

CITY OF BAINBRIDGE ISLAND, WASHINGTON

ORDINANCE NO. 2010-33

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to contracting indebtedness; providing for the issuance of local improvement district bonds of the City to provide funds with which to pay for a portion of the cost of certain improvements within Local Improvement District No. 22; and all of the costs of issuance of the bonds; fixing certain terms and covenants of the bonds; and providing for the method of fixing the interest rate on assessments in the local improvement district.

Passed October 27, 2010

This document prepared by:

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THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. LID Formation and Purpose. Capitalized terms are defined in Section 2 of this ordinance.

(a) Pursuant to Ordinance No. 2010-32, passed October 13, 2010, the City created Local Improvement District No. 22 to finance a portion of the costs the Project. It is found to be in the best interest of the City to issue, sell and deliver one or more local improvement district bonds, as authorized and described in this ordinance, for the purpose of providing financing for a portion of the Project as soon as practicable after the expiration of the prepayment period.

(b) The Owners of the Property have entered into the Agreement with the City, pursuant to which a total of \$1,000,000 of the costs of the Project will be financed with local improvement district bonds. The assessment roll is expected to be confirmed on January 12, 2011, in the aggregate amount of \$1,000,000, and the 30-day period for making cash prepayments of assessments without interest will expire on February 14, 2011.

(c) Seattle Northwest Securities Corporation, of Seattle, Washington, has presented a Letter of Intent (the "Letter of Intent") to the City indicating an interest in purchasing the Bond or Bonds under the terms and conditions provided in the Letter of Intent.

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

"**Bond**" or "**Bonds**" means the local improvement district bond or bonds authorized to be issued by this ordinance.

"**Bond Legislation**" means this ordinance and the Bond Sale Resolution.

“Bond Register” means the books or records maintained by the Bond Registrar containing the name and mailing address of the owner of each Bond and the principal amount and number of Bonds held by each owner.

“Bond Registrar” means the Finance Director.

“Bond Sale Resolution” means a resolution adopted by the City Council approving and fixing the date, form, maturities, interest rates, terms and covenants and approving the sale of the Bonds pursuant to a Offer Letter.

“City” means the City of Bainbridge Island, Washington, a municipal corporation duly organized and existing under and by virtue of the laws of the state of Washington.

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

“Letter of Intent” means the letter from the Purchaser, dated October 12, 2010, indicating an interest in purchasing the Bonds and proposing terms for such purchase.

“Finance Director” means the Director of Finance and Administrative Services of the City, or such person as shall from time to time be appointed to those duties.

“Guaranty Fund” means the City’s Local Improvement Guaranty Fund, created by Chapter 3.32 of the Bainbridge Island Municipal Code.

“LID” means Local Improvement District No. 22, which was formed pursuant to Ordinance No. 2010-32 of the City, adopted on October 13, 2010, to fund the Project.

“LID Assessments” means all assessments levied and collected in the LID created for the purpose of providing a portion of the cost of the Project.

“LID Bond Fund” means the special fund created by the Bond Sale Resolution for the payment of the principal of and interest on the Bonds.

“Offer Letter” means an offer to purchase the Bonds at the time and in accordance with the terms presented therein.

“Owners” means the owners of the Property.

“Project” means the replacement of below and above-ground utility and transportation infrastructure between State Route 305 and Madison Avenue. Elements of the project include: replacement of water, sewer and stormwater facilities; street improvements, including paving, curbs, gutters, sidewalks, street lighting, street trees and other landscaping and enhancements; retention of angled parking and addition of bicycle facilities; and certain sidewalk improvements between Madison Avenue and Grow Avenue.

“Project Fund” means the City’s Winslow Way Reconstruction Project Fund created by this ordinance.

“Property” means the property described in Appendices 1-21 of the Property Owner Agreement.

“Property Owner Agreement” means the Winslow Way Reconstruction Project Agreement and Petition, entered into by and between the City and the Owners of the Property, dated October 13, 2010.

“Purchaser” means Seattle Northwest Securities Corporation, or such other purchaser who presents an Offer Letter accepted by the City in a Bond Sale Resolution.

Section 3. Authorization and Description of the Bond. The City Council finds and determines it to be in the best interest of the City to authorize the issuance and sale of its Local Improvement District Bonds for the purposes of paying a portion of the costs of the Project, and paying the costs of issuance. The total principal amount of Bonds to be issued shall be specified by the City Council in the Bond Sale Resolution; but shall in no event exceed \$1,000,000 plus the amount necessary (if any) to fund the Guaranty Fund and the pay costs of issuance of the Bonds. The Bonds may be issued in such denominations as are approved in the Bond Sale Resolution, and shall be numbered in such manner as is determined appropriate by the Bond Registrar for purposes of identification. The Bonds shall be designated the City of Bainbridge Island, Washington, Local Improvement District No. 22 Bonds, 2011, shall be in fully registered form and shall be dated its date of delivery to the Purchaser. The Bond Sale Resolution shall specify the rates of interest per annum, which interest shall accrue from the date of issuance of the Bonds. Principal of and interest on the Bonds shall be payable in annual, semiannual or other periodic amortized installments on the date or dates specified in the Bond Sale Resolution.

Section 4. Bond Sale Resolution. The Bond may be issued only upon adoption by the City Council of a Bond Sale Resolution providing for the matters described in this ordinance and such other matters that the City Council deems necessary and appropriate to carry out the purposes of this ordinance. Once adopted, the Bond Sale Resolution shall be deemed a part of this ordinance as if set forth herein. The Mayor, City Manager, and Finance Director are each separately authorized to execute and deliver, on behalf of the City, such documents consistent with the provisions of this ordinance for which the City’s approval is necessary or to which the City is a party and that are related or incidental to the issuance and sale of the Bonds.

Section 5. Registration and Transfer of Bonds. Pursuant to RCW 39.46.030, the Bond Sale Resolution shall appoint the person to serve as Bond Registrar and fiscal agent for the City with respect to the Bonds, which may be the Finance Director or may be the State’s fiscal agent. The Bond Registrar shall be authorized, on behalf of the City, to authenticate and deliver the Bonds in accordance with the provisions of the Bond Legislation. The Bond shall be issued only in registered form as to both principal and interest and shall be recorded on the Bond Register.

The Bonds shall be issued only in registered form as to both principal and interest and shall be recorded in the Bond Register. The Bond Register shall contain the name and mailing address of the owner of each Bond and the principal amount and number of each of the Bonds held by each owner (the “Registered Owners”). Additional provisions for the registration, assignment and transfer of the Bonds shall be set forth in the Bond Sale Resolution.

Upon a determination by the Finance Director that maintenance of the duties of the Bond Registrar is no longer convenient, a bank or trust company organized under the laws of the State of Washington, or a national banking association having a capital and surplus aggregating at least \$20,000,000, if there be such a bank, trust company or national banking association willing and able to accept the duties of Bond Registrar on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this ordinance, shall be appointed by the Council.

The Bond Registrar shall keep, or cause to be kept, at its office, sufficient books for the registration, assignment or transfer of the Bonds, which books shall be open to inspection by the City at all times. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver the Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's paying agent for the Bonds and to carry out all of the Bond Registrar's powers and duties under this ordinance. The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on the Bonds.

Section 6. Payment of the Bond. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America and shall be paid by electronic transfer, check or draft as set forth in the Bond Sale Resolution. Upon receipt of the final installment payment of principal of and interest on a Bond, whether at maturity or upon prepayment, the Registered Owner shall present and surrender that Bond to the Bond Registrar to be destroyed or cancelled in accordance with law. The City and the Bond Registrar may deem and treat the Registered Owner of the Bonds as the absolute owner of the Bonds for the purpose of receiving payment of principal and interest and for all other purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary other than proper notice of assignment or transfer.

Section 7. Prepayment and Early Redemption Provisions. The Bond Sale Resolution shall set forth any prepayment and provisions for optional or mandatory redemption prior to maturity and the applicable requirements for notice to be given to the Registered Owners of any Bonds called for prepayment or redemption prior to maturity. Interest on any principal amount called for redemption shall cease to accrue on the date fixed for redemption unless the principal amount called for redemption is not paid on the redemption date. The Bond Resolution shall set forth the terms pursuant to which the Bonds shall be prepaid in advance of its scheduled maturity whenever there shall be sufficient money in the LID Bond Fund call and redeem a portion of the outstanding principal amount of Bonds, over and above an amount sufficient for the payment of the interest next accruing on the Bonds.

Section 8. Failure to Pay; No Acceleration. If any Bond (or principal installment with respect thereto) is not paid when due, the City shall be obligated to pay interest on that unpaid principal at the same rate provided in the Bond until that installment, together with interest, is paid in full or until sufficient money for its payment in full is on deposit in the LID Bond Fund and the principal represented by such installment has been called for payment by giving notice of that call to the Registered Owner. The Bonds are not subject to acceleration upon the occurrence of a payment default.

Section 9. Security for the Bonds. Both principal of and interest on the Bonds shall be payable solely out of the LID Bond Fund and the Guaranty Fund. Assessments collected in the District, together with interest and penalties, if any, are pledged to the payment of the Bonds, which are payable solely out of the LID Bond Fund and the Guaranty Fund, in the manner provided by law. The Bond is not a general obligation of the City.

Section 10. Form and Execution of the Bonds. The Bonds shall be prepared in a form consistent with the provisions of this ordinance and state law and shall be signed by the Mayor and City Clerk, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon. The Bonds will be printed at City expense and delivered to the Purchaser in accordance with the Offer Letter, together with the approving legal opinion of Foster Pepper PLLC, municipal bond counsel to the City.

The Bonds shall bear a Certificate of Authentication in the following form, manually signed by the Bond Registrar, and only if so executed shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance: "This Bond is [one of]the fully registered City of Bainbridge Island, Washington, Local Improvement District No. 22 Bond[s], 2011, described in Ordinance No. 2010-32 and Resolution No. 2010-36." The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

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

Section 11. Preservation of Tax Exemption for Interest. The City covenants that it will take all actions necessary to prevent interest on the Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bonds or other funds of the City treated as proceeds of the Bonds at any time during the term of the Bonds, which will cause interest on the Bond to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirement in the Code is applicable to the Bonds, take all actions necessary to comply (or to be treated as having complied) with that requirement in connection with the Bond, including the calculation and payment of any penalties that the City has elected to pay as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section 148 of the Code to prevent interest on the Bonds from being included in gross income for federal income tax purposes.

Section 12. Designation of Bond as a "Qualified Tax-Exempt Obligation." The City has determined and certifies that (a) the Bonds are not "private activity bonds" within the

meaning of Section 141 of the Code; (b) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) which the City and any entity subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) will issue during the calendar year in which the Bond is issued will not exceed \$10,000,000 (or such greater limitation as may be in effect during the calendar year in which the Bonds are issued); and (c) the amount of tax-exempt obligations, including the Bond, designated, or deemed designated, by the City as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Bonds are issued does not exceed \$10,000,000 (or such greater limitation as may be in effect during the calendar year in which the Bonds are issued). The City designates the Bonds as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code.

Section 13. Refunding or Defeasance of the Bonds. The City may issue refunding bonds pursuant to the laws of the State of Washington or use money available from any other lawful source to pay when due the principal of and interest on the Bonds, or any portion thereof included in a refunding or defeasance plan, and to redeem and retire, refund or defease the Bonds and to pay the costs of the refunding or defeasance. If money and/or "government obligations" (as defined in chapter 39.53 RCW, as now or hereafter amended) maturing at a time or times and bearing interest in amounts (together with money, if necessary) sufficient to redeem and retire, refund or defease the defeased portion of the Bonds in accordance with its terms are set aside in a special trust fund or escrow account irrevocably pledged to that redemption, retirement or defeasance of defeased portion of the Bonds (hereinafter called the "trust account"), then all right and interest of the owner of the defeased Bonds in the covenants of this ordinance and in the funds and accounts obligated to the payment of the defeased portion of the Bonds shall cease and become void. The owner of the defeased Bonds shall have the right to receive payment of the principal of and interest on the defeased Bonds from the trust account. The City shall include in the refunding or defeasance plan such provisions as the City deems necessary for the notice of the defeasance to be given to the owner of the defeased Bonds. The defeased portion of the Bonds shall be deemed no longer outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the defeased portion of the Bonds to any lawful purposes as it shall determine.

Section 14. LID Bond Fund, Guaranty Fund and Deposit of Bond Proceeds.

(a) *LID Bond Fund; Deposit of Assessments.* Prior to the issuance of the Bonds, any money on hand representing collections pertaining to prepayments or installments of assessments, and interest thereon, shall be transferred to and deposited in the LID Bond Fund; that money may be used for costs of the Project or for the redemption of Bonds, as determined by the Finance Director. All collections pertaining to assessments on the assessment roll of the LID that are collected after the issuance of the Bonds shall, when received be deposited in the LID Bond Fund, and until the Bonds are redeemed or otherwise provided for, those collections shall be used to pay interest on or redeem a portion of the outstanding principal amount of the Bonds, or to pay for costs of collecting delinquent assessments.

(b) *Project Fund; Deposit of Bond Proceeds.* Unless provided otherwise by the Bond Sale Resolution, the principal proceeds received from the sale and delivery of the Bonds shall be paid into or allocated to the Project Fund, and thereafter such other funds, accounts, or subaccounts of the City as the Director of Finance may determine, and used to pay all or part of the costs of the Project. Until needed to pay such costs, the City may invest the principal proceeds of the Bonds temporarily in any legal investment, and the investment earnings shall be deposited in the LID Bond Fund. Earnings subject to a federal tax or rebate requirement may be withdrawn from any such fund or account and used for those tax or rebate purposes. Any proceeds of Bonds remaining after paying the costs of the Project, issuing and selling the Bonds, and for the purposes set forth in this section, or after the City Council has determined that the expenditure of such bond proceeds for those purposes is no longer necessary or appropriate, may be used to pay principal of and interest on the Bonds consistent with applicable law.

(c) *Guaranty Fund.* From assessments prepaid or paid in the LID, or other available funds, the City shall deposit an amount in the Guaranty Fund equal to approximately one annual principal and interest payment on the Bonds, or in such other amount as may be set forth in the Bond Sale Resolution, consistent with the Offer Letter.

Section 15. Sale of Bond Pursuant to Bond Sale Resolution. The Purchaser has presented a Letter of Intent to the City indicating its interest in purchasing the Bonds, subject to the conditions provided therein. Subject to approval by the City Council in a Bond Sale Resolution, the Finance Director is authorized and directed to prepare for and conduct the sale of the Bond authorized by this ordinance on substantially similar terms as provided in the Letter of Intent and as further specified in the Offer Letter.

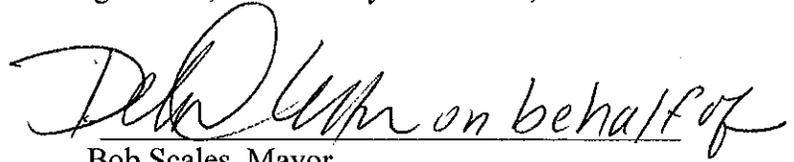
Section 16. Fixing Interest Rate on Assessments. The interest rate on the installments and delinquent payments of the special assessments in Local Improvement District No. 22 shall be fixed in the Bond Sale Resolution.

Section 17. General Authorization. The Mayor, City Manager and the Finance Director, and each of the other appropriate officers of the City, are each authorized and directed to take any actions and to execute documents as in their judgment may be necessary or desirable to carry out the terms of, and complete the transactions contemplated by, this ordinance (including everything necessary for the prompt delivery of the Bonds to the Purchaser and for the proper application and use of the proceeds of the sale thereof). All other actions heretofore taken in furtherance hereof and not inconsistent with the provisions of this ordinance are hereby ratified and confirmed in all respects.

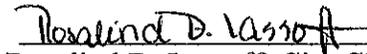
Section 18. Severability. If any provision of this ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bonds.

Section 19. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

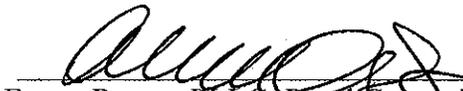
PASSED by the City Council and APPROVED by the Mayor of the City of Bainbridge Island, Washington, at a regular open public meeting thereof, this 27th day of October, 2010.


Bob Scales, Mayor

ATTEST:


Rosalind D. Lassoff, City Clerk

APPROVED AS TO FORM:


Foster Pepper PLLC, Bond Counsel

FILED WITH CITY CLERK:	October 14, 2010
PASSED BY THE CITY COUNCIL:	October 27, 2010
PUBLICATION DATE:	October 29, 2010
EFFECTIVE DATE:	November 2, 2010
ORDINANCE NO.	2010-33

CERTIFICATION

I, the undersigned, City Clerk of the City of Bainbridge Island, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. 2010-33 (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on October 27, 2010, as that ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after publication in the City's official newspaper.
2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of October, 2010.

CITY OF BAINBRIDGE ISLAND,
WASHINGTON



Rosalind D. Lassoff, City Clerk