ORDINANCE NO. 2012-12 including redactions

AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, RELATING TO THE WATERWORKS UTILITY OF THE TOWN; AMENDING ORDINANCE NO. 2012-7 AND PROVIDING FOR RELATED MATTERS.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON, as follows:

Section 1. Definitions. As used in this ordinance, capitalized terms shall have the meanings given in Ordinance No. 2012-7 of the Town (the "Bond Ordinance").

Section 2. Amendments. The following sections of the Bond Ordinance are amended as shown below. Deleted material is indicated using strikeout format. Inserted material is indicated using double underlining.

(a) Section 6 of the Bond Ordinance is amended to read as follows:

> **Section 6. Payment of the Bonds.** Installments of principal of and interest on the Bonds shall be payable in lawful money of the United States of America and shall be paid by a check or draft of the Bond Registrar mailed on the Installment Payment Date to the registered owner at the address appearing on the Bond Register 15 days prior to the Installment Payment Date or by ~~electronic transfer~~ preauthorized debit on the Installment Payment Date. The last installment of principal and interest on the Bonds shall be payable upon presentation and surrender of the Bonds by the registered owner at the office of the Bond Registrar in Eatonville, Washington.

(b) Section 9 of the Bond Ordinance is amended to read as follows:

> **Section 9. Payments into Bond Fund.** The Bond Fund has been previously created and established by the office of the Town Treasurer and divided into a Principal and Interest Account and a Reserve Account. So long as any Parity Bonds are outstanding, the Town Treasurer shall set aside and pay into the Principal and Interest Account all ULID Assessments and, out of the Net Revenue, at least five days prior to each Installment Payment Date, certain fixed amounts without regard to any fixed proportion, namely amounts, together with ULID Assessments and other money on deposit therein, sufficient to pay the installment of principal and interest due on that Installment Payment Date.
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> The Town shall deposit into the Reserve Account no more than ten approximately equal annual payments from Net Revenue and ULID Assessments available after making the required deposits into the

Principal and Interest Account totaling the required deposit for the Reserve Requirement allocated to the Bond. The Town may contribute amounts into the Reserve Account so that it accumulates more rapidly, at the option of the Mayor.

The Reserve Account shall be maintained at the Reserve Requirement, except for withdrawals therefrom as authorized herein, at all times so long as any portion of Parity Bonds are unpaid. When the total amount in the Bond Fund equals the total amount of principal and interest for all outstanding Parity Bonds to the last maturity thereof, no further payment need be made into the Bond Fund. The amount deposited into the Reserve Account on account of the Bonds may not be reduced at any time prior to the redemption of the Bonds to an amount ~~not~~ less than an allocable share of the Reserve Requirement for all Parity Bonds then outstanding. For purposes of the preceding sentence, the share of the Reserve Requirement allocable to the Bonds shall be equal to the average annual installment payment amount for the Bonds.

If there is a deficiency in the Principal and Interest Account to meet maturing installments of either principal or interest, as the case may be, that deficiency shall be made up from the Reserve Account by the withdrawal of cash for that purpose. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up from the Net Revenue and/or ULID Assessments payable into the Bond Fund first available after making necessary provision for the required payments into the Principal and Interest Account. The money and investments in the Reserve Account otherwise shall be held intact and may be applied against the last outstanding Parity Bonds. If the Reserve Account is fully funded, money in excess of the Reserve Requirement shall be withdrawn and deposited, at the option of the Town Treasurer, either in the Principal and Interest Account and spent for the purpose of retiring bonds payable from the Bond Fund or in the Waterworks Utility operating fund and spent for other lawful Waterworks Utility purposes.

The Town may provide for the purchase, redemption or defeasance of Parity Bonds by the use of money on deposit in any account in the Bond Fund as long as the money remaining in those accounts is sufficient to satisfy the required deposits in those accounts for the remaining outstanding Parity Bonds.

All money in the Bond Fund may be kept in cash or invested in legal investments maturing not later than the date when the funds are required for the payment of principal of or interest on the Parity Bonds (for investments in the Principal and Interest Account) or having a guaranteed redemption price prior to maturity and in no event maturing later than the last maturity of any remaining outstanding Parity Bonds (for investments in the Reserve Account). Earnings from investments in the Principal and

Interest Account shall be deposited in that account. Earnings from investments in the Reserve Account shall be deposited in that account.

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

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

(c) Section 11 of the Bond Ordinance is amended to read as follows:

Section 11. Deposit of Bond Proceeds. Proceeds of the sale of the Bonds will be used to pay the costs of the Project and the costs of issuance and sale of the Bonds. ~~Until needed to pay the costs of the Project and paying the costs of issuance and sale of the Bonds, the Town may invest money on deposit in the Construction Fund temporarily in any legal investment, and the investment earnings may be retained in the Construction Fund and be spent for the Project.~~ Proceeds of the Bonds will be disbursed to the Town pursuant to draw requests. Any proceeds of the Bonds not needed for immediate expenditure shall be held uninvested pending their expenditure. At the completion of the Project, funds remaining and not needed for the Project shall be deposited into the Principal and Interest Account and shall be used to prepay a portion of the Bonds, in accordance with Section 7.

(d) Section 12 of the Bond Ordinance is amended to read as follows:

Section 12. Covenants. For so long as the Bonds are outstanding, the Town covenants and agrees with the owner of the Bonds as follows:

(a) ULID Assessments. All ULID Assessments shall be paid into the Bond Fund and may be used to build up the required reserves in the Reserve Account and to pay the principal of and interest on Parity Bonds, without those ULID Assessments' being particularly allocated to the payment of the principal of and interest on any particular issue of bonds.

(b) Maintenance and Operation. The Town will at all times maintain, preserve and keep the properties of the Waterworks Utility in good repair, working order and condition, will make all necessary and proper additions, betterments, renewals and repairs thereto, and improvements, replacements and extensions thereof, and will at all times operate or cause to be operated the properties of the Waterworks Utility and the business in connection therewith in an efficient manner and at a reasonable cost.

(c) Establishment and Collection of Rates and Charges. The Town will establish, maintain and collect rates and charges for all services and facilities provided by the Waterworks Utility which will be fair and nondiscriminatory, and will adjust those rates and charges from time to time so that:

(1) The Gross Revenue will at all times be sufficient to (i) pay all Maintenance and Operation Expense on a current basis, (ii) pay when due all amounts that the Town is obligated to pay into the Bond Fund and the accounts therein, and (iii) pay all taxes, assessments or other governmental charges lawfully imposed on the Waterworks Utility or the revenue therefrom or payments in lieu thereof and any and all other amounts which the Town may now or hereafter become obligated to pay from the Gross Revenue by law or contract; and

(2) The Net Revenue and ULID Assessments in each calendar year will be at least equal to the Coverage Requirement.

To the extent allowable by law, those to whom service of the Waterworks Utility is available will be charged for that service at the prevailing rate within 30 days of the availability of that service~~, except in the case of aid to the poor or infirm, as described below~~.

(d) *Sale or Disposition of the Waterworks Utility.* The Town will not sell or otherwise dispose of the Waterworks Utility in its entirety unless, simultaneously with such sale or other disposition, provision is made for the redemption of all then-outstanding Parity Bonds in accordance with the applicable Parity Bond authorizing ordinance.

The Town will not sell, lease, mortgage or in any manner encumber or otherwise dispose of any part of the Waterworks Utility that are used, useful or material in the operation of the Waterworks Utility, unless provision is made for the replacement thereof or for payment into the Bond Fund of the greatest of the following:

(1) An amount which will be in the same proportion to the aggregate outstanding principal amount of Parity Bonds less the amount of cash and investments in the Bond Fund, as the Gross Revenue from the portion of the Waterworks Utility sold or disposed of for the preceding 12-month period bears to the total Gross Revenue for that period; or

(2) An amount which will be in the same proportion to the aggregate outstanding principal amount of Parity Bonds then outstanding (net of deposits in the Bond Fund), as the Net Revenue from the portion of the Waterworks Utility sold or disposed of for the preceding 12-month period bears to the total Net Revenue for such period; or

(3) An amount which will be in the same proportion to the aggregate outstanding principal amount of Parity Bonds then outstanding (net of deposits in the Bond Fund) that the depreciated cost value of the facilities sold or disposed of bears to the depreciated cost value of the entire Waterworks Utility immediately prior to such sale or disposition.

Notwithstanding any other provision of this subsection, (1) the Town in its discretion may sell or otherwise dispose of any of the works, plant, properties or facilities of the Waterworks Utility or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the Waterworks Utility, or no longer necessary, material to or useful to the operation of the Waterworks Utility, without making any deposit into the Bond Fund, and (2) the Town may transfer the Waterworks Utility to another municipal corporation so long as ULID Assessments and Net Revenue of the portion of the Waterworks Utility so transferred are used for payment of debt service on the Parity Bonds prior to any other purpose. In no event shall proceeds of any sale of Waterworks Utility property be treated as Gross Revenue for purposes of this ordinance.

For so long as the Purchaser is the registered owner of the Bonds, the Town shall obtain the written consent of the Purchaser prior to the sale or other disposition of any part of the Waterworks Utility that is used, useful or material in the operation of the Waterworks Utility. No consent is required to sell or otherwise dispose of any of the works, plant, properties or facilities of the Waterworks Utility or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the Waterworks Utility, or no longer necessary, material to or useful to the operation of the Waterworks Utility.

(e) *Liens Upon the Waterworks Utility.* It will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the Gross Revenue, or any part thereof, prior or superior to the lien thereon for the payment of the Parity Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Gross Revenue, or any part thereof, prior to or superior to the lien of the Parity Bonds, or which might impair the security of the Parity Bonds.

(f) *Books and Accounts.* It will keep proper books, records and accounts with respect to the operations, income and expenditures of the Waterworks Utility in accordance with proper accounting procedures and any applicable rules and regulations prescribed by the State. It will prepare annual financial and operating statements within 270 days of the

close of each fiscal year showing in reasonable detail the financial condition of the Waterworks Utility as of the close of the previous year, and the income and expenses for such year, including the amounts paid into the Bond Fund and into any and all special funds or accounts created pursuant to the provisions of this ordinance, the status of all funds and accounts as of the end of such year, and the amounts expended for maintenance, renewals, replacements and capital additions to the Waterworks Utility. Such statements shall be sent to the owner of any Parity Bonds upon written request therefor being made to the Town. For so long as the Purchaser is the registered owner of the Bonds, the Town shall provide copies of such annual financial statements to the Purchaser.

~~*(g) No Free Service.* Except to aid the poor or infirm, to provide for resource conservation or to provide for the proper handling of hazardous materials, it will not furnish or supply or permit the furnishing or supplying of any service or facility in connection with the operation of the Waterworks Utility free of charge to any person, firm or corporation, public or private, other than the Town, so long as any Parity Bonds are outstanding.~~

(h) Collection of Delinquent Accounts. On at least an annual basis, it will determine all accounts that are delinquent and will take all necessary action to enforce payment of such accounts against those property owners whose accounts are delinquent.

(i) Fire and Extended Coverage Insurance. It at all times will carry fire and extended coverage and such other forms of insurance with responsible insurers and with policies payable to the Town on such of the buildings, equipment, works, plants, facilities and properties of the Waterworks Utility as are ordinarily carried by municipal or privately owned utilities engaged in the operation of like systems, ~~or will implement and maintain a self insurance or~~ which may be an insurance pool program with reserves adequate, in ~~the reasonable judgment of the Town~~ accordance with reasonably prudent utility practices, to protect the Waterworks Utility and the owners of the Parity Bonds against loss.

(j) Public Liability and Property Damage Insurance. It at all times will keep or arrange to keep in full force and effect such policies of public liability and property damage insurance with responsible insurers and with policies payable to or on behalf of the Town and any additional insureds against such claims for damages as are ordinarily carried by municipal or privately owned utilities engaged in the operation of like systems, or will implement and maintain a self insurance or an insurance pool program with reserves adequate, in the reasonable judgment of the Town Council, to protect the Waterworks Utility and the owners of the Parity Bonds against loss.

(e) Section 14 of the Bond Ordinance is amended to read as follows:

> **Section 14. Provisions for Future Parity Bonds.** If the Parity Conditions are met and complied with pursuant to this ordinance, then nothing contained herein shall prevent the Town from issuing Future Parity Bonds. For so long as the Purchaser is the registered owner of the Bonds, a copy of the certificate required in Exhibit A shall be provided to the Purchaser prior to the issuance of such Future Parity Bonds and the Purchaser's consent shall be obtained in writing prior to the issuance of any additional bonds described in this Section.
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> The Town further covenants with the owners of the Parity Bonds that for so long as any Parity Bonds remain outstanding, it will not create any special fund or funds for the payment of the principal of or interest on any other water and sewer revenue bonds, warrants or obligations, or authorize or issue any other revenue bonds, warrants or obligations which will rank on a parity with or have any priority over the payments to be made out of the Net Revenue into the Bond Fund, except that it reserves the right to issue Future Parity Bonds if the Parity Conditions are met, for any purpose permitted by State law.
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> Nothing contained herein shall prevent the Town from issuing Future Parity Bonds to refund the maturing Bonds or Future Parity Bonds then outstanding, money for the payment of which is not otherwise available.
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> Nothing contained herein shall prevent the Town from issuing revenue bonds that are a charge upon the Net Revenue subordinate to the payments required to be made in respect of the Parity Bonds or from pledging the payment of utility local improvement district assessments into a bond redemption fund created for the payment of the principal of and interest on those junior lien bonds as long as such utility local improvement district assessments are levied for improvements constructed from the proceeds of those junior lien bonds.

Section 3. Consent to Amendatory Ordinance. By taking and holding the Bonds, USDA consents to these provisions to the extent that they conflict with the Future Parity Bond requirements set forth in Ordinance No. 2001-03 authorizing the issuance of the 2001 Bonds.

Section 4. General Authorization and Ratification. The proper Town officials are authorized and directed to do everything necessary for the prompt execution, authentication and delivery of the Bonds to the Purchaser and for the proper application and use of the proceeds of the sale thereof and to execute such certificates and documents as are consistent with the purposes of the Bond Ordinance, as amended.

Section 5. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and following its publication as required by law.

PASSED by the Town Council and APPROVED by the Mayor of the Town of Eatonville, Washington, at a regular meeting thereof, this 24th day of September, 2012.

_____
Raymond Harper, Mayor

ATTEST:

_____
Kathy Linnemeyer, Town Clerk

APPROVED AS TO FORM:

_____
Foster Pepper PLLC, Bond Counsel

CERTIFICATION

I, the undersigned, Town Clerk of the Town of Eatonville, Washington (the "Town"), hereby certify as follows:

1. The attached copy of Ordinance No. 2012-___ (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the Town Council of the Town held at the regular meeting place thereof on September 24, 2012, as that ordinance appears on the minute book of the Town; and the Ordinance will be in full force and effect immediately after the publication of its summary in the town's official newspaper; and

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

IN WITNESS WHEREOF, I have hereunto set my hand this __th day of September, 2012.

TOWN OF EATONVILLE, WASHINGTON

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Kathy Linnemeyer, Town Clerk