redemption, or other retirement of a principal amount of
11 Subordinate Bonds equal to the greater of the following amounts:
12

13 (i) An amount that will be in the same proportion to the net
14 principal amount of Subordinate Bonds then outstanding (defined as the total
15 principal amount of such Subordinate Bonds outstanding less the amount of
16 cash and investments in the Principal Account and Bond Retirement Account in
17 the Bond Fund) that the revenues attributable to the part of the Electric System
18 sold or disposed of for the 12 preceding months bears to the total revenues for
19 such period; or
20

21 (ii) An amount that will be in the same proportion to the net
22 principal amount of Subordinate Bonds then outstanding that the book value of
23 the part of the Electric System sold or disposed of bears to the book value of
24 the entire Electric System immediately prior to such sale or disposition.
25
26



1 (c) The City may sell or otherwise dispose of any part of the Electric
2 System which shall have become unserviceable, inadequate, obsolete, or unfit
3 to be used in the operation of the Electric System, or no longer necessary,
4 material to or useful in such operation.

5 (d) The proceeds of sale of any part of the Electric System shall be
6 deposited in the Revenue Fund.

7 No sale of any part of the Electric System valued in excess of 10 percent
8 of the book value of the physical assets of the Electric System, shall be made
9 unless, in the opinion of a Consulting Engineer, following such sale the City
10 would still be able to satisfy the requirements of Section 9.2 and of the first
11 paragraph of Section 9.3.

12 **Section 9.8. Insurance.** The City shall either self-insure in such manner
13 and to such extent as the City shall determine to be necessary and appropriate
14 or, or to the extent insurance coverage is available at reasonable cost with
15 responsible insurers, keep, or cause to be kept, the Electric System and the
16 operation thereof insured, with policies payable to the City, against the risks of
17 direct physical loss, damage to or destruction of the Electric System, or any part
18 thereof, and against accidents, casualties, or negligence, including liability
19 insurance and employer's liability, at least to the extent that similar insurance is
20 usually carried by utilities operating like properties.
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24 In the event of any insured loss or damage, the City will promptly repair
25 or replace the damaged portion of the insured property and apply the proceeds
26 of any insurance policy for that purpose; or in the event the City should



1 determine not to repair or reconstruct such damaged portion of the properties of
2 the Electric System, the proceeds of such insurance shall be paid into the debt
3 service reserve account for the Senior Bonds and thereafter into Reserve
4 Account, in each case to the extent that such transfer shall be necessary to
5 make up any deficiency therein, and the balance, if any, shall at the option of
6 the City, be used either for repairs, renewals, replacements, or capital additions
7 to the Electric System or for the purchase, payment, or redemption of Senior
8 Bonds or Subordinate Bonds.

9 **Section 9.9. Condemnation.** In the event of any loss or damage to the
10 properties of the Electric System by reason of condemnation, the City will
11 (i) with respect to each such loss, promptly replace, repair, and reconstruct to
12 the extent necessary to the proper conduct of the operations of the Electric
13 System the condemned portion thereof and shall apply the proceeds of any
14 condemnation award for that purpose to the extent required therefor, and (ii) if
15 the City shall not use the entire proceeds of such condemnation award to
16 repair, replace, or reconstruct such lost or damaged property, such award not
17 so used shall be paid into the Revenue Fund.

18 **Section 9.10. Books of Account.** The City shall keep proper
19 books of account in accordance with the rules and regulations prescribed by the
20 Division of Municipal Corporations of the State Auditor's office of the State of
21 Washington, or other State department or agency succeeding to such duties of
22 the State Auditor's office, and if no such rules or regulations are prescribed as
23 aforesaid then in substantial accordance with the Uniform System Of Accounts ,
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1 whether or not the City is at the time required by law to use such system of
2 accounts. The City shall cause its books of account to be audited annually by
3 the State Auditor's office or other State department or agency as may be
4 authorized and directed by law to make such audits, or if such an audit shall not
5 be made for 12 months after the close of any Fiscal Year of the City, by
6 Certified Public Accountants.

7 **Section 9.11. Covenant Not to Render Service Free of Charge.**

8 So long as any Subordinate Bonds are Outstanding, the City shall not furnish or
9 supply or permit the furnishing or supplying of any commodity, service, or
10 facility furnished by or in connection with the operation of the Electric System
11 free of charge to any person, firm, or corporation, public or private, and the City
12 will maintain and enforce reasonable procedures for the payment of any and all
13 accounts owing to the City and delinquent, by discontinuing service or by filing
14 suits, actions, or proceedings, or by both discontinuance of service and filing
15 suit.
16
17

18 **Section 9.12. Covenant to Make Only Sound Improvements.**

19 The City shall not expend any money in the Revenue Fund or the proceeds of
20 Subordinate Bonds or other obligations for any renewals, replacements,
21 extensions, betterments and improvements to the Electric System that are not
22 economically sound and that will not properly and advantageously contribute to
23 the conduct of the business of the Electric System in an efficient and
24 economical manner or that are not mandated by law or regulation.
25
26



Section 9.13. Covenant to Pay Bond Principal and Interest

1 **Punctually.** The City shall duly and punctually pay or cause to be paid, but
2 only from Revenues and other money pledged therefor under this Subordinate
3 Ordinance, the principal of, premium, if any, and interest on each and every
4 Subordinate Bond on the dates and at the places and in the manner provided
5 herein and in such Subordinate Bonds, according to the true intent and
6 meaning thereof, and will faithfully do and perform and fully observe and keep
7 any and all covenants, undertakings, stipulations and provisions contained in
8 the Subordinate Bonds and in this Subordinate Ordinance.
9
10

11 **Section 9.14. Covenant to Pay Taxes, Assessments and Other**

12 **Claims.** The City shall from time to time duly pay and discharge, or cause to be
13 paid and discharged, when the same shall become due, all taxes, assessments
14 and other governmental charges, or payments in lieu thereof, lawfully imposed
15 upon the Electric System or the Revenues, and all claims for labor and
16 materials and supplies that, if not paid, might become a lien or charge upon the
17 Electric System, or any part thereof, or upon the Revenues (prior to the lien
18 thereon for the payment of the Subordinate Bonds), or that might in any way
19 impair the security of the Subordinate Bonds, except taxes, assessments,
20 charges, or claims that the City shall in good faith contest by proper legal
21 proceedings.
22
23

24 **Section 9.15. Protection of Security.** The City shall at all times,

25 to the extent permitted by law, defend, preserve and protect the pledge of the
26 Revenues and the rights of the Owners under this Subordinate Ordinance



1 against all claims and demands of all Persons whatsoever (other than claims of
2 the owners of the Senior Bonds).

3 **Section 9.16. Tax Covenants.** The City covenants that it shall not
4 take any action, or fail to take any action, if any such action or failure to take
5 action would adversely affect the exclusion from gross income of the interest on
6 any Tax-Exempt Bonds under Section 103 of the Code. The City shall not
7 directly or indirectly use or permit the use of any proceeds of the Tax-Exempt
8 Bonds in such a manner as would adversely affect the exclusion of interest on
9 any Tax-Exempt Bonds from gross income under Section 103 of the Code. The
10 City shall not directly or indirectly use or permit the use of any proceeds of any
11 Tax-Exempt Bonds, or of any facilities financed thereby, or other funds of the
12 City, or take or omit to take any action, that would cause any Tax-Exempt
13 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.
14 To that end, the City shall comply with all requirements of Section 148 of the
15 Code and all regulations of the United States Department of the Treasury
16 promulgated thereunder to the extent such requirements are, at the time, in
17 effect and applicable to the Tax-Exempt Bonds. In the event that at any time
18 the City is of the opinion that for purposes of this Section it is necessary to
19 restrict or to limit the yield on the investment of any moneys held by the Trustee
20 under this Subordinate Ordinance, the City shall so instruct the Trustee in
21 writing, and the Trustee shall take such action as may be directed in such
22 instructions. Terms used but not otherwise defined in this Section shall have
23 the meanings set forth in the Code.
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Section 9.17. Further Assurances. The City shall at any and all times, insofar as it may be authorized to do so by law, pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, assignments, instruments and assurances as may be necessary or desirable for the better assuring, granting, pledging, assigning and confirming any and all of the rights, revenues, funds and other property hereby granted, pledged or assigned to pay or secure the payment of the Bonds, in the manner and to the extent provided herein.

ARTICLE X
SUPPLEMENTS AND AMENDMENTS

Section 10.1. Amendments without Consent of Owners. The City may adopt at any time and from time to time without the consent of the Owners of any Subordinate Bonds an ordinance or ordinances supplemental to or amendatory of this Subordinate Ordinance and any Supplemental Ordinance theretofore enacted for any one or more of the following purposes:

(a) To provide for the issuance of Subordinate Bonds and to prescribe the terms and conditions thereof in accordance with the provisions of this Subordinate Ordinance;

(b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Owners or the Trustee that are not contrary to or inconsistent with this Subordinate Ordinance as then in effect or



to subject to the pledge, charge and lien of this Subordinate Ordinance

1 additional revenues, properties or collateral;

2 (c) To add covenants and agreements of the City for the purpose of
3 further securing the payment of the Subordinate Bonds;
4

5 (d) To prescribe further limitations and restrictions upon the City's
6 ability to issue bonds and incur indebtedness payable from the Revenues;

7 (e) To surrender any right, power, or privilege reserved to or
8 conferred upon the City by the terms of this Subordinate Ordinance;

9 (f) To confirm as further assurance any pledge under, and the
10 subjection to any lien, charge or pledge created or to be created by, the
11 provisions of this Subordinate Ordinance of the Revenues or of any other
12 money, securities, or funds;

13 (g) To cure any ambiguity or defect or inconsistent provision of this
14 Subordinate Ordinance or any Supplemental Ordinance or to insert such
15 provisions clarifying matters or questions arising under this Subordinate
16 Ordinance or any Supplemental Ordinance as are necessary or desirable in the
17 event any such modifications are not contrary to or inconsistent with this
18 Subordinate Ordinance or any Supplemental Ordinance as theretofore in effect;

19 (h) To add such provisions as the City shall deem necessary in order
20 to preserve the tax-exempt status of any Tax-Exempt Bonds; or
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22 (i) Make any other change herein that the Trustee determines shall
23 not be materially adverse to the interests of the Owners and which does not
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involve a change described in the following Section requiring the consent of
1 Owners.

2 **Section 10.2. Amendments with Consent of Owners.** With the
3 prior written consent of the Owners of a majority in aggregate principal amount
4 of the Subordinate Bonds at the time Outstanding, and in case the supplement
5 or amendment does not apply to all of the Subordinate Bonds then Outstanding,
6 then a majority in aggregate principal amount of the Subordinate Bonds at the
7 time Outstanding to which it does apply, the City may pass an ordinance or
8 ordinances supplemental hereto or to any Supplemental Ordinance for the
9 purpose of adding any provisions to or changing in any manner or eliminating
10 any of the provisions of this Subordinate Ordinance or of any Supplemental
11 Ordinance, but no such Supplemental Ordinance shall:
12

13 (a) Extend the fixed maturity of any Subordinate Bonds or the time of
14 payment of interest thereon from the established due date, or reduce the rate of
15 interest thereon or the amount of the principal thereof, or reduce any premium
16 payable on the redemption thereof, or accelerate any redemption provision,
17 without the written consent of the Owner of each Subordinate Bond so affected;
18

19 (b) Reduce the aforesaid percentage of Owners required to approve
20 any such Supplemental Ordinance, without the written consent of the Owners of
21 all of the Subordinate Bonds then outstanding;
22

23 (c) Give to any Subordinate Bond any preference over any other
24 Subordinate Bond; or
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1 (d) Authorize the creation of any pledge, charge or lien prior to or,
2 except as provided herein for the issuance of Subordinate Bonds, on a parity
3 with the pledge afforded by this Subordinate Ordinance, without the consent of
4 the Owner of each such Subordinate Bond affected thereby.

5 It shall not be necessary for Owners to approve the particular form of any
6 proposed Supplemental Ordinance, but it shall be sufficient if such consent
7 shall approve the substance thereof.

8 Notice of any Supplemental Ordinance enacted pursuant to this Section
9 shall be given to the Owners promptly following the enactment thereof by the
10 City.
11

12 **Section 10.3. Consent of Owners and Opinions.** Each
13 Supplemental Ordinance enacted pursuant to the provisions of Section 10.2
14 shall take effect only when and as provided in this Section. A copy of such
15 Supplemental Ordinance (or brief summary thereof or reference thereto in form
16 approved by the Trustee), together with a request to Owners for their consent
17 thereto in form satisfactory to the Trustee, shall be sent by the Trustee to the
18 Owners, at the expense of the City, by first class mail, postage prepaid;
19 provided, that a failure to mail such request shall not affect the validity of the
20 Supplemental Ordinance when consented to as provided below. Such
21 Supplemental Ordinance shall not be effective unless and until there shall have
22 been filed with the Trustee the written consents of Owners of the percentage of
23 Subordinate Bonds specified in Section 10.2 given as provided in Section 14.9.
24 Any such consent shall be binding upon the Owner giving such consent and
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upon any subsequent Owner of such Subordinate Bonds and of any
1 Subordinate Bonds issued in exchange therefor or in lieu thereof (whether or
2 not such subsequent Owner has notice thereof), unless such consent is
3 revoked in writing by the Owner giving such consent or a subsequent Owner of
4 such Subordinate Bonds by filing such revocation with the Trustee prior to the
5 date the Trustee receives the required percentage of consents.
6

7 **Section 10.4. Filing of Supplemental Ordinances.** No

8 Supplemental Ordinance shall become effective until delivered to the Trustee
9 together with an opinion of Bond Counsel to the effect that such Supplemental
10 Ordinance is authorized or permitted by this Subordinate Ordinance, has been
11 duly enacted, and is a valid and binding obligation of the City.
12

13 **ARTICLE XI**

14 **DEFAULTS AND REMEDIES**

15 **Section 11.1. Events of Default.** The following shall constitute

16 "Events of Default" under this Subordinate Ordinance:
17

18 (a) If default shall be made in the payment of the principal of or
19 premium, if any, on any Subordinate Bond when the same shall become due
20 and payable, either at maturity or by proceedings for redemption or otherwise;
21

22 (b) If default shall be made in the payment of interest on any
23 Subordinate Bond when the same shall become due and payable; or

24 (c) If the City shall default in the observance and performance of any
25 other of the covenants, conditions, and agreements on the part of the City
26 contained in this Subordinate Ordinance or in any ordinance of the City



1 authorizing Subordinate Bonds and such default or defaults shall have
2 continued for a period of 90 days after the City shall have received from the
3 Trustee or from the Owners of not less than 25 percent in principal amount of
4 the Subordinate Bonds Outstanding a written notice specifying and demanding
5 the cure of such default; provided, that if the default is one which cannot be
6 completely remedied within 90 days after written notice, it shall not be an Event
7 of Default as long as the City has taken active steps within the 90 days after
8 written notice to remedy the default and is diligently pursuing such remedy; or

9 (d) An "Event of Default" as specified in the Senior Bond Ordinance;

10 or

11 (e) An "Event of Default" specified in a Supplemental Ordinance

12 authorizing the issuance of a series of Subordinate Bonds.

13 **Section 11.2. Remedies upon Default.** The Trustee may, upon
14 the happening of an Event of Default, and during the continuance thereof, take
15 such steps and institute such suits, actions, or other proceedings at law or in
16 equity in its own name, or as trustee, all as it may deem appropriate for the
17 protection and enforcement of the rights of Owners to collect any amounts due
18 and owing by the City, or to obtain other appropriate relief, and may enforce the
19 specific performance of any covenant, agreement, or condition contained in this
20 Subordinate Ordinance, or in any of the Subordinate Bonds; provided, that
21 nothing herein shall limit the remedies of any Credit Provider under any Credit
22 Facility.
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Section 11.3. Priority of Payment Following Event of Default. If

1 at any time after the occurrence of an Event of Default the money held by the
2 Trustee under this Subordinate Ordinance shall not be sufficient to pay the
3 Subordinate Bonds as the same become due and payable, such money,
4 together with any money then available or thereafter becoming available for
5 such purpose, whether through the exercise of remedies in this Article or
6 otherwise, shall be applied by the Trustee first to the payments of all amounts
7 due to the Trustee under Section 12.5 and then to the payment of the amounts
8 and in the order of priority set forth in Section 8.1(b).
9
10

Section 11.4. Owners May Direct Proceedings. The Owners of

11 a majority in aggregate principal amount of the Outstanding Subordinate Bonds
12 shall, subject to the requirements of Section 12.2(e), have the right, by an
13 instrument or instruments in writing executed and delivered to the Trustee, to
14 direct the method and place of conducting all remedial proceedings by the
15 Trustee hereunder; provided, that such direction shall not be in conflict with any
16 rule of law or this Subordinate Ordinance and that the Trustee shall have the
17 right to decline to follow any such direction which in the opinion of the Trustee
18 would be unduly prejudicial to the rights of Owners not parties to such direction
19 or would subject the Trustee to personal liability or expense. Notwithstanding
20 the foregoing, the Trustee shall have the right to select and retain counsel of its
21 choosing to represent it in any such proceedings. The Trustee may take any
22 other action which is not inconsistent with any direction under this Section.
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Section 11.5. Waiver of Defaults.

1 (a) The Owners of a majority in aggregate principal amount of the
2 Outstanding Subordinate Bonds may, by written notice to the Trustee, waive
3 any existing default or Event of Default and its consequences, except an Event
4 of Default under Section 11.1(a), (b) and (d). Upon any such waiver, the default
5 or Event of Default shall be deemed cured and shall cease to exist for all
6 purposes. No waiver of any default or Event of Default shall extend to or effect
7 any subsequent default or Event of Default or shall impair any right or remedy
8 consequent thereto.
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11 (b) Notwithstanding any provision of this Subordinate Ordinance to
12 the contrary, in no event shall any person, other than all of the affected Owners,
13 have the ability to waive any Event of Default under this Subordinate Ordinance
14 if such event results or may result, in the opinion of Bond Counsel, in interest on
15 any of the Tax-Exempt Bonds becoming includable in gross income for federal
16 income tax purposes.
17

Section 11.6. Notice of Events of Default. If an Event of Default

18 occurs of which the Trustee has or is deemed to have notice under
19 Section 12.2(h), the Trustee shall give prompt notice thereof to the City.
20 Promptly and in any event within five Business Days thereafter (unless such
21 Event of Default has been cured or waived), the Trustee shall give notice of
22 such Event of Default to each Owner of Subordinate Bonds then Outstanding.
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Section 11.7. Possession of Subordinate Bonds Not Required.

25 Any action, suit, or other proceeding instituted by the Trustee hereunder shall
26



1 be brought in its name as trustee for the Owners and all such rights of action
2 upon or under any of the Subordinate Bonds or the provisions of this
3 Subordinate Ordinance may be enforced by the Trustee without the possession
4 of any of said Subordinate Bonds, and without the production of the same at
5 any trial or proceedings relative thereto except where otherwise required by
6 law, and the respective Owners of said Subordinate Bonds, by taking and
7 holding the same, shall be conclusively deemed irrevocably to appoint the
8 Trustee the true and lawful trustee of the respective Owners of said
9 Subordinate Bonds, with authority to institute any such action, suit, or
10 proceeding; to receive as trustee and deposit in trust any sums becoming
11 distributable on account of said Subordinate Bonds; to execute any paper or
12 documents for the receipt of such money, and to do all acts with respect thereto
13 that the Owner himself might have done in person.
14

15 **Section 11.8. Trustee May File Proofs of Claim.**

16 (a) In case of the pendency of any receivership, insolvency,
17 liquidation, bankruptcy, reorganization, arrangement, adjustment, composition
18 or other judicial proceeding under the federal bankruptcy code relating to the
19 City, any other obligor upon the Subordinate Bonds or any property of the City,
20 the Trustee (whether or not the principal of the Subordinate Bonds shall then be
21 due and payable, and whether or not the Trustee shall have made any demand
22 upon the City for the payment of overdue principal, premium, if any, and
23 interest) shall be entitled and empowered, by intervention in such proceeding or
24 other means: (i) to file and prove a claim for the whole amount of the principal,
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1 premium, if any, and interest owing and unpaid in respect of the Subordinate
2 Bonds then Outstanding or for breach of this Subordinate Ordinance and to file
3 such other papers or documents as may be necessary or advisable in order to
4 have the claims of the Trustee (including any claim for the reasonable
5 compensation, expenses, disbursements and advances of the Trustee and its
6 agents and counsel) and of the Owners allowed in such proceeding; and (ii) to
7 collect and receive any money or other property payable or deliverable on any
8 such claims and to distribute the same; and each Owner, by holding the
9 Subordinate Bonds, thereby authorizes any receiver, assignee, trustee,
10 liquidator, sequestrator or similar official in any such judicial proceeding to make
11 such payments to the Trustee, and, in the event that the Trustee shall consent
12 to the making of such payments directly to the Owners, to pay to the Trustee
13 any amount due it for the reasonable compensation, expenses, disbursements
14 and advances of the Trustee and its agents and counsel, and any other
15 amounts due the Trustee under Section 12.5.
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18 (b) Nothing herein contained shall be deemed to authorize or
19 empower the Trustee to consent to accept or adopt, on behalf of any Owner of
20 said Subordinate Bonds, any plan or reorganization or adjustment affecting the
21 said Subordinate Bonds or any right of any Owner thereof, or to authorize or
22 empower the Trustee to vote the claims of the Owners thereof in any
23 receivership, insolvency, liquidation, bankruptcy, reorganization, or other
24 proceeding to which the City shall be a party.
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Section 11.9. Limitations on Rights of Owners. No Owner of

1 any one or more of said Subordinate Bonds shall have any right to institute any
2 action, suit, or proceeding at law or in equity for the enforcement of same,
3 unless (a) an Event of Default shall have happened and be continuing; (b) the
4 Owners of a majority in aggregate principal amount of the Outstanding
5 Subordinate Bonds have requested the Trustee, in writing, to exercise the
6 powers hereinabove granted or to pursue such remedy in its or their name or
7 names; (c) the Trustee has been offered indemnity satisfactory to it against
8 costs, expenses and liabilities reasonably anticipated to be incurred; (d) the
9 Trustee has declined to comply with such request, or has failed to do so, within
10 60 days after its receipt of such written request and offer of indemnity; and
11 (e) no direction inconsistent with such request has been given to the Trustee
12 during such 60-day period by the Owners of a majority in aggregate principal
13 amount of the Outstanding Subordinate Bonds. Any remedy herein authorized
14 to be exercised by the Trustee may be exercised individually by any Owner, in
15 his own name and on his own behalf or for the benefit of all Owners; provided,
16 however, that nothing in this Subordinate Ordinance or in any Subordinate
17 Bonds shall affect or impair the obligation of the City, which is absolute and
18 unconditional, to pay from Revenues the principal of, redemption premium, if
19 any, and interest on said Subordinate Bonds to the respective Owners thereof
20 at the respective due dates therein specified, or affect or impair the right of
21 action, which is absolute and unconditional, of such Owners to enforce such
22 payment.
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Section 11.10. Remedies Granted in Ordinance Not Exclusive.

1 The remedies herein conferred upon or reserved to the Owners of the
2 Subordinate Bonds and to the Trustee are not intended to be exclusive of any
3 other remedy or remedies, and each and every such remedy shall be
4 cumulative and shall be in addition to every other remedy given hereunder or
5 now or hereafter existing at law or in equity or by statute. The privileges herein
6 granted shall be exercised from time to time and continued so long as and as
7 often as the occasion therefor may arise and no waiver of any default
8 hereunder, whether by the Trustee or by the Owners of Subordinate Bonds,
9 shall extend to or shall affect any subsequent default or shall impair any rights
10 or remedies consequent thereon. The assertion or employment of any right or
11 remedy hereunder shall not prevent the concurrent assertion or employment of
12 any other appropriate right or remedy. No delay or omission of the Owners or
13 of the Trustee to exercise any right or power accruing upon any default shall
14 impair any such right or power or shall be construed to be a waiver of any such
15 default or any acquiescence therein.

Section 11.11. Restoration of Rights and Remedies. If the

20 Trustee or any Owner has instituted any proceeding to enforce any right or
21 remedy under this Subordinate Ordinance, and any such proceeding has been
22 discontinued or abandoned for any reason, or has been determined adversely
23 to the Trustee or such Owner, then the City, the Trustee and the Owners shall,
24 subject to any determination in such proceeding, be restored to their former
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1 positions hereunder, and all rights and remedies of the Trustee and the Owners
2 shall continue as though no such proceeding had been instituted.

3 **ARTICLE XII**

4 **TRUSTEE**

5 **Section 12.1. Appointment; Duties and Responsibilities of the** 6 **Trustee.**

7 (a) The initial Trustee with respect to the Subordinate Bonds shall be
8 appointed as provided by the Supplemental Ordinance authorizing the issuance
9 of the first series of Subordinate Bonds.

10
11 (b) Prior to the occurrence of an Event of Default of which it has or is
12 deemed to have notice hereunder, and after the curing or waiver of any Event
13 of Default that may have occurred: (i) the Trustee undertakes to perform such
14 duties and only such duties as are specifically set forth in this Subordinate
15 Ordinance, and no implied covenants or obligations shall be read into this
16 Subordinate Ordinance against the Trustee; and (ii) in the absence of bad faith
17 on its part, the Trustee may conclusively rely, as to the truth of the statements
18 and the correctness of the opinions expressed therein, upon certificates or
19 opinions furnished to the Trustee that conform to the requirements of this
20 Subordinate Ordinance; but the Trustee is under a duty to examine such
21 certificates and opinions to determine whether they conform to the requirements
22 of this Subordinate Ordinance.

23
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25 (c) In case an Event of Default of which the Trustee has or is deemed
26 to have notice hereunder has occurred and is continuing, the Trustee shall



1 exercise such of the rights and powers vested in it by this Subordinate
2 Ordinance, and use the same degree of care and skill in their exercise, as a
3 prudent person would exercise or use in the conduct of such person's own
4 affairs.

5 (d) No provision of this Subordinate Ordinance shall be construed to
6 relieve the Trustee from liability for its own negligent action, its own negligent
7 failure to act, or its own willful misconduct, except that: (i) this subsection shall
8 not be construed to limit the effect of subsection (b) of this Section; (ii) the
9 Trustee is not liable for any error of judgment made in good faith by an
10 authorized officer of the Trustee, unless it is proven that the Trustee was
11 negligent in ascertaining the pertinent facts; (iii) the Trustee is not liable with
12 respect to any action it takes or omits to be taken by it in good faith in
13 accordance with the direction of the Owners under any provision of this
14 Subordinate Ordinance relating to the time, method and place of conducting
15 any proceeding for any remedy available to the Trustee, or exercising any trust
16 or power conferred upon the Trustee under this Subordinate Ordinance; and
17 (iv) no provision of this Subordinate Ordinance shall require the Trustee to
18 expend or risk its own funds or otherwise incur any liability in the performance
19 of any of its duties hereunder, or in the exercise of any of its rights or powers, if
20 it has reasonable grounds for believing that the repayment of such funds or
21 adequate indemnity against such risk or liability is not reasonably assured to it.
22

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25 (e) The Trustee shall maintain proper books of record and accounts
26 in which complete and correct entries shall be made of all investments and



1 disbursements of proceeds in the Funds through the date ending six (6) years
2 following the date on which all the Subordinate Bonds have been retired, and
3 such records shall be available for inspection by the City upon reasonable
4 notice.

5 (f) Whether or not expressly so provided, every provision of this
6 Subordinate Ordinance relating to the conduct or affecting the liability of or
7 affording protection to the Trustee is subject to the provisions of this Section.

8 **Section 12.2. Certain Rights of the Trustee.** Except as
9 otherwise provided in Section 12.1:

10 (a) The Trustee may rely and is protected in acting or refraining from
11 acting upon any resolution, certificate, statement, instrument, opinion, report,
12 notice, request, direction, consent, order, approval, bond, debenture or other
13 paper or document believed by it to be genuine and to have been signed or
14 presented by the proper party or parties;
15

16 (b) Any statement or certification of the City under this Subordinate
17 Ordinance shall be sufficiently evidenced by a Certificate of the City (unless
18 other evidence thereof is specifically prescribed), any request, direction, order
19 or demand of the City under this Subordinate Ordinance shall be sufficiently
20 evidenced by an Order of the City (unless other evidence thereof is specifically
21 prescribed) and any ordinance or resolution of the City Council may be
22 sufficiently evidenced by a copy thereof certified by the Secretary of the City
23 Council;
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1 (c) Whenever in the administration of this Subordinate Ordinance the
2 Trustee deems it desirable that a matter be proved or established prior to
3 taking, suffering or omitting any action hereunder, the Trustee (unless other
4 evidence thereof is specifically prescribed) may, in the absence of bad faith on
5 its part, rely upon a Certificate of the City;

6 (d) The Trustee may consult with counsel and the written advice of
7 such counsel or an opinion of Bond Counsel shall be full and complete
8 authorization and protection for any action taken, suffered or omitted by it in
9 good faith and in accordance with such advice or opinion;

10 (e) The Trustee is under no obligation to exercise any of the rights or
11 powers vested in it by this Subordinate Ordinance at the request or direction of
12 any of the Owners unless the Owners have offered to the Trustee security or
13 indemnity reasonably satisfactory to the Trustee as to its terms, coverage,
14 duration, amount and otherwise with respect to the costs, expenses and
15 liabilities which may be incurred by it in compliance with such request or
16 direction, and the provision of such indemnity shall be mandatory for any
17 remedy taken upon direction of the Owners of a majority in aggregate principal
18 amount of the Outstanding Subordinate Bonds;

19 (f) The Trustee is not required to make any inquiry or investigation
20 into the facts or matters stated in any resolution, certificate, statement,
21 instrument, opinion, report, notice, request, direction, consent, order, approval,
22 bond, debenture or other paper or document but the Trustee, in its discretion,
23 may make such further inquiry or investigation into such facts or matters as it
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1 may see fit and, if the Trustee determines to make such further inquiry or
2 investigation, it is entitled to examine the books, records and premises of the
3 City, in person or by agent or attorney;

4 (g) The Trustee may execute any of its trusts or powers or perform
5 any duties under this Subordinate Ordinance either directly or by or through
6 agents or attorneys, and may in all cases pay, subject to reimbursement as
7 provided in Section 12.5, such reasonable compensation as it deems proper to
8 all such agents and attorneys reasonably employed or retained by it, and the
9 Trustee shall not be responsible for any misconduct or negligence of any agent
10 or attorney appointed with due care by it;

12 (h) The Trustee is not required to take notice or deemed to have
13 notice of any default or Event of Default hereunder, except an Event of Default
14 under Section 9.1(a), unless an officer of the Trustee has actual knowledge
15 thereof or has received notice in writing of such default or Event of Default from
16 the City or the Owners of at least 25 percent in aggregate principal amount of
17 the Outstanding Subordinate Bonds, and in the absence of any such notice, the
18 Trustee may conclusively assume that no such default or Event of Default
19 exists;

22 (i) The Trustee is not required to give any bond or surety with
23 respect to the performance of its duties or the exercise of its powers under this
24 Subordinate Ordinance;

25 (j) In the event the Trustee receives inconsistent or conflicting
26 requests and indemnity from two or more groups of Owners, each representing



less than a majority in aggregate principal amount of the Outstanding
1 Subordinate Bonds, pursuant to the provisions of this Subordinate Ordinance,
2 the Trustee, in its sole discretion, may determine what action, if any, shall be
3 taken;
4

5 (k) The Trustee's immunities and protections from liability and its right
6 to indemnification in connection with the performance of its duties under this
7 Subordinate Ordinance shall extend to the Trustee's officers, directors, agents,
8 attorneys and employees. Such immunities and protections and right to
9 indemnification, together with the Trustee's right to compensation, shall survive
10 the Trustee's resignation or removal, the defeasance or discharge of this
11 Subordinate Ordinance and final payment of the Subordinate Bonds;
12

13 (l) The permissive right of the Trustee to take the actions permitted
14 by this Subordinate Ordinance shall not be construed as an obligation or duty to
15 do so; and
16

17 (m) Except for information provided by the Trustee concerning the
18 Trustee, the Trustee shall have no responsibility for any information in any
19 offering memorandum or other disclosure material distributed with respect to
20 the Subordinate Bonds, and the Trustee shall have no responsibility for
21 compliance with any state or federal securities laws in connection with the
22 Subordinate Bonds.
23

24 **Section 12.3. Trustee Not Responsible for Recitals.** The
25 recitals contained in this Subordinate Ordinance and in the Subordinate Bonds
26 (other than the certificate of authentication on the Subordinate Bonds) are



1 statements of the City, and the Trustee assumes no responsibility for their
2 correctness. The Trustee makes no representations as to the value, condition
3 or sufficiency of any assets pledged or assigned as security for the Subordinate
4 Bonds, the right, title or interest of the City therein, the security provided thereby
5 or by this Subordinate Ordinance or the tax status of interest on the
6 Subordinate Bonds. The Trustee is not accountable for the use or application
7 by the City of any of the Subordinate Bonds or the proceeds of the Subordinate
8 Bonds, or for the use or application of any money paid over by the Trustee in
9 accordance with any provision of this Subordinate Ordinance.
10

11 **Section 12.4. Trustee May Own Subordinate Bonds.** The
12 Trustee, in its commercial banking or in any other capacity, may in good faith
13 buy, sell, own, hold and deal in any of the Subordinate Bonds and may join in
14 any action which any Owner may be entitled to take with like effect as if it were
15 not Trustee. The Trustee, in its commercial banking or in any other capacity,
16 may also engage in or be interested in any financial or other transaction with
17 the City and may act as depository, trustee or agent for any committee of
18 Owners secured hereby or other obligations of the City as freely as if it were not
19 Trustee. The provisions of this Section shall extend to affiliates of the Trustee.
20

21 **Section 12.5. Compensation and Expenses of the Trustee.**

22 (a) The City hereby covenants and agrees:
23 (i) to pay to the Trustee compensation for all services
24 rendered by it hereunder and under the other agreements relating to the
25 Subordinate Bonds to which the Trustee is a party in accordance with terms
26



1 agreed to from time to time, and, subsequent to default, in accordance with the
2 Trustee's then-current fee schedule for default administration (the entirety of
3 which compensation shall not be limited by any provision of law regarding
4 compensation of a trustee of an express trust);

5 (ii) to reimburse the Trustee upon its request for all reasonable
6 expenses, disbursements and advances incurred or made by the Trustee in
7 accordance with any provision of this Subordinate Ordinance, any other
8 agreement relating to the Subordinate Bonds to which it is a party or in
9 complying with any request by the City or any securities credit rating agency
10 with respect to the Subordinate Bonds, including the reasonable compensation,
11 expenses and disbursements of its agents and counsel, except any such
12 expense, disbursement or advance attributable to the Trustee's negligence or
13 bad faith; and

14 (iii) to indemnify, defend and hold the Trustee harmless from
15 and against any loss, liability or expense incurred without negligence or bad
16 faith on its part, arising out of or in connection with the acceptance or
17 administration of the office of Trustee under this Subordinate Ordinance,
18 including the costs of defending itself against any claim or liability in connection
19 with the exercise or performance of any of its powers or duties hereunder or
20 thereunder.

21 (b) In the event the Trustee incurs expenses or renders services in
22 any proceedings under federal or state bankruptcy law relating to the City, the
23 expenses so incurred and compensation for services so rendered are intended
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to constitute expenses of administration under federal or state bankruptcy law.

1 As security for the performance of the obligations of the City under this Section,
2 the Trustee shall have a lien prior to the lien securing the Subordinate Bonds
3 and Payment Agreement Payments, which it may exercise through a right of
4 setoff, upon all property or funds held or collected by the Trustee pursuant to
5 this Subordinate Ordinance. The obligations of the City to make the payments
6 described in this Section shall survive discharge of this Subordinate Ordinance,
7 the resignation or removal of the Trustee and payment in full of the Subordinate
8 Bonds.
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11 **Section 12.6. Qualifications of the Trustee.** There shall at all
12 times be a trustee hereunder which shall be a corporation or banking
13 association organized and doing business under the laws of the United States
14 of America or of any state, authorized under such laws to exercise corporate
15 trust powers, which has a combined capital and surplus of at least
16 \$100,000,000, or is an affiliate of a corporation or banking association meeting
17 such capital and surplus requirement which guarantees the obligations and
18 liabilities of the proposed trustee, and which is subject to supervision or
19 examination by federal or state banking authority. If such corporation or
20 banking association publishes reports of condition at least annually, pursuant to
21 law or the requirements of any supervising or examining authority above
22 referred to, then for purposes of this Section, the combined capital and surplus
23 of such corporation or banking association shall be deemed to be its combined
24 capital and surplus as set forth in its most recent report of condition so
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1 published. If at any time the Trustee shall cease to be eligible in accordance
2 with the provisions of this Section, it shall resign promptly in the manner and
3 with the effect specified in this Article.

4 **Section 12.7. Resignation or Removal of the Trustee;**

5 **Appointment of Successor Trustee.**

6 (a) No resignation or removal of the Trustee and no appointment of a
7 successor Trustee pursuant to this Article shall become effective until the
8 acceptance of appointment by the successor Trustee under Section 12.8.

9 (b) The Trustee may resign at any time by giving written notice to the
10 City. Upon receiving such notice of resignation, the City shall promptly appoint
11 a successor Trustee by an instrument in writing. If an instrument of acceptance
12 has not been delivered to the resigning Trustee within 30 days after the giving
13 of such notice of resignation, the resigning Trustee or any Owner of a
14 Subordinate Bond then Outstanding may petition a court of competent
15 jurisdiction for the appointment of a successor Trustee.

16 (c) Prior to the occurrence and continuance of an Event of Default
17 hereunder, or after the curing or waiver of any such Event of Default, the City or
18 the Owners of a majority in aggregate principal amount of the Outstanding
19 Subordinate Bonds may remove the Trustee and shall appoint a successor
20 Trustee. In the event there shall have occurred and be continuing an Event of
21 Default hereunder, the Owners of a majority in aggregate principal amount of
22 the Outstanding Subordinate Bonds may remove the Trustee and shall appoint
23 a successor Trustee. In each instance such removal and appointment shall be
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1 accomplished by an instrument or concurrent instruments in writing signed by
2 the City or such Owners, as the case may be, and delivered to the Trustee, the
3 City and Owners of the Outstanding Subordinate Bonds.

4 (d) If at any time: (i) the Trustee shall cease to be eligible and
5 qualified under Section 12.6 and shall fail or refuse to resign after written
6 request to do so by the City or the Owner of any Subordinate Bond, or (ii) the
7 Trustee shall become incapable of acting or shall be adjudged insolvent, or a
8 receiver of the Trustee or its property shall be appointed, or any public officer
9 shall take charge or control of the Trustee, its property or affairs for the purpose
10 of rehabilitation, conservation or liquidation, then in either such case (A) the City
11 may remove the Trustee and appoint a successor Trustee in accordance with
12 the provisions of subsection (c) of this Section; or (B) any Owner of a
13 Subordinate Bond then Outstanding may, on behalf of the Owners of all
14 Outstanding Subordinate Bonds, petition a court of competent jurisdiction for
15 removal of the Trustee and appointment of a successor Trustee.

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18 (e) The City shall give written notice of each resignation or removal of
19 the Trustee and each appointment of a successor Trustee to each Owner of
20 Subordinate Bonds then Outstanding as listed in the Bond Register. Each such
21 notice shall include the name and address of the applicable corporate trust
22 office of the successor Trustee.
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Section 12.8. Acceptance of Appointment by Successor

1 **Trustee.**

2 (a) Every successor Trustee appointed hereunder shall execute,
3 acknowledge and deliver to the City and the predecessor Trustee an instrument
4 accepting its appointment. The resignation or removal of the retiring Trustee
5 shall thereupon become effective, and the successor Trustee shall, without
6 further act, deed or conveyance, become vested with all the estates, properties,
7 rights, powers and duties of the predecessor Trustee. Upon the request of the
8 City or the successor Trustee, the predecessor Trustee shall execute and
9 deliver an instrument transferring to the successor Trustee all the estates,
10 properties, rights, powers and duties of the predecessor Trustee under this
11 Subordinate Ordinance, shall duly assign, transfer, deliver and pay over to the
12 successor Trustee all money and other property then held under this
13 Subordinate Ordinance, subject, however, to the lien provided for in
14 Section 12.5, and shall deliver to the successor Trustee, all records maintained
15 by the predecessor Trustee with respect to the Funds and the Subordinate
16 Bonds and such records shall be proper books of record and accounts
17 containing complete and correct entries. The successor Trustee shall promptly
18 give written notice of its appointment to the Owners of all Subordinate Bonds
19 Outstanding in the manner prescribed herein, unless such notice has previously
20 been given.
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1 (b) No successor Trustee shall accept appointment as provided in
2 this Section unless, as of the date of such acceptance, it is eligible and qualified
3 under the provisions of Section 12.6.

4 **Section 12.9. Merger, Succession or Consolidation of**
5 **Trustee.** Any corporation or association: (a) into which the Trustee is merged or
6 with which it is consolidated; (b) resulting from any merger or consolidation to
7 which the Trustee is a party; or (c) succeeding to all or substantially all of the
8 corporate trust business of the Trustee, shall be the successor Trustee without
9 the execution or filing of any document or the taking of any further action. Any
10 such successor must nevertheless be eligible and qualified under the provisions
11 of Section 12.6.

12 **Section 12.10. Notices to Owners; Waiver.**

13 (a) Where this Subordinate Ordinance provides for notice to Owners
14 of any event, such notice shall be sufficiently given (unless otherwise expressly
15 provided herein) if in writing and mailed, first-class postage prepaid, to each
16 Owner affected by each event, at such Owner's address as it appears on the
17 Bond Register, not later than the latest date, and not earlier than the earliest
18 date, prescribed for the first giving of such notice. In any case where notice to
19 Owners is given by mail, neither the failure to mail such notice nor any defect in
20 any notice so mailed to any particular Owner shall affect the sufficiency of such
21 notice with respect to other Owners. Where this Subordinate Ordinance
22 provides for notice in any manner, such notice may be waived in writing by the
23 Person entitled to receive such notice, either before or after the event, and such
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1 waiver shall be the equivalent of such notice. Waivers of notice by Owners
2 shall be filed with the Trustee, but such filing shall not be a condition precedent
3 to the validity of any action taken in reliance upon such waiver.

4 (b) With respect to Book-Entry Bonds, where this Subordinate
5 Ordinance provides for notice to the Owners of the existence of, or during the
6 continuance of, any Event of Default, or at any time upon the written request of
7 the City, the Trustee, at the expense of the City, shall: (i) establish a record date
8 for determination of the Persons entitled to receive such notice; (ii) request a
9 securities position listing from the Securities Depository showing the
10 participants holding positions in the Book-Entry Bonds affected by such notice
11 as of the record date for such notice; (iii) mail, first class postage prepaid,
12 copies of the notice as provided above to each participant identified in the
13 securities position listing as holding a position in the Book-Entry Bonds as of the
14 record date for the notice, to each nationally recognized municipal securities
15 information repository and state information depository for the State of
16 Washington, if any, and to any Person identified to the Trustee as a non-
17 objecting Beneficial Owner pursuant to the immediately following clause;
18 (iv) request that the participant retransmit the notice to all Persons for which it
19 served as nominee on the record date, including non-objecting Beneficial
20 Owners, or retransmit the notice to objecting Beneficial Owners and provide a
21 listing of non-objecting Beneficial Owners for whom the participant served as
22 nominee on the record date to the Trustee, (v) provide on behalf of the City and
23 not as its agent, an undertaking of the City to pay to any participant or other
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1 nominee (other than the Securities Depository) the reasonable costs of
2 transmitting the notice to Persons for whom the participant acts as nominee;
3 and (vi) provide as many copies of the notice as may be requested by any
4 nominee owner of the Subordinate Bonds. Any default in performance of the
5 duties required by this subsection shall not affect the sufficiency of notice to the
6 Owners given in accordance with subsection (a) of this Section, or the validity of
7 any action taken under this Subordinate Ordinance in reliance on such notice to
8 Owners.

9 (c) Where this Subordinate Ordinance provides for notice to the
10 Owners of any event, the form of the notice shall prominently include a title
11 block, separate from the body of the notice, which shall include the following
12 information: (i) the complete title of the Subordinate Bonds; (ii) the CUSIP
13 number of each affected Subordinate Bond; (iii) the record date for the notice;
14 and (iv) a summary of the notice.

15
16 (d) Any notice required or permitted by this Subordinate Ordinance to
17 be given to the Securities Depository shall be given to it in the manner provided
18 by this Section for giving notice to Owners, and also shall be given in the format
19 requested by the Securities Depository to such address as may be specified by
20 the Securities Depository in writing to the Trustee.
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23 ARTICLE XIII

24 DISCHARGE AND DEFEASANCE

25 **Section 13.1. Discharge.** If (a) the principal of any Bonds and the
26 interest due or to become due thereon together with any premium required by



1 redemption of any of such Bonds prior to maturity and all obligations to any
2 Credit Providers and Reserve Account Facility Providers shall be paid, or is
3 caused to be paid, or is provided for under Section 13.2, at the times and in the
4 manner to which reference is made in such Bonds, Credit Facilities and
5 Reserve Account Facilities, according to the true intent and meaning thereof,
6 (b) and all City Payments and other payments due in accordance with the
7 provisions of the Payment Agreements and this Subordinate Ordinance have
8 been made, and (c) all of the covenants, agreements, obligations, terms and
9 conditions of the City under this Subordinate Ordinance shall have been kept,
10 performed and observed and there shall have been paid to the Trustee all sums
11 of money due or to become due to it in accordance with the terms and
12 provisions hereof, then the right, title and interest of the Trustee in all money
13 and other property then held under this Subordinate Ordinance shall thereupon
14 cease and the Trustee, on request of and at the expense of the City, shall
15 release this Subordinate Ordinance and shall execute such documents to
16 evidence such release as may be reasonably required by the City and shall turn
17 over to the City, or to such other Person as may be entitled to receive the same,
18 all balances remaining in any Funds except for amounts required to pay such
19 Bonds or held pursuant to Section 13.2.

22
23 **Section 13.2. Defeasance.** In the event that the City, in order to
24 effect the payment, retirement, or redemption of any Subordinate Bond, sets
25 aside in the Bond Fund or in another special account, held in trust by the
26 Trustee, cash or Government Obligations in amounts and maturities which,



1 together with the known earned income therefrom, are sufficient to redeem or
2 pay and retire such Subordinate Bond in accordance with its terms and to pay
3 when due the interest and redemption premium, if any, thereon, and such cash
4 and Government Obligations are irrevocably set aside and pledged for such
5 purpose, then no further payments need be made into the Bond Fund for the
6 payment of the principal of and interest on such Subordinate Bond. The owner
7 of a Subordinate Bond so provided for shall cease to be entitled to any lien,
8 benefit, or security of this Subordinate Ordinance except the right to receive
9 payment of principal, premium, if any, and interest from such special account,
10 such Subordinate Bond shall be deemed to be no longer Outstanding under this
11 Subordinate Ordinance, and the Trustee shall hold such money, Government
12 Obligations and earnings in trust exclusively for such Owner or Owners and
13 such money, Government Obligations and earnings shall not secure any other
14 Subordinate Bonds under this Subordinate Ordinance. In determining the
15 sufficiency of the money and Government Obligations deposited pursuant to
16 this Section, the Trustee shall receive, at the expense of the City, and may rely
17 upon: (a) a verification report of a Certified Public Accountant; and (b) an
18 opinion of Bond Counsel to the effect that (a) all conditions set forth in this
19 Article have been satisfied, and (b) that defeasance of the Subordinate Bonds
20 will not cause interest on any Tax-Exempt Bonds to be includable in gross
21 income for federal income tax purposes. Upon such defeasance all rights of the
22 City, including its right to provide for optional redemption of Subordinate Bonds
23 on dates other than planned pursuant to such defeasance, shall cease unless
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specifically retained by filing a written notification thereof with the Trustee on or prior to the date the Government Obligations are deposited with the Trustee.

Section 13.3. Notice of Defeasance.

(a) If money or Government Obligations have been deposited with the Trustee pursuant to Section 13.2 for payment of less than all Subordinate Bonds of a series and maturity, the Subordinate Bonds of such series and maturity to be so paid from such deposit shall be selected by the Trustee by lot by such method as shall provide for the selection of portions (in authorized denominations) of the principal of Subordinate Bonds of such series and maturity of a denomination larger than the smallest authorized denomination.

Such selection shall be made within seven (7) days after the money or Government Obligations have been deposited with the Trustee. This selection process shall be in lieu of the selection process otherwise provided with respect to redemption of Subordinate Bonds in Article V. After such selection is made, Subordinate Bonds that are to be paid from such deposit (including Subordinate Bonds issued in exchange for such Subordinate Bonds pursuant to the transfer or exchange provisions of this Subordinate Ordinance) shall be identified by a separate CUSIP number or other designation satisfactory to the Trustee. The Trustee shall notify Owners whose Subordinate Bonds (or portions thereof) have been selected for payment from the money or Government Obligations on deposit and shall direct such Owners to surrender their Subordinate Bonds to the Trustee in exchange for Subordinate Bonds with the appropriate designation. The selection of Subordinate Bonds for payment from such



deposit pursuant to this subsection shall be conclusive and binding on the City.

1 The City shall give to the Trustee in form satisfactory to it irrevocable
2 instructions to give notice of the deposit of money or Government Obligations,
3 the selection of Subordinate Bonds to be redeemed including CUSIP numbers
4 and the anticipated date of redemption. The Trustee shall promptly give such
5 notice to the Owners including the information required under Section 5.3.
6

7 (b) In case any of the Subordinate Bonds, for the payment of which
8 money or Government Obligations have been deposited with the Trustee
9 pursuant to Section 13.2, are to be redeemed on any date prior to their maturity,
10 the City, in addition to any notice required under subsection (a) of this Section,
11 shall give to the Trustee in form satisfactory to it irrevocable instructions to give
12 notice of redemption of such Subordinate Bonds on the date fixed for
13 redemption for such Subordinate Bonds as provided in Section 5.3.
14

15 (c) In addition to the foregoing notice, in the event such Subordinate
16 Bonds to be redeemed are not by their terms subject to redemption within the
17 next succeeding 91 days, the Trustee shall give further notice to the Owners
18 that the deposit required by Section 13.2 has been made with the Trustee and
19 that said Subordinate Bonds are deemed to have been paid in accordance with
20 this Article and stating the maturity or date fixed for redemption or dates upon
21 which money is to be available for the payment of the principal of or premium, if
22 any, on said Subordinate Bonds; such further notice shall be given promptly
23 following the making of the deposit required by Section 13.2; and such further
24 notice also shall be given in the manner set forth in Section 5.3(c); but no defect
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1 in such further notice nor any failure to give all or any portion of such further
2 notice shall in any manner defeat the effectiveness of the deposit.

3 (d) If the City has retained any rights pursuant to the last sentence of
4 Section 13.2, notice thereof shall be sent to Owners of such Subordinate Bonds
5 as soon as practicable and not later than any notice required by subsections (a)
6 or (b) of this Section.

7 **ARTICLE XIV**

8 **MISCELLANEOUS**

9 **Section 14.1. Ordinance and Laws a Contract with Owners.**

10 This Ordinance is adopted under the authority of and in full compliance with the
11 Constitution and laws of the State of Washington and the Charter of the City,
12 each as amended and supplemented. In consideration of the purchase and
13 acceptance of the Subordinate Bonds by those who shall hold the same from
14 time to time, the provisions of this Subordinate Ordinance and of said laws shall
15 constitute a contract with the owner or owners of each Subordinate Bond, and
16 the obligations of the City under said acts and under this Subordinate
17 Ordinance shall be enforceable by any court of competent jurisdiction. The
18 covenants and agreements herein set forth to be performed on behalf of the
19 City shall be for the equal benefit, protection, and security of the owners of any
20 and all Subordinate Bonds, all of which, regardless of the time or times of their
21 issue or maturity, shall be of equal rank without preference, priority, or
22 distinction of any Subordinate Bonds over any others thereof except as
23 expressly provided herein.
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1 **Section 14.2. No Personal Liability.** No City Council or Board
2 member, or officer, agent or employee of the City or the Trustee shall be
3 individually or personally liable for the payment of the Bonds or be subject to
4 any personal liability or accountability by reason of the issuance thereof; but
5 nothing herein contained shall relieve any such City Council or Board member,
6 or officer, agent or employee of the City or the Trustee from the performance of
7 any official duty provided by law or by this Subordinate Ordinance.

8 **Section 14.3. Benefits of Ordinance Limited.** Nothing in this
9 Subordinate Ordinance, expressed or implied, is intended or shall be construed
10 to confer upon or give to any person other than the City, the Trustee, the Paying
11 Agents, the Bond Registrar, each Credit Provider, each Reserve Account
12 Facility Provider, each Reciprocal Payor and the Owners from time to time of
13 the Subordinate Bonds any rights, remedies, or claims under or by reason of
14 this Subordinate Ordinance or any covenant, condition, or stipulation thereof;
15 and all the covenants, stipulations, promises, and agreements in this
16 Subordinate Ordinance contained by or on behalf of the City shall be for the
17 sole and exclusive benefit of the City, the Trustee, the Paying Agents, the
18 Registrar, each Credit Provider, each Reserve Account Facility Provider each
19 Reciprocal Payor and the Owners from time to time of the Subordinate Bonds.
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23 **Section 14.4. Credit Provider Rights.** Except as otherwise
24 provided in the Supplemental Ordinance authorizing the issuance of a series of
25 Subordinate Bonds, if the Credit Provider with respect to such series of
26 Subordinate Bonds (i) is not in default in respect of any of its payment



obligations under the Credit Facility with respect to such series of Subordinate
1 Bonds, and (ii) is not bankrupt or insolvent, the following shall apply:

2 (a) Such Credit Provider, and not the actual Owners, shall be deemed
3 to be the Owner of such series of Subordinate Bonds at all times for the
4 purposes of (i) giving any approval or consent to the effectiveness of any
5 Supplemental Ordinance other than a Supplemental Ordinance providing for
6 (A) a change in the terms of redemption, purchase or maturity of the principal of
7 any Outstanding Subordinate Bond of such series or any interest thereon or a
8 reduction the principal amount thereof or the premium, if any, or the rate of
9 interest thereon, or (B) a reduction in the percentage of Owners required to
10 approve or consent to the effectiveness of any Supplemental Ordinance, and
11 (ii) giving any approval or consent or exercising any remedies in connection
12 with the occurrence of an Event of Default.

13 (b) Any amendment to this Subordinate Ordinance requiring the
14 consent of Owners of such series of Subordinate Bonds shall also require the
15 prior written consent of such Credit Provider.

16 (c) Any amendment to this Subordinate Ordinance not requiring the
17 consent of Owners of such series of Subordinate Bonds shall require the prior
18 written consent of such Credit Provider if its rights, remedies, security or
19 interests shall be materially and adversely affected by such amendment.

20 (d) The prior written consent of such Credit Provider shall be a
21 condition precedent to the substitution by the City of any reserve account credit
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facility for cash deposited in any Reserve Account securing such series of

1 Subordinate Bonds.

2 (e) Such Credit Provider shall have the right to institute any suit,
3 action or proceeding at law or in equity under the same terms as an Owner of
4 such series of Subordinate Bonds in accordance with this Subordinate
5 Ordinance.

7 (f) Such Credit Provider shall, to the extent it makes any payment of
8 principal of, premium if any, or interest on such series of Subordinate Bonds,
9 become subrogated to the rights of the recipients of such payments.

11 (g) The principal, premium, if any, or interest on such series of
12 Subordinate Bonds paid by such Credit Provider under such Credit Facility shall
13 not be deemed paid for purposes of this Subordinate Ordinance, and the
14 Subordinate Bonds with respect to which such payments were made shall
15 remain Outstanding and continue to be due and owing until paid by the City in
16 accordance with this Subordinate Ordinance.

18 (h) In the event of any defeasance of such series of Subordinate
19 Bonds, the City shall provide such Credit Provider with copies of all documents
20 required by Article XIII to be delivered to the Trustee.

22 (i) The City shall not discharge this Subordinate Ordinance unless all
23 amounts due or to become due to such Credit Provider have been paid in full or
24 duly provided for.

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1 (j) The City shall send or cause to be sent to such Credit Provider
2 copies of notices required to be sent to Owners or the Trustee under this
3 Subordinate Ordinance.

4 (k) The City shall observe any payment procedures under such Credit
5 Facility required by such Credit Provider as a condition to the issuance and
6 delivery thereof.

7 **Section 14.5. Severability.** If any one or more of the provisions of
8 this Subordinate Ordinance or the Subordinate Bonds is or are held by any
9 court of competent jurisdiction to be contrary to law, then such provision or
10 provisions shall be null and void and shall be deemed separable from the
11 remaining provisions and shall in no way affect the validity of the other
12 provisions of this Subordinate Ordinance or the Subordinate Bonds.

14 **Section 14.6. Holidays.** If the date for making any payment or the
15 last date for performance of any act or the exercising of any right, as provided in
16 this Subordinate Ordinance, is not a Business Day, such payment may be
17 made or act performed or right exercised on the next succeeding Business Day
18 with the same force and effect as if done on the nominal date provided in this
19 Subordinate Ordinance and except as otherwise provided in a Supplemental
20 Ordinance, no interest shall accrue on the payment so deferred during the
21 intervening period.

24 **Section 14.7. Applicable Law.** This Ordinance shall be governed
25 in all respects including validity, interpretation and effect by, and shall be
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1 enforceable in accordance with, the laws of the United States of America and of
2 the State.

3 **Section 14.8. Successors and Assigns.** All the covenants,
4 promises and agreements in this Subordinate Ordinance contained by or on
5 behalf of the City, or by or on behalf of the Trustee, shall bind and inure to the
6 benefit of their respective successors and assigns.

7 **Section 14.9. Consent of Owners.** Any consent, request,
8 direction, approval, objection or other instrument required by this Subordinate
9 Ordinance to be signed and executed by the Owners may be in any number of
10 concurrent writings of similar tenor and must be signed or executed by such
11 Owners in person or by agent appointed in writing. Proof of the execution of
12 any such consent, request, direction, approval, objection or other instrument or
13 of the writing appointing any such agent and of the ownership of Subordinate
14 Bonds, if made in the following manner, shall be sufficient for any of the
15 purposes of this Subordinate Ordinance, and shall be conclusive in favor of the
16 Trustee with regard to any action taken by it under such request or other
17 instrument, namely: (a) the fact and date of the execution by any person of any
18 such writing may be proved by the certificate of any officer in any jurisdiction
19 who by law has power to take acknowledgments within such jurisdiction that the
20 person signing such writing acknowledged the execution thereof, or by an
21 affidavit of any witness to such execution; and (b) the Trustee may establish a
22 record date for the purpose of identifying Owners entitled to issue any such
23 consent, request, direction, approval or instrument.
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Section 14.10. General Authorization. The officers, agents and employees of the City are authorized and directed to execute and deliver such documents, agreements and certificates and to take such other actions, upon consultation with the City Attorney, as may be necessary or desirable and in the best interests of the City to carry out the purposes and intents of this Ordinance and the transactions contemplated hereby.

Section 14.11. Effective Date. This Ordinance shall take effect and be in force 10 days after its passage, approval, and publication as required by law. Any actions taken pursuant to this Subordinate Ordinance before its effective date and after its passage are hereby ratified, approved and confirmed.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form and legality:

ORRICK, HERRINGTON & SUTCLIFFE LLP
Bond Counsel to the City of Tacoma

By _____



CLERK'S CERTIFICATE

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I, the undersigned, the duly chosen, qualified City Clerk of the City of Tacoma, Washington, and keeper of the records of the City Council (herein called the "City Council"), DO HEREBY CERTIFY:

1. That the attached Ordinance No. _____ (herein called the "Ordinance") is a true and correct copy of an Ordinance of the City Council, as finally passed at a regular meeting of the City Council held on the ____ day of _____, 2015, and duly recorded in my office.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City as of this ____ day of _____, 2015.

City Clerk
City of Tacoma, Washington