CITY OF FORKS, WASHINGTON

ORDINANCE NO. 636

AN ORDINANCE of the City of Forks, Washington, relating to the water system of the City; separating its water system and sewerage system; specifying, adopting and ordering the carrying out of a system or plan of additions to and betterments and extensions of that water system; declaring the estimated cost thereof as nearly as may be; authorizing the issuance of a bond anticipation note (non-revolving line of credit) in the maximum principal amount of $1,947,000 pending the issuance of a water revenue bond authorized herein; creating certain funds and accounts; specifying the terms and covenants of such note; providing for delivery thereof to Cashmere Valley Bank of Cashmere, Washington; and providing for other matters properly relating thereto.

PASSED: MAY 14, 2018

This document prepared by:

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Exhibit A  Post-Issuance Compliance Policies and Procedures for Tax-Exempt Obligations
CITY OF FORKS, WASHINGTON

ORDINANCE NO. 636

AN ORDINANCE of the City of Forks, Washington, relating to the water system of the City; separating its water system and sewerage system; specifying, adopting and ordering the carrying out of a system or plan of additions to and betterments and extensions of that water system; declaring the estimated cost thereof as nearly as may be; authorizing the issuance of a bond anticipation note (non-revolving line of credit) in the maximum principal amount of $1,947,000 pending the issuance of a water revenue bond authorized herein; creating certain funds and accounts; specifying the terms and covenants of such note; providing for delivery thereof to Cashmere Valley Bank of Cashmere, Washington; and providing for other matters properly relating thereto.

THE CITY COUNCIL OF THE CITY OF FORKS, WASHINGTON, DO ORDAIN as follows:

Section 1: Definitions.

The words and phrases set forth in this ordinance with initial capitalization shall have the respective meanings ascribed to such words and phrases in this section unless the context clearly requires otherwise.

(a) "Acquisition" or "Acquire" shall include purchase, securing, lease, receipt by gift or grant, condemnation, transfer or other acquisition, or any combination thereof.

(b) "Bank" means Cashmere Valley Bank of Cashmere, Washington.

(c) "Bank Offer" means the Bank's offer to extend a non-revolving line of credit, in the form of a water revenue bond anticipation note, to the City, and to accept the Note under the terms and conditions provided in the Bank Offer as further set forth in this Ordinance.

(d) "Bond" means the water revenue bond authorized to be issued by Section 5 of this Ordinance in the principal amount of $1,947,000, or such lesser amount necessary.

(e) "City" means the City of Forks, Washington.

(f) "Clerk" means the de facto or de jure Clerk of the City, or other officer of the City who is the custodian of the seal of the City and of the records of the proceedings of the Council, and her successors in functions, if any.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations promulgated thereunder.

(h) "Construction Account" means the account designated by the City for the purpose of paying Costs of the Project.
(i) "Costs of the Project," or any phrase of similar import, means all or any part designated by the Council as costs of the Project, or interest therein, which costs, at the option of the Council, may include all or any part of the incidental costs pertaining to the Project, including, without limitation: (1) preliminary expenses advanced by the City from funds available for the use therefor, or advanced from any other source, with approval of the Council, or any combination thereof; (2) the costs of making surveys, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries; (3) the Acquisition costs of any properties, rights, easements or other interest in properties, or any licenses, privileges, agreements and franchises; (4) the costs of Acquiring, constructing and installing improvements to the System; (5) the costs of Acquiring and installing equipment necessary for the operation and maintenance of said facilities; (6) the costs of appraising, printing, estimates, advice, services of engineers, architects, financial consultants, attorneys, clerical help or other agents or employees; (7) the costs of contingencies; (8) the costs (including interest costs) of all interim financing for the Project, the costs of issuance, fees, costs of bond counsel, and the costs of registration and authentication of the Note and the Bond and the costs, if any, of rating agencies and of bond insurance; and (9) all other expenses necessary or desirable and appertaining to the Project, as estimated or otherwise ascertained by the Council.

(j) "Council" means the City Council of the City.

(k) "Future Parity Bonds" means any and all revenue bonds of the City hereafter issued, the payment of which, both principal and interest, constitutes a lien and charge upon the Gross Revenue equal in rank with the lien and charge upon such Gross Revenue for the payments required to pay and secure the payment of the Bond.

(l) "Gross Revenue" means all of the earnings and revenues received from the maintenance and operation of the System, and earnings from the investment of money on deposit in the various accounts of the System. Gross Revenue also includes all earnings from the investment of money on deposit in the Debt Service Account; and all System connection and capital improvement charges. Gross Revenue does not include: (1) principal proceeds of Future Parity Bonds or any other borrowings, (2) amounts collected in respect of City-imposed utility taxes, (3) earnings or proceeds from any investments in a trust account created to defease or refund revenue obligations of the System or held in a special account for the purpose of paying a rebate to the United States Government under the Code, (4) local improvement district assessments (including Water ULD Assessments), (5) grants, gifts, income and revenue which are restricted or may not legally be pledged for revenue bond debt service, (6) payments received in respect of any bond insurance policy or reserve surety, or insurance or condemnation proceeds used for the replacement of capital projects or equipment, (7) proceeds from the sale of System property; (8) any tax credit subsidy payments; or (9) any revenue from a separate utility system.

(m) "Interest Payment Date" means each June 1 and December 1, commencing December 1, 2018, or the first June 1 or December 1 after the first Loan Draw on the Note, and Maturity Date or date of prior redemption of the Note.

(n) "Interest Rate" means a fully floating variable rate of interest equal to 1 minus the marginal corporate tax rate, plus 0.01% multiplied by the Wall Street Journal Prime Rate, the resulting product then minus 1.06%. The marginal corporate tax rate will be reviewed annually on a date mutually agreed upon by the City and the Bank.
(o) "Issue Date" means the date the Note is initially delivered to the Bank.

(p) "Letter of Conditions" means USDA’s Letter of Conditions dated August 2, 2017, establishing the conditions under which the USDA would loan money to the City to finance the acquisition, construction and installation of improvements to the System.

(q) "Loan Draws" shall have the meaning given such term in Section 6 of this Ordinance.

(r) "Maturity Date" means July 1, 2021.

(s) "Mayor" means the de facto or de jure Mayor of the City (including the Mayor pro tempore in the Mayor’s absence), or any presiding officer or titular head of the City, and his successors in functions, if any.

(t) "Net Revenue" means Gross Revenue less Operating and Maintenance Expenses.

(u) "Note" means the Water Revenue Bond Anticipation Note, 2018 (Non-Revolving Line of Credit), of the City in the maximum principal amount of $1,947,000 which is authorized to be issued by this Ordinance.

(v) "Note Account" means the account designated by the City for the purpose of paying and securing the principal of and interest on the Note.

(w) "Note Register" means the registration records of the City, maintained by the Registrar, on which shall appear the name and address of the Registered Owner of the Note.

(x) "Operating and Maintenance Expenses" means all reasonable expenses incurred by the City in causing the System to be operated and maintained in good repair, working order and condition, including general maintenance and administrative costs of the City allocated to the System, but shall not include non-cash accounting items (e.g., depreciation, amounts treated as expenses under accounting guidelines with respect to unfunded contributions to pension or other post-employment benefit plans, non-exchange financial guarantees, potential environmental liabilities, or similar items) or capital additions or capital replacements to the System.

(y) "Ordinance" means this ordinance passed and approved by the Mayor and the Council on May 14, 2018.

(z) "Project" shall have the meaning specified in Section 4 hereof.

(aa) "Qualified Tax-Exempt Obligation" shall have the meaning specified in Section 13 hereof.

(bb) "RCW" means the Revised Code of Washington.

(cc) "Registered Owner" means the entity or person named as the Registered Owner of the Note on the Note Register, initially the Bank.
(dd) "Registrar" means (i) the Treasurer, or (ii) upon a determination by the Treasurer that maintenance of the duties of the Registrar is no longer convenient, a bank or trust company organized under the laws of the State, or a national banking association, and having a capital and surplus aggregating at least $20,000,000, if there be such a bank, trust company or national banking association willing and able to accept the duties of Registrar on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Ordinance.

(ee) “Revenue Fund” means the City’s existing Water Revenue Fund which is an enterprise fund of the City in which Gross Revenue is deposited.

(ff) “State” means the State of Washington.

(gg) “System” means the water system of the City (as separated from the City’s sewerage system by this Ordinance), together with all additions thereto and betterments and extensions thereof at any time made or construed.

(hh) “Treasurer” means the de facto or de jure Treasurer of the City, and her successors in functions, if any.

(ii) “USDA” means the United States of America, acting through the Department of Agriculture.

(jj) “Water ULID” means any utility local improvement district of the City created for the purpose of financing improvements to the System, and if the water and sewer systems of the City are later combined, any ULID thereafter created for water or sewer improvements, or both.

(kk) “Water ULID Assessments” means the assessments levied in any Water ULID which may be created pursuant to State law in connection with an improvement to the System financed by the issuance of any Future Parity Bonds, the assessments in which are pledged to be paid into the Debt Service Account, and shall include installments thereof and interest and any penalties thereon.

Section 2: Findings and Determinations.

The Council takes note of the following facts and hereby makes the following findings and determinations:

(a) The City is a municipal corporation duly organized and existing under the laws of the State, is currently organized as a code city and operates under a Mayor-Council plan of government. Pursuant to the provisions of chapters 35.92 and 35A.80 RCW, the City is authorized to acquire, construct, install and operate a water system. The City is authorized to conduct proceedings and to issue revenue bonds pursuant to chapters 35.41, 35.92, 35A.40 and 39.46 RCW.

(b) The City previously combined its water system and sewerage system pursuant to RCW 35.67.331; however, the Council now finds that it is in the best interest of the
City and its various utility ratepayers to maintain the water system and the sewerage system as separate utilities, and the accounts for such systems as separate enterprise funds.

(c) Pursuant to the terms of the Letter of Conditions, the USDA has offered to make a loan to the City, evidenced by a water revenue bond (i.e., the Bond) in the amount of $1,947,000, or such lesser amount necessary, to pay costs of carrying out the Project. Chapter 39.50 RCW authorizes cities to issue short-term obligations in anticipation of the receipt of bond proceeds.

(d) It is advisable for the City to acquire, construct and install the improvements to the System as further described in Section 4 of this Ordinance. In determining the costs of the Project pursuant to RCW 35.41.090, the Council has estimated that the total costs of the Project will be $1,967,926. It is advisable for the City to provide funds for defraying costs of the Project from the proceeds of the sale of a short-term revenue obligation (i.e., the Note) pending the issuance of the Bond. The various improvements comprising the Project represent additions to or betterment of the City's existing waterworks. Because the Project will not produce electricity for sale and neither the Note or the Bond will be a general obligation of the City, neither the Project nor the issuance of the Note or the Bond are required to be approved by the City's voters under RCW 35.41.030 or RCW 35.92.070.

(e) The Council deems it to be in the best interest of the City that the City borrow money and issue the Note pending the issuance of the Bond for the purpose of providing the funds with which to pay costs of carrying out the Project specified, adopted and ordered to be carried out herein, and the Bank has offered to accept the Note under the terms set forth in this Ordinance.

Section 3: Separate Utilities and Accounts.

The City hereby restores its water system and its sewerage system as separate utilities and the accounts for such systems as separate enterprise funds.

Section 4: The Project.

The City hereby specifies, adopts and authorizes a plan for making certain additions to and betterments and extensions of the System, including water storage facility improvements (the "Project"). The Project is more particularly described in the plans and specifications prepared by Gray & Osborne Inc., consulting engineers to the City, and now on file in the office of the Clerk. The total cost of the Project is currently estimated to be $1,967,926. The Council may make such changes prior to or during the actual construction of the Project where, in the Council's judgment, such changes appear advisable.

Section 5: Authorization of the Bond.

For the purpose of paying Costs of the Project and retiring the Note, the City shall issue the Bond in the amount of $1,947,000, or such lesser amount necessary. The Bond shall be payable from Net Revenue and other sources, if any, identified and pledged by the City by further ordinance, and shall constitute a charge and lien upon such revenue prior and superior to any other lien and charge whatsoever, except such liens and charges as may be created in favor of Future Parity Bonds issued pursuant to the ordinance authorizing the issuance of the Bond. The
Bond shall be issued in one or more series at such times as the City shall deem advisable; shall be in such amount, denomination and form, shall be dated, shall bear such interest rate or rates, shall be payable at such time or times, shall have such option of payment prior to maturity, shall guarantee such coverage and collection of rates, shall provide for such additional funds and accounts and shall contain and be subject to such provisions and covenants as hereafter shall be provided by ordinance.

Section 6: Purpose, Authorization and Description of Note.

(a) For the purpose of providing the funds with which to pay Costs of the Project, the City shall issue and deliver its Water Revenue Bond Anticipation Note, 2018 (Non-Revolving Line of Credit) (the "Note"), in the maximum principal amount of $1,947,000, pursuant to the terms of this Ordinance. The Note shall be dated the Issue Date; shall mature on the Maturity Date; shall be issued in fully registered form as to both principal and interest on the Note Register; and shall be numbered R-1, with any additional designation as the Registrar deems necessary for purposes of identification.

(b) Upon satisfaction of applicable requirements of the USDA, the City may make incremental draws upon the Note (the "Loan Draws") on any business day during the term of the Note for the purpose of providing the funds with which to pay Costs of the Project. Unless otherwise approved by the Bank, each Loan Draw must be in an amount greater than or equal to $25,000. No Loan Draw may exceed the total amount of the costs to be paid from such Loan Draw, and the proceeds of each Loan Draw shall be used immediately to pay those costs. Loan Draws shall be recorded on the Loan Draw Record attached to the Note, or in such other form as the City and the Bank may agree. Loan Draws are not subject to approval by the Bank, but shall be limited to an aggregate principal amount of $1,947,000. The City shall submit to the Bank, with each request for a Loan Draw, evidence that the USDA concurs in the amount of such Loan Draw. Loan Draws requested prior to 11:00 a.m. Pacific Time and confirmed by the Bank will be funded on that business day.

(c) The outstanding principal of the Note shall bear interest at the Interest Rate, calculated on the basis of a 365-day year, and the actual days elapsed. Interest on the outstanding principal of the Note shall be payable on each Interest Payment Date. Principal of the Note is payable on the Maturity Date or the date of prior redemption. If the Note is not paid when properly presented for payment on the Maturity Date or date of prior redemption, the City shall be obligated to pay interest on the Note at the applicable Interest Rate from and after its maturity or prior redemption date until the Note, both principal and interest, is paid in full or until sufficient money for that payment in full is on deposit in the Note Fund. The Council finds that the fixing of the interest rate in the above manner is in the best interest of the City.

Section 7: Designation of Officer to Make Loan Draws.

The Council has determined it to be in the best interest of the City that the Mayor and the Treasurer, or such other person(s) as they may designate, be and hereby are severally authorized to make Loan Draws in the amounts and at the times as either of such officials may determine hereafter, those Loan Draws to be made in accordance with the terms and provisions set forth herein.
Section 8: Appointment of Registrar; Registration and Transfer of Note.

(a) The Treasurer is hereby appointed and designated to serve as the Registrar. The Registrar shall keep, or cause to be kept, at its office, sufficient books for purposes of registering the name, mailing address and taxpayer identification number of the Registered Owner of the Note, and for registering any transfer of Note ownership. The books and records maintained by the Registrar for such purpose shall be considered the Note Register for purposes of this Ordinance. The Note Register shall at all times be open to inspection by the City. In addition to maintaining the Note Register, the Registrar is authorized and directed to perform the following duties with respect to the Note: (i) to authenticate the Note upon the initial issuance thereof by executing the Certificate of Authentication contained thereon; (ii) to authenticate and deliver any Note that is transferred in accordance with the provisions thereof and this Ordinance; (iii) to serve as the City’s paying agent for the Note; (iv) to imprint on each Note transferred or exchanged pursuant to this Ordinance the name of the Registered Owner, the maximum principal amount of the Note, the interest rate borne by the Note, and the maturity date of the Note; (v) to cancel the Note returned to the Registrar upon the payment in full thereof by punching holes through the signatures on the Note and by writing clearly across the face of such Note the word “cancelled”; and (vi) to carry out all of the Registrar’s duties otherwise described in this Ordinance and to comply fully with all applicable federal and State laws and regulations respecting the carrying out of those duties. The Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Note.

(b) The Note may be assigned or transferred only: (i) in whole; (ii) to a single investor that is a “qualified institutional buyer” as defined in the United States Securities and Exchange Commission Rule 144A; (iii) if endorsed in the manner provided thereon and surrendered to the Registrar; and (iv) if the transferee provides the Registrar with an executed transfer certificate in substantially the form to be attached to the Note. Any such transfer shall be without cost to the Registered Owner or transferee (other than any cost incurred by the Registered Owner or transferee in preparing and delivering such transfer certificate) and shall be noted on the Note Register. The Registrar shall not be obligated to assign or transfer the Note during the 15 days preceding any payment or prepayment date.

Section 9: Deposit of Note Proceeds.

The principal proceeds received as a result of Loan Draws on the Note shall be paid into the Construction Account and used to pay Costs of the Project. Interest earnings on Loan Draws, if any, shall be retained in the Construction Account and used to pay Costs of the Project.

Section 10: Payment of Note; Note Account.

(a) Both principal of and interest on the Note shall be payable in lawful money of the United States of America solely out of the special fund or account of the City created for the sole purpose of paying and securing the payment of the Note Account from the proceeds of the Bond authorized by this Ordinance to be deposited in such account, or from other short-term obligations or from other money legally available and to be used therefor, and the City irrevocably pledges to redeem the Note on the Maturity Date or date of prior redemption from the proceeds of that Bond, or of other short-term obligations or from other money legally available for that purpose. The Note may also be paid from Net Revenue, subject to the prior
claim and lien of the Bond. The Note shall be payable only from the Note Account as provided herein and shall not be a general obligation of the City, the State or any political subdivision thereof. The City’s full faith, credit and resources are not pledged to the payment of the Note.

(b) Prior to each Interest Payment Date, the Registered Owner shall present to the City a statement of interest due on the Note on such Interest Payment Date. Prior to the Maturity Date or date of prior redemption, such statement shall also include the amount of principal due on the Note. Payments due on the Note shall be paid by electronic transfer, unless payment by check or draft of the Registrar is permitted by the Registered Owner, and sent to the Registered Owner so that the Registered Owner receives said payments when due at the address appearing on the Note Register. Upon receipt of the final payment of principal of and interest on the Note, whether on the Maturity Date or upon prepayment, the Registered Owner shall present and surrender the Note to the Registrar to be destroyed or cancelled in accordance with law. The City and the Registrar may deem and treat the Registered Owner of the Note as the absolute owner of the Note for the purpose of receiving payment of principal and interest and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary other than proper notice of assignment or transfer.

Section 11: Prepayment and Redemption Provisions.

The City reserves the right and option to prepay the Note, in whole or in part, at any time with no prepayment penalty. Interest on the Note or the portion thereof so prepaid shall cease to accrue on the date of such prepayment. The City will provide the Registered Owner with written notice of any intended prepayment at least 15 days prior to such prepayment date.

Section 12: Note Form and Execution.

(a) The Note shall be prepared in a form consistent with the provisions of this Ordinance and State law, shall be signed by the Mayor and Clerk, either or both of whose signatures may be manual or in facsimile, and shall have the seal of the City (or facsimile reproduction thereof) impressed or printed thereon.

(b) The Note shall not be valid or obligatory for any purpose, or entitled to the benefits of this Ordinance, unless it bears a certificate of authentication manually signed by the Registrar stating: "This Note is the fully registered City of Forks, Washington, Water Revenue Bond Anticipation Note, 2018 (Non-Revolving Line of Credit), described in the Note Ordinance." A minor deviation in the language of such certificate shall not void a certificate of authentication that otherwise is substantially in the form of the foregoing. The authorized signing of a certificate of authentication shall be conclusive evidence that the Note so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this Ordinance.

(c) If any officer whose signature appears on the Note ceases to be an officer of the City authorized to sign notes before the Note bearing his or her signature is authenticated or delivered by the Registrar or issued by the City, that Note nevertheless may be authenticated, delivered and issued and, when authenticated, delivered and issued, shall be as binding upon the City as though that person had continued to be an officer of the City authorized to sign notes. Any Note also may be signed and attested on behalf of the City by any person who, on the actual date of the signing of the Note, is an officer of the City authorized to sign notes, although he or she did not hold the required office on the date of issuance of the Note.
Section 13: Tax Covenants.

(a) Preservation of Tax Exemption for Interest on the Note. The City covenants that it will take all actions necessary to prevent interest on the Note 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 Note or other funds of the City treated as proceeds of the Note at any time during the term of the Note which will cause interest on the Note to be included in gross income for federal income tax purposes.

(b) Designation of the Note as a “Qualified Tax-Exempt Obligation.” The City designates the Note as a “qualified tax-exempt obligation” for the purposes of Section 265(b)(3) of the Code, and makes the following findings and determinations:

(i) the Note does not constitute a “private activity bond” within the meaning of Section 141 of the Code;

(ii) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) that 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 Note is issued will not exceed $10,000,000; and

(iii) the amount of tax-exempt obligations, including the Note, 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 Note is issued does not exceed $10,000,000.

(c) Compliance Policies. The Council hereby adopts the post-issuance compliance policies and procedures for tax-exempt obligations attached hereto as Exhibit A in connection with the Note and the City’s other tax-exempt obligations.

Section 14: Flow of Funds.

The Revenue Fund has heretofore been established by the City into which shall be deposited Gross Revenue as collected, except the interest earned and income derived from investments of money in the Note Account, which shall remain in such account. The Revenue Fund shall be held separate and apart from all other funds and accounts of the City and the Gross Revenue deposited in such Revenue Fund shall be used only for the following purposes and in the following order of priority:

(a) to pay Operating and Maintenance Expenses;

(b) to pay principal of and interest on the Bond and Future Parity Bonds;

(c) to make all payments required to be made into a reserve account created pursuant to an ordinance authorizing the issuance of the Bond or any Future Parity Bonds;
(d) to make all deposits required to be made into a short-lived asset reserve account created pursuant to an ordinance authorizing the issuance of the Bond or any Future Parity Bonds;

(e) to make all payments required to be made into any revenue bond redemption fund, revenue warrant or note redemption fund, debt service account, reserve account or sinking fund account created to pay and secure the payment of the principal of and interest on any revenue bonds, or revenue warrants or notes or other revenue obligations of the District having a lien upon the Net Revenue junior and inferior to the lien thereon for the payment of the principal of and interest on the Bond and any Future Parity Bonds, including the Note; and

(f) to make any other payments, transfers or deposits as may be lawful for Gross Revenue.

Section 15: Approval of Bank Offer; Authorization of City Officials.

The Bank has presented the Bank Offer, which written Bank Offer is on file with the Clerk and is incorporated herein by this reference. The Council finds that accepting the Bank Offer is in the City’s best interest and therefore accepts the same. A fee in the amount of $1,500 shall be withheld by the Bank from the first Loan Draw. The Note will be printed at City expense and will be delivered to the Bank in accordance with the Bank Offer, together with the approving legal opinion of Foster Pepper PLLC, municipal bond counsel, regarding the Note. The Mayor and the Clerk-Treasurer, or such other person(s) as they may designate, are severally authorized and directed to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this Ordinance, and to do everything necessary for the prompt delivery of the Note to the Bank and for the proper application and use of the proceeds of the Loan Draws made pursuant to the Note.

Section 16: Reporting Requirements.

For so long as the Note is outstanding and held by the Bank, the City shall provide its annual financial reports to the Bank along with such additional information as the Bank may reasonably request.

Section 17: Ratification; Severability.

All actions taken prior to the effective date of this Ordinance in furtherance of the purposes described in this Ordinance and not inconsistent with the terms of this Ordinance are ratified and confirmed in all respects. The provisions of this Ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this Ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this Ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.
Section 18: 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. The Clerk is directed to cause this Ordinance, or a summary hereof, to be published in the official newspaper of the City.

PASSED by the City Council and APPROVED by the Mayor of the City of Forks, Washington, this 14th day of May, 2018, at a regular open public meeting thereof.

CITY OF FORKS, WASHINGTON

Tim Fletcher, Mayor

ATTEST:

Audrey Grafstrom, Clerk-Treasurer

(SEAL)
Exhibit A

City of Forks, Washington
Post-Issuance Compliance Policies and Procedures for Tax-Exempt Obligations

1. **Purpose.** The purpose of these post-issuance compliance procedures ("Compliance Procedures") is to ensure that the City of Forks, Washington (the "City") will be in compliance with: (i) requirements of the Internal Revenue Code of 1986, as amended (the "Code"), that must be satisfied to maintain the tax-exempt status of bonds or other obligations issued by the City that are exempt from federal income tax under the Code (sometimes collectively referred to herein as "bonds" or "tax-exempt bonds") and (ii) each Continuing Disclosure Undertaking (described in Section 8 below).

2. **Responsibility for Monitoring Post-Issuance Tax Compliance.** The City Council of the City (the "Council") has the overall, final responsibility for monitoring whether the City is in compliance with post-issuance federal tax requirements for the City’s tax-exempt bonds. However, the City Treasurer (the "Treasurer") shall have the primary operating responsibility to monitor the City’s compliance with post-issuance federal tax requirements for the City’s bonds. In addition to any compliance checks that may be undertaken in connection with (and prior to) any prospective change in use of property or facilities financed with tax-exempt bonds as described in Section 4 below, the Treasurer will check on the City’s compliance with applicable requirements of the Code and the Continuing Disclosure Undertaking (defined below) at least annually.

3. **Arbitrage Yield Restriction and Rebate Requirements.** The Treasurer shall maintain or cause to be maintained records of:

(a) purchases and sales of investments made with bond proceeds (including amounts treated as "gross proceeds" of bonds under section 148 of the Code) and receipts of earnings on those investments;

(b) expenditures made with bond proceeds (including investment earnings on bond proceeds) in a timely and diligent manner for the governmental purposes of the bonds, such as for the costs of purchasing, constructing and/or renovating property and facilities;

(c) information showing, where applicable for a particular calendar year, that the City was eligible to be treated as a "small issuer" in respect of bonds issued in that calendar year because the City did not reasonably expect to issue more than $5,000,000 of tax-exempt bonds in that calendar year;

(d) calculations that will be sufficient to demonstrate to the Internal Revenue Service ("IRS") upon an audit of a bond issue that, where applicable, the City has complied with an available spending exception to the arbitrage rebate requirement in respect of that bond issue;

(e) calculations that will be sufficient to demonstrate to the IRS upon an audit of a bond issue for which no exception to the arbitrage rebate requirement was applicable, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS; and
(f) information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments.

4. Restrictions on Private Business Use and Private Loans. The Treasurer shall adopt other procedures that are calculated to educate and inform the principal operating officials of those departments, including capital projects and facility departments, if any, of the City (the “users”) for which land, buildings, facilities and equipment (“property”) are financed with proceeds of tax-exempt bonds about the restrictions on private business use that apply to that property after the bonds have been issued, and of the restriction on the use of proceeds of tax-exempt bonds to make or finance any loan to any person other than a state or local government unit.

In particular, following the issuance of bonds for the financing of property, the Treasurer shall provide to the users of the property a copy of these Compliance Procedures and other appropriate written guidance advising that:

(a) “private business use” means use by any person other than a state or local government unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and the United States of America and any federal agency, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain “qualified” management or service contracts), output contract for the purchase of electricity or water, privately sponsored research contract (except for certain “qualified” research contracts), “naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property;

(b) under section 141 of the Code, no more than 10% of the proceeds of any tax-exempt bond issue (including the property financed with the bonds) may be used for private business use, of which no more than 5% of the proceeds of the tax-exempt bond issue (including the property financed with the bonds) may be used for any “unrelated” private business use—that is, generally, a private business use that is not functionally related to the governmental purposes of the bonds; and no more than the lesser of $5,000,000 or 5% of the proceeds of a tax-exempt bond issue may be used to make or finance a loan to any person other than a state or local government unit;

(c) before entering into any special use arrangement with a nongovernmental person that involves the use of bond-financed property, the user must consult with the Treasurer, provide the Treasurer with a description of the proposed nongovernmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property;

(d) in connection with the evaluation of any proposed nongovernmental use arrangement, the Treasurer should consult with nationally recognized bond counsel to the City as may be necessary to obtain federal tax advice on whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property, and, if not, whether any “remedial action” permitted under Section 141 of the Code may be taken by the City as a means of enabling that use arrangement to be put into effect without adversely affecting the tax-exempt status of the bonds that financed the property; and

(e) the Treasurer and the user of the property shall maintain records of such nongovernmental uses, if any, of bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-exempt status of the bonds that financed the property.
5. **Records to be Maintained for Tax-Exempt Bonds.** It is the procedure of the City that, unless otherwise permitted by future IRS regulations or other guidance, written records (which may be in electronic form) will be maintained with respect to each bond issue for as long as those bonds remain outstanding, plus three years. For this purpose, the bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records to be maintained are to include:

(a) the official Transcript of Proceedings for the original issuance of the bonds;

(b) records showing how the bond proceeds were invested, as described in 3(a) above;

(c) records showing how the bond proceeds were spent, as described in 3(b) above, including purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of bond issuance costs, and records of “allocations” of bond proceeds to make reimbursement for project expenditures made before the bonds were actually issued;

(d) information, records and calculations showing that, with respect to each bond issue, the City was eligible for the “small issuer” exception or one of the spending exceptions to the arbitrage rebate requirement or, if not, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS, as described in 3(c), (d) and (e) above; and

(e) records showing that special use arrangements, if any, affecting bond-financed property made by the City with nongovernmental persons, if any, are consistent with applicable restrictions on private business use of property financed with proceeds of tax-exempt bonds and restrictions on the use of proceeds of tax-exempt bonds to make or finance loans to any person other than a state or local government unit, as described in 4 above.

The basic purpose of the foregoing record retention procedure for the City’s tax-exempt bonds is to enable the City to readily demonstrate to the IRS upon an audit of any tax-exempt bond issue that the City has fully complied with all federal tax requirements that must be satisfied after the issue date of the bonds so that those bonds continue to be eligible for tax exemption under the Code.

6. **Identification and Remediation of Potential Violations of Federal Tax Requirements for Tax-Exempt Bonds.**

(a) So long as any of the City’s tax-exempt bond issues remain outstanding, the Treasurer should periodically consult with the users of the City’s bond-financed property to review and determine whether current use arrangements involving that property continue to comply with applicable federal tax requirements as described in these Compliance Procedures. This may be accomplished, for example, by periodically meeting with users, providing questionnaires to users about current use arrangements, or adopting other protocols reasonably calculated to ensure compliance with applicable federal tax requirements on a continuing basis. This periodic review may be scheduled, for example, at or before the times that the City is required to file with the Municipal Securities Rulemaking Board the annual financial information and operating data pursuant to the City’s undertaking to provide continuing disclosure with respect to outstanding bonds.

(b) If at any time during the life of an issue of tax-exempt bonds, the City discovers that a violation of federal tax requirements applicable to that issue may have occurred, the Treasurer will consult with bond counsel to determine whether any such violation actually has occurred and, if so, take
prompt action to accomplish an available remedial action under applicable IRS regulations or to enter into a closing agreement with the IRS under the Voluntary Closing Agreement Program described under Notice 2008-31 or other future published guidance.

7. **Education Procedure With Respect to Federal Tax Requirements for Tax-Exempt Bonds.** It is the procedure of the City that the Treasurer and his or her staff, as well as the principal operating officials of those departments of the City for which property is financed with proceeds of tax-exempt bonds should be provided with education and training on federal tax requirements applicable to tax-exempt bonds. The City recognizes that such education and training is vital as a means of helping to ensure that the City remains in compliance with those federal tax requirements in respect of its bonds. The City therefore will enable and encourage, to the extent the City can afford to do so, those personnel to attend and participate in educational and training programs with regard to the federal tax requirements applicable to tax-exempt bonds.

8. **Responsibility for Continuing Disclosure Undertaking.** Under the provisions of Securities and Exchange Commission Rule 15c2-12 ("Rule 15c2-12"), underwriters are required to obtain an agreement for ongoing continuing disclosure in connection with the public offering of municipal securities. The City’s responsibility to provide ongoing continuing disclosure to the municipal securities markets is set forth in the bond ordinance or in a separate continuing disclosure agreement for each publicly sold issue of bonds (the “Continuing Disclosure Undertaking”). Each Continuing Disclosure Undertaking requires the City to provide to the municipal securities markets certain annual financial information and notices of certain listed events. For some types of listed events (e.g., bond calls), the Registrar has undertaken the responsibility of filing notice of the applicable listed event. If audited financial statements are not available by the time of each annual filing, the City shall file unaudited financial statements and file audited financial statements once they become available. For example, the annual filing of operating and financial information may be scheduled to occur at the same time financial information is provided to the State auditor’s office, if such time is before the annual deadline described in the Continuing Disclosure Undertaking. The Treasurer shall monitor compliance by the City with each Continuing Disclosure Undertaking, shall maintain a file that includes a copy of each Continuing Disclosure Undertaking entered into by the City, shall ensure that the information required to be disclosed is disclosed in a timely fashion and shall cause any failure to make disclosure to be remedied in a timely fashion.
CERTIFICATION

I, the undersigned, the Clerk-Treasurer of the City of Forks, Washington (the “City”), hereby certify as follows:

1. The foregoing Ordinance No. 636 (the “Ordinance”) is a full, true and correct copy of the Ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on the 14th day of May, 2018, as that Ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after the publication of its summary in the City’s official newspaper; and

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

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of May, 2018.

CITY OF FORKS, WASHINGTON

(S E A L)

Audrey Graffstrom, Clerk-Treasurer