

EXHIBIT A

No. R-

\$ _____

STATE OF OREGON
MULTNOMAH, WASHINGTON AND CLACKAMAS COUNTIES
CITY OF PORTLAND
ENVIRONMENTAL REMEDIATION REVENUE BONDS
1993 SERIES A

DATED DATE INTEREST % PER ANNUM MATURITY DATE CUSIP

November __, 1993

REGISTERED OWNER ***** CEDE & CO *****

PRINCIPAL AMOUNT

The City of Portland, in the Counties of Multnomah, Washington and Clackamas, State of Oregon (the "City"), for value received, acknowledges itself indebted and hereby promises to pay to the registered owner hereof, or registered assigns, but solely from the sources indicated below, the Principal Amount on the Maturity Date together with interest thereon from the date hereof at the rate per annum indicated above, calculated on the basis of a 360 day year. Interest is payable semiannually on the first days of May and November in each year until maturity or prior redemption, commencing May 1, 1994. Interest upon this bond is payable through a corporate trust office of the City's paying agent and registrar (the "Registrar") by check or draft. Checks or drafts will be mailed on the interest payment date (or the next business day if the interest payment date is not a business day) to the name and address of the registered owner as they appear on the Bond Register as of the fifteenth day of the month prior to the Interest Payment Date. Bond principal is payable when due upon presentation and surrender of this bond to the Registrar at its corporate trust office in Portland, Oregon.

This revenue bond is not a general obligation or liability of the City, and is payable solely from the Net Revenues of the System as provided in Ordinance No. _____ of the City adopted November 10, 1993 establishing a system for environmental remedial action activities of the City (the "Ordinance"). The City covenants and agrees with the owner of this bond that it will keep and perform all of its obligations in this bond and in the Ordinance. The City has pledged the Net Revenues of the System, as defined in the Ordinance, to the payment of principal and interest on this bond.

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all conditions, acts, and things required to exist, to happen, and to be performed precedent to and in the issuance of this bond have existed, have happened, and have been performed in due time, form, and manner as required by the Constitution and Statutes of the State of Oregon and the Charter of the City; that the issue of which this bond is a part, and all other obligations of such City, are within every debt limitation and other limits prescribed by such Constitution and Statutes.

IN WITNESS WHEREOF, the City Council of the City of Portland, Oregon has caused this bond to be signed by facsimile signature of its Mayor and attested by facsimile signature of its Auditor, and has caused its seal to be affixed hereto or printed hereon as of the date indicated above.

CITY OF PORTLAND

By _____
Mayor

(SEAL)

By _____
Auditor

THIS BOND SHALL NOT BE VALID UNLESS PROPERLY AUTHENTICATED BY THE REGISTRAR IN THE SPACE INDICATED BELOW.

CERTIFICATE OF AUTHENTICATION

This is one of the City of Portland, Oregon Environmental Remediation Revenue Bonds, 1993 Series A issued pursuant to the Ordinance described herein.

DATED: _____

BANK OF AMERICA OREGON,
as Registrar

By _____
Authorized Officer

[BACK OF BOND FORM]

This bond is one of the Environmental Remediation Revenue Bonds, 1993 Series A (the "Bonds") of the City, and is issued by the City for the purpose of paying the costs incurred in connection with the issuance thereof, funding Remedial Action and Remedial Action Costs as defined in Oregon Revised Statutes Sections 459.311, 465.200 through 465.210, Section 17.102.170 of the City Code and other applicable laws relating to remedial actions and solid waste disposal, and repaying certain interfund borrowings of the City used to finance Remedial Action Costs, all in full and strict accordance and compliance with all of the provisions of the Constitution and Statutes of the State of Oregon, and the Charter of the City.

The Serial Bonds maturing on November 1, 1994 through November 1, 1999 are not subject to optional redemption prior to maturity.

The City reserves the right to redeem all or any portion of the Term Bond maturing on November 1, 2005 in whole or in part on any date on or after November 1, ____ at the redemption price of 100% of the principal amount thereof plus accrued and unpaid interest to the date of redemption.

The Term Bond maturing on November 1, 2005 may be retired prior to its maturity in whole or in part on November 1 of each year commencing November 1, 1994 at a price equal to 100% of the principal amount to be redeemed plus accrued and unpaid interest to the date of redemption to the extent the City chooses to apply excess Net Revenues of the System (each as defined in the Ordinance) to the redemption of such Term Bond.

Notice of any call for redemption shall be given as required by the Letter of Representations to The Depository Trust Company, as referenced in the Ordinance. Interest on any Bond or Bonds so called for redemption shall cease on the redemption date designated in the notice. The Registrar will notify The Depository Trust Company promptly of any Bonds called for redemption.

The Bonds are initially issued as a book-entry only security issue with no certificates provided to the Bondowners. Records of Bond ownership will be maintained by the Registrar and The Depository Trust Company and its participants, as provided in the Ordinance.

Should the City cease to use a Book-Entry System, the shall be issued in the form of registered Bonds without coupons in the denominations of \$5,000 or any integral multiple thereof. Such Bonds may be exchanged for Bonds of the same aggregate principal amount, but different authorized denominations, as provided in the

Ordinance.

Unless this certificate is presented by an authorized representative of The Depository Trust Company to the issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

_____ (Please insert social security or other identifying number of assignee)

the within bond and does hereby irrevocably constitute and appoint _____ as attorney to transfer this bond on the books kept for registration thereof with the full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed

(Bank, Trust Company or Brokerage Firm)

Authorized Officer

The following abbreviations, when used in the inscription on the face of the within bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM -- tenants in common
 TEN ENT -- as tenants by the entireties
 JT TEN -- as joint tenants with right of
 survivorship and not as tenants in common
 OREGON CUSTODIANS use the following
 _____ CUST UL OREG _____ MIN
 as custodian for (name of minor)
 OR UNIF TRANS MIN ACT

under the Oregon Uniform Transfer to Minors Act
 Additional abbreviations may also be used though not in the list above.

Ordinance No. _____

- * **Establish program for the financing of environmental remediation projects; authorize issuance of \$6,000,000 of Environmental Remediation Revenue Bonds and establish and determine other matters in connection therewith. (Ordinance).**

THE CITY OF PORTLAND ORDAINS:

The Council finds:

Section 1. Findings.

As the preamble and findings to this Ordinance, the City Council (the "Council") of the City of Portland, Oregon (the "City") hereby recites the matters set forth below. To the extent any of the following recitals relates to a finding or determination which must be made by the Council in connection with the subject matter of this Ordinance or any aspect thereof, the Council declares that by setting forth such recital such finding or determination is thereby made by the Council. This preamble and the recitals, findings and determinations set forth herein constitute a part of this Ordinance.

Political Subdivision. That the City is a municipal corporation and political subdivision organized and existing under and pursuant to the laws of the State of Oregon.

Environmental Remediation Activities of the City. The City has entered into a Consent Order with the Oregon Department of Environmental Quality pursuant to which the City has agreed to undertake certain remediation activities with respect to soil conditions on a parcel purchased by the City from Marathon Properties USA (the "Guilds Lake Property") and an adjoining property (the "Hopkins Property") each located in the northwest industrial sector of the City. The Guilds Lake Property was owned by the City for a number of years prior to its recent reacquisition and was the site of a City operated incinerator. The Hopkins Property has been affected by the residues of City operations on the Guilds Lake Property. In addition, the City has determined that additional sites may be identified from time to time upon which environmental remediation activities which are the responsibility of the City will be necessary. It is the City's intent to establish a program for the financing of such remediation activities which is complementary to other financing methods presently used by the City.

Remedial Action and Remediation Costs. The City has taken and will continue to take reasonable steps to provide that all activities undertaken by the City and all costs incurred by the City with respect to remediation projects will qualify as "remedial action" and "remedial action costs" as defined under the laws of the State of Oregon, and in particular Oregon Revised Statutes ("ORS") 465.200.

Authority to Issue Revenue Bonds. Pursuant and subject to the requirements of ORS 288.805 to 288.945 (inclusive), as amended, and related provisions of the laws of the State of Oregon, the City is authorized and empowered, without a vote of the electors, but subject to certain other restrictions set forth in ORS 288.815, to issue and sell revenue bonds for the purpose of financing the costs of facilities constituting "real property, including land, streets and other improvements, betterments, appurtenances, structures and fixtures, and personal property which is functionally related and subordinate to real property" within the meaning of ORS 288.805(2). This Ordinance sets forth the terms and conditions of revenue

bond obligations of the City and shall not be interpreted as establishing the authorization, terms or conditions of any general obligation debt of the City which may be authorized by the voters residing within the boundaries of the City from time to time.

Prior Actions of the Council. On April 7, 1993 the Council adopted Ordinance No. 166397 initially authorizing the issuance of revenue bonds and authorizing the publication of a notice of such action in compliance with ORS 288.515. On July 22, 1993 such notice was published in The Oregonian, a newspaper of general circulation in the City. The notice informed the electors of the City that the question of issuing the revenue bonds could be referred to a vote of the electors if petitions validly signed by not less than five percent (5%) of the electors residing within the boundaries of the City requesting such a vote were delivered to the County Clerk of Multnomah County, Elections Division prior to 5:00 p.m. (pacific time) on Tuesday, September 21, 1993. Petitions containing the required number of signatures were not received at the appropriate office on or before such time and date. On August 4, 1993 the City adopted Resolution No. 166790 expressing its intent to reimburse itself from the proceeds of an issue of revenue bonds for the purchase price of the Guilds Lake Property and any capital expenditures with respect to remedial action undertaken on the Guilds Lake Property and the Hopkins Property prior to the issuance of such obligations.

Master Ordinance. This Ordinance is a master ordinance which shall govern the terms and conditions of all Obligations issued from time to time by the City which are secured by a pledge and interest in the Trust Estate created hereunder, except as specifically set forth in a Supplemental Ordinance adopted in conformance with the provisions of this Ordinance.

NOW, THEREFORE, the Council directs:

Section 2. Operative Provisions.

**ARTICLE I
DEFINITIONS**

Section 101. Specific Definitions. As used in this Ordinance, unless the context shall otherwise require, the following terms shall have the following respective meanings set forth below:

"Account" or "Accounts" means one or more of the accounts, and **"Subaccount" or "Subaccounts"** means one or more of the subaccounts therein, within the Environmental Remediation Fund held and maintained by the Bureau of Environmental Services of the City.

"Act" shall mean Section 17.102.170 of the City Code and ORS 459.311, 465.200 through 465.210 and other applicable law relating to remedial actions and solid waste disposal, and in respect to the issuance of revenue bonds ORS 288.805 to 288.945 (inclusive) as amended, and related provisions of the laws of the State of Oregon affecting, governing or authorizing the issuance of revenue bonds or advance refunding bonds for the purpose of refunding outstanding revenue bonds.

"Additional Obligations" means, with respect to a particular Obligation, an additional Obligation issued or incurred pursuant to the provisions of this Ordinance or the Supplemental Ordinance under which such initial Obligation was issued or incurred, and which constitute a part of such Obligation.

"Agents" each respectively, an **"Agent"** shall mean the Paying Agent, the Registrar, and any Remarketing Agent or Tender Agent for Variable Rate Obligations, or any or all of them, as may be appropriate.

"Alternate Credit Facility" means with respect to a particular Series of Obligations, any Credit Facility meeting the applicable requirements of this Ordinance or the Supplemental Ordinance under which such

Series of Obligations is issued and which is given in substitution for or replacement of an existing Credit Facility securing such Series of Obligations.

"Annual Budget" shall mean the annual budget for remediation expenses of the Bureau of Environmental Services of the City to be funded from the Revenue Account established hereunder, as amended or supplemented, adopted or in effect for a particular Fiscal Year.

"Annual Debt Service" shall mean with respect to any Obligations issued or incurred under this Ordinance, the amount required to be deposited in the then current Fiscal Year into the Debt Service Account as provided in this Ordinance for the payment of such Obligations; *provided, however, that:*

(i) there shall be credited against such sum any interest capitalized from proceeds of such Obligations;

(ii) the amount of a Term Obligation subject to mandatory redemption in any Fiscal Year pursuant to a Mandatory Redemption Schedule shall be deemed to mature in the Fiscal Year in which such Term Obligations are subject to such mandatory redemption and only the principal amount of such Term Obligations scheduled to remain Outstanding on the maturity date thereof shall be included in determining the Annual Debt Service for such Term Obligations in the Fiscal Year in which such maturity date occurs;

(iii) the amount of a Term Obligation which is deemed subject to mandatory redemption pursuant to a Deemed Mandatory Redemption Schedule in any Fiscal Year shall be deemed to mature and be subject to mandatory redemption in accordance with the Deemed Mandatory Redemption Schedule applicable to such Term Obligation and only the principal amount of such Term Obligations which is deemed to remain Outstanding on the maturity date thereof pursuant to the Deemed Mandatory Redemption Schedule shall be included in determining the Annual Debt Service for such Term Obligations in the Fiscal Year in which such maturity date occurs

(iv) for purpose of computing Annual Debt Service for any Obligation which constitutes a Variable Rate Obligation, such Variable Rate Obligation shall be deemed to bear interest at all times to maturity thereof at the Estimated Average Interest Rate applicable thereto.

References herein to "actual Annual Debt Service" during a particular Fiscal Year or period shall mean the amount of debt service actually paid or scheduled to be paid during such Fiscal Year or period without the adjustments set forth in subsections (i), (ii), (iii) or (iv) immediately above.

"Authorized Denominations" means, with respect to a particular Series of Obligations, the denominations in which the Obligations of such Series are authorized to be issued or incurred as provided in the Supplemental Ordinance relating to such Series of Obligations.

"Authorizing Action" means, collectively, the Act, Ordinance No. 166397, this Ordinance, and each Supplemental Ordinance adopted pursuant to this Ordinance.

"Bond" or **"Bonds"** shall mean all bonds, notes or other evidences of indebtedness from time to time issued, authenticated and delivered under and pursuant to this Ordinance or any Supplemental Ordinance enacted pursuant to this Ordinance; *provided that* in no event shall the term "Bond" or "Bonds" mean or include any Operating Leases.

"Bond Counsel" shall mean Stoel Rives Boley Jones & Grey or an attorney or firm of attorneys of

recognized national standing in the field of law relating to municipal bonds selected by the City.

"Bond Year" means, with respect to a particular issue of Obligations, each one year period commencing on: (i) the date of issuance and delivery of the Obligations; or (ii) such other date as the City may elect in accordance with the application provisions of Section 148(f) of the Code and the regulations thereunder.

"Capital Costs" shall mean and include all costs of acquisition, construction, reconstruction, improvement, betterment or extension of the System or any part thereof, including, without limitation, the costs of:

(i) any demolitions or relocations necessary in connection with the acquisition, construction, reconstruction, improvement, betterment and extension of the System and any renewals, replacements, alterations, improvements, additions, machinery and equipment, facilities, paving, grading, excavation, blasting or removals deemed by the City to be necessary or useful or convenient in connection therewith;

(ii) obligations incurred for labor and materials and payments made to contractors, builders and materialmen in connection with the acquisition, construction, reconstruction, improvement, betterment and extension of the System, and for the restoration of property damaged or destroyed in connection therewith;

(iii) payments, taxes or other governmental charges lawfully levied or assessed during construction or on any property acquired, and premiums on insurance (if any) during such construction or acquisition or reimbursement to the appropriate person for such premium payments;

(iv) fees and expenses for studies, surveys and reports, engineering, borings, testings, estimates of costs and revenues, preparation of plans and specifications and inspecting or supervising construction or acquisition, as well as for the performance of all other duties of engineers or architects in connection with the acquisition, construction, reconstruction, improvement, betterment or extension of the System or required by this Ordinance;

(v) expenses of administration properly chargeable to the acquisition, construction, reconstruction, improvement, betterment or extension of the System, including legal expenses and fees, financing charges, costs of audits and fiscal advice and other similar administrative costs incurred during the construction period in connection with the related Obligations but only to the extent such fees, expenses and costs have been capitalized, and all other items of expense not elsewhere in this definition specified, incident to the acquisition, construction, reconstruction, improvement, betterment or extension of the System, including the acquisition of real estate, franchises and rights-of-way therefor, and abstracts of title and title insurance;

(vi) the cost and expense of acquiring by purchase or condemnation or by leasing such property, lands, rights-of-way, franchises, easements, and other interests in land as may be deemed necessary or convenient for the acquisition, construction, reconstruction, improvement, betterment or extension of any part of the System, and options and partial payments thereon, and the amount of any damages incident to or consequent upon the same;

(vii) any obligation or expense heretofore or hereafter expended or incurred by the City or any other person and any amounts heretofore or hereafter advanced by the City or any other person for any of the foregoing purposes;

(viii) any Costs of Issuance;

(ix) interest on the related Obligations during the period of construction, installation, acquisition and testing of a project; and

(x) any other costs properly treated as a capital cost which constitutes a remedial action cost under State law.

"Charter" means the charter of the City, as amended.

"City" shall mean the City of Portland, Oregon, located within the Counties of Multnomah, Clackamas and Washington, a political subdivision duly organized and existing under the laws of the State of Oregon.

"City Code" shall mean the Code of the City of Portland, Oregon.

"City Engineer" shall mean an employee of the City regularly engaged in providing engineering services to the City, licensed as a Professional Engineer in the State of Oregon and personally knowledgeable in the matters being certified for purposes of this Ordinance.

"Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated or applicable thereunder.

"Contribution" or **"City Contribution"** shall mean any moneys, other than proceeds of an Obligation issued hereunder, and the interest earned thereon, which are to be applied to the payment of any Capital Cost relating to any Project, or to the defeasance or redemption of any Obligation.

"Costs of Issuance" shall mean, with respect to any Obligation issued or incurred hereunder, all costs necessary or attributable to the issuance of such Obligations which are not Capital Costs described in subparts (i) through (vii), (ix) and (x) of the definition of "Capital Costs" set forth above, and which include, but are not limited to, legal fees and expenses, fees and expenses of any consulting engineer and financial advisors, cost of audits, advertising and printing expenses, fees and expenses of the Agents, costs of ratings, costs of premiums on insurance on an Obligation, costs of any Reserve Equivalent, the initial fees, expenses and other amounts payable to any indexing agent, depository, remarketing agent, tender agent or any other person whose services are required with respect to the issuance of any Obligation, and also including discounts to the underwriters or other purchasers of an Obligation incurred in the issuance and sale of the Obligation, the proceeds of which have been or will be required to be applied to one or more purposes for which Obligations could be issued.

"Council" means the duly elected and acting City Council of the City of Portland, Oregon.

"Counsel" shall mean an attorney, or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia.

"Credit Agreement" shall mean an agreement with a Credit Provider pursuant to which a Credit Facility is issued or given as security for a particular Obligation.

"Credit Facility" shall mean a letter of credit, a municipal bond insurance policy, a surety bond, standby bond purchase agreement or other credit enhancement device given, issued or posted as security for one or more Obligations, including any Alternate Credit Facility.

"Credit Provider" shall mean, with respect to a particular Obligation, the person or entity, if any, providing a Credit Facility as security for such Obligation or any portion of an Obligation.

"Deemed Mandatory Redemption Schedule" shall mean the debt service payment schedule and method of calculation set forth below. The concept of a Deemed Mandatory Redemption Schedule shall apply and be utilized solely for the purpose of determining Annual Debt Service for Term Obligations which are not otherwise subject to a Mandatory Redemption Schedule. Any portion of such Term Obligations deemed no longer Outstanding for purposes of calculating the Deemed Mandatory Redemption Schedule applicable to such Term Obligations shall be treated as no longer Outstanding solely for purposes of such calculation and such status shall have no force or effect for any other purpose of this Ordinance. The Deemed Mandatory Redemption Schedule for such Term Obligations shall be as follows:

- (i) a Term Obligation to which a Deemed Mandatory Redemption Schedule is applicable shall be deemed to mature in each Fiscal Year during the period composed of: (1) each remaining Fiscal Year during which such Term Obligation is scheduled to remain Outstanding and during which (A) interest only is scheduled to be paid on such Term Obligation and such interest is payable solely from Revenues, (B) no principal is payable on any Serial Obligation plus (2) the Fiscal Year in which the maturity date of such Term Obligation occurs;
- (ii) the principal amount of such Term Obligation which shall be deemed to mature during each Fiscal Year of such period is the amount of principal which, when added to interest deemed to be paid on such Term Obligation during such Fiscal Year (treating all portions of such Term Obligation which have been deemed to mature pursuant to the Deemed Mandatory Redemption Schedule as no longer Outstanding) equals a deemed level Annual Debt Service payment on such Term Obligation for each Fiscal Year of the Deemed Mandatory Redemption Schedule.

"Director" means the Director or the Debt Manager of the Office of Finance and Administration of the City, or any designee of the Director of the Office of Finance and Administration.

"Estimated Average Interest Rate" shall mean as to any Outstanding Obligations during any period in which such Obligations are Variable Rate Obligations:

- (I) to the extent such Variable Rate Obligations have been Outstanding for a period of 12 months or more, the weighted average rate of interest applicable to such Obligations, as the case may be, during the immediately preceding 12 month period, plus one percent; or
- (II) as to any Obligations which have been authorized to be issued or incurred pursuant to, but have not yet been issued or incurred under, a Supplemental Ordinance or which have been Outstanding less than 12 months, as the case may be, 100% of the average rate of one year notes as published in the Bond Buyer index during the immediately preceding 12 month period, plus one percent.

"Expenditure Accounts" means the expenditure Accounts in the Environmental Remediation Fund held by the Bureau of Environmental Services of the City, which shall be used to keep records for accounting purposes of all operating, capital outlay, debt service expenditures relating to the System, and for such other purposes as the City may deem appropriate and in conformance with the intent of this Ordinance. Specific Accounts within the Expenditure Accounts may include: an Operating Expenses Account, a Capital Outlay Account, a Debt Service Account and an Other Expenditures Account, or Accounts of different names intended to serve similar purposes.

"Financing Agreement" shall mean any lease-purchase agreement or installment sale contract or similar financing agreement which do not qualify as Operating Leases hereunder, entered into by the City for the purpose of financing or refinancing the acquisition and/or construction of any additions, extensions, improvements and betterments to and reconstructions of the System.

"Fiscal Year" shall mean the fiscal year of the City as prescribed by law, currently that period commencing on July 1 and continuing to and including the next succeeding June 30.

"Fitch" means Fitch Investors Service.

"Fund" means the Environmental Remediation Fund created and established by the City within the Bureau of Environmental Services.

"Government Obligations" means direct, noncallable, nonprepayable obligations of the United States of America or noncallable, nonprepayable obligations the principal of, and interest on which are irrevocably guaranteed as to timely payment by the United States of America.

"Gross Revenues" means all amounts received by the City from remediation charges imposed by the City pursuant to ORS 459.311, and Sections 17.102.105 and 17.102.170 of the City Code, as such sections may be amended, supplemented, renumbered or otherwise modified from time to time; any amounts received by the City from the leasing, rental, sale or other use of property, facilities or areas located upon property which the City has acquired in order to pursue remediation actions, or in relation to remediation actions to be performed on an adjacent property; and any other sources of revenue which may be added to the Trust Estate hereunder pursuant to a Supplemental Ordinance. Provided, however, notwithstanding anything herein to the contrary and not by way of any limitation on the Trust Estate created hereunder, the proceeds received by the City from the sale of any property or properties comprising the System shall not be taken into account in determining Gross Revenues for purposes of any Net Revenue Covenant, coverage test or other financial calculation required under this Ordinance. Nothing contained herein shall be interpreted or construed to direct or require the inclusion in Gross Revenues of (A) the proceeds of any grants received by the City for remediation actions; (B) the proceeds of any borrowing for Remedial Action Costs pursuant to action of the City other than this Ordinance or a Supplemental Ordinance; (C) the proceeds of any borrowing for capital improvements pursuant to City action other than this Ordinance or a Supplemental Ordinance; (D) the proceeds of any liability insurance; (E) the proceeds of any casualty insurance which the City intends to use for repair or replacement of a portion of the System.

"Interest Payment Date" shall mean any date upon which interest and/or principal on an Obligation issued or incurred pursuant to this Ordinance or any Supplemental Ordinance is due and payable in accordance with the terms of such Obligation.

"Junior Event of Default" shall mean, with respect to Subordinate Obligations, any of those events set forth in the Supplemental Ordinance authorizing the issuance of such Subordinate Obligations.

"Local Budget Law" means ORS 294.305 to 294.565, as amended, and the administrative rules promulgated thereunder.

"Mandatory Redemption Schedule" shall mean with respect to particular Obligations, the schedule pursuant to which such Obligations are subject to mandatory redemption prior to maturity, all as set forth in this Ordinance or the Supplemental Ordinance pursuant to which such Obligations are issued or incurred. A Term Obligation which is subject to a Deemed Mandatory Redemption Schedule is not subject to a Mandatory Redemption Schedule for the purpose of determining whether this definition applies to a particular Obligation.

"Minimum Authorized Denomination" shall mean with respect to a particular Bond, the minimum denomination in which such Bond is permitted to be issued as set forth in this Ordinance or the Supplemental Ordinance authorizing the issuance of such Bond.

"1993 Series A Bonds" means the initial Series of Bonds issued pursuant to this Ordinance. The 1993 Series A Bonds are being issued as Senior Bonds and Taxable Obligations.

"Moody's" shall mean Moody's Investors Service, Inc. a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns.

"Net Revenues" means Gross Revenues less Operating Expenses.

"Obligations" means any Bonds or Financing Agreements issued or incurred by the City under this Ordinance or any Supplemental Ordinance relating hereto. In general, and except as may be specifically noted herein, for convenience references to "Bond Year," "Bond Counsel" and similar notations shall be deemed to apply to all Obligations issued pursuant to this Ordinance, despite any inference that such terms apply only to "Bonds."

"Operating Expenses" means all costs and expenses, including but not limited to any lease or other debt service payments due under an Operating Lease, which are properly treated as expenses of operating and maintaining the System under generally accepted accounting principles applicable to enterprise funds of municipalities. Provided, however, that Operating Expenses shall not include any of the following: (i) depreciation, (ii) any rebates paid from Gross Revenues under Section 148(f) of the Code, (iii) debt service payments made with respect to any Obligation.

"Operating Lease" means any lease, lease-purchase agreement, installment sale contract or similar financing agreements which (i) each have a term of ten years or less and (ii) which require, in the aggregate, total payments in each fiscal year which are not in excess of ten percent (10%) of Operating Expenses for the prior fiscal year.

"Opinion of Bond Counsel" shall mean an opinion of Stoel Rives Boley Jones & Grey, attorneys of Portland, Oregon, or other Bond Counsel acceptable to the City, addressed to the City, to the effect that the action proposed to be taken is authorized or permitted by this Ordinance or the applicable provisions of any Supplemental Ordinance and will not adversely affect the excludability for federal income tax purposes of the interest on any Obligations issued as Tax-Exempt Obligations, and which at the time of rendition of such opinion still are Tax-Exempt Obligations, from the gross incomes of the Owners thereof.

"Ordinance" shall mean collectively, except as the context herein specifically requires otherwise, Ordinance No. 166397 and this Ordinance, as from time to time amended, modified or supplemented by Supplemental Ordinances.

"Outstanding", when used with reference to Obligations of a particular Series, shall mean, as of a particular date, all Obligations of such Series theretofore authenticated and delivered under this Ordinance or the Supplemental Ordinance pursuant to which such Series is issued or incurred, except:

- (i) Obligations theretofore cancelled by the Registrar or delivered to the Registrar for cancellation;
- (ii) Obligations (or portions of Obligations) for the payment, prepayment or redemption of which Government Obligations or cash, equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, shall be held in trust under this Ordinance or any Supplemental Ordinance and set aside for such payment, prepayment or redemption (whether at or prior to the maturity or redemption date), *provided that* if such Obligations (or portions of Obligations) are to be redeemed or prepaid, notice of such redemption or prepayment shall have been given

or provision satisfactory to the Registrar shall have been made for the giving of such notice as provided in this Ordinance or the applicable provisions of any Supplemental Ordinance;

(iii) Obligations in lieu of or in substitution for which other Obligations shall have been authenticated and delivered pursuant to Article III or Section 1006 hereof or the applicable provisions of any Supplemental Ordinance unless proof satisfactory to the Registrar is presented that any such Obligations are held by a *bona fide* purchaser in due course; and

(iv) Obligations paid or deemed to have been paid as provided in Section 1101

In addition, Obligations held by or for the City shall not be deemed to be Outstanding for the purposes and within the purview of Article IX and Article X of this Ordinance.

"**Owner**" shall mean any person who shall be the registered owner of any Obligations as shown by the registration books maintained by the Registrar.

"**Paying Agent**" shall mean, with respect to a particular Series of Obligations, any bank, trust company or national banking association, which may include the Registrar or its successor or successors, authorized by the City pursuant to a Supplemental Ordinance to pay the principal, Prepayment Price, Redemption Price of or interest due on such Series of Obligations and having the duties, responsibilities and rights provided for in this Ordinance and such Supplemental Ordinance and its successor or successors and any other corporation or association which at any time may be substituted in its place pursuant to this Ordinance or the applicable provisions of any Supplemental Ordinance. The initial Paying Agent is Bank of America Oregon, Portland, Oregon.

"**Parity Obligations**" means any Obligations of the City which comply with the provisions of Section 205 of this Ordinance for the issuance of Parity Obligations, and are payable from the Net Revenues on a parity of lien with the Senior Obligations.

"**Permitted Investments**" means any investments in which public moneys of the City may be lawfully invested pursuant to the laws of the State of Oregon as in effect from time to time, including but not limited to Oregon Revised Statutes 294.035.

"**Project**" or "**Projects**" means all activities undertaken by the City and all costs incurred by the City with respect to remediation projects will qualify as Remedial Action and Remedial Action Costs to be financed, in whole or in part, from the proceeds of any Obligations.

"**Qualified Consultant**" means an individual or firm qualified to do business in the State of Oregon as professional engineers, certified public accountants or financial advisers, knowledgeable and experienced in the areas with respect to which such consultants are rendering certification.

"**Rating Agency**" means: (i) with respect to any Obligations then rated by S&P, S&P; (ii) with respect to any Obligations rated by Moody's, Moody's; and (ii) with respect to any Obligations rated by Fitch, Fitch.

"**Record Date**" means, with respect to a particular Series of Obligations, a date which is the fifteenth day of the month immediately preceding the month in which each Interest Payment Date occurs, whether or not a business day, or such other date or dates established by Supplemental Ordinance with respect to a Series of Obligations.

"**Redemption Price**" means, with respect to any Obligation, the amount payable upon the redemption or prepayment thereof prior to maturity, including the principal of, premium (if any) and accrued or accreted interest

thereon.

"Refunding Obligations" means Obligations issued or incurred pursuant to this Ordinance or any Supplemental Ordinance incurred to the extent such Obligations are issued or incurred for the purpose of paying, whether at or prior to the stated maturity thereof, the principal of, premium (if any) and interest on any Outstanding Obligations previously incurred.

"Registrar" shall mean, with respect to a particular Series of Obligations, any bank, trust company or national banking association, which may include the Paying Agent or its successor or successors, authorized by the City pursuant to a Supplemental Ordinance to pay the principal or Redemption Price of or interest due on such Series of Obligations and having the duties, responsibilities and rights provided for in this Ordinance and such Supplemental Ordinance and its successor or successors and any other corporation or association which at any time may be substituted in its place pursuant to this Ordinance or the applicable provisions of any Supplemental Ordinance. The Registrar is initially Bank of America Oregon, Portland, Oregon.

"Remarketing Agent" shall mean with respect to a Variable Rate Obligation, the person or entity designated to act in such capacity with respect to such Variable Rate Obligation pursuant to the Supplemental Ordinance under which such Variable Rate Obligation is issued.

"Remedial Action" shall have the same meaning as the definition of such term contained in ORS 465.200(15) in effect at the time this Ordinance was adopted by the City.

"Remedial Action Costs" shall have the same meaning as the definition of such term contained in ORS 459.311(7) and ORS 465.200(16), when read together, in effect at the time this Ordinance was adopted by the City.

"Reserve Account" means the Reserve Account in the Environmental Remediation Fund held by the Bureau of Environmental Services of the City. Separate Accounts may be established for each Series of Obligations, or, at the option of the City, a commingled reserve account may be established.

"Reserve Equivalent" means a Credit Facility which may be an insurance policy, surety bond or letter of credit issued by a municipal bond insurance company or a commercial bank having a credit rating (when the policy, bond, or letter of credit is issued) of at least Aa or AA as determined by Moody's, Fitch or S&P, or their successors, in which the insurance company or commercial bank agrees unconditionally to provide the City with funds for the payment of debt service on a Series of Obligations, as appropriate, and any obligations issued on a parity therewith pursuant to Section 205 of this Ordinance. Each Reserve Equivalent must be unconditional and irrevocable, and either be in effect until the final maturity date of a Series of Obligations, or if it expires sooner, the City shall provide a substitute Reserve Equivalent or fund the Reserve Account with cash prior to the expiration date of the Reserve Equivalent, and shall be rated by Moody's, if Moody's is then rating the Bonds, S&P, if S&P is then rating the Bonds, and Fitch, if Fitch is then rating the Bonds.

"Reserve Requirement" shall mean:

- (i) with respect to all Obligations issued as Taxable Obligations:
 - (a) With respect to all Senior Obligations, an amount equal to ten percent (10%) of the initial principal amount of such Senior Obligations; and
 - (b) with respect to Subordinated Debt, the amount required to be maintained on deposit in a reserve account established with respect to such Subordinated Debt.

(ii) with respect to Obligations issued as Tax-Exempt Obligations:

- (a) With respect to all Senior Obligations, determined on an aggregate basis, an amount equal to the lesser of: the maximum annual debt service on all Outstanding Senior Obligations; one hundred twenty-five percent of average annual debt service on all Outstanding Senior Obligations; or, ten percent of the initial stated principal amount of all Outstanding Series of Senior Obligations; and
- (b) with respect to Subordinated Debt, the amount required to be maintained on deposit in a reserve account established with respect to such Subordinated Debt.

"Revenue Accounts" means the revenue accounts in the Environmental Remediation Fund held by the Bureau of Environmental Services of the City, which shall be used to keep records for accounting purposes of all Gross Revenues relating to the System from whatever source derived, and for such other purposes as the City may deem appropriate and in conformance with the intent of this Ordinance. Specific Accounts within the Revenue Accounts may include: a Public Works/ Utility Charges Account, a Rents and Reimbursements Account, a Bond and Notes Sales Account, an Interest on Investments Account and an Other Miscellaneous Revenues Account, or Accounts of different names intended to serve similar purposes.

"S&P" shall mean Standard & Poor's Corporation, a corporation organized and existing under the laws of the State of New York, its successors and their assigns.

"Senior Bonds" means all senior lien Bonds issued or incurred under the provisions of this Ordinance and any Supplemental Ordinance which: (i) are secured by a pledge of Net Revenues and the Trust Estate on an equal and ratable (*pari passu*) basis with all other Outstanding Senior Obligations; (ii) which are secured with a claim on the Net Revenues and the Trust Estate senior to all Obligations issued under this Ordinance other than any other Outstanding Obligations and (iii) are designated as "Senior Obligations" in this Ordinance or the Supplemental Ordinance pursuant to which such Obligations are issued.

"Senior Event of Default" means, with respect to the Senior Obligations, any of those events defined as Events of Default in Section 701 hereof.

"Senior Obligations" means, collectively, all Senior Bonds and Financing Agreements designated as having a claim on the Trust Estate on a *pari passu* basis with Senior Bonds which may be Outstanding under this Ordinance from time to time.

"Serial Obligations" shall mean the Obligations of a Series which shall be stated to mature in annual installments, but not including Term Obligations.

"Series" shall mean all of the Obligations issued, authenticated and delivered or incurred, executed and delivered pursuant to this Ordinance or a Supplemental Ordinance on original issuance of a stipulated aggregate principal amount in a simultaneous transaction and any Obligations thereafter authenticated and delivered in lieu of or in substitution therefor pursuant to this Ordinance or such Supplemental Ordinance regardless of variations in maturity, interest rate or other provisions, including: (i) any Additional Obligations issued under this Ordinance or such Supplemental Ordinance; and (ii) any Refunding Obligations issued under this Ordinance or such Supplemental Ordinance.

"Subordinated Debt" shall mean any Obligations of the City which are issued or incurred pursuant to this Ordinance or a Supplemental Ordinance and are secured by a pledge of and lien on the Net Revenues, which lien is junior and subordinate in all respects to the lien on the Net Revenues granted hereunder as security for the payment of the Senior Obligations and which are payable from the Net Revenues on a basis which is subordinate to the payment from Net Revenues of the amounts owing on Outstanding Senior Obligations.

"Supplemental Ordinance" shall mean any ordinance supplemental to or amendatory of this Ordinance, entered into by the City in accordance with this Ordinance.

"State" shall mean the State of Oregon.

"System" means all real and personal property now or hereafter owned, operated, used, or maintained by the City for the undertaking, operation or maintenance of remediation action activities of the City under this Ordinance or functionally related and subordinate thereto.

"Taxable Obligation" shall mean any Obligation issued or incurred by the City, the interest on which is included in gross income for federal income tax purposes.

"Tax Covenants" shall mean, with respect to those Obligations issued as Tax-Exempt Obligations, the covenants of the City to effect the City's compliance with the Code to ensure the initial and continued exclusion from gross income for federal income tax purposes of the interest on such Obligations.

"Tax-Exempt Obligation" shall mean any Obligation issued or incurred by the City the interest on which is excluded from gross income for federal income tax purposes.

"Tender Agent" shall mean with respect to a Variable Rate Obligation, the person or entity designated to act in such capacity with respect to such Variable Rate Obligation pursuant to the Supplemental Ordinance under which such Variable Rate Obligation is issued.

"Term Obligations" shall mean Obligations which: (i) are stated to mature on one date, which date is more than one year after the immediately preceding maturity date of any Obligation of the same series and (ii) which are subject to scheduled mandatory redemption prior to maturity pursuant to a Mandatory Redemption Schedule or are subject to the Deemed Mandatory Redemption Schedule defined and set forth herein. A Term Obligation which is not subject to a Mandatory Redemption Schedule shall be subject to the Deemed Mandatory Redemption Schedule defined and set forth herein for the purpose of determining Annual Debt Service on such Term Obligation.

"Trust Estate" shall mean the properties and assets herein and hereafter pledged as security for the payment of Obligations pursuant to Section 201(iii) hereof.

"Variable Rate Obligation" shall mean any Obligations, which may be either Serial Bonds or Term Bonds issued with a variable, adjustable, convertible, or other similar interest rate which is not fixed in percentage for the entire term thereof at the date of issue or is not fixed for the remaining term of such Obligation as of the date of calculation.

Section 102. Miscellaneous Definitions and Conventions. Words of the masculine or feminine gender shall be deemed and construed to include correlative words of the masculine, feminine and neuter genders (as the case may be). Except where the context otherwise requires, words importing the singular numbers shall include the plural number and *vice versa*, and words importing persons shall include firms, associations, corporations, districts, agencies and bodies as well as natural persons. All reference in this Ordinance to Articles, Sections, and

other subdivisions are to the corresponding Articles, Sections or subdivisions of this Ordinance, and the words herein, hereof, hereunder and other words of similar import refer to this Ordinance as a whole and not to any particular Article, Section subdivision of this Ordinance, and any Table of Contents appended to copies of this Ordinance, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Ordinance. References herein to Bond Year, Bond Counsel, and similar notations shall be deemed to apply to all Obligations, as appropriate.

**ARTICLE II
AUTHORIZATION AND ISSUANCE OF OBLIGATIONS;
PLEDGE OF TRUST ESTATE**

Section 201. Authorization of Obligations; Operating Leases and Other Contracts; Designation; Pledge of Trust Estate; Initial Authorized Principal Amount of Obligations .

(a) Authorization of Obligations; Operating Leases and Other Contracts. In order to provide sufficient funds for the Capital Costs of the System, to provide working capital for the System or to provide such other funds as may be necessary or appropriate in connection with the operation and activities of the System, or for the purpose of refunding any Obligations, the City, pursuant to and in accordance with the terms and provisions of this Ordinance and such Supplemental Ordinances as may hereafter be enacted as provided herein, may issue from time to time Obligations in one or more Series, without limitation as to amount except as may be limited by law or the provisions of this Ordinance or any Supplemental Ordinance. All Obligations authorized by this Ordinance shall be issued only after the City has complied with all applicable provisions of City and State law.

In order to provide for the necessary or appropriate operation of the System, the City may incur from time to time Operating Leases without limitation as to amount except as may be limited by law or the provisions hereof defining "Operating Lease." In addition, the City may incur or enter into from time to time such other contractual agreements which do not constitute Obligations or Operating Leases hereunder as are necessary or appropriate for the operation of the System.

(b) Designation of Obligations. All Series of Obligations issued hereunder shall be either Senior Obligations or Subordinated Debt. Each Series issued as Senior Obligations issued as Bonds shall be designated "City of Portland Environmental Remediation Revenue Bonds, *[insert calendar year in which such Series is issued]* Series *[insert series designation]*". Each series of Bonds designated as Subordinate Debt issued hereunder shall be designated "City of Portland Subordinate Lien Environmental Remediation Revenue Bonds *[insert calendar year in which such Series is issued]* Series *[insert series designation]*". All Series of Obligations issued hereunder to refund or refinance other Obligations issued hereunder shall bear an appropriate designation identifying such as refunding or refinancing Obligations.

(c) Pledge of Trust Estate. As security for the payment of the principal of, premium (if any) and interest on all Outstanding Senior Obligations issued from time to time hereunder, the City, pursuant to and in accordance with the provisions of the Act, does hereby pledge unto the Owners all of the City's right, title and interest to, in and under the following:

(i) the Net Revenues;

(ii) the moneys and investments (including investment earnings thereon) on deposit from time to time in the Debt Service Account and the Reserve Account, including without limitation the City's right, title and interest to, in and under any Credit Facility given for the purpose of meeting all or part of the Reserve Requirement with respect to a Series of Senior Obligations and any moneys drawn or paid under such Credit Facility;

(iii) any Credit Facility given as security for the payment of any amounts owing under or with respect to any Senior Obligations (other than any Credit Facility given for the purpose of meeting all or part of the Reserve Requirement) together with all moneys drawn or paid thereunder; *provided that* with respect to any such Credit Facility which is given as security for some, but not all, Outstanding Senior Obligations, such Credit Facility together with the moneys drawn or paid thereunder shall be held solely as security for the Senior Obligations for which such Credit Facility was given as security and neither such Credit Facility nor any moneys drawn or paid thereunder shall secure the payment of any amounts owing under or with respect to any other Senior Obligations; and

(iv) such other properties and assets and interests in properties and assets as may hereafter be pledged to the payment of the Senior Obligations pursuant to any Supplemental Ordinance or which may be delivered, pledged, mortgaged or assigned by any person as security for the Senior Obligations.

The foregoing are herein collectively referred to as the "Trust Estate".

(d) **Pledge of Trust Estate to Subordinated Debt.** The City may pledge as security for Subordinated Debt a lien on the Trust Estate of such priority and nature as the City deems appropriate in the Supplemental Indenture or other document evidencing the authorization and issuance of such Subordinated Debt, provided, however, that the pledge and lien on the Trust Estate shall not, in any event, be construed or declared to be superior to in *pari passu* right with the pledge and lien on the Trust Estate of any Senior Obligations.

(e) **Initial Authorized Principal Amount of Obligations.** The City is authorized pursuant to the Ordinance to issue Obligations secured by a pledge of, and payable from the Trust Estate hereunder in an aggregate principal amount of not to exceed Six Million Dollars (\$6,000,000). Such aggregate principal amount may be issued in the form of one or more Series of Obligations.

Section 202. Authorization of Initial Series of Senior Bonds; Delegation.

(a) **Authorization of 1993 Series A Bonds.** There is hereby authorized to be issued pursuant to this Ordinance an initial Series of Senior Bonds to be known as the City of Portland Environmental Remediation Revenue Bonds 1993 Series A (the "1993 Series A Bonds"). The 1993 Series A Bonds shall be issued as Taxable Obligations in the aggregate principal amount of not to exceed \$6,000,000. The 1993 Series A Bonds shall bear interest at a rate not to exceed, in the aggregate, eight percent (8%). The 1993 Series A Bonds shall be sold by private negotiated sale to Smith Barney Shearson Inc. on behalf of itself and as representative of the underwriters (the "Underwriters"). The power and authority to determine and establish the aggregate principal amount of the 1993 Series A Bonds to be issued, the maturity dates, the redemption provisions, the interest rates or method for determining the interest rates and other terms and conditions applicable to the 1993 Series A Bonds, the disposition of the proceeds of the 1993 Series A Bonds and the required deposits into the accounts relating to the 1993 Series A Bonds are hereby delegated to the Director.

(b) **Delegation of Duties to Director.** The Director is hereby authorized, empowered and directed, for and on behalf of the City, to:

(i) **Preliminary Official Statement:** cause to be prepared, in accordance with the requirements of ORS 287.018, a preliminary official statement in substantially final form describing the 1993 Series A Bonds and setting forth such information concerning the City and the 1993 Series A Bonds as may be necessary or appropriate to disclose all material information which a prospective investor would need to make an informed decision with respect to an investment in the 1993 Series A Bonds and to "deem final" such document within the meaning of SEC Rule 15c2-12 on behalf of the City;

(ii) **Final Official Statement:** upon the execution and delivery of a bond purchase contract with the Underwriters, to cause to be prepared within the time required by law a final official statement describing the 1993 Series A Bonds and setting forth such information concerning the City and the 1993 Series A Bonds as may be necessary or appropriate in order to disclose all material information which a prospective investor would need in order to make an informed decision with respect to an investment in the 1993 Series A Bonds, and to execute and deliver such official statement on behalf of the City;

(iii) **Sale:** negotiate, execute and deliver a bond purchase contract with the Underwriters containing such terms and conditions for such sale as are acceptable to the Director, provided that such terms of sale shall allow a discount of not more than two percent (2%), excluding any original issue discount;

(iv) **Establish Principal Maturities and Interest Rates:** in connection with the negotiated sale of the 1993 Series A Bonds, establish the principal amount of the Bonds to mature in each year, including both Serial Bonds and Term Bonds and the rate of interest *per annum* to be applicable to the 1993 Series A Bonds of each maturity;

(v) **Reserve:** establish the Reserve Requirement with respect to the 1993 Series A Bonds;

(vi) **Redemption:** determine the terms and conditions relating to optional or mandatory redemption of the 1993 Series A Bonds, specifically including, but not limited to, the authorization of optional redemption from designated excess Net Revenues of the System and determination of the terms of such optional redemption;

(vii) **Obtain Credit Facility:** obtain a policy of insurance, a surety bond, a letter of credit, or any other form of Credit Facility or Reserve Equivalent for the 1993 Series A Bonds and enter into agreement with the Credit Provider relating to the terms and conditions of such Credit Facility ; and

(viii) **Other Documents:** execute and deliver any other certificates or closing documents which are reasonably required to consummate the transactions contemplated by the issuance of the 1993 Series A Bonds, and to issue, sell and deliver the 1993 Series A Bonds.

(c) **Manner of Exercise.** The authority of the Director to determine the terms of the 1993 Series A Bonds as provided above shall be exercised by setting forth such terms as so determined and established in a certificate or other document signed by the Director and delivered at the closing of the issuance of the 1993 Series A Bonds and, to the extent approval of such terms and conditions by the City Council is required under applicable law, such certificate shall constitute the completion of the determination of such matters by the City as a public body.

Section 203. Contents of Supplemental Ordinance Authorizing Further Obligations. Each Obligation issued hereunder, other than the initial Senior Bonds authorized under this Ordinance, shall be authorized pursuant to a Supplemental Ordinance, which Supplemental Ordinance shall:

- (a) Specify that the Obligations are to be Senior Obligations or Subordinated Debt;
- (b) Specify which, if any, of the Obligations are intended to be Tax-Exempt Obligations;
- (c) Specify the aggregate principal amount of such Obligations, the maturity dates, the redemption

provisions, the interest rates or method for determining the interest rates and other terms and conditions applicable to the Obligations;

- (d) Specify the manner in which the Obligations shall be sold;
- (e) Direct the disposition of the proceeds of such Obligations and the required deposits into the accounts relating to such Obligations;
- (f) Specify whether the Obligations of such Series shall be supported or secured by a Credit Facility;
- (g) Specify provisions for Variable Rate Obligations, any Credit Facilities and the appointment of Tender Agents and Remarketing Agents, if any;
- (h) Specify the Authorized Denominations of, and the manner of dating, numbering and lettering, of such Obligations, if appropriate;
- (i) Specify the Project, if any, to be constructed or acquired with the proceeds of such Obligations;
- (j) Set forth the forms of Obligations and of the Registrar's certificate of authentication, if appropriate; and
- (k) Set forth such other terms and provisions of such Obligations and other matters related thereto as shall be necessary or appropriate, which other terms and provisions shall not be inconsistent with the applicable provisions of this Ordinance.

Section 204. Conditions Precedent to Delivery of Obligations. After their authorization, Obligations may be executed by or on behalf of the City and delivered to the Registrar for authentication or executed and delivered by the Registrar as issuer, as appropriate, and, upon compliance with the requirements, if any, set forth in this Ordinance or the Supplemental Ordinance authorizing such Obligations, the Registrar shall thereupon authenticate or execute and deliver such Obligations to or upon the order of the City, but only upon the receipt by the Registrar of:

- (a) an opinion of Bond Counsel to the effect that:
 - (i) the City is a political subdivision of the State with the power to issue the Obligations;
 - (ii) the Obligations have been validly authorized and executed and have been issued for a purpose provided in and authorized by the Act, and this Ordinance or any Supplemental Ordinance enacted by the City in connection with the issuance of the Obligations has been duly enacted by the City and is in full force and effect;
 - (iii) all of the conditions precedent to the issuance of the Obligations as set forth in or pursuant to this Ordinance and the related Supplemental Ordinance have been satisfied or duly waived;
 - (iv) the Obligations constitute legal, valid and binding limited obligations of the City enforceable in accordance with their terms and entitled to the benefit of the related Trust Estate; and
 - (v) if the Obligations are being issued as Tax-Exempt Obligations, that interest on such Obligations is excluded from gross income for federal income tax purposes;

it being intended that such opinion as to the enforceability of the Obligations and this Ordinance may be subject to the exercise of judicial discretion in accordance with general equitable principles and to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable;

(b) a written order for the delivery of the Obligations, signed by the Director;

(c) copies of this Ordinance and, after the issuance of the initial Series of Bonds hereunder, the related Supplemental Ordinance, certified by the Director;

(d) a certificate of the Director stating that the City is not in default in the performance of any of the covenants, conditions, agreements or provisions contained in this Ordinance, the Supplemental Ordinance authorizing such Series, if applicable, or any other Supplemental Ordinance relating to, affecting or otherwise limiting the issuance of Obligations; and

(e) such other documents, instruments, agreements, opinions of counsel, certificates, money and securities as are necessary or appropriate or required by the provisions of this Ordinance and any applicable Supplemental Ordinance.

Section 205. *Pari Passu* Obligations; Credit Agreement Obligations.

(a) **Senior Obligations.** All Senior Obligations issued pursuant to this Ordinance or any Supplemental Ordinance shall be payable *pari passu* with all other Senior Obligations issued hereunder or under any other Supplemental Ordinance and all of the covenants and other provisions relating to the Senior Obligations set forth herein or in any Supplemental Ordinance shall be for the equal benefit, protection and security of the Owners of any Senior Obligations. All Senior Obligations issued pursuant to this Ordinance or any Supplemental Ordinance, regardless of time or times of their issuance, shall rank equally with respect to their lien on the Trust Estate (other than any Credit Facility constituting a part of the Trust Estate) pledged as security for the payment of the Senior Obligations, and their sources and security for payment therefrom, without preference of any Senior Obligations over any other Senior Obligations.

Notwithstanding anything expressed or implied herein or in any Supplemental Ordinance to the contrary, except as otherwise expressly provided in a duly enacted Supplemental Ordinance each Credit Facility given as security for some, but less than all, Outstanding Senior Obligations and any moneys drawn under such Credit Facility shall secure only those Senior Obligations for which such Credit Facility was given as security.

In connection with any Credit Agreement pursuant to which a Credit Facility is provided as security for all or some of the Outstanding Senior Obligations, the City may provide in a Supplemental Ordinance that the financial obligations arising under such Credit Agreement shall be equally and ratably secured by the Trust Estate with all Outstanding Senior Obligations and be payable from the Trust Estate *pari passu* with all Outstanding Senior Obligations, to the same extent and with the same force and effect as if the financial obligations under such Credit Agreement were a Senior Obligation.

(b) **Subordinated Debt.** The City may by Supplemental Ordinance issue or incur Subordinated Debt from time to time. Subordinated Debt may have such claim on the Trust Estate as is specified in the Supplemental Ordinance authorizing its issuance or incurrence. Any Supplemental Ordinance authorizing the issuance of Subordinated Debt shall specifically provide: (i) that regardless of the specific claim of such Subordinated Debt on the Trust Estate, that claim is inferior and junior to the claim on the Trust Estate of all Senior Obligations; (ii) that such Subordinated Debt is not subject to acceleration upon the occurrence of either a Senior Event of Default or a

Junior Event of Default; (iii) that a Junior Event of Default shall not constitute an Event of Default on any Outstanding Senior Obligations; (iv) that all amounts due and unpaid on all Outstanding Senior Obligations shall be repaid in full prior to the payment of any Subordinated Debt upon the occurrence of a Senior Event of Default; (v) that upon the occurrence of a Junior Event of Default no preference shall be given, or detriment imposed, on Subordinated Debt which is also payable from sources other than the Trust Estate; and (vi) that a Senior Event of Default shall not, in and of itself, constitute a Junior Event of Default.

Section 206. Additional Obligations; Refunding Obligations.

(a) **Additional Senior Obligations.** The City may from time to time issue or incur one or more series of Additional Obligations as Senior Obligations for any lawful purpose related to the System or the operation thereof for which Obligations may be issued or incurred under the Act or other applicable law.

The following shall be conditions precedent to the issuance of any Additional Obligations hereunder as Senior Obligations:

(b) **Certificates of City Engineer and City.** The City shall obtain:

(i) **City Engineer's Certificate.** A certificate of the City Engineer certifying an estimate of the amount of the Capital Costs expected to be incurred, which estimate may include costs which have been or will be paid from sources other than the proceeds of such Additional Senior Obligations, and the estimated date of completion for such Project or Projects.

(ii) **City's Certificate.** A certificate of the Director certifying:

(A) **Historical Revenues.** The Net Revenues derived from the System during the most recently completed Fiscal Year or during any 12 consecutive months out of the last 24 months equaled or exceeded 125% of the actual annual debt service payments during such period for all Outstanding Senior Obligations during such period;

(B) **Projected Revenues.** The projected Gross Revenues of the System less projected Operating Expenses of the System for each Fiscal Year during which Senior Obligations will be Outstanding following the Fiscal Year in which the Additional Senior Obligations are proposed to be issued or incurred will equal or exceed 125% of the projected Annual Debt Service on all Outstanding Senior Obligations during each of such Fiscal Years; and

(C) **Rates and Charges.** That the projection of Gross Revenues to be derived from collection of the City's remediation fee in each Fiscal Year included in the certification required by subsection (B) immediately above is, for each Fiscal Year included in such certification, within both the annual remediation fee limitations and the aggregate remediation fee limitations mandated by then applicable State law.

(c) **Refunding Obligations.**

(i) **Senior Obligations.** The City may, from time to time, issue or incur one or more series of Refunding Obligations as Senior Obligations hereunder; *provided that* the maximum Annual Debt Service for all Outstanding Senior Obligations after such issuance or incurrence (including the Refunding Obligations proposed to be issued but not including any Senior Obligations proposed to be refunded by

means of such Refunding Obligations) is not more than \$5,000 greater than the Annual Debt Service for any future Fiscal Year would be on all Outstanding Senior Obligations (including the Senior Obligations proposed to be refunded) if such Refunding Obligations were not issued.

(ii) **Subordinated Debt.** The City may, from time to time, issue or incur one or more series of Refunding Obligations as Subordinated Debt hereunder.

(d) **Provisions Not Applicable to Certain Variable Rate Obligations.** In connection with any Senior Obligations which are Variable Rate Obligations the terms of which permit the City or another party appointed for such purpose to elect to convert the rate(s) of interest applicable thereto to a rate or rates which are fixed and nonvariable through the maturity date thereof, then the provisions of Sections 206(a), (b) and (c) hereof shall not apply in the following situations:

(i) any such conversion of the rate(s) of interest applicable to such Senior Obligations is to a rate or rates which are fixed and nonvariable through the maturity date thereof; or

(ii) in lieu of so converting the interest rate(s), the City elects to issue Refunding Obligations bearing rate(s) of interest fixed to the stated maturity dates thereof.

Section 207. Opinion of Bond Counsel. An Opinion of Bond Counsel shall be delivered prior to the issuance or incurrence of any Additional Obligations or Refunding Obligations stating that such issuance or incurrence, as the case may be, will not impair the exclusion from gross income for federal income tax purposes of interest paid on any Senior Obligations then Outstanding which were issued or incurred as, and which at the time of issuance or incurrence of such Obligations still are, Tax-Exempt Obligations.

ARTICLE III GENERAL TERMS AND PROVISIONS OF OBLIGATIONS

Section 301. Limited Obligations; Medium of Payment; Form and Date; Letters and Numbers; Place of Payment.

(a) **Payment of Obligations; Limited Obligations.** The Obligations issued or incurred hereunder and any obligations under any Credit Agreement relating to a particular Series of Obligations shall be limited obligations of the City payable solely and only from and secured by the Trust Estate specifically pledged thereto.

The Obligations and any obligations under any Credit Agreement shall not constitute a general obligation of the City within the meaning of any constitutional or statutory provision or limitation, but shall be limited obligations of the City payable solely from, and secured solely by, the pledge and lien on the related Trust Estate as described above. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OF OREGON OR ANY OTHER POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL, PREMIUM (IF ANY) OR INTEREST ON THE OBLIGATIONS OR ANY OBLIGATIONS UNDER ANY CREDIT AGREEMENT AND NEITHER THE STATE OF OREGON NOR ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE CITY, SHALL BE OBLIGATED TO PAY THE PRINCIPAL, PREMIUM (IF ANY) OR INTEREST THEREON. Provided, however, that with respect to certain specifically identified issues of Subordinated Debt, the City may create a pledge and lien on other City revenues which is in addition to the pledge and lien on the Trust Estate granted to such Subordinated Debt.

(b) **Medium of Payment.** Except as may be otherwise set forth in any Supplemental Ordinance,

the Obligations issued or incurred hereunder shall be payable, with respect to interest, principal and premium (if any), in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, *provided, however, that* interest shall be paid on such Obligations by checks or drafts to the persons entitled thereto or by such other method of payment as may be specified in a Supplemental Ordinance authorizing the issuance of such Obligations.

(c) **Registered Form.** Tax-exempt Obligations shall be issued only in fully registered form.

(d) **Numbers and Dated Dates.** Each Obligation shall be lettered and numbered as provided in the Supplemental Ordinance authorizing their issuance so as to be distinguished from every other Obligation. Obligations shall be dated as provided in the Supplemental Ordinance authorizing their issuance.

(e) **Place of Payment.** Except as may be otherwise set forth in a Supplemental Ordinance authorizing the issuance or incurrence of a particular Obligation, the principal and premium (if any) of all fully registered Obligations shall be payable upon presentation and surrender of such Obligation at the principal corporate trust office of the Paying Agent, and payment of the interest on each fully registered Obligation shall be made by the Paying Agent to the person appearing on each Record Date on the registration books of the City for such Series as the Owner thereof, by check or draft mailed on the applicable Interest Payment Date, first-class postage prepaid, to such registered Owner at his address as it appears on such registration books or by such other method of payment as may be specified in a Supplemental Ordinance authorizing the issuance of such Obligations.

Section 302. Legends. Obligations may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Ordinance as may be necessary or desirable to comply with custom, the rules of any securities exchange or commission or brokerage board, or otherwise, as may be determined by the City prior to the authentication and delivery thereof.

Section 303. Execution and Certificate of Authentication on Bonds.

(a) **Execution.** The Bonds of each Series shall be executed in the name of the City by the manual or facsimile signatures of the Mayor and the City Auditor and the City's seal (or a facsimile thereof) shall be impressed, imprinted, engraved or otherwise reproduced thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer before the Bonds so signed and sealed shall have been authenticated and delivered by the Registrar, such Bonds may, nevertheless, be authenticated and delivered as herein provided, and may be issued as if the persons who signed or sealed such Bonds had not ceased to hold such offices. Any Bond may be signed and sealed on behalf of the City by such persons as at the time of the execution of such Bonds shall be duly authorized or hold the proper office in the City, although at the date borne by such Bonds or at the time of authentication of such Bonds such persons may not have been so authorized or have held such office.

(b) **Certificate of Authentication.** The Bonds of each Series shall bear thereon a certificate of authentication, in the form set forth in the form of bond attached as an exhibit hereto or in any related Supplemental Ordinance, executed manually by the Registrar or its authorized agent. Only such Bonds as shall bear thereon such certificate of authentication shall be entitled to any right or benefit under this Ordinance or the related Supplemental Ordinance and no Bond shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Registrar. The execution of any such certificate of authentication upon any Bond executed on behalf of the City shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered under this Ordinance and that the Owner thereof is entitled to the benefits of this Ordinance and any related Supplemental Ordinance.

Section 304. Interchangeability of Obligations. Obligations, upon surrender thereof at the principal corporate trust office of the Registrar with a written instrument of transfer satisfactory to the Registrar,

duly executed by the Owner or his duly authorized attorney, may, at the option of the Owner thereof, and upon payment by such Owner of any charges which the Registrar may make as provided in Section 306 hereof, may be exchanged for Obligations of the same Series, date, aggregate principal amount and maturity in any other Authorized Denominations.

Section 305. Transfer and Registry; Persons Treated as Owners. The Registrar shall keep books for the registration of, and for the registration of transfers of, Obligations as provided in this Ordinance and any related Supplemental Ordinance. Except as otherwise provided in a Supplemental Ordinance authorizing a particular Obligation, the Obligations of a particular Series shall be transferable only upon the books of the City kept by the Registrar by the Owner thereof in person or by her attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or her duly authorized attorney. Upon the transfer of any such Obligation, the City shall issue in the name of the transferee a new Obligation of the same Series, maturity date and aggregate principal amount.

The City and the Paying Agent and Registrar may deem and treat the person in whose name any Obligation shall be registered upon the books kept by the Registrar as the absolute owner of such Obligation, whether such Obligation shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal and premium, if any, of and interest on such Obligation and for all other purposes, and all such payments so made to any such Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Obligation to the extent of the sum or sums so paid, and neither the City nor the Paying Agent or Registrar shall be affected by any notice to the contrary.

Section 306. Regulations With Respect to Exchanges and Transfers. In all cases in which the privilege of exchanging Obligations or transferring Obligations is exercised, the City shall execute and the Registrar or its authorized agent shall authenticate and deliver Obligations in accordance with the provisions of this Ordinance. All Obligations surrendered in any such exchanges or transfers shall forthwith be delivered to the Registrar and cancelled by the Registrar in the manner provided in Section 309. For every such exchange or transfer of Obligations, the City or the Registrar may make a charge against the Owner sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. Unless otherwise provided by a Supplemental Ordinance, neither the City nor the Registrar shall be required (a) to transfer or exchange Obligations for a period of 15 days next preceding any selection of Obligations to be redeemed or thereafter until after the mailing of any notice of redemption; or (b) to transfer or exchange any Obligations called for redemption.

Section 307. Obligations Mutilated, Destroyed, Stolen or Lost. If any Obligation becomes mutilated or is lost, stolen or destroyed, the City may execute and the Registrar or its authorized agent shall authenticate and deliver a new Obligation of like Series, maturity date, principal amount and interest rate *per annum* as the Obligation so mutilated, lost, stolen or destroyed, *provided that*:

- (a) in the case of a mutilated Obligation, such Obligation is first surrendered to the Registrar;
- (b) in the case of any such lost, stolen or destroyed Obligation, there is first furnished evidence of such loss, theft or destruction satisfactory to the City together with indemnity satisfactory to the City and the Registrar;
- (c) all other reasonable requirements of the City and the Registrar are complied with; and
- (d) expenses in connection with such transaction are paid by the Owner.

Any mutilated Obligation surrendered for exchange shall be cancelled. Any new Obligations issued pursuant to this Section 307 in substitution for Obligations alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of the City, whether or not the Obligations so alleged to be

destroyed, stolen or lost shall be at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits with all other Obligations of the same Series to the lien of the Trust Estate pledged to such Series.

Section 308. Temporary Obligations. Until definitive Obligations of a Series are prepared, the City may execute, in the same manner as is provided in Section 303, and upon the request of the City, the Registrar or its authorized agent shall authenticate and deliver, in lieu of definitive Obligations of such Series, but subject to the same provisions, limitations and conditions as the definitive Obligations of such Series, one or more temporary Obligations substantially of the tenor of the definitive Obligations of such Series in lieu of which such temporary Obligation is issued, in Authorized Denominations, and with such omissions, insertions and variations as may be appropriate for temporary Obligations. Payment of debt service on such temporary Obligations of a Series shall be in the same manner as for definitive Obligations of the same Series. At its own expense the City shall prepare and execute and, upon the surrender of such temporary Obligations for exchange and, upon the surrender of such temporary Obligations for exchange and the cancellation of such surrendered temporary Obligations, the Registrar or its authorized agent shall authenticate and, without charge to the registered owner thereof, deliver in exchange therefor, definitive Obligations of the same Series and aggregate principal amount and maturity as the temporary Obligations surrendered. Until so exchanged, the temporary Obligations shall in all respects be entitled to the same benefits and security as definitive Obligations of the same Series.

All temporary Obligations surrendered in exchange either for another temporary Obligation or for a definitive Obligation shall be forthwith cancelled by the Registrar in the manner provided in Section 309.

Section 309. Cancellation and Destruction of Obligations. All Obligations paid or redeemed, either at or before maturity shall be delivered to the Registrar when such payment or redemption is made, and such Obligations, together with all Obligations purchased by the City, or on its behalf, shall thereupon be promptly cancelled. Obligations so cancelled shall be destroyed by the Registrar, who shall execute from time to time certificates of destruction in duplicate by the signature of one of its authorized officers describing any Obligations so destroyed, and one executed copy of each such certificate shall be filed with the City and the other executed copy of each such certificate shall be retained by the Registrar.

Section 310. Book-Entry System. The provisions of this Article III may be modified as set forth in a Supplemental Ordinance in order to implement and maintain a book-entry system of registration of the Bonds of such Series.

(a) Provisions for Book-Entry System. The following definitions apply for purposes of an election by the City to adopt a Book-Entry System of registration and transfer:

"Beneficial Owners" shall mean, whenever used with respect to Obligations issued under a Book-Entry System, the person or entity in whose name such Obligation is recorded as the beneficial owner of such Obligation by a Participant on the records of such Participant pursuant to the arrangements for book-entry determination of ownership applicable to the Securities Depository.

"Book-Entry System" shall mean that system whereby the clearance and settlement of securities transactions is made through electronic book-entry changes, thereby eliminating the need of physical movement of securities.

"Cede & Co." shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Obligations.

"DTC" shall mean The Depository Trust Company, a limited purpose trust company organized

under the laws of the State of New York, and its successors and assigns.

"Participant" shall mean a broker-dealer, bank or other financial institution for which DTC holds as Securities Depository Obligations.

"Securities Depository" shall mean, initially, DTC, and its successors and replacement securities depository appointed hereunder.

If so determined by the Director upon the pricing and sale of the Obligations, the Obligations will initially be subject to a Book-Entry System of ownership and transfer, which Book-Entry System shall continue with respect to the Obligations until such time as the same is discontinued as provided in (iii) below. If the Director determines to make the Obligations subject to a Book-Entry System as aforesaid, the general provisions for effecting such Book-Entry System shall be as follows:

(i) The City hereby designates The Depository Trust Company, New York, New York, as the initial Securities Depository for the Obligations.

(ii) Notwithstanding the provisions regarding exchange and transfer of Obligations set forth in this Ordinance, the Obligations shall initially be evidenced by one certificate for each maturity in an amount equal to the aggregate principal amount thereof. The Obligations so initially delivered shall be registered in the name of "Cede & Co." as nominee for The Depository Trust Company. The Obligations may not thereafter be transferred or exchanged on the registration books held by the Registrar except:

(A) to any successor Securities Depository designated pursuant to (C) below;

(B) to any successor nominee designated by a Securities Depository; or

(C) if the City shall, by resolution, elect to discontinue the Book-Entry System pursuant to (iii) below, the City will cause the Registrar to authenticate and deliver replacement Obligations in fully registered form in Authorized Denominations in the names of the beneficial Owners or their nominees; thereafter the provisions of this Resolution regarding registration, transfer and exchange of Obligations shall apply.

(iii) Upon the resignation of any institution acting as Securities Depository hereunder, or if the City determines that continuation of any institution in the role of Securities Depository is not in the best interests of the Beneficial Owners of the Obligations, the City will attempt to identify another institution qualified to act as Securities Depository or will discontinue the Book-Entry System by resolution. If the City is unable to identify such successor Securities Depository prior to the effective date of the resignation, the City shall discontinue the Book-Entry System, as provided in (ii)(C) above.

(iv) So long as the Book-Entry System is used for the Obligations, the Registrar will give any notice required to be given to owners of Obligations only to the Securities Depository or its nominee registered as the owner thereof. Any failure of the Securities Depository to advise any of its Participants, or of any Participant to notify the Beneficial Owner, of any such notice and its content or effect will not affect the validity of any action premised on such notice. Neither the City nor the Registrar shall be responsible or liable for the failure of the Securities Depository or any Participant thereof to make any payment or give any notice to a Beneficial Owner in respect of the Obligations or any error or delay relating thereto.

(v) With respect to Obligations registered in the registration books maintained by the Bond Registrar in the name of the Nominee of the Depository, the City and the Bond Registrar shall have no

responsibility or obligation to any participant or correspondent of the Depository or to any Registered Owner on behalf of which such participants or correspondents act as agent for the Owner with respect to:

(A) the accuracy of the records of the Depository, the Nominee or any participant or correspondent with respect to any ownership interest in the Obligations;

(B) the delivery to any participant or correspondent or any other person, other than an Owner as shown in the registration books maintained by the Bond Registrar, of any notice with respect to the Obligations, including any notice of prepayment;

(C) the selection by the Depository of the beneficial interest in Obligations to be redeemed prior to maturity; or

(D) the payment to any participant, correspondent, or any other person other than the Owner of the Obligations as shown in the registration books maintained by the Registrar, of any amount with respect to principal or interest on the Obligations.

(vi) Notwithstanding the Book-Entry System, the City may treat and consider the Beneficial Owner in whose name each Obligation is registered in the registration books maintained by the Registrar as the holder and absolute owner of such Obligation for the purpose of payment of principal and interest with respect to such Obligation, or for the purpose of giving notices of redemption and other matters with respect to such Obligation, or for the purpose of registering transfers with respect to such Obligation, or for all other purposes whatsoever. The City shall pay or cause to be paid all principal and interest on the Obligations only to or upon the order of the Registered Owner, as shown in the registration books maintained by the Registrar, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligation with respect to payment thereof to the extent of the sum or sums so paid.

ARTICLE IV REDEMPTION OR PREPAYMENT OF OBLIGATIONS

Section 401. Redemption and Prepayment Provisions to be Specified in Supplemental Ordinance. The Obligations of a particular Series shall be subject to mandatory, optional, extraordinary or other redemption or prepayment prior to maturity on such terms and conditions, on such dates and at such redemption prices or prepayment prices as shall be specified in the certificate of the Director delivered with respect to the issuance of the 1993 Series A Bonds or in the Supplemental Ordinance authorizing the issuance of such Series of Obligations. Except as may be otherwise expressly provided herein or in a Supplemental Ordinance with respect to Obligations of a particular Series, Obligations to be redeemed shall be selected and notice of any such redemption or prepayment shall be given in the manner set forth in this Article IV.

Section 402. Selection of Obligations to be Redeemed or Prepaid. If less than all of the Obligations of a like Series and maturity shall be called for redemption or prepayment, the particular Obligations or portions of Obligations of each Series to be redeemed shall be selected by the Registrar in such manner as the Registrar in its discretion may deem fair and appropriate; *provided, however, that* for purposes of any redemption or prepayment in part, each portion of any Obligation equal to the minimum Authorized Denomination for such Obligation shall be treated as a separate Obligation for purposes of such redemption or prepayment and may be called for redemption or prepayment separately from any other portion of such Obligation so long as following such redemption all unredeemed Obligations remaining Outstanding shall be in an Authorized Denomination for such

Obligation. The Registrar shall promptly notify the City in writing of the Obligations so selected for redemption or prepayment.

Section 403. Notice of Redemption or Prepayment. The Registrar shall give notice, in the name of the City, of the redemption or prepayment of Obligations, which notice shall specify the Series and maturities of the Obligations to be redeemed or prepaid, the redemption or prepayment date and the place or places where amounts due upon such redemption or prepayment will be payable and, if less than all of a Series of Obligations of the same maturity are to be redeemed or prepaid, the letters and numbers or other distinguishing marks of such Obligations so to be redeemed or prepaid, and, in the case of Obligations to be redeemed or prepaid in part only, such notice shall also specify the respective portions of the principal amount thereof to be redeemed or prepaid. Such notice shall further state that on such date there shall become due and payable upon each Obligation to be redeemed or prepaid the Redemption Price or prepayment price thereof, or the Redemption Price or prepayment price of the specified portions of the principal thereof in the case of Obligations to be redeemed in part only, together with interest accrued to the redemption or prepayment date, and that from and after such date interest thereon shall cease to accrue and be payable.

The Registrar shall file a copy of such notice with the City and shall mail or cause to be mailed a copy of such notice, by first class mail, postage prepaid, not less than thirty (30) days nor more than sixty (60) days before the redemption or prepayment date to the Owners of any Obligations or portions of Obligations which are to be redeemed or prepaid, at their last addresses appearing upon the registration books held by the Registrar immediately prior to the date on which such notice is mailed. Such mailing shall be a condition precedent to such redemption or prepayment, but defects or inconsistencies in such notice or failure of any Owner of any Obligation to receive such notice shall not affect the validity of the proceedings for the redemption or prepayment of such Obligations. Notwithstanding the foregoing, in the event that any Obligation to be redeemed or prepaid was not issued in registered form (including book-entry), then and in such event notice of such redemption or prepayment shall be published at least once not less than thirty (30) days prior to the redemption or prepayment date in a newspaper of general circulation in any of the cities of New York, New York, San Francisco, California or Chicago, Illinois.

In addition to the foregoing notice, further notice in the form described in the first paragraph of this Section 403 shall be given by the Registrar as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption or prepayment if notice thereof is given as above prescribed:

(a) Notice of redemption or prepayment shall be sent at least 40 days before the redemption or prepayment date by registered or certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Obligations (such depositories now being Depository Trust Company of New York, New York, Midwest Securities Trust Company of Chicago, Illinois, Pacific Securities Depository Trust Company of San Francisco, California and Philadelphia Depository Trust Company of Philadelphia, Pennsylvania) and to one or more national information services that disseminate notices of redemption of obligations such as the Obligations (such as Financial Information, Inc.'s Financial Daily Called Bond Service, Kenny Information Service's Called Bond Service, Moody's Municipal and Government Called Bond Service and Standard & Poor's Called Bond Record).

(b) Notice of redemption or prepayment shall be published one time in the Bond Buyer of New York, New York or, if such publication is impractical or unlikely to reach a substantial number of the owners of the Obligations, in some other financial newspaper or journal which regularly carries notices of redemption or prepayment of other obligations similar to the Obligations, such publication to be made at least 30 days prior to the date fixed for redemption or prepayment.

(c) Upon the payment of the Redemption Price of Bonds being redeemed or the prepayment price of

Leases being prepaid, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer or such similar information as is appropriate with respect to a Lease.

Section 404. Payment of Redeemed Obligations. Notice having been given in the manner provided in Section 403, the Obligations or portions thereof so called for redemption or prepayment, shall become due and payable on the redemption date (or prepayment date) so designated at the Redemption Price (or prepayment price) and, upon presentation and surrender thereof at the office specified in such notice, such Obligations, or portions thereof, shall be paid at the Redemption Price (or prepayment price). If there shall be selected for redemption or prepayment less than all Obligations, the City shall execute and the Registrar or its authorized agent shall authenticate and deliver, upon the surrender of such Obligation or evidence of an interest in the Obligation and without charge to the Owner thereof, a new Obligation of the same Series or evidence of an interest in the same Obligation, as appropriate, and maturity in any of the Authorized Denominations at the option of the Owner thereof for the unredeemed balance of the principal amount of the Obligation or evidence of an interest therein so surrendered. If, on the redemption (or prepayment) date, moneys sufficient to pay the Redemption Price (or prepayment price) of all the Obligations or portions thereof to be redeemed (or prepaid) shall be held by the Paying Agent so as to be available therefor on said date and if notice of redemption (or prepayment) shall have been given as aforesaid, then from and after the redemption (or prepayment) date interest on the Obligations, or portions thereof, so called for redemption (or prepayment) shall cease to accrue and become payable. If said moneys shall not be so available on the redemption (or prepayment) date, such Obligations, or portions thereof, shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption (or prepayment).

**ARTICLE V
ESTABLISHMENT OF FUND AND ACCOUNTS;
DEPOSITS OF GROSS REVENUES AND PROCEEDS;
AND APPLICATION THEREOF**

Section 501. Establishment of Environmental Remediation Fund and Accounts Therein.

(a) Fund and Accounts Established with City. The City has established an Environmental Remediation Fund to be held and maintained with the Bureau of Environmental Services of the City into which shall be deposited all Gross Revenues received by the City in relation to the System, including, but not limited to, remediation charges imposed by the City pursuant to ORS 459.311, and Sections 17.102.105 and 17.102.170 of the City Code, and from which all expenditures relating to the System shall be made. The Environmental Remediation Fund contains Accounts and Subaccounts for the following functions:

- (i) Revenue Accounts, which may consist of separate Accounts or Subaccounts relating to the remediation fee collected with respect to each Project of the System, rents, royalties or other amounts received with respect to properties acquired or leased with respect to operations and Projects of the System, interest on various Accounts within the Environmental Remediation Fund and other revenues constituting Gross Revenues of the System, plus Accounts or Subaccounts relating to the receipt of proceeds of Obligations and other revenues which do not constitute Gross Revenues of the System;
- (ii) Expenditure Accounts, which may consist of separate Accounts or Subaccounts relating to expenditures of the System, including, but not limited to, Operating Expenses, capital outlays, debt service on Obligations, and other funds appropriately accounted for within the Expenditure Accounts;

- (iii) The Reserve Account, which may consist of separate Accounts or Subaccounts for each Series of Obligations issued hereunder, a single commingled Reserve Account for certain types of Obligations, such as Senior Obligations, or any combination thereof consistently applied.

The City may determine from time to time by Supplemental Ordinance to create and establish within each separate Account within the Revenue Accounts, the Expenditure Accounts or the Reserve Account such subaccounts relating to particular Series of Obligations or particular Projects requiring Remedial Action as the City may deem necessary or appropriate, which subaccounts shall constitute a part of the Account in which they are created. The names given or used with respect to particular Accounts herein is not intended to be binding on the City. The City may establish Accounts within the Environmental Remediation Fund with names different than those set forth herein, but which are intended to serve the same purpose or purposes as Accounts with the names used herein would serve. References to particular Accounts herein should be interpreted to apply equally to Accounts by a different name but serving the same purpose or purposes.

Section 502. Application of Gross Revenues.

(a) **Application of Gross Revenues.** The City hereby covenants and agrees, with and for the benefit of the Registrar and the Owners from time to time of the Obligations issued hereunder that from and after the issuance of the first Series of Obligations hereunder and so long as any Obligations are Outstanding hereunder, all Gross Revenues shall be deposited, as and when received by the City, in the Revenue Accounts established within the Environmental Remediation Fund and applied for the following purposes and in the order of priority set forth below:

(i) **First**, to make any deposits into the Expenditure Accounts required for the payment of all Operating Expenses;

(ii) **Second**, to make any deposits into the Debt Service Account within the Expenditure Accounts required by this Ordinance or any Supplemental Ordinance, including (without limitation) the payment of any amounts owing under a Credit Agreement as a result of amounts having been drawn under a Credit Facility given as security for the payment of any amounts owing under or with respect to any Senior Obligations;

(iii) **Third**, to make any deposits into the Reserve Account with respect to Senior Obligations which are necessary to maintain on deposit therein an amount equal to the Reserve Requirement with respect to such Senior Obligations, including (without limitation) the payment of any amounts owing under a Credit Agreement as a result of amounts having been drawn under a Credit Facility given for the purpose of meeting in whole or in part the Reserve Requirement with respect to such Senior Obligations, which deposits shall be made at the times and in the amounts provided in Section 507;

(iv) **Fourth**, to the payment of any amounts owing under or with respect to any Subordinated Debt, including (without limitation) the payment of any amounts owing under a Credit Agreement as a result of amounts having been drawn under a Credit Facility given as security for the payment of any amounts owing under or with respect to any Subordinated Debt or which is provided for the purpose of meeting in whole or in part any reserve requirement established in connection with such Subordinated Debt;

(v) **Fifth**, to make any deposits into the Reserve Account with respect to Subordinated Obligations which are necessary to maintain on deposit therein an amount equal to the Reserve Requirement with respect to such Subordinated Obligations, including (without limitation) the payment of any amounts

owing under a Credit Agreement as a result of amounts having been drawn under a Credit Facility given for the purpose of meeting in whole or in part the Reserve Requirement with respect to such Subordinated Obligations, which deposits shall be made at the times and in the amounts provided in Section 507;

(vi) **Sixth**, to the payment of any rebate amounts then due and owing with respect to any Tax-Exempt Obligations;

(vii) **Seventh**, the balance of the Gross Revenues shall be retained in the Revenue Accounts pending their use and expenditure for the purposes of funding Remedial Action Costs and any other lawful purposes specifically provided for in this Ordinance or in a Supplemental Ordinance.

(b) **Compliance with Local Budget Law.** In enacting this Master Ordinance, it is the intent of the City to ensure full compliance with the requirements of the Local Budget Law for the City's 1993-94 Fiscal Year and each Fiscal Year thereafter. Therefore, the City hereby acknowledges, finds and determines the following:

(i) that the Annual Budget relating to the System for the 1993-94 Fiscal Year has heretofore been duly adopted in accordance with the Local Budget Law, which Annual Budget is intended to remain intact for the remainder of such Fiscal Year notwithstanding any provisions of this Master Ordinance to the contrary, except as said Annual Budget may otherwise be amended or supplemented in accordance with the requirements of the Local Budget Law; and

(ii) during the remainder of the 1993-94 Fiscal Year, all expenditures to be made by the City with respect to any Project to be financed in whole or in part out of the proceeds of any Obligations issued hereunder are to be made solely and only out of:

(A) moneys duly appropriated in accordance with the Local Budget Law, as set forth in the Annual Budget relating to the System for the 1993-94 Fiscal Year or as amended by a Supplemental Budget validly adopted and in force; and

(B) the proceeds of Obligations issued hereunder.

Section 508. Deposits of Proceeds to Certain Accounts.

(a) **Proceeds of Obligations.** The certificate of the Director delivered in connection with the issuance and delivery of each Series of Obligations shall specify the specific amounts to be applied as follows, which amounts shall be applied as soon as practicable after receipt by the City:

(i) the amount, if any, stipulated by this Ordinance or the Supplemental Ordinance authorizing the issuance of such Series of Obligations to be deposited into any Reserve Account shall be deposited in the Reserve Account existing or established with respect to such Series of Obligations (or in lieu of all or part of any such money deposit, the amount which may be drawn upon under any Credit Facility then provided for the purpose of meeting in whole or in part the Reserve Requirement shall be credited to the Reserve Account);

(ii) the amount, if any, stipulated by this Ordinance or the Supplemental Ordinance authorizing the issuance of such Series of Obligations to be deposited into the Bond and Note Sales Account designated to receive the proceeds of issuance of each Series of Obligations shall be deposited in the subaccount therein established for the Project for which the Obligations were issued;

(iii) the amount, if any, of accrued interest paid by the initial purchasers of such Series of

Obligations shall be deposited into the appropriate Subaccount of the Debt Service Account; and

(iv) the amount, if any, stipulated by this Ordinance or a Supplemental Ordinance to be deposited into any other Account established hereunder.

Section 504. Bond and Note Sales Account.

(a) **Deposits.** Upon the issuance and sale of each Series of Obligations there shall be paid into the appropriate Subaccount of the Bond and Note Sales Account established to receive the proceeds arising from the sale of Obligations:

(i) the amounts, if any, required to be paid into such Subaccount by the provisions of this Ordinance or the Supplemental Ordinance authorizing the issuance of a Series of Obligations; and

(ii) at the option of the City, any City Contribution to be used for the purpose of financing a portion of the items sought to be financed out of the proceeds of such Series of Obligations.

(b) **Disbursements from Bond and Note Sales Account.** Amounts on deposit in the subaccount of the Bond and Note Sales Account established with respect to each Series of Obligations shall be transferred to the appropriate Account or Subaccount of the Expenditure Accounts and applied to pay the Capital Costs of the related Project.

(c) **Additional Requirements Imposed By Supplemental Ordinance.** The City may impose by Supplemental Ordinance additional procedures and covenants to be followed in connection with the withdrawal of amounts from the Bond and Note Sales Account, or any Account in the Revenue Accounts by another name serving the same purpose, and Capital Outlay Account or any Account in the Expenditure Accounts by another name serving the same purpose. Any such additional procedures and covenants may be made applicable to all moneys on deposit from time to time in each such Account or Subaccount or only to moneys on deposit from time to time in specific Subaccounts thereof.

(d) **Completion.** Upon the completion of a Project, the balance in the Subaccount of the Bond and Note Sales Account relating to that Project:

(i) shall be transferred to the Other Miscellaneous Revenue Account within the Revenue Accounts, or such other Account within the Revenue Accounts which serves the same purpose, and upon such transfer shall constitute part of the Gross Revenues of the System; and

(ii) if such Obligations are Tax-Exempt Obligations, shall be invested at a yield not in excess of the yield on the related Obligations unless the City causes to be delivered an Opinion of Bond Counsel to the effect that the failure to invest such moneys at a yield not in excess of the yield on the related Obligations will not adversely affect the excludability of the interest on such Obligations from gross income for federal income tax purposes;

provided, however, that such amounts may, at the request of the Director and, if such Bonds are Tax-Exempt Obligations, upon receipt of an Opinion from Bond Counsel to the effect that such use of such amounts will not adversely affect the excludability of the interest on such Obligations from gross income for federal income tax purposes, may be retained in the Bond and Note Sales Account and applied to the payment of any Capital Costs of any other Project.

Section 505. Revenues Accounts. Following the issuance of the first Series of Obligations hereunder

and continuing for so long thereafter as there are Obligations Outstanding, all Gross Revenues shall be deposited in the appropriate Accounts of the Revenue Accounts. The Gross Revenues so deposited shall be used and applied from time to time in the manner, in the order of priority and for the purposes provided in Section 502.

Section 506. The Debt Service Account. Not later than the Business Day immediately preceding an Interest Payment Date on a Series of Obligations, there shall be deposited in the Subaccount of the Debt Service Account within the Expenditure Accounts relating to such Obligations, as provided in Section 502 hereof, the following amounts:

(a) **Amount Equal to Interest Due.** An amount which, when added to any amounts on deposit in the Debt Service Account which are available for such purpose, shall, for each Obligation then Outstanding, equal the interest due on such Obligation on the next Interest Payment Date therefor ;

provided that to the extent that interest on any Obligation has been capitalized, then to such extent the deposit into the Debt Service Account shall be made by means of a transfer of such capitalized interest from the Bond and Note Sales Account within the Revenue Accounts to the Debt Service Account; and

(b) **Amount Equal to Principal Due.** An amount which, when added to any amounts on deposit in the Reserve Account which are available for such purpose, shall, for each Obligation then Outstanding, equal the principal coming due on each Outstanding Obligation on the next Interest Payment Date.

For purposes of Section 506(a) above, the deposits required to be made into the Debt Service Account with respect to interest on any Variable Rate Obligations shall be calculated on the basis of the Estimated Average Interest Rate applicable thereto.

The moneys on deposit from time to time in the Debt Service Account shall be used to pay when due the principal of, interest on, and Redemption Price of the Outstanding Obligations, and the City shall transfer such moneys to the Paying Agent in a timely manner for application to the payment when due of the principal of, interest on and Redemption Price of the Outstanding Obligations. Notwithstanding the foregoing or any other provision herein to the contrary, if any amount applied to the payment of principal of, interest on, or Redemption Price of any Obligations that would have been paid from the Debt Service Account is paid instead by amounts drawn or paid under a Credit Facility, amounts on deposit in the Debt Service Account, and allocable to such payment for said Obligations shall be paid and transferred by the City to the Credit Provider in the manner, at the times and to the extent required under the related Credit Agreement to the related Credit Provider.

Section 507. The Reserve Account. In connection with each issuance of Senior Obligations hereunder the City shall, and with respect to each issuance of Subordinated Debt may, cause to be deposited in the appropriate Account or Subaccount of the Reserve Account an amount such that, when added to the amounts already on deposit in the Reserve Account, will cause the balance on deposit in the Reserve Account to at least equal the Reserve Requirement. For purposes of the foregoing provision, there shall be deemed to be deposited in the Reserve Account an amount equal to the amount available to be drawn by the Paying Agent under any Credit Facility given for the purpose of meeting in whole or in part the Reserve Requirement. The Paying Agent shall draw upon or demand payment under such Credit Facility and apply the moneys so drawn or paid in accordance with the provisions of this Section 507. In addition, the City may, subject only to compliance with the requirements of the Code, transfer or apply amounts held in the Reserve Account upon the refunding of any Obligations issued or incurred pursuant to this Ordinance or any Supplemental Ordinance, regardless of whether or not a defeasance will occur as a consequence of such refunding.

(a) **Transfers From Reserve Account.** If, on any date upon which any amounts of principal of or interest on Outstanding Obligations are due and payable (including any amounts of principal due and payable

pursuant to a Mandatory Redemption Schedule), the amounts on deposit in the appropriate Subaccount of the Debt Service Account within the Expenditure Accounts, when added to moneys drawn or available to be drawn under any Credit Facility for such purpose, are insufficient to pay all amounts of principal of, premium (if any) and interest on the Outstanding Obligations due on such date, then the City shall withdraw from the Subaccount of the Reserve Account related to such Outstanding Obligations, in the order of priority set forth below, an amount equal to such deficiency and apply the amount so withdrawn to the payment of the amounts of principal of, premium (if any) and interest due on the Outstanding Obligations on such date. Withdrawals from the Reserve Account shall be made in the following order of priority:

First, from any cash on deposit in the related Subaccount of the Reserve Account;

Second, from the liquidation proceeds of any investments made from moneys on deposit in the related Subaccount of the Reserve Account, with the City first liquidating those investments with the shortest term to maturity unless otherwise determined by the City; and

Third, from moneys drawn or paid under any Credit Facility given for the purpose of meeting in whole or in part the Reserve Requirement with respect to the Outstanding Obligations.

(b) **Calculation Dates.** The amounts on deposit in the Reserve Account shall be determined by the City:

(i) on July 1 of each year or the first Business Day thereafter;

(ii) on the date of issuance of any Obligations hereunder; and

(iii) as of the date of any withdrawal from the Reserve Account for the purpose of making up any deficiencies in the Debt Service Account.

(c) **Valuation of Reserve Account.** For purposes of determining the amounts on deposit from time to time in the Reserve Account:

(i) all investments with a remaining term to maturity of twenty four months or more shall be valued at the lower of:

(A) the mean between the bid and asked price therefor as shown in the Wall Street Journal last published immediately prior to the date of such determination; or

(B) the amortized cost of such investment; and

(C) there shall be deemed to be on deposit in the Reserve Account an amount equal to the amount available to be drawn by the Paying Agent under any Credit Facility given for the purpose of meeting in whole or in part the Reserve Requirement.

(ii) it shall be conclusively presumed with respect to all investments with a remaining term to maturity of less than twenty four months that the purchase price of the investment equals its market value.

(d) **Transfer of Excess to Debt Service Account.** If, on July 1 of any year, the amounts on deposit in the Reserve Account are in excess of the Reserve Requirement (with investments on deposit therein being valued as provided herein), then the City, shall withdraw from the Reserve Account an amount equal to such excess

and transfer the amount so withdrawn to the Other Miscellaneous Revenue Account within the Revenue Accounts, or to such Account within the Revenue Accounts as serves the same purpose. Upon deposit within the Other Miscellaneous Revenue Account, or other such Account within the Revenue Accounts as serves the same purpose, such amounts shall constitute part of the Gross Revenues of the System. If such amounts relate to Tax-Exempt Obligations, such amounts shall be invested at a yield not in excess of the yield on the related Tax-Exempt Obligations unless the City causes to be delivered an Opinion of Bond Counsel to the effect that the failure to invest such moneys at a yield not in excess of the yield on the related Tax-Exempt Obligations will not adversely affect the excludability of the interest on such Tax-Exempt Obligations from gross income for federal income tax purposes

(e) **Reinstatement of Withdrawals.** In the event that any amounts are withdrawn from the Reserve Account for the purpose of making up any deficiency in the Debt Service Account as described above, the City shall cause to be deposited in the Reserve Account, from the moneys on deposit in the Revenue Accounts and in accordance with the priorities set forth in Section 502 hereof, an amount such that the amount on deposit in the Reserve Account shall at least equal the Reserve Requirement, which deposits shall be made in not more than twelve equal monthly installments commencing on the first day of the month next succeeding the date of the withdrawal from the Reserve Account giving rise to such deficiency. In addition, in the event any amounts are drawn under a Credit Facility given for the purpose of meeting in whole or in part the Reserve Requirement in order to make up any deficiency in the Debt Service Account as described above, the City shall, over a period of not to exceed twelve months or such other period as is provided for by the terms of the Credit Facility upon which amounts were drawn, cause the amount available to be drawn under such Credit Facility to be reinstated to an amount such that the total amount on deposit in the Reserve Account shall at least equal the Reserve Requirement. For purposes of this paragraph, the City shall determine the amount on deposit in the Reserve Account as of the date upon which the City makes the last deposit in the Reserve Account pursuant to the first sentence of this paragraph or as of the date upon which the City has caused the Credit Facility to be reinstated in the amount required by the second sentence of this paragraph, as the case may be. Further, the City shall not optionally redeem or prepay any Obligations issued pursuant to this Ordinance or any Supplemental Ordinance while a deficiency exists in the Reserve Account.

(f) **Application to Final Payments.** If sufficient amounts are on deposit in the Reserve Account to make all remaining payments due on the Obligations secured by such amounts, or in the case of a commingled Reserve Account the Obligations to which such Reserve Account amounts relate, the City may apply the amounts held in the Reserve Account to such payments (whether at maturity, by prior redemption or prepayment or by means of a defeasance as provided in Section 1101 hereof) of all Outstanding Senior Obligations or any other Outstanding Obligations issued pursuant to this Ordinance or any Supplemental Ordinance if no Senior Obligations are then Outstanding.

Section 508. Excess Net Revenues. In the event the Director has designated that a particular Series of Obligations shall be subject to optional redemption from excess Net Revenues at any particular time or from time to time in accordance with the Director's determination, the City shall determine excess Net Revenues available for such optional redemption in accordance with the following procedure:

- (i) as soon as reasonably possible, but no later than September 1 of each Fiscal Year, the City shall determine the beginning Fund Balance in the Environmental Remediation Fund as of July 1 of such Fiscal Year;
- (ii) as soon as reasonably possible, but no later than September 15th of each Fiscal Year, the City shall determine the estimated Gross Revenues, estimated Operating Expenses and the scheduled actual debt service payments due in such Fiscal Year, and shall also preliminarily determine excess Net Revenues for such Fiscal Year by subtracting from such estimated Gross Revenues the estimated Operating Expenses and the scheduled actual debt service payments due in such Fiscal Year;

- (iii) promptly after making the preliminary determination of excess Net Revenues provided for in subsection (ii) immediately above, the City shall determine the actual amount of excess Net Revenues which the City deems appropriate to be used for the optional redemption of Obligations during such Fiscal Year;
- (iii) no later than the fifth Business Day prior to the end of September of each Fiscal Year the City shall notify the Paying Agent of the amount of excess Net Revenues to be used for the optional redemption of Obligations during such Fiscal Year;
- (iv) promptly upon notifying the Paying Agent of the amount of excess Net Revenues to be used to optionally redeem Obligations during such Fiscal Year, the City shall transfer an amount equal to such excess Net Revenues from the Revenue Accounts to the appropriate Subaccount of the Redemption Account; and
- (v) on the Business Day immediately prior to the date set for an optional redemption from excess Net Revenues the City shall transfer from the appropriate Subaccount of the Redemption Account to the related Subaccount of the Debt Service Account the amount designated for the optional redemption of Obligations and such amount shall be immediately transferred and delivered to the Paying Agent for the payment of the Redemption Price on such Obligations on the date set for optional redemption.

ARTICLE VI PARTICULAR COVENANTS OF THE CITY

Section 601. Covenants Applicable to All Obligations. The City covenants and agrees with the Owners of the Outstanding Obligations issued hereunder from time to time that, so long as any Obligations remain Outstanding:

(a) **Payment of Obligations.** The City shall duly and punctually pay or cause to be paid, but solely from the Trust Estate pledged therefor, the principal of, premium, if any, and interest on every Obligation and any obligations under any Credit Agreement at the dates and places and in the manner mentioned in the Obligations or any Credit Agreement, according to the true intent and meaning thereof, subject to the provisions of this Ordinance and the applicable provisions of any Supplemental Ordinance.

(b) **Extension of Payment of Obligations.** The City shall not directly or indirectly extend or assent to the extension of the maturity of any of the Obligations or the time of payment of any interest on the Obligations. Nothing herein shall be deemed to limit the right of the City to issue Refunding Obligations and such issuance shall not be deemed to constitute an extension of maturity of Obligations.

(c) **Further Assurance.** At any and all times the City shall, as far as it may be authorized by law, comply with any reasonable request of any Owners of Obligations or Credit Provider to pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, pledging, assigning and confirming in all and singular the rights, the related Trust Estate and other moneys, securities and funds pledged or assigned as security for any Series of Obligations, or intended so to be, or which the City may become bound to pledge or assign.

(d) **Power to Issue Obligations and to Pledge the Trust Estate and Other Funds.** The City, at the time of enactment of this Ordinance and the issuance of the first Series of Obligations hereunder, is, and

at the time of enactment of any Supplemental Ordinance and the issuance of any Series of Obligations thereunder, will be, duly authorized under all applicable laws to issue the Obligations and to enact this Ordinance and to pledge the Trust Estates and other moneys, securities and funds purported to be pledged as security for particular Series of Obligations in the manner and to the extent provided in this Ordinance and any Supplemental Ordinance. Except to the extent otherwise provided in this Ordinance or any Supplemental Ordinance, the Trust Estates and other moneys, securities and funds so pledged are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created by this Ordinance or any Supplemental Ordinance, and all action on the part of the City to that end has been and will be duly and validly taken. The Obligations and the provisions of this Ordinance and each Supplemental Ordinance are and will be the valid and legally enforceable obligations of the City in accordance with their terms and the terms of this Ordinance and such Supplemental Ordinance. The City shall at all times, to the extent permitted by law, defend, preserve and protect the pledges of the Trust Estates and other moneys, securities and funds pledged under this Ordinance and any Supplemental Ordinance and all the rights of the Owners of the Obligations and the Credit Providers, if any, under this Ordinance, any Supplemental Ordinance and any Credit Agreement, respectively, against all claims and demands of all persons whomsoever.

(e) **General Tax Covenants.** Except with respect to Obligations issued by the City which are not Tax-Exempt Obligations, the City will take all actions within its control required by the Code as necessary to preserve the exclusion of interest received on Obligations issued or, then to be issued, from gross income for federal income tax purposes.

The City will not direct or permit any action within its control which would cause any Obligation issued as a Tax-Exempt Obligation to be or become an "arbitrage bond" within the meaning of section 148 of the Code or direct or permit any action inconsistent with the applicable regulations thereunder as amended from time to time and as applicable to such Obligations.

Except with respect to Obligations issued by the City which are Taxable Obligations, the City shall at all times comply with the Tax Covenants.

(f) **Rebate.** Except with respect to Obligations issued by the City which are Taxable Obligations, the City shall at all times comply with the following covenants. The initial Series of Senior Bonds issued hereunder are Taxable Obligations.

(i) **Calculation of Rebate Amount; Payment.** The City hereby covenants and agrees that, in accordance with the applicable provisions of the Code, it shall calculate, or cause to be calculated, the rebate amount accruing with respect to each issue of Obligations as provided herein. The City shall prepare and maintain detailed information concerning the investments made during the calculation period just ended with any moneys related to such issue of Obligations and the City shall compute the rebate amount for such issue of Obligations in accordance with the requirements of Section 148(f) of the Code.

(ii) **Payment.** In the event the City determines that the City has a positive rebate liability pursuant to Section 148(f) of the Code, the City shall promptly and at a time complying with the requirements of Section 148(f) of the Code make a timely rebate payment to the United States Treasury.

(iii) **Conformance to the Code Requirements; "Issue of Obligations" Defined; Covenant to Survive Payment.**

(A) Notwithstanding anything expressed or implied herein to the contrary:

1. the provisions of this Section 601(f) may be amended from time to

time by the City without the consent of or notice to any Owners to conform to the requirements of the Code regarding the payment of the Rebate Amount to the United States of America or the manner or time of calculating such Rebate Amount; and

2. in no event shall the City be deemed to be in default in respect of its obligations under this Section 601(f) so long as all actions taken by the City with respect to the calculation of the Rebate Amount and the payment thereof to the United States of America conform to the requirements of the Code as such requirements may be changed, modified or amended from time to time.

(B) As used in this Section 601(f), the phrases "issue of Obligations or any words of similar import shall mean all Obligations of whatever Series howsoever incurred which, for purposes of the arbitrage rebate provisions of the Code, are considered to be a single "issue" of obligations.

(C) Notwithstanding anything expressed or implied herein or in any Supplemental Ordinance to the contrary, the covenants of the City set forth in this Section 601(f) shall survive the payment in full and/or defeasance of all Outstanding Tax-exempt Obligations or any particular issue of Tax-exempt Obligations.

(g) **Performance of Covenants in General.** The City shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the City under the provisions of the Act, this Ordinance and each Supplemental Ordinance. Upon the date of authentication or execution and delivery of any of the Obligations, all conditions, acts and things required by law and this Ordinance and any applicable Supplemental Ordinance to exist, to have happened and to have been performed precedent to and in the issuance of such Obligations shall exist, have happened and have been performed and the issue of such Obligations, together with all other indebtedness of the City, shall comply in all respects with the applicable laws of the State.

Section 602. Covenants Applicable Only to Senior Obligations. The City covenants and agrees with the Owners of the Outstanding Senior Obligations issued hereunder from time to time that, so long as any Senior Obligations remain Outstanding:

(a) **Acquisition and Construction of any Project and its Operation and Maintenance.** The City shall use its best efforts to cause any Project financed in whole or in part out of the proceeds of any Senior Obligations to be acquired and constructed in accordance with due diligence and in sound and economical manner. The City shall use its best efforts at all times to cause each such Project to be operated properly and in an efficient and economical manner, and shall cause the same to be maintained, preserved, reconstructed and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the System may be properly and advantageously conducted in a manner which will minimize, to the extent reasonably feasible, any future requirement for additional Remedial Action with respect to System.

(b) **Payment of Taxes and Charges.** The City from time to time duly will pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or required payments in lieu thereof, lawfully imposed upon the System or any Project financed in whole or in part from the proceeds of any Senior Obligations or upon the rights, revenues, income, receipts, and other moneys, securities and funds of the City when the same shall become due (including all rights, moneys and other property transferred, assigned or pledged under this Ordinance or any Supplemental Ordinance in connection with any Senior Obligations), and all lawful claims for labor and material and supplies, except those taxes, assessments, charges or claims which the City shall in good faith contest by proper legal proceedings if the City shall in all such cases have set aside on its books

reserves deemed adequate with respect thereto.

(c) **Power to Establish Charges and Collect Amounts.** The City has, and will maintain, to the extent legally authorized, for so long as any Senior Obligations or any obligations under any Credit Agreement relating to the Senior Obligations are outstanding, good right and lawful power to establish and collect remediation charges imposed by the City pursuant to ORS 459.311, and Sections 17.102.105 and 17.102.170 of the City Code and other fees or charges for the use of the services and facilities of the System which may be legally authorized from time to time, and to cause such remediation fees and other fees and charges to be collected. The City shall take all necessary legal action to assure the collection of Gross Revenues.

(d) **Creation of Liens.** Except as otherwise provided in Section 205 hereof, the City hereafter shall not issue any bonds, notes, debentures, or other evidences of indebtedness of similar nature payable out of or secured by the pledge or assignment of the Trust Estate on a parity with or prior to the payment of the amounts owing under and with respect to the Senior Obligations and shall not create or cause to be created any lien or charge on the Trust Estate equal or superior to the lien on the Trust Estate securing the Senior Obligations; *provided, however, that* nothing contained in this Ordinance shall prevent the City from issuing or incurring, if and to the extent permitted by law, indebtedness:

(i) payable out of moneys in the Construction Account as part of the Capital Costs of any Project to be financed in whole or part out of the proceeds of any Senior Obligations;

(ii) payable out of, or secured by, a pledge and assignment of any part of the Trust Estate to be derived on and after such date as the pledge of the Trust Estate provided in this Ordinance shall be discharged and satisfied as provided in Section 1101 hereof;

(iii) payable out of, or secured by, a pledge or assignment of any part of the Trust Estate which shall be, and shall be expressed to be, subordinate in all respects to the pledge of the Trust Estate as security for the Senior Obligations; or

(iv) arising under any Credit Agreement pursuant to which a Credit Facility is given as security for some or all of the Outstanding Senior Obligations or for the purpose of meeting the Reserve Requirement, it being expressly understood that the City reserves the right to pledge the Trust Estate as security for the obligations arising under such Credit Agreement as permitted under Section 201 hereof.

(e) **Sale and Lease of Property.** No part of the System shall be sold, exchanged, leased, mortgaged, pledged, encumbered or otherwise disposed of, in the aggregate amount of five percent (5%) of the total assets of System per each Fiscal Year except as follows:

(i) The City may sell or exchange at any time and from time to time any property or facilities constituting part of the System only if:

(A) as certified by the City, such sale or exchange of property or facilities will not have a material adverse effect on the City's ability to meet its Net Revenues covenant as provided in Section 602(h) hereof; and

(B) as determined by the City, such property or facility to be so disposed of is not necessary for, or is not useful in, the operation of the System, or such property or facility is not profitable in the operation of the System; or

(C) amounts realized by the City from such sale or exchange are deposited in the

Debt Service Account and are used as soon as authorized under the terms of this Ordinance to redeem or repay, on a pro-rata basis, Outstanding Senior Obligations.

The proceeds of any such sale or exchange not used to acquire other property upon which the City is then obligated to conduct Remedial Action or to redeem or repay Outstanding Senior Obligations shall forthwith be deposited in the Revenue Account.

(ii) The City may lease or make contracts or grant licenses for the operation of, or make arrangements for the use of, or grant easements or other rights with respect to, all or any part of the System; *provided that* any such lease, contract, license, arrangement, easement or right:

(A) as certified by the City, will not have material adverse effect on the operation of the System; and

(B) does not in any material manner impair or adversely affect the rights or security of the Owners of the Outstanding Senior Obligations under this Ordinance.

Any payments received by the City under or in connection with any such lease, contract, license, arrangement, easement or right in respect of the System or any part thereof shall constitute Gross Revenues and shall be deposited into the Revenue Fund.

Notwithstanding the foregoing, no part of the System financed in whole or in part out of the proceeds of any Senior Obligations issued as, and which still are, Tax-Exempt Obligations shall be sold, exchanged, leased, mortgaged or otherwise disposed of unless the City receives an Opinion from Bond Counsel to the effect that the City is authorized to take such proposed action and such sale, exchange, lease, mortgage or other disposition and the proposed use of the proceeds thereof will not adversely affect the exclusion of the interest payable on the Senior Obligations from gross income for federal income tax purposes as such exclusion may be applicable to the interest on the Senior Obligations.

(f) **Limitations on Expenses and Other Costs.** The City shall not incur Operating Expenses and other costs or expenses payable from the Revenue Account in any Fiscal Year in excess of the reasonable and necessary amount of such Operating Expenses and other expenses or costs, respectively.

(g) **Operation and Maintenance.** The City shall at all times cause the System to be operated properly and in an efficient and economical manner, and shall cause the same to be maintained, preserved, reconstructed and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the System may be properly and advantageously conducted so as to minimize, to the extent reasonably feasible, any future requirement for additional Remedial Action with respect to the System.

(h) **Net Revenues Covenant.**

(i) **Annual Covenant.** At all times, the City shall establish, levy, impose, maintain and collect remediation fees, rates and charges for the use of the service and facilities of the System as shall be required to provide Gross Revenues in each Fiscal Year, taking into account all other sources of revenues available to the City which constitute Gross Revenues, which after reduction by the actual Operating Expenses of the System for such Fiscal Year are sufficient to produce Net Revenues at least equal to 125% of Annual Debt Service on all Outstanding Senior Obligations for such Fiscal Year.

For purposes of the foregoing Net Revenues covenant, "Annual Debt Service" with respect to any

Senior Obligations which, during the Fiscal Year in question, were Variable Rate Obligations, shall be calculated by reference to the actual rates of interest borne by such Variable Rate Obligations during such Fiscal Year; and

(ii) **Insufficient Net Revenues.** If the City fails to collect sufficient Net Revenues in any Fiscal Year such failure shall not give rise to a default hereunder if:

(A) the Net Revenues for such Fiscal Year, when added to the moneys on deposit in the Revenue Account as of the last day of such Fiscal Year, equal or exceed 110% of the Annual Debt Service for such Fiscal Year;

(B) within 180 days following the determination of such failure, a Qualified Consultant makes written recommendations regarding the actions the City should take in order to ensure compliance with the foregoing Net Revenues covenant in succeeding Fiscal Years and the City promptly proceeds to implement such written recommendations to the extent the City determines such recommendations are reasonable and can be implemented by the City under the circumstances then prevailing; and

(C) actual Net Revenues collected in the succeeding Fiscal Year meet or exceed the covenant requirements.

(i) **No Free Service.** Except as may be provided for in an ordinance of the City establishing a separate rate, the City will not reduce or eliminate the remediation fee payable by any resident of the City nor allow any use of the service and facilities of the System free of charge to any person, firm or corporation, public or private, and the City will enforce the payment of any and all accounts owing to the City by reason of its ownership, operation or any interest in the System. Provided, however, this covenant shall not restrict the City from setting the remediation fee or fees and charges for the use of the service or facilities of the System at a rate or amount which is less than the highest rate or amount charged for such services or use in any specific part of the System, or otherwise setting rates or amounts in specific circumstances which are not uniform throughout the System.

(j) **Maintenance of Insurance.**

(i) The City shall at all times keep or cause to be kept the properties of the System which are of an insurable nature and of the character usually insured by those constructing or operating properties similar to the System insured against loss or damage by fire and from other causes customarily insured against and in such relative amounts as are usually obtained. The City shall maintain or cause to be maintained insurance or reserves against loss or damage from such hazards and risks to the person and property of others as are usually insured or reserved against by those constructing or operating properties similar to the properties of the System. The City shall maintain or cause to be maintained any and all such insurance as may be required by law.

(ii) Any such insurance shall be:

(A) in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the City; or

(B) in the form of self-insurance.

(k) **Reconstruction; Application of Insurance or Condemnation Proceeds.**

(i) If any useful portion of the System shall be damaged or destroyed or condemned through the power of eminent domain, the City shall as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted the repair, reconstruction or replacement thereof, or the substitution of other facilities constituting a portion of the System for such portion damaged or destroyed or condemned. However, no such reconstruction, replacement or substitution shall be done if the City shall decide not to so repair, reconstruct, replace or substitute in accordance with this Section 602(k).

(ii) The proceeds of any insurance or condemnation award, including the proceeds of any self-insurance fund, received on account of such damage or destruction (other than any business interruption loss insurance) shall be held by the City in a special subaccount of the Construction Account and made available for and to the extent necessary be disbursed and applied to the cost of such reconstruction, replacement or substitution in the same manner as other moneys on deposit in the Construction Account are disbursed. Pending such application, such proceeds may be invested by the City in investments which mature not later than such times as shall be necessary to provide moneys when needed to pay such costs of reconstruction or replacement. Interest earned on such account or investments shall be retained in the special account.

(iii) The proceeds of any insurance or condemnation award, including the proceeds of any self-insurance, not applied within thirty-six (36) months after receipt thereof by the City to repairing or replacing damaged or destroyed property, or substituting other property therefor shall be:

(A) deposited into the Revenue Account but only upon prior receipt by the City of an Opinion of Bond Counsel to the effect that such disposition will not adversely affect the excludability of the interest on any Senior Obligations issued as, and which still are, Tax-Exempt Obligations from the gross incomes of the Owners thereof for federal income tax purposes; or

(B) applied in such other manner as the City shall be advised in an Opinion of Bond Counsel will not adversely affect the excludability of the interest on any Senior Obligations issued as, and which still are, Tax-Exempt Obligations from the gross incomes of the Owners thereof for federal income tax purposes and the proposed application is authorized by this Ordinance.

(iv) Notwithstanding any other provisions hereof, no substitution of other property or facilities for property or facilities damaged or destroyed shall be made without obtaining an Opinion of Bond Counsel that the substitution of such property will not impair the exclusion from gross income for federal income tax purposes of interest paid on any Senior Obligations then Outstanding issued as, and which still are, Tax-Exempt Obligations.

(v) If any portion of the System shall have been damaged or destroyed or condemned and the City, at any time, has determined that the operation of the System has not been materially affected (and has so notified the issuer of any Credit Facility given as security for any Senior Obligations and the City has received an Opinion of Bond Counsel that such failure to repair, reconstruct, replace or substitute will not impair the exclusion from gross income for Federal income tax purposes of interest paid on any Senior Obligations then Outstanding issued as, and which still are, Tax-Exempt Obligations) and the City therefore has determined not to repair, reconstruct, replace or make substitution for that portion of the System so damaged or destroyed, the proceeds of insurance, if any, shall be:

(A) deposited into the Revenue Account but only upon delivery to the City of an Opinion of Bond Counsel to the effect that such disposition will not adversely affect the excludability of the interest on any Senior Obligations issued as, and which still are, Tax-Exempt Obligations from the gross incomes of the Owners thereof for federal income tax purposes; or

(B) applied in such other manner as the City shall be advised in an Opinion of Bond Counsel will not adversely affect the excludability of the interest on any Senior Obligations issued as, and which still are, Tax-Exempt Obligations from the gross incomes of the Owners thereof for federal income tax purposes.

(vi) If the proceeds of insurance or condemnation, including the proceeds of any self-insurance fund, are insufficient for such purpose, the deficiency may be supplied out of moneys in the Construction Account and the Revenue Account to the extent, as shown by a certificate of the Director filed with the issuer of any Credit Facility given as security for any Senior Obligations, not needed to be reserved for the purposes provided therefor.

(vii) The proceeds of business interruption loss insurance, if any, received shall be paid into the Revenue Account.

ARTICLE VII EVENTS OF DEFAULT; REMEDIES OF OWNERS

Section 701. Senior Events of Default.

(a) **Senior Default.** The occurrence of any one or more of the following events shall constitute a "Senior Event of Default":

(i) if default shall be made by the City in the due and punctual payment of the principal of, premium (if any) or interest on any Senior Obligations when and as the same shall become due and payable, whether at maturity or by call for redemption, or otherwise;

(ii) if default with respect to the Senior Obligations shall be made by the City in the performance or observance of any other of the covenants, agreements or conditions on its part in this Ordinance, any Supplemental Ordinance or in the Senior Obligations contained, and such default shall continue for a period of sixty (60) days after written notice thereof to the City by the Paying Agent or Registrar, or to the City and to the Registrar by the Owners of not less than fifty percent (50%) in aggregate principal amount of the Senior Obligations Outstanding;

(iii) if the City shall file a petition or otherwise seek relief under any federal or state bankruptcy law or similar law;

(iv) if an order or decree shall be entered, with the consent or acquiescence of the City, appointing a receiver or receivers of the System, or any part thereof, or of the Gross Revenues therefrom, or if such order or decree having been entered without the consent or acquiescence of the City, shall not be vacated or discharged or stayed within ninety (90) days after the entry thereof;

(v) written notice shall have been received by the City and the Registrar from the issuer of a Credit Facility for any Series of Senior Obligations that an event of default has occurred under the related Credit Agreement or there shall have been a failure by said issuer to make said Credit Facility available or to reinstate the interest component of said Credit Facility in accordance with the terms of said Credit Facility, to the extent said notice or failure is established as an event of default under the terms of any Supplemental Ordinance executed and delivered in connection with the issuance of any Series of Senior Obligations; or

(vi) the occurrence of any other event that shall be expressly stated to constitute a Senior Event of Default under any Supplemental Ordinance relating to the Senior Obligations.

(b) **Appointment of Receiver.** Upon the occurrence of a Senior Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Owners of the Senior Obligations under this Ordinance, the City covenants and agrees to have a Receiver appointed as custodian of the System, with such power as the court making such appointment shall confer. All costs and expenses of such action by the Receiver shall be borne solely by the City. If a Senior Event of Default shall have occurred the Receiver shall apply Net Revenues as set forth in Section 704 below.

(c) **Acceleration of Principal After Default.** So long as a Senior Event of Default shall have occurred and be continuing, unless the principal of all the Senior Obligations shall have already become due and payable, the Receiver (by notice in writing to the City) may, and upon the written request of the Owners of not less than fifty percent (50%) in aggregate principal amount of the Senior Obligations Outstanding (by notice in writing to the City), shall declare the principal of all the Senior Obligations then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this Ordinance or in any Supplemental Ordinance contained to the contrary notwithstanding.

(d) **Conditions of Right to Accelerate.** The right of the Receiver or of the Owners of not less than fifty percent (50%) in aggregate principal amount of Senior Obligations then Outstanding to make any such declaration as aforesaid, however, is subject to the condition that if, at any time after such declaration, but before the Senior Obligations shall have matured by their terms, all overdue installments of interest upon the Senior Obligations, together with interest on such overdue installments of interest to the extent permitted by law and the reasonable and proper charges, expenses and liabilities of the Receiver, and all other sums then payable by the City under this Ordinance (except the principal of, and interest accrued since the next preceding Interest Payment Date on the Senior Obligations due and payable solely by virtue of such declaration) shall be paid for the account of the City or provision satisfactory to the Receiver shall be made for such payment, and all defaults under the Senior Obligations or under this Ordinance (other than the payment of principal and interest due and payable solely by reason of such declaration) shall be cured or be secured to the satisfaction of the Receiver or provision deemed by the Receiver to be adequate shall be made therefor, then and in every such case the Receiver, by written notice to the City and the Owners of the Outstanding Senior Obligations, or the Owners of fifty percent (50%) in aggregate principal amount of the Senior Obligations Outstanding, by written notice to the City and to the Receiver, may rescind such declaration and annul such default in its entirety, but no such recession or annulment shall extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

Section 702. Junior Events of Default.

(a) **Junior Default.** The events constituting a "Junior Event of Default" shall be set forth in each Supplemental Ordinance authorizing the issuance of Subordinated Debt.

(b) **No Right to Accelerate Following a Junior Default.** Each Supplemental Ordinance authorizing the issuance or incurrence of Subordinated Debt shall specify those terms and condition set forth in Section 205(b) above and in addition to the other requirements relating to Subordinated Debt contained herein, that the Owners of Subordinated Debt shall have no power or authority to declare the principal of, or interest on all or any portion of Subordinated Debt to be due and payable immediately upon the occurrence of a Junior Event of Default.

(c) **Limited Rights of Subordinated Debt Owners.** Each Supplemental Ordinance authorizing the issuance or incurrence of Subordinated Debt shall further specify:

(i) that a Junior Event of Default shall not constitute an Event of Default on any Outstanding Senior Obligations; and

(ii) that all amounts due and unpaid on all Outstanding Senior Obligations shall be repaid in full prior to the payment of any Subordinated Debt upon the occurrence of a Senior Event of Default.

Section 703. Accounting and Examination of Records After Default The City covenants that if a Senior Event of Default shall have happened and shall not have been remedied, the books of record and accounts of the City and all other records relating to the System shall at all times be subject to the inspection and use of the Receiver and of its agents and attorneys.

Section 704. Application of Revenues and Other Moneys After Senior Event of Default.

(a) **Application of Moneys by Receiver.** During the continuance of a Senior Event of Default, the City, acting upon the directions of the Receiver shall apply all moneys, securities, funds which constitute Gross Revenues in the following order:

(i) **Expenses of Agents:** to the payment of the reasonable and proper charges, expenses and liabilities of the Agents for the Senior Obligations;

(ii) **Operating Expenses:** to the payment of the amounts required for reasonable and necessary Operating Expenses of the System;

(iii) **Payment of Obligations:** to the payment of the interest and principal then due on the Outstanding Obligations and for payment of obligations under any Credit Agreement relating to a Credit Facility given as security for any Series of Obligations as follows:

(A) if the principal of all Senior Obligations has not been declared due and payable,

First: To the payment of interest then due and unpaid principal on Outstanding Senior Obligations in the order of the maturity of such installments and, if the amount available is not sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, without any discrimination or preference;

Second: To the payment of any amounts owing to the issuer or issuers of any Credit Facility given as security for any Series of Senior Obligations, ratably according to the amounts due thereon, without any discrimination or preference; and

Third: To the payment of any amounts owing to the issuer or issuers of any Credit Facility given for the purpose of meeting in whole or in part the Reserve Requirement; and

Fourth: To the payment to the persons entitled thereto of all installments of interest and unpaid principal then due on any Outstanding Subordinated Debt in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, without any discrimination or preference;

(B) if the principal of all Senior Obligations has been declared due and payable:

First: to the payment of the principal and interest then due and unpaid upon the Outstanding Obligations and for payment of obligations under any Credit Agreement relating to a Credit Facility given as security for any Series of Senior Obligations (other than a Credit Facility given for the purpose of meeting in whole or in part the related Reserve Requirement), without preference or priority of principal over interest, or of any Senior Obligation over any other Senior Obligations or Credit Agreement, ratably, according to the amounts due respectively, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Senior Obligations or Credit Agreement, of the obligations due and payable, ratably according to the amounts due thereon; and

Second: to the payment of any amounts owing under a Credit Agreement relating to a Credit Facility given for the purpose of meeting in whole or in part the related Reserve Requirement for any Outstanding Senior Obligations;

Third: To the payment of all installments of interest or principal then due on any Outstanding Subordinated Debt in the order of the maturity, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, without any discrimination or preference;

(b) **Application of Moneys After Cure of Default.** If and whenever all overdue installments of interest on all Senior Obligations, or under any Credit Agreement relating to a Credit Facility given as security for a Series of Senior Obligations, together with the reasonable and proper charges, expenses and liabilities of the Receiver and Agents, and all other sums payable for the account of the City under this Ordinance shall be paid for by the account of the City, or provision satisfactory to the Receiver shall be made for such payment, and all defaults under this Ordinance or the Senior Obligations or under any Credit Agreement relating to a Credit Facility given as security for a Series of Senior Obligations, shall be made good or secured to the satisfaction of the Receiver or provision deemed by the Receiver to be adequate shall be made therefor, the Receiver shall resign, and thereupon the City shall be restored to its former position and rights under this Ordinance and all Supplemental Ordinances. No such restoration of the City to its former position and rights shall extend to or affect any subsequent default under this Ordinance or any Supplemental ordinance relating to the Senior Obligations or impair any right consequent thereon.

Section 705. [Reserved.]

Section 706. Proceedings Brought by Receiver. If a Senior Event of Default shall happen and shall not have been remedied, then and in every such case, the Receiver, by its agents and attorneys, may proceed, and upon written request of the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Senior Obligations Outstanding shall proceed, to protect and enforce their rights and the rights of the Owners of the Senior Obligations or the issuer of any Credit Facility given as security for any Series of Senior Obligations, under this Ordinance forthwith by a suit or suits in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted or any remedy granted under the Act, or for an accounting against the City as if the City were the trustee of an express trust, or in the enforcement of and other legal or equitable right as the Receiver, being advised by counsel, shall deem most effectual to enforce any of its rights or to perform any of its duties under this Ordinance.

All rights of action under this Ordinance may be enforced by the Receiver without the possession of any of the Senior Obligations or the production thereof on the trial or other proceedings, and any such suit or proceedings instituted by the Receiver shall be brought in its name.

The Owners of not less than a majority in principal amount of the Senior Obligations at the time Outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Receiver, or of exercising any trust or power conferred upon the Receiver, *provided that* the Receiver shall have the right to decline to follow any such direction if the Receiver shall not be provided adequate security and indemnity or shall be advised by counsel that the action or proceeding so directed may not lawfully be taken or shall be inconsistent with the provisions of this Ordinance, or if the Receiver in good faith shall determine that the action or proceeding so directed would involve the Receiver in personal liability or be unjustly prejudicial to the Owners of Senior Obligations not parties to such direction.

Upon commencing a suit in equity or upon other commencement of judicial proceedings by the Receiver to enforce any right under this Ordinance, the Receiver shall be entitled to exercise any and all rights and powers conferred in this Ordinance and provided to be exercised by the Receiver upon the occurrence of any Senior Event of Default.

Regardless of the happening of a Senior Event of Default, the Receiver shall have power to, but unless requested in writing by the Owners of a majority in principal amount of the Senior Obligations then Outstanding, and furnished with reasonable security and indemnity, shall be under no obligation to, institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Ordinance by any acts which may be unlawful or in violation of this Ordinance, and such suits and proceedings as the Receiver may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Owners of the Outstanding Senior Obligations.

Section 707. [Reserved.]

Section 708. Restriction on Owner's Action. No Owner of an Obligation which does not constitute a Senior Obligation hereunder shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Ordinance or the execution of any trust under this Ordinance or for any remedy under this Ordinance. No Owner of any Senior Obligation having a right to seek a remedy for a Senior Event of Default hereunder shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Ordinance or the execution of any trust under this Ordinance or for any remedy under this Ordinance, unless such Owner shall have previously given to the City written notice of the happening of a Senior Event of Default, as provided in this Article, and the Owners of at least 25% in aggregate principal amount of the Senior Obligations then outstanding shall have filed a written request with the Receiver, and shall have offered it reasonable opportunity, either to exercise the powers granted in this Ordinance or by the Act or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Owners shall have offered to the Receiver adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Receiver shall have refused to comply with such request for a period of sixty (60) days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no one or more Owners of Senior Obligations shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this Ordinance, or to enforce any right under this Ordinance, except in the manner therein provided; and that all proceedings at law or in equity to enforce any provision of this Ordinance shall be instituted, had and maintained in the manner provided in this Ordinance and for the equal benefit of all Owners of the Outstanding Senior Obligations and, except as otherwise provided in a Supplemental Ordinance, the issuers of all Credit Facilities given as security for any Senior Obligations.

Nothing in this Ordinance or in the Senior Obligations shall affect or impair the obligation of the City, which is absolute and unconditional, to pay, but solely and only from the Trust Estate pledged therefor, at the respective dates of maturity and places therein expressed the principal of (and premium, if any) and interest on the Senior Obligations to the respective Owners thereof or the issuer of any Credit Facility given as security for any Series of Senior Obligations or affect or impair the right of action, which is also absolute and unconditional, of any

Owner or the issuer of such Credit Facility to enforce such payment of his Senior Obligation.

Section 709. Not Exclusive. No remedy by the terms of this Ordinance conferred upon or reserved to the Receiver or the Owners of the Senior Obligations is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or existing at law, including under the Act, or in equity or by statute on or after the effective date of this Ordinance.

Section 710. Effect of Waiver and Other Circumstances. No delay or omission of the Receiver or any Owner of any Senior Obligations to exercise any right or power arising upon the happening of a Senior Event of Default shall impair any right or power or shall be construed to be a waiver of any such Senior Event of Default or be an acquiescence therein; and every power and remedy given by this Article to the Receiver or to the Owners of the Senior Obligations may be exercised from time to time and as often as may be deemed expedient by the Registrar or by the Owners of the Senior Obligations.

Prior to the declaration of maturity of the Senior Obligations as provided in Section 801, the Owners of not less than a majority in principal amount of the Senior Obligations at the time Outstanding, or their attorneys-in-fact duly authorized, may on behalf of the Owners of all of the Senior Obligations waive any past default under this Ordinance and its consequences, except a default in the payment of interest on or principal of or premium (if any) on any of the Senior Obligations. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 711. Termination of Proceedings. In case any proceeding taken by the Receiver on account of any Senior Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Receiver, the Owners of the Senior Obligations or the issuer of any Credit Facility given as security for any Senior Obligations, then the City, the Receiver, the issuer of any Credit Facilities given as security for any Senior Obligations and the Owners of the Senior Obligations shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Receiver, the issuers of any Credit Facilities given as security for any Senior Obligations and the Owners of the Senior Obligations shall continue as if no such proceeding had been taken.

Section 712. Notice of Default. The Receiver and the City shall notify the issuer of any Credit Facility given as security for any Series of Senior Obligations of the happening of a Senior Event of Default and the Receiver, after its appointment, shall promptly mail written notice of the occurrence of any Senior Event of Default to each Owner of Senior Obligations then Outstanding at his address, if any, appearing upon the registry books of the City.

Section 713. Credit Provider's Rights Upon Events of Default.

(a) **Credit Provider as Owner of Bonds.** Anything in this Ordinance to the contrary notwithstanding, if any Senior Event of Default hereof has occurred and is continuing while a Credit Facility securing all or a portion of the Senior Obligations Outstanding is in effect, including but not limited to a Credit Facility providing all or a portion of the Reserve Requirement with respect to one or more Series of Senior Obligations, the issuer of such Credit Facility, to the extent so authorized in the applicable Supplemental Ordinance, shall have the right, in lieu of the Owners of the Senior Obligations secured by said Credit Facility, by an instrument in writing, executed and delivered to the Receiver, to direct the time, method and place of conducting all remedial proceedings available to the Receiver under this Ordinance, or exercising any trust or power conferred on the Receiver by this Ordinance to the same extent and subject to the same conditions and limitations as if it were the Owner of the Senior Obligations secured by such Credit Facility.

(b) **Limitation on Credit Provider Rights.** Notwithstanding the foregoing, no issuer of a

Credit Facility given as security for any Senior Obligations shall be entitled to exercise any rights under this Section 713 during any period where:

- (i) the Credit Agreement or Credit Facility to which such Credit Provider is a party shall not be in full force and effect;
- (ii) such Credit Provider shall have filed a petition or otherwise sought relief under any federal or state bankruptcy or similar law;
- (iii) such Credit Provider shall, for any reason, have failed or refused to honor a proper demand for payment under such Credit Facility; or
- (iv) an order or decree shall have been entered, with the consent or acquiescence of such Credit Provider, appointing a receiver or receivers of the assets of the Credit Provider, or if such order or decree having been entered without the consent or acquiescence of such Credit Provider, shall not have been vacated or discharged or stayed within ninety (90) days after the entry thereof.

ARTICLE XIII CONCERNING THE AGENTS

Section 801. Acceptance of Duties by Registrar and Paying Agent. Bank of America Oregon, Portland, Oregon, is hereby appointed Paying Agent and also appointed Registrar. The Registrar shall signify its acceptance of the duties and obligations imposed upon it by this Ordinance by executing and delivering to the City a written acceptance thereof. The Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Ordinance by executing and delivering to the City a written acceptance thereof. Only one entity shall be appointed to act at any one time as Registrar. Only one entity shall be appointed to act at any one time as Paying Agent.

Section 802. Responsibilities of Agents. Any recitals of fact herein, in any Supplemental Ordinance and in an Obligation contained shall be taken as the statements of the City and no Agent assumes any responsibility for the correctness of the same. No Agent makes any representations as to the validity or sufficiency of this Ordinance, any Supplemental Ordinance or of any Obligations issued or incurred thereunder or as to the security afforded by this Ordinance or any Supplemental Ordinance, and no Agent shall incur any liability in respect thereof. The Registrar shall, however, be responsible for its representation contained in its certificate of authentication on a Series of Bonds and its execution of evidences of interest in a Lease. No Agent shall be under any responsibility or duty with respect to the application of any moneys paid by such Agent in accordance with the provisions of this Ordinance or any Supplemental Ordinance to any other Agent. No Agent shall be under any obligation or duty to perform any act which would involve it in any expense or liability or to institute or defend any suit in respect thereof, or to advance any of its own moneys, unless properly indemnified. Subject to the provisions of the second paragraph of this Section 802, no Agent shall be liable in connection with the performance of its duties hereunder except for its own negligence, misconduct or default.

The Registrar, prior to the occurrence of a Senior Event of Default and after the curing of all Senior Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Ordinance. In case a Senior Event of Default has occurred (which has not been cured) the Registrar shall exercise such of the rights and powers vested in it by this Ordinance and any applicable Supplemental Ordinance, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of her own affairs.

Section 803. Evidence on Which Agents May Act. Each Agent, upon receipt of any notice

resolution, request, consent, order, certificate, report, opinion, bond, or other paper or document furnished to it pursuant to any provision of this Ordinance or any Supplemental Ordinance, shall examine such instrument to determine whether it conforms to the requirements of this Ordinance or the applicable provisions of a Supplemental Ordinance and shall be protected in acting upon any such instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. Each Agent may consult with counsel, who may or may not be Bond Counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it under this Ordinance in good faith and in accordance therewith.

Whenever any Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Ordinance or any Supplemental Ordinance, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of the City, and such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of this Ordinance or such Supplemental Ordinance upon the faith thereof; but in its discretion the Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Except as otherwise expressly provided in this Ordinance or a Supplemental Ordinance, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision thereof by the City to any Agent shall be sufficiently executed in the name of the City by the Director thereof.

Section 804. Compensation. The City shall cause to be paid to each Agent from time to time reasonable compensation for all services rendered under this Ordinance, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Ordinance and any Supplemental Ordinance and each Agent shall have a lien therefor on any and all funds at any time held by it under this Ordinance or any Supplemental Ordinance except with respect to any monies drawn under a Credit Facility.

Section 805. Certain Permitted Acts. Any Agent may become the owner of any Obligations or Agreements, with the same rights it would have if it were not a Agent. To the extent permitted by law, any Agent may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners or to effect or aid in any reorganization growing out of the enforcement of the Obligations or this Ordinance, whether or not any such committee shall represent the Owners of a majority in principal amount of the Senior Obligations then Outstanding.

Section 806. Resignation of Registrar. Except as otherwise expressly provided in a Supplemental Ordinance, the Registrar may at any time resign and be discharged of the duties and obligations created by this Ordinance or any Supplemental Ordinance by giving not less than sixty (60) days' written notice to the City and the issuer of any Credit Facility, and mailing notice thereof, postage prepaid, specifying the date when such resignation shall take effect, to each registered Owner of Obligations then Outstanding at his address appearing upon the registry books of the Registrar, and such resignation shall take effect upon the latest to occur of the day specified in such notice or the date upon which the City has appointed a successor and such successor has agreed to act in such capacity.

Section 807. Removal of Registrar. Except as otherwise expressly provided in a Supplemental Ordinance, the Registrar may be removed at any time by an instrument in writing, filed with the Registrar and signed by the City. The City may appoint a successor Registrar upon such removal, but no such removal shall be effective until the City has appointed a successor and such successor has agreed to act in such capacity.