

BIRCH BAY WATER AND SEWER DISTRICT
WHATCOM COUNTY, WASHINGTON
WATER AND SEWER REVENUE REFUNDING BONDS, 2008
\$3,510,000

RESOLUTION NO. 668

A RESOLUTION of the Board of Commissioners of Birch Bay Water and Sewer District, Whatcom County, Washington, providing for the issuance and sale of water and sewer revenue refunding bonds in the principal sum of \$3,510,000 for the purpose of refunding certain outstanding obligations of the District; providing the date, form, terms and maturities of the bonds to be issued; providing certain covenants for the payment of principal and interest on the bonds; providing that additional water and sewer revenue bonds may be issued on a parity with the bonds; and approving the sale of the bonds herein authorized.

ADOPTED MAY 8, 2008

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* This table of contents and the cover page provided for convenience of the reader only and are not a part of this resolution.

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WHEREAS, Birch Bay Water and Sewer District (the "District") owns, operates and maintains a system of sewers and water supply and distribution for the District, and has consolidated the water and sewer systems into a combined water and sewer system (the "System"); and

WHEREAS, pursuant to Resolution No. 583, the District has previously issued its Water and Sewer Revenue Bonds, 1997, dated as of July 15, 1997 (the "1997 Bonds") in the aggregate principal amount of \$8,415,000; and

WHEREAS, the 1997 Bonds mature in principal amounts and bear interest as follows:

Maturity Dates (September 1)	Principal Amounts	Interest Rates
2008	\$ 630,000	4.75%
2009	660,000	4.85
2010	695,000	5.00
2011	725,000	5.10
2012	765,000	5.15

WHEREAS, the 1997 Bonds maturing on and after September 1, 2008, are subject to optional redemption on any date on and after September 1, 2007, at a price of par plus interest accrued to the date of redemption; and

WHEREAS, it appears that the 1997 Bonds may now be refunded at lower interest rates, thereby yielding savings to the District's ratepayers;

WHEREAS, the District now desires to issue its water and sewer revenue refunding bonds (hereinafter defined as the "Bonds") for the purpose of refunding the 1997 Bonds and paying costs of issuance for the Bonds; and

WHEREAS, the District has received an offer from Seattle-Northwest Securities Corporation to purchase the Bonds, and this Board finds that it is in the best interests of the District that such offer be accepted;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF BIRCH BAY WATER AND SEWER DISTRICT, WHATCOM COUNTY, WASHINGTON, as follows:

Section 1. Definitions. As used in this resolution, the following terms shall have the following meanings, unless a different meaning clearly appears from the context:

Acquired Obligations mean the Government Obligations acquired by the District under the terms of this resolution and the Escrow Agreement to effect the defeasance and refunding of the 1997 Bonds.

Average Annual Debt Service means the average amount of annual Debt Service which will become due in any future calendar year on the Parity Bonds then outstanding.

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

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

Board means the Board of Commissioners of the District as the same shall be duly and regularly constituted from time to time.

Bond Fund means the special fund of the District designated as the "Water and Sewer Revenue Bond Redemption Fund" authorized to be created in the office of the Treasurer by Section 8 of the 1997 Bond Resolution.

Bond Register means the records maintained on behalf of the District containing the name and mailing address of each owner of the Bonds or the nominee of such owner, and such other information as the Registrar shall determine.

Bonds mean the "Birch Bay Water and Sewer District, Whatcom County, Washington, Water and Sewer Revenue Refunding Bonds, 2008" issued pursuant to and for the purposes provided in this resolution.

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

Call Date means the date established by the Designated District Representative for the redemption of the 1997 Bonds, which date shall occur not later than 60 days following the issuance of the Bonds and shall be set forth in the closing memorandum for the Bonds.

Code means the federal Internal Revenue Code of 1986, as the same shall have been amended from time to time through the date of issuance and delivery of the Bonds, and all regulations promulgated or applicable thereunder.

Consultant means an independent firm or person selected by the District and having experience with water and sewer systems.

Costs of Maintenance and Operation mean all expenses incurred by the District in causing the System to be operated and maintained in good repair, working order and condition, including without limitation: deposits, premiums, assessments or other payments for insurance, if any, on the System; payments into pension funds; State-imposed taxes; amounts due for the purchase of water; payments made to any other person or entity for the receipt of water or sewer supply or transmission or other right, commodity or service; payments made to any other person or entity that are required in connection with the operation of the System or the acquisition or transmission of water or sewer and that are not subordinate to the lien of the Parity Bonds; and payments with respect to any other expenses of the System that are properly treated as operation and maintenance expenses under generally accepted accounting principles applicable to municipal corporation. Under all circumstances, *Costs of Maintenance and Operation* do not include any depreciation or taxes levied or imposed by the District or capital expenditures made by the District (including, but not limited to, regional connection charges) and capital additions or capital replacements to the System.

Credit Facility means a policy of municipal bond insurance, a letter of credit, surety bond, line of credit, guarantee, standby purchase agreement or other financial instrument which obligates a third party to make payment or provide funds for the payment of financial obligations of the District, including but not limited to payment of the principal of, interest on or purchase price of Parity Bonds or meeting reserve requirements therefor.

Debt Service an amount equal to (1) the principal amount of Parity Bonds due or subject to mandatory redemption during such period and for which no sinking fund installments have

been established, (2) the amount of any payments required to be made during such period into any sinking fund established for the payment of any such Parity Bonds, plus (3) all interest payable during such period on any such outstanding Parity Bonds and with respect to Parity Bonds with mandatory sinking fund requirements, calculated on the assumption that mandatory sinking fund installments will be applied to the redemption or retirement of such Parity Bonds on the date specified in the resolution authorizing such Parity Bonds.

Debt Service Account means the special account of that name within the Bond Fund created by Section 8 of the 1997 Bond Resolution for the purpose of paying the principal of and interest on Parity Bonds.

Designated District Representative means the Treasurer (or the successor in function to such person(s)) or such other person as may be directed by motion or resolution of the Board.

District means Birch Bay Water and Sewer District, Whatcom County, Washington, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Washington.

DTC means The Depository Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York, as depository for the Bonds pursuant to Section 5 hereof.

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

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

Fitch means Fitch, Inc., organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such organization shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, *Fitch* shall be deemed to refer to

any other nationally recognized securities rating agency (other than S&P or Moody's) designated by the Designated District Representative.

Future Parity Bonds mean all water and sewer revenue bonds of the District hereafter issued, the payment of which constitutes a lien and charge upon the Revenue of the System required to be paid into the Bond Fund which is equal in rank to the lien and charge upon the Revenue of the System for the payments required to pay and secure the payment of the Bonds.

Government Obligations has the meaning given to such term in chapter 39.53 RCW, as the same may be amended from time to time.

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

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

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

MSRB means the Municipal Securities Rulemaking Board or any successor to its functions.

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

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

1997 Bond Resolution means Resolution No. 583, adopted by the Board on July 17, 1997 and authorizing the 1997 Bonds.

1997 Bonds mean the "Birch Bay Water and Sewer District, Whatcom County, Washington, Water and Sewer Revenue Bonds, 1997" issued pursuant to the 1997 Bond Resolution.

NRMSIR means a nationally recognized municipal securities information repository.

Parity Bonds mean the Bonds and any Future Parity Bonds.

Parity Requirement means Net Revenues equal to or greater than:

(a) 125% of Maximum Annual Debt Service for all Parity Bonds computed by deducting from Annual Debt Service the Annual Debt Service for each series or issue of Parity Bonds which is covered by ULID Assessments which is determined by multiplying such Annual Debt Service by the percentage determined by dividing the ULID Assessments originally pledged to such issue/series by the original principal amount of such issue/series, and

(b) 100% of Maximum Annual Debt Service for all subordinate lien evidences of indebtedness secured by Revenue of the System.

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

Private Person Use means the use of property in a trade or business by a Private Person if such use is other than as a member of the general public. Private Person Use includes ownership

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

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

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

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

Rate Stabilization Account means the special fund authorized to be created by the 1997 Bond Resolution.

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

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

Registered Owner means the person named as the registered owner of a Bond in the Bond Register. For so long as the Bonds are held in book-entry only form, DTC shall be deemed to be the sole Registered Owner.

Registrar means the fiscal agency of the State of Washington, whose duties include registering and authenticating the Bonds, maintaining the Bond Register, transferring ownership of the Bonds, and paying the principal of and interest on the Bonds.

Replacement Ratio means a dollar amount which divided by the amount of outstanding Parity Bonds is equal to the greater of (i) the Net Revenue available for Debt Service for such outstanding Parity Bonds for the 12 months preceding such sale, lease, encumbrance or disposal from the portion of the System sold, leased, encumbered or disposed of bears to the Net Revenue available for Debt Service for such Parity Bonds from the entire system for the same period; (ii) the Revenue of the System for the 12 months preceding such sale, lease, encumbrance or

disposal from the portion of the System sold, leased, encumbered or disposed of bears to the Revenue of the System for the same period; (iii) the proportion of assets (on a depreciated basis) allocable to the assets being sold, leased, encumbered or disposed of bears to the total assets of the District; or (D) the proportion of customers of the District allocable to the assets being sold, leased, encumbered or disposed of bears to the total number of customers of the District.

Reserve Account means the special account of the District of that name authorized to be created by Section 8 of the 1997 Bond Resolution.

Reserve Requirement means the least of (a) 10% of the net proceeds of each series of Parity Bonds, (b) Maximum Annual Debt Service, (c) 1.25 times Average Annual Debt Service or (d) such lesser amount as shall be required to maintain the exemption of interest of any Parity Bonds from taxation under the Code.

Revenue Account means the general operating account of the District.

Revenue of the System or *Revenue* means all earnings, revenue and moneys received by the District from or on account of the operation of the System, including, but not limited to connection and general facilities charges and the income from investments of money in the Revenue Account and the Bond Fund or from any other investment thereof. *Revenue of the System* shall also include any federal or state reimbursements of operating expenses to the extent such expenses are included as *Costs of Maintenance and Operation*; provided, however, that Revenue of the System shall not include ULID Assessments.

Rule means the Commission's Rule 15c2-12 under the Securities Exchange Act of 1934, as the same may be amended from time to time.

S&P means Standard & Poor's, a Division of The McGraw Hill Companies, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no

longer perform the functions of a securities rating agency, *S&P* shall be deemed to refer to any other nationally recognized securities rating agency (other than Moody's and Fitch) designated by the Designated District Representative.

SID means a state information depository for the State of Washington.

State means the State of Washington.

System means the existing sanitary sewerage collection, treatment and disposal system of the District, as it now exists and as it may later be added to, extended and improved, and the existing water supply and distribution system of the District, as it now exists and as it may later be added to, extended and improved, for as long as any Parity Bonds remain outstanding.

Treasurer means the Treasurer of the District or any other public officer as may hereafter be designated pursuant to law to have the custody of District funds.

ULID means a utility local improvement district of the District.

ULID Assessments mean assessments or installments thereof levied in any utility local improvement district of the District, and shall include interest and any penalties thereon and any interest earnings from the investment thereof.

Underwriter means Seattle-Northwest Securities Corporation.

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

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

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

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

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

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

Section 2. Compliance with Parity Conditions The Board hereby finds and determines, as required by Section 13 of the 1997 Bond Resolution, as follows:

First, that the Bonds are being issued for the purpose of refunding the 1997 Bonds;

Second, that at the time of the adoption of this resolution and at the time of the issuance and delivery of the Bonds there is not nor will there be any deficiencies in the Bond Fund and the Reserve Account;

Third, all ULID Assessments are pledged to be paid into the Bond Fund;

Fourth, all debt service on the Bonds is payable from the Bond Fund;

Fifth, the issuance of the Bonds will result in a debt service savings and does not require an increase of more than \$5,000 in any fiscal or calendar year for principal of and interest on the

Bonds over and above the amount required in such year for the principal of and interest on the 1997 Bonds.

The conditions contained in Section 13 of the 1997 Bond Resolution having been complied with or assured, the payments required herein to be made out of the Revenue Account into the Bond Fund and the Reserve Account to pay and secure the payment of the principal of and interest on the Bonds shall constitute a lien and charge upon the money in the Revenue Account equal in rank with the lien and charge thereon for the payments required to be made for the 1997 Bonds.

Section 3. Authorization and Description of Bonds. For the purpose of providing the funds necessary to refund the 1997 Bonds and to pay costs of issuance of the Bonds, the District shall issue and sell its water and sewer revenue refunding bonds (the "Bonds") in the principal amount of \$3,510,000. The Bonds shall be designated "Birch Bay Water and Sewer District, Whatcom County, Washington, Water and Sewer Revenue Refunding Bonds, 2008," shall be dated as their date of initial issuance and delivery, shall be fully registered as to both principal and interest, and shall be in the denomination of \$5,000 each, or any integral multiple thereof, provided no Bond shall represent more than one maturity, shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification. The Bonds shall bear interest payable on September 1, 2008, and semiannually thereafter on the first day of each succeeding March and September at the rates set forth below and shall mature on September 1 in the years and amounts as follows:

<u>Maturity Dates</u> <u>(September 1)</u>	<u>Principal</u> <u>Amounts</u>	<u>Interest</u> <u>Rates</u>
2008	\$ 675,000	4.00%
2009	670,000	4.00
2010	695,000	4.00
2011	720,000	4.00
2012	750,000	4.00

Section 4. Registration, Exchange and Payments.

(a) *Registrar/Bond Register.* The District hereby specifies and adopts the system of registration and transfer for the Bonds approved by the Washington State Finance Committee from time to time through the appointment of state fiscal agencies. The District shall cause a bond register to be maintained by the Registrar. So long as any Bonds remain outstanding, the Registrar shall make all necessary provisions to permit the exchange and registration of transfer of Bonds at its principal corporate trust office. The Registrar may be removed at any time at the option of the Designated District Representative upon prior notice to the Registrar, DTC, each party entitled to receive notice pursuant to Section 18 and a successor Registrar appointed by the Designated District Representative. No resignation or removal of the Registrar shall be effective until a successor shall have been appointed and until the successor Registrar shall have accepted the duties of the Registrar hereunder. The Registrar is authorized, on behalf of the District, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of such Bonds and this resolution and to carry out all of the Registrar's powers and duties under this resolution. The Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bonds.

(b) *Registered Ownership.* The District and the Registrar, each in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes (except as provided in Section 18 of this resolution), and neither the District nor the Registrar

shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 4(h) hereof, but such Bond may be transferred as herein provided. All such payments made as described in Section 4(h) shall be valid and shall satisfy and discharge the liability of the District upon such Bond to the extent of the amount or amounts so paid.

(c) *DTC Acceptance/Letter of Representations.* To induce DTC to accept the Bonds as eligible for deposit at DTC, the District has executed and delivered to DTC a Letter of Representations.

Neither the District nor the Registrar will have any responsibility or obligation to DTC participants or the persons for whom they act as nominees (or any successor depository) with respect to the Bonds in respect of the accuracy of any records maintained by DTC (or any successor depository) or any DTC participant, the payment by DTC (or any successor depository) or any DTC participant of any amount in respect of the principal of or interest on Bonds, any notice which is permitted or required to be given to Registered Owners under this resolution (except such notices as shall be required to be given by the District to the Registrar or to DTC (or any successor depository), or any consent given or other action taken by DTC (or any successor depository) as the Registered Owner. For so long as any Bonds are held in fully immobilized form hereunder, DTC or its successor depository shall be deemed to be the Registered Owner for all purposes hereunder, and all references herein to the Registered Owners shall mean DTC (or any successor depository) or its nominee and shall not mean the owners of any beneficial interest in such Bonds.

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

(d) *Use of Depository.*

(1) The Bonds shall be registered initially in the name of "Cede & Co.," as nominee of DTC, with one Bond maturing on each of the maturity dates for the Bonds in a denomination within each series corresponding to the total principal therein designated to mature on such date. Registered ownership of such immobilized Bonds, or any portions thereof, may not thereafter be transferred except (A) to any successor of DTC or its nominee, provided that any such successor shall be qualified under any applicable laws to provide the service proposed to be provided by it; (B) to any substitute depository appointed by the Designated District Representative pursuant to subsection (2) below or such substitute depository's successor; or (C) to any person as provided in subsection (4) below.

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

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

(4) In the event that (A) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (B) the Designated District Representative determines that it is in the best interest of the beneficial owners of the Bonds that such owners be able to obtain such bonds in the form of Bond certificates, the ownership of such Bonds may then be transferred to any person or entity as herein provided, and shall no longer be held in fully immobilized form. The Designated District Representative shall deliver a written request to the Registrar, together with a supply of definitive Bonds, to issue Bonds as herein provided in any authorized denomination. Upon receipt by the Registrar of all then outstanding Bonds together with a written request on behalf of the Designated District Representative to the Registrar, new Bonds shall be issued in the appropriate denominations and registered in the names of such persons as are requested in such written request.

(e) *Registration of Transfer of Ownership or Exchange; Change in Denominations.*

The transfer of any Bond may be registered and Bonds may be exchanged, but no transfer of any such Bond shall be valid unless such Bond is surrendered to the Registrar with the assignment form appearing on such Bond duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Registered Owner or transferee therefor, a new Bond (or Bonds at the option of the new Registered Owner) of the same date, maturity and interest rate and for the same aggregate principal amount in any authorized denomination, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and canceled Bond. Any Bond may be surrendered to the

Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds of the same date, maturity and interest rate, in any authorized denomination or denominations. The Registrar shall not be obligated to register the transfer or to exchange any Bond during the 15 days preceding the date any such Bond is to be redeemed.

(f) *Registrar's Ownership of Bonds.* The Registrar may become the Registered Owner of any Bond with the same rights it would have if it were not the Registrar, and to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as member of, or in any other capacity with respect to, any committee formed to protect the right of the Registered Owners of Bonds.

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

(h) *Place and Medium of Payment.* Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be calculated on the basis of a 360-day year and twelve 30-day months. For so long as all Bonds are in fully immobilized form, payments of principal and interest shall be made as provided in accordance with the operational arrangements of DTC referred to in the Letter of Representations.

In the event that the Bonds are no longer in fully immobilized form, interest on the Bonds shall be paid by check or draft mailed to the Registered Owners at the addresses for such Registered Owners appearing on the Bond Register on the 15th day of the month preceding the interest payment date, and principal of the Bonds shall be payable upon presentation and surrender of such Bonds by the Registered Owners at the principal office of the Registrar.

Section 5. Redemption Prior to Maturity.

(a) *No Optional Redemption.* The Bonds are not subject to redemption prior to their scheduled maturities.

(b) *Purchase of Bonds.* The District reserves the right to purchase any of the Bonds offered to the District at any time at a price deemed reasonable by the District.

Section 6. Payment from Revenue Account; Rate Stabilization Account.

(a) *Revenue Account.* The District hereby obligates and binds itself to set aside and pay into the Revenue Account all Revenue of the System except income from investment of money in the Bond Fund; provided, that ULID Assessments shall be deposited directly into the Bond Fund. The Revenue Account has heretofore been established in the office of the Treasurer. The Revenue of the System shall be deposited in the Revenue Account as collected. The Revenue Account shall be held separate and apart from all other funds and accounts of the District and the Revenue of the System deposited in such Fund shall be used only for the following purposes and in the following order of priority:

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

Second, to pay the interest on any Parity Bonds;

Third, to pay the principal of any Parity Bonds;

Fourth, to make all payments required to be made into the Reserve Account and repayments to any provider of a policy of Qualified Insurance or Qualified Letter of Credit in accordance with the provisions of Section 7(b) hereof;

Fifth, to make all payments required to be made into any revenue bond redemption fund or revenue warrant redemption fund and debt service fund or reserve fund created to pay and secure the payment of the principal of and interest on any other revenue bonds or revenue

warrants of the District having a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on Parity Bonds; and

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

(b) *Rate Stabilization Account.* The District may create a Rate Stabilization Account to even out fluctuations in Net Revenues and help to alleviate the need for short-term rate adjustments. The District may make payments into the Rate Stabilization Account from the Revenue Account at any time. Money in the Rate Stabilization Account may be withdrawn at any time and used for the purposes for which the Revenue of the System may be used. Amounts withdrawn from the Rate Stabilization Account shall increase Revenue of the System for the period for which they are withdrawn, and amounts deposited in the Rate Stabilization Account shall reduce Revenue of the System for the period for which they are deposited. Credits to or from the Rate Stabilization Account that occur within 90 days after the end of a fiscal year may be treated as occurring within such fiscal year. Earnings on the Rate Stabilization Account shall be credited to the Revenue Account.

Section 7. Payments Into Bond Fund. A special fund of the District to be known as the "Water and Sewer Revenue Bond Redemption Fund" (the "Bond Fund") has been created by the 1997 Bond Resolution. The Bond Fund shall contain two accounts: the "Debt Service Account" and the "Reserve Account." At the option of the District, separate accounts may be created in the Bond Fund, or within the Bond Fund accounts, for the purpose of paying or securing the payment of principal and interest on the Parity Bonds.

((a) *Debt Service Account.* The District has created within the Bond Fund an account known as the "Debt Service Account" for the purpose of paying the principal of and interest on the Parity Bonds.

The District hereby obligates and binds itself to set aside and pay into the Debt Service Account in the Bond Fund out of the Revenue of the System and money in the Revenue Account those amounts necessary, together with other money on hand and available therefor in the Bond Fund, to pay the principal of and interest on the Bonds as the same shall become due and payable.

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

(If the balances on hand in the Reserve Account are sufficient to satisfy the Reserve Requirement, interest earnings shall be applied as provided in the following sentences.

Whenever there is a sufficient amount in the Bond Fund, including the Reserve Account to pay the principal of and interest on all outstanding Bonds, the money in the Reserve Account may be used to pay such principal and interest. As long as the money left remaining on deposit in the Reserve Account is equal to the Reserve Requirement, money in the Reserve Account may be transferred to the Debt Service Account and used to pay the principal of and interest on the Bonds as the same becomes due and payable. The District also may transfer out of the Reserve Account any money required in order to prevent any Parity Bonds from becoming "arbitrage bonds" under the Code.

If a deficiency in the Debt Service Account for the payment of debt service on Parity Bonds shall occur, such deficiency shall be made up from the Reserve Account by the withdrawal of cash therefrom for that purpose and by the sale or redemption of obligations held in the Reserve Account, in such amounts as will provide cash in the Reserve Account sufficient to make up any such deficiency with respect to Parity Bonds, and if a deficiency still exists immediately prior to an interest payment date and after the withdrawal of cash, the District shall then draw from any Qualified Letter of Credit or Qualified Insurance in sufficient amount to make up the deficiency. Such draw shall be made at such times and under such conditions as the agreement for such Qualified Letter of Credit or such Qualified Insurance shall provide.

In making the payments and credits to the Reserve Account required by this Section 7(b), to the extent that the District has obtained Qualified Insurance or a Qualified Letter of Credit for specific amounts required pursuant to this section to be paid out of the Reserve Account such amounts so covered by Qualified Insurance or a Qualified Letter of Credit shall be credited against the amounts required to be maintained in the Reserve Account by this Section 7(b) to the

(extent that such payments and credits to be made are insured by an insurance company, or guaranteed by a letter of credit from a financial institution.

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

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

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

In the event that the District issues Future Parity Bonds, the resolution authorizing their issuance shall provide for the funding of the Reserve Requirement no later than the date of issuance of the Future Parity Bonds.

(c) *Priority of Lien of Payments into Debt Service Account and Reserve Account.*

(The amounts so pledged to be paid into the Debt Service Account and the Reserve Account from

(the Revenue Fund and from ULID Assessments are hereby declared to be a prior lien and charge upon the Revenue of the System and ULID Assessments superior to all other charges of any kind or nature whatsoever except the Costs of Maintenance and Operation of the System, and except that the amounts so pledged are of equal lien to the charges upon such Revenue and ULID Assessments for the payment of the principal of and interest on any Future Parity Bonds.

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

((e) *Sufficiency of Revenues.* The Board hereby finds that in fixing the amounts to be paid into the Debt Service Account and the Reserve Account out of the Revenue of the System, it has exercised due regard for the Costs of Maintenance and Operation and the amounts previously pledged for the payment of the District's outstanding indebtedness of the System, and has not obligated the District to set aside and pay into such Fund a greater amount of such Revenue than in its judgment will be available over and above the amounts necessary to pay the Costs of Maintenance and Operation and the amounts previously pledged for the payment of the outstanding indebtedness of the System.

Section 8. Application of Bond Proceeds; Refunding Plan.

((a) *Refunding Plan.* For the purpose of realizing a debt service savings and benefiting the taxpayers of the District, the Board shall issue the Bonds. Proceeds of the Bonds

shall provide for the payment of the principal of and interest on and the redemption price (or principal due at maturity) of the 1997 Bonds.

The 1997 Bonds shall be called for redemption at 100% of par on the Call Date.

(b) *Refunding Proceeds.* The net proceeds of sale of the Bonds in the dollar amount certified by the District to the Escrow Agent shall be delivered to the Escrow Agent for the purpose of defeasing the 1997 Bonds and paying related costs of issuance.

Money received by the Escrow Agent from the Bond proceeds and other money provided by the District shall be used immediately by the Escrow Agent upon receipt thereof in accordance with the terms of the Escrow Agreement to defease the 1997 Bonds as authorized by the 1997 Bond Resolution, and to pay costs of issuance of the Bonds. The District shall defease the 1997 Bonds and discharge such obligations by the use of money deposited with the Escrow Agent to purchase certain Government Obligations (which obligations so purchased, are herein called "Acquired Obligations"), bearing such interest and maturing as to principal and interest in such amounts and at such times which, together with any necessary beginning cash balance, will provide for the payment:

(1) interest on the 1997 Bonds coming due on each date on which interest is due and payable, to and including the Call Date; and

(2) the redemption price of the 1997 Bonds (100% of the principal amount thereof) on the Call Date.

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

(c) *Escrow Agent/Escrow Agreement.* The District hereby appoints U.S. Bank National Association as the Escrow Agent for the 1997 Bonds (the "Escrow Agent"). A beginning cash balance, if any, and the Acquired Obligations shall be deposited irrevocably with the Escrow Agent in an amount sufficient to defease the 1997 Bonds. The proceeds of the Bonds remaining after acquisition of the Acquired Obligations and provision for the necessary beginning cash balance shall be utilized to pay expenses of the acquisition and safekeeping of the Acquired Obligations and expenses of the issuance of the Bonds.

In order to carry out the purposes of this Section 8, the Designated District Representative, President or the Secretary of the Board are authorized and directed to execute and deliver to the Escrow Agent, an Escrow Deposit Agreement.

(d) *Call for Redemption of 1997 Bonds.* The District hereby irrevocably sets aside sufficient funds out of the purchase of Acquired Obligations from proceeds of the Bonds to make the payments described in Subsections (b)(1) through (4) of this Section 8.

The District hereby irrevocably calls the 1997 Bonds for redemption on the Call Date in accordance with the provisions of the 1997 Bond Resolution.

Said defeasance and call for redemption of the 1997 Bonds shall be irrevocable after the final establishment of the escrow account and delivery of the Acquired Obligations to the Escrow Agent.

The Escrow Agent is hereby authorized and directed to provide for the giving of notices of the redemption of the 1997 Bonds in accordance with the applicable provisions of the 1997 Bond Resolution. The Treasurer is authorized and requested to provide whatever assistance is necessary to accomplish such redemption and the giving of notices therefor. The costs of publication of such notices shall be an expense of the District.

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

Section 9. Defeasance. In the event that money and/or "Government Obligations," as such obligations are now or may hereafter be defined in chapter 39.53 RCW, or its successor statute, if any, maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to redeem and retire all or a portion of the Bonds in accordance with their terms are set aside in a special account to effect such redemption or retirement and such money and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on the Bonds to be retired, and such Bonds shall cease to be entitled to any lien, benefit or security of this resolution except that right to receive the funds so set aside and pledged, and such Bonds shall be deemed not to be outstanding hereunder.

Section 10. Bond Covenants. The District hereby covenants and agrees with the owner of each of the Bonds for as long as any of the same remain outstanding as follows:

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

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

(c) *Disposition of Property.*

(1) The District will not mortgage, sell, lease, or in any manner encumber or dispose of all or substantially all the property of the System (voluntarily or involuntarily), unless

provision is made for payment into the Bond Fund of a sum sufficient to pay the principal of, premium, if any, and interest on all outstanding bonds payable therefrom.

(2) The District will not mortgage, sell, lease, or in any manner encumber or dispose of (including but not limited to a disposition by transfer to another public or private organization) voluntarily or involuntarily any part of the System that is used, useful and material to the operation of the System ("Useful Components") unless

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

(B) provision is made for replacement of the Useful Components disposed of or provision is made for payment into the Bond Fund of the total amount of payment received (or Net Revenue) at least equal to the Replacement Ratio, *provided, however*, that the District may dispose of any portion of the facilities of the System up to an aggregate of five percent of the book value of the total assets of the System without the requirement for any deposit to the Bond Fund as hereinabove provided.

For purposes of construing the foregoing limitations, any arrangement with any other organization, public or private, whether voluntary or involuntary, in which the management of the operations of all or substantially all of the facilities of the System and/or the decisions as to rates and charges for services from the System is transferred to another organization (other than the District) shall be considered a sale or other disposition of substantially all of the System. If the District enters into an arrangement with another organization, public or private, whether voluntary or involuntary in which the management of the operations or the ownership of assets of less than substantially all of the facilities of the System is transferred to the other organization,

then such disposition shall be permitted under the terms of this subsection if the District certifies, based upon reasonable expectations, that the remaining assets of the System shall be sufficient to continue regular operations of the District on a financially sound basis for a period of at least ten years.

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

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

(e) *No Free Service.* The District will not furnish water or sanitary sewerage disposal service to any customer whatsoever free of charge and will promptly take legal action to enforce collection of all delinquent accounts.

(f) *Insurance.* The District will at all times carry fire and such other forms of insurance on such of the buildings, equipment, facilities and properties of the District as under good practice are ordinarily carried on such buildings, equipment, facilities, and properties by utilities engaged in the operation of water and sewer systems to the full insurable value thereof, and also will carry adequate public liability insurance (and war risk insurance if available at reasonable rates) at all times. The premiums on such insurance policies are declared to be a Costs of Maintenance and Operation. In lieu of policies of commercial insurance, the District may participate in a program of self-insurance if funded with reserves reviewed at least annually by an actuary.

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

Section 11. Tax Covenants. The District covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exemption from federal income taxation of the interest on the Bonds and will take or require to be taken such acts as may reasonably be within its ability and as may from time to time be required under applicable law to continue the exemption from federal income taxation of the interest on the Bonds.

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

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

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

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

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

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

The District further covenants that, if:

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

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

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

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

(c) *Designation under Section 265(b).* The Bonds are deemed designated as "qualified tax exempt obligations" under Section 265(b)(3) of the Code for investment by financial institutions.

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

Section 12. Issuance of Future Parity Bonds.

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

(1) the District shall not have been in default of its Rate Covenant for the immediately preceding fiscal year, and

(2) The Resolution authorizing the issuance of such Future Parity Bonds shall include the covenants provided in Section 7(b) hereof and provide that the Future Parity Bond reserve requirement shall be funded no later than the date of delivery of the Future Parity Bonds.

(3) there shall have been filed a certificate (prepared as described in subsection (c) or (d) below) demonstrating fulfillment of the Parity Requirement, commencing with the first full fiscal year following the date on which any portion of interest on the series of

Future Parity Bonds then being issued no longer will be paid from the proceeds of such series of Future Parity Bonds.

(b) *No Certificate Required.* The certificate described in the foregoing subsection (a)(2) shall not be required as a condition to the issuance of Future Parity Bonds:

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

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

(c) *Certificate of the District Without A Consultant.* If required pursuant to the foregoing subsection (a)(2), a certificate may be delivered by the District (executed by the Designated District Representative) without a Consultant if Net Revenues for the Base Period (confirmed by an independent auditor) conclusively demonstrate that the Parity Requirement will be fulfilled commencing with the first full fiscal year following the date on which any portion of interest on the series of Future Parity Bonds then being issued will not be paid from the proceeds of such series of Future Parity Bonds.

(d) *Certificate of a Consultant.* Unless compliance with the requirements of subsection (a)(2) have been otherwise satisfied (as provided in (b) or (c) above), compliance with the Parity Requirement shall be demonstrated conclusively by a certificate of a Consultant.

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

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

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

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

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

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

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

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

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

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

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

Section 13. Lost or Destroyed Bonds. In case a Bond shall be lost, stolen or destroyed, the District may execute and the Registrar may deliver a new bond or bonds of like amount, date, number and tenor to the registered owner thereof upon the registered owner paying the expenses and charges of the District in connection therewith and upon the registered owner filing with the Registrar evidence satisfactory to said Registrar that such bond or bonds were actually lost, stolen or destroyed, and of such registered owner's ownership thereof, and upon furnishing the District with indemnity satisfactory to the Registrar.

Section 14. Form of Bonds. The Bonds shall be issued in substantially the following form:

UNITED STATES OF AMERICA

NO. \$ _____

STATE OF WASHINGTON
BIRCH BAY WATER AND SEWER DISTRICT
WATER AND SEWER REVENUE REFUNDING BOND, 2008

INTEREST RATE: MATURITY DATE: CUSIP NO:

REGISTERED OWNER: CEDE & Co.

PRINCIPAL AMOUNT:

BIRCH BAY WATER AND SEWER DISTRICT, Whatcom County, Washington (the "District") hereby acknowledges itself to owe and for value received promises to pay, but only from the hereinafter defined "Bond Fund", to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, the Principal Amount indicated above and to pay interest thereon from May 22, 2008, or the most recent date to which interest has been paid or duly provided for until payment of this bond at the Interest Rate set forth above, payable on September 1, 2008, and semiannually thereafter on the first day of each March and September.

Both principal of and interest on this bond are payable in lawful money of the United States of America. Interest and principal shall be paid as provided in the Blanket Issuer Letter of

Representations (the "Letter of Representations") by the District to The Depository Trust Company ("DTC"). The fiscal agency of the State of Washington has been appointed by the District as the authenticating agent, paying agent and registrar for the bonds of this issue (the "Registrar"). Capitalized terms used in this bond that are not specifically defined have the meanings given such terms in Resolution No. 668 of the District (the "Bond Resolution"). Reference is made to the Bond Resolution and any and all modifications and amendments thereto for a description of the nature and extent of the security for the bonds of this issue, the funds or revenues pledged, and the terms and conditions upon which such bonds are issued.

This bond is one of an authorized issue of bonds of like date and tenor, except as to number, amount, rate of interest and date of maturity, in the aggregate principal amount of \$3,510,000 and is issued pursuant to the Bond Resolution to refund certain outstanding obligations of the District, and to pay costs of issuance.

The bonds of this issue are not subject to redemption prior to their stated maturities as shown in the Bond Resolution.

The bonds of this issue are payable solely from the special fund of the District known as the "Water and Sewer Revenue Bond Redemption Fund" (the "Bond Fund") created pursuant to Resolution No. 583 of the District. The District has irrevocably obligated and bound itself to pay into the Bond Fund out of Revenue of the System or from such other money as may be provided for such purpose certain amounts necessary to pay and secure the payment of the principal and interest on the Bonds. The District has pledged to set aside from the Revenue Account out of Revenue of the System and to pay into the Bond Fund the various amounts required by the Bond Resolution to be paid into and maintained in the Bond Fund within the times provided by the Bond Resolution.

To the extent more particularly provided by the Bond Resolution, the amounts so pledged to be paid from the Revenue Account out of the Revenue of the System into the Bond Fund shall be a lien and charge thereon equal in rank to the lien and charge upon Gross Revenue of the amounts required to pay and secure the payment of any revenue bonds hereafter issued on a parity with the Bonds and superior to all other liens and charges of any kind or nature, except the Costs of Maintenance and Operation of the System.

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

The bonds of this issue are deemed designated as "qualified tax-exempt obligations" for purchase by financial institutions.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington and resolutions of the District to exist, to have happened, been done and performed precedent to and in the issuance of this bond exist, have happened, been done and performed and that the issuance of this bond and the bonds of this issue do not

violate any constitutional, statutory or other limitation upon the amount of bonded indebtedness that the District may incur.

IN WITNESS WHEREOF, Birch Bay Water and Sewer District, Whatcom County, Washington, has caused this bond to be executed by the facsimile signatures of the President and the Secretary of its Board of Commissioners, and the seal of the District to be imprinted or impressed hereon, as of the 22nd day of May, 2008.

[Seal]

BIRCH BAY WATER AND SEWER
DISTRICT, WHATCOM COUNTY,
WASHINGTON

By _____ /s/ facsimile signature
President, Board of Commissioners

ATTEST:

_____/s/ facsimile signature
Secretary, Board of Commissioners

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Bond Resolution and is one of the Water and Sewer Revenue Refunding Bonds, 2008 of Birch Bay Water and Sewer District, Whatcom County, Washington, dated May 22, 2008.

WASHINGTON STATE FISCAL
AGENCY as Registrar

By _____
Authorized Signer

Section 15. Execution of the Bonds. The Bonds shall be executed on behalf of the District with the facsimile or manual signatures of the President and Secretary of the Board, and shall have the seal of the District imprinted or impressed thereon.

Only such Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the Registrar, shall be valid or obligatory for any

purpose or entitled to the benefits of this resolution. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this resolution.

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

Section 16. Sale of Bonds. The District hereby accepts the written offer of the Underwriter to purchase the Bonds at the price set forth in its purchase offer presented to this Board and under the terms, conditions and covenants of the Bonds as set forth herein. The Designated District Representative is authorized and directed to execute the purchase offer presented by the Underwriter.

The General Manager and the Treasurer are hereby authorized to review and approve on behalf of the District the preliminary and final Official Statement relative to the Bonds with such additions and changes as may be deemed necessary and advisable to them. The Preliminary Official Statement for the Bonds, dated May 2, 2008, is hereby deemed final for purposes of the Rule.

The Treasurer and other District officials, agents and representatives are hereby authorized and directed to do everything necessary for the prompt issuance, execution and delivery of the Bonds to the Underwriter, and for the proper use and application of the proceeds of sale of the Bonds.

Section 17. Amendments.

(a) *Without Consent.* The Board may adopt a resolution or resolutions supplemental hereto, which resolution or resolutions thereafter shall become a part of this resolution, for any one or more of the following purposes:

(1) To add to the covenants and agreements of the District contained in this resolution other covenants and agreements thereafter to be observed which shall not adversely affect the interests of the registered owners of any Parity Bonds, or to surrender any right or power herein reserved to or conferred upon the District.

(2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this resolution or any resolution authorizing additional or refunding Parity Bonds in regard to matters or questions arising under such resolutions as the Board may deem necessary or desirable and not inconsistent with such resolutions and which shall not adversely affect the interests of the registered owners of the Parity Bonds in any material respect.

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

(b) *With Consent.* With the consent of the registered owners of not less than 65% in aggregate principal amount of the Parity Bonds then outstanding, the Board may adopt a

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

(1) Extend the fixed maturity of any Parity Bond or principal installments thereof, or reduce the rate of interest thereon, or extend the times of payment of interest from their respective due dates, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the registered owner of each bond so affected; or

(2) Reduce the aforesaid percentage of bondowners required to approve any such supplemental resolution, without the consent of the registered owners of all of the Parity Bonds then outstanding.

It shall not be necessary for the consent of bondowners under this subsection (b) to approve the particular form of any proposed supplemental resolution, but it shall be sufficient if such consent shall approve the substance thereof. For purposes of consenting to any amendment pursuant to this subsection (b), to the extent that a bond insurer has issued a policy of bond insurance with respect to an outstanding Parity Bond and the bond insurer is not in default under its policy (and maintains a rating in at least one of the two highest rating categories by a Rating Agency), then the bond insurer shall be entitled to vote on behalf of the owner of that Parity Bond.

(c) *Effect of Amendment.* Upon the adoption of any supplemental resolution pursuant to the provisions of this section, this resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the District under this resolution and all registered owners of the Parity Bonds outstanding hereunder shall

thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all the terms and conditions of any such supplemental resolution shall be deemed to be a part of the terms and conditions of this resolution for any and all purposes.

(d) *Future Parity Bonds.* Parity Bonds executed and delivered after the execution of any supplemental resolution adopted pursuant to the provisions of this section may have a notation as to any matter provided for in such supplemental resolution, and if such supplemental resolution shall so provide, new bonds so modified as to conform, in the opinion of the Board, to any modification of this resolution contained in any such supplemental resolution may be prepared by the District and delivered without cost to the registered owners of any affected Parity Bonds then outstanding, upon surrender for cancellation of such bonds, in equal aggregate principal amounts.

Section 18. Undertaking to Provide Ongoing Disclosure.

(a) *Contract/Undertaking.* This Section constitutes the District's written undertaking for the benefit of the owners of the Bonds as required by Section (b)(5) of the Rule. The District is an obligated person with respect to less than \$10,000,000, of municipal securities, including the Bonds.

(b) *Financial Statements/Operating Data.* The District agrees to provide or cause to be provided to each person upon request to the General Manager, Birch Bay Water and Sewer District, 7096 Point Whitehorn Road, Birch Bay, Washington 988230-9675, or to the SID, if any, a copy of its latest publicly available annual financial statements prepared in accordance with the Budget Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute) and generally of the type included in the

official statement for the Bonds under the headings "THE DISTRICT—The Water System," "—Water Rates," "—Water Customers," "—The Sewer System," "—Sewer Rates," "—Sewer Customers," and "—Historical Operating Results."

(c) *Material Events.* The District agrees to provide or cause to be provided, in a timely manner, to the SID, if any, and to each NRMSIR or to the MSRB notice of any of the following events with respect to the Bonds, if material:

- Principal and interest payment delinquencies;
- Non-payment related defaults;
- Unscheduled draws on debt service reserves reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity providers, or their failure to perform;
- Adverse tax opinions or events affecting the tax-exempt status of the Bonds;
- Modifications to rights of Bondholders;
- Bond calls;
- Defeasances;
- Release, substitution or sale of property securing repayment of the Bonds;
- and
- Rating changes.

Solely for purposes of disclosure, and not intending to modify this undertaking, the District advises that there is no property securing repayment of the Bonds.

(d) *Termination/Modification.* The District's obligations to provide annual financial information and notices of material events shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. Any provision of this Section shall be null and void if the District (1) obtains an opinion of nationally recognized bond counsel to the effect that the portion of the Rule that requires that provision is invalid, has been repealed retroactively or otherwise does not apply to the Bonds and (2) notifies each NRMSIR and the SID, if any, of such opinion and the cancellation of this Section.

The District may amend this Section with an opinion of nationally recognized bond counsel in accordance with the Rule. In the event of any amendment of this Section, the District shall describe such amendment in the next annual report, and shall include, a narrative explanation of the reason for the amendment and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the District. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a material event under subsection (c), and (ii) the annual report for the year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

(e) *Bond Owner's Remedies Under This Section.* The right of any Bondowner or Beneficial Owner of Bonds to enforce the provisions of this Section shall be limited to a right to obtain specific enforcement of the District's obligations under this Section, and any failure by the District to comply with the provisions of this undertaking shall not be an Event of Default with respect to the Bonds. For purposes of this Section, "Beneficial Owner" means any person who

has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds, including persons holding Bonds through nominees or depositories.

(f) *DisclosureUSA*. The District may elect to submit the information required by this Section 18 to be filed with the NRMSIRs and the SID, if any, directly to DisclosureUSA.org unless or until the SEC withdraws its approval of this submission process.

Section 19. Severability. If any one or more of the covenants or agreements provided in this resolution to be performed on the part of the District shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Bonds issued in exchange therefor.

Section 20. General Authorization. The President and Secretary of the Board, the Treasurer, and each of the other appropriate officers of the District are each hereby authorized and directed to take such steps, to do such other acts and things, and to execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this resolution.

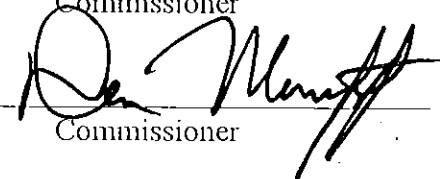
Section 21. Effective Date. This resolution shall be effective after its adoption as provided by law.

ADOPTED by the Board of Commissioners of Birch Bay Water and Sewer District, Whatcom County, Washington, this 8th day of May, 2008.

BIRCH BAY WATER AND SEWER
DISTRICT WHATCOM COUNTY,
WASHINGTON

By 
President Board of Commissioners

By 
Commissioner

By 
Commissioner

Attest:


Secretary, Board of Commissioners


CERTIFICATE

I, the undersigned, Secretary of the Board of Commissioners of Birch Bay Water and Sewer District, Whatcom County, Washington (the "District"), DO HEREBY CERTIFY:

1. That the attached Resolution No. 668 (the "Resolution") is a true and correct copy of a resolution of the District as finally adopted at a regular meeting of the Board of Commissioners of the District held on the 8th day of May, 2008, 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 Board voted in the proper manner for the adoption of the Resolution; that all other requirements and proceedings incident to the proper adoption of the Resolution have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of May, 2008.



Secretary, Board of Commissioners
Birch Bay Water and Sewer District
Whatcom County, Washington