

ORDINANCE NO. 5078

**AN ORDINANCE OF THE CITY OF ALBANY, OREGON AMENDING
ORDINANCE NO. 5073 OF THE CITY OF ALBANY, OREGON
AUTHORIZING THE ISSUANCE AND NEGOTIATED SALE OF SEWER
REVENUE ADVANCE REFUNDING BONDS, SERIES 1993C; AND
DECLARING AN EMERGENCY.**

WHEREAS, pursuant to the authority of Oregon Revised Statutes Section 288.605 to 288.695 inclusive, the City of Albany, Oregon (the "City") adopted Ordinance No. 5073 on the 25th day of August, 1993 authorizing the issuance and negotiated sale of Sewer Revenue Advance Refunding Bonds, Series 1993C. The Finance Director, acting as the "Authorized Representative" of the City pursuant to Section 1 of Ordinance No. 5073, approved of municipal bond insurance to secure the payment of the City's Sewer Revenue Advance Refunding Bonds, Series 1993C. The City has received from Financial Security Assurance Inc. ("FSA") a commitment to insure the Series 1993C Bonds. It is necessary that the City Council amend Ordinance No. 5073 to address the following items as required by Financial Security: remedies of default; Ordinance is a contract; defeasance language, general terms and conditions of the City's relationship with Financial Security and certain definitions, now, therefore

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Definitions. For the purpose of Ordinance No. 5073 as amended by this Ordinance and the issuance of the Series 1993C Bonds, the following terms shall have the meanings as hereinafter set forth:

"Additional Bonds" shall mean additional sewer revenue bonds issued by the City on a parity with the Bonds.

"Annual Debt Service" for any calendar year shall mean all of the principal and interest due on the Parity Bonds, the Bonds and Additional Bonds in such year, and plus all mandatory sinking fund redemption requirements for the Term Bonds, which requirements will mature or become due in such year.

"Gross Revenue of the System" shall mean all income, earnings, revenues and moneys received by the City from or on account of the operation of the Sewer System, including the income from investments of money in the Debt Service Account and the Debt Service Reserve Account.

"Maintenance and Operation Expense" shall mean all necessary operating expenses, current maintenance expense, expenses of reasonable upkeep and repairs, and insurance and administrative expenses of the Sewer System (the "System"), and the waste-water treatment and collection system maintenance and administrative expenses, but excludes depreciation, payments for debt service or into reserve accounts, costs of capital

additions to or replacements of the Sewer System, municipal taxes, payments to the City in lieu of taxes, or payments to the City as reimbursement of general overhead.

"Maximum Annual Debt Service" shall mean the maximum amount, in the aggregate, of principal of and interest on the Parity Bonds, the Bonds and any Additional Bonds due in any one fiscal year. Term Bonds shall be deemed to be amortized in the annual amounts of principal subject to mandatory redemption plus annual interest on the outstanding Bonds.

"Net Revenue" shall mean the Gross Revenues of the Sewer System less Maintenance and Operation Expenses.

"Sewer System" means the City's collection and treatment of sewage facilities system.

Section 2. Amendments to Ordinance No. 5073 by adding thereto the following Sections:

Section 24. Remedy in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Oregon, the City covenants and agrees particularly that in the event the City (a) defaults in payments to be made to the Debt Service Account or the Debt Service Reserve Account as required by Ordinance No. 5073, as amended, or (b) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in Ordinance No. 5073, as amended, the Bond holder or Bondholders of any of the Bonds shall be entitled to a writ of mandamus issued by a court of proper jurisdiction, compelling and requiring the City and its officers to observe and perform any covenant, condition, or obligation prescribed in Ordinance No. 5073, as amended. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

This specific remedy herein provided shall be cumulative of all other existing remedies and the specification of such remedy shall not be deemed to be exclusive.

Section 25. Ordinance to Constitute Contract; Further Covenants. Ordinance No. 5073, as amended shall constitute a contract with the Bondholders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Bond remains outstanding except as permitted in this Section. The City may, without the consent of or notice to any Bondholders, but with the consent of the Bond Insurer, from time to time and at any time, amend Ordinance No. 5073, as amended, in any manner not detrimental to the interest of the Bondholders, including the curing of any ambiguity, inconsistency, or formal defect or omission, and with the consent of the Bondholders holding a majority in aggregate principal amount of the Bonds similarly secured then outstanding affected thereby and of FSA, amend, add to, or rescind any of the provisions of Ordinance No. 5073, as amended; provided that, without the consent

of all Bondholders of outstanding Bonds and of FSA, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Bonds, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Bondholders for consent to any such amendment, addition, or rescission.

Section 26. Investment of Certain Funds. Funds held in the Debt Service Account and in the Debt Service Reserve Account may be invested or reinvested from time to time in Qualified Investments as set forth in Exhibit A to this Ordinance. Such Qualified Investments shall mature in not more than five (5) years from date of such investment or not later than the final maturity of the Bonds outstanding for which the Debt Service Reserve Account is established, whichever is shorter. Any obligations in which money is so invested shall be kept in escrow with the custodian of the Debt Service Account or the Debt Service Reserve Account, as the case may be, and shall be promptly sold and the proceeds of sale applied to the making of payments required to be made from the Debt Service Account or the Debt Service Reserve Account, as the case may be, whenever such payments are necessary to be made under the provisions of Ordinance No. 5073. All moneys resulting from the investment of the Debt Service Reserve Account shall be transferred to the Debt Service Account as the same are received.

The City shall be required to invest the Debt Service Account and Debt Service Reserve Account as directed by the appropriate officials of the City and if and when it becomes necessary to sell or dispose of investments in order to utilize the Funds for the purpose for which such Funds were created, the City shall sell or dispose of such investments.

The provisions of this section are subject to, and investments shall be made in compliance with, the Oregon Revised Statutes Section 294.035.

Section 27. Further Covenants. The City further covenants and agrees as follows:

(a) That it will comply with all of the terms and conditions of any and all franchises, permits and authorizations applicable to or necessary with respect to the Sewer System, and which have been obtained from any governmental agency; and the City has or will obtain and keep in full force and effect all franchises, permits, authorizations and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation and maintenance of the Sewer System.

(b) That it will not grant any franchise or permit the acquisition, construction or operation of any competing facilities which might be used as a substitute for the Sewer System's facilities, and, to the extent that it legally may, the City will prohibit any such competing facilities.

Section 28. Satisfaction of Obligation of the City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in Ordinance No. 5073, as amended, then the pledge of revenues under Ordinance No. 5073, as amended, and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the stated maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which, as certified by an independent certified public accountant in writing, is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of four (4) years after the stated maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall, upon the request of the City be remitted to the City against a written receipt therefor. The provisions of this paragraph are subject to the applicable unclaimed property law of the State of Oregon.

The term "Government Securities", used herein, means direct obligations of, or obligations the timely payment of the principal and interest of which are fully and unconditionally guaranteed by, the United States of America, which are non-callable prior to the respective stated maturities of the Bonds and may be

United States Treasury Obligations such as the State and Local Government Series and may be in book-entry form.

Section 29. Pledge of Net Revenues. The City hereby covenants and agrees that all of the Net Revenues are hereby irrevocably pledged for the payment and security of the principal of and interest on the Bonds as is provided in Ordinance No. 5073, as amended herein.

Section 30. Rate Covenant. In the event the annual audit report reflects that the Net Revenues of the System for the Fiscal Year covered thereby were less than one and one-fourth (1-1/4) times the Annual Debt Service for the Parity Bonds, the Bonds and Additional Bonds that are secured on a parity with the Parity Bonds and the Bonds then outstanding, the City Council shall immediately review the operation of the System, the rates and charges for services provided and make necessary adjustments or revisions in order that the Net Revenues will be sufficient to meet foregoing coverage requirement.

Section 31. System Fund. The System shall be operated on the basis of a Fiscal Year and the City hereby covenants and agrees with the holders of the Bonds that all revenues derived from the operation of the System shall be kept separate and apart from other funds of the City. The City further covenants and agrees that all revenues and income of every nature derived from the operation of the System shall be deposited from day to day into the "City of Albany Sewer Fund": (hereby created in connection with the Bonds and hereinafter called "Sewer Fund") to be kept separate and apart from all other Funds and Accounts of the City. This Fund is and shall continue to be kept and maintained at the City's official depository bank, and all moneys deposited therein shall be pledged, appropriated and used for the purposed authorized, and in the order of priority prescribed in this Ordinance. After paying all Maintenance and Operation Expenses of the System, the Net Revenues remaining in said Sewer Fund shall be applied and appropriated for the purposes set forth in Section 13 of Ordinance No. 5073.

Section 32. Further Covenants. The City further covenants and agrees by and through this Ordinance as follows:

(a) That the City has the lawful power to pledge the revenues supporting this issue of Bonds and has lawfully exercised said power under the Constitution and laws of the State of Oregon and that the Second Lien Bonds and the Bonds, together with the Additional Bonds payable from the same source, shall be ratably secured in such manner that no one bond shall have preference over any other bond of said issues.

(b) That other than for the payment of the Outstanding Parity Bonds, the Net Revenues of the System have not been in any manner pledged to the payment of any debt or obligation of the City or the System.

(c) That, so long as any of the Bonds or any interest thereon remain outstanding, the City will not sell or encumber the System or any substantial part thereof; provided, however, this covenant shall not be construed to prohibit the

sale of such machinery, or other properties or equipment which has become obsolete or otherwise unsuited to the efficient operation of the System, and, also, with the exception of the additional parity obligations expressly permitted by this Ordinance to be issued, it will not encumber the Net Revenues of the System unless such encumbrance is made junior and subordinate to all of the provisions of this Ordinance.

(d) That no free service of the System shall be allowed, and should the City or any of its agents or instrumentalities make use of the services and facilities of the System, payment of the reasonable value thereof shall be made by the City out of funds from sources other than the revenues and income of the System.

Section 33. Maintenance and Operation - Insurance. The City shall maintain the System in good condition and operate the same in an efficient manner and at reasonable cost. So long as any Bonds are outstanding, the City agrees to maintain insurance on the System of a kind and in an amount which usually would be carried by private companies engaged in a similar type of business, for the benefit of the holder or holders of Bonds.

Section 34. Provisions Relating to Bond Insurance.

(a) Definitions:

(1) "Bond Insurance Policy" means the municipal bond insurance policy issued by the Bond Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds.

(b) "Bond Insurer" means Financial Security Assurance Inc., a New York stock insurance company, or any successor thereto.

(b) Notice of the optional or extraordinary redemption of Bonds, other than any notice that refers to Bonds that are to be redeemed from proceeds of a refunding bond issue or from amounts to be provided by the Bond Insurer in its discretion, may be given only if sufficient funds have been deposited with the Paying Agent to pay the applicable redemption price of the Bonds to be redeemed.

(c) Investments purchased with funds on deposit in the Debt Service Reserve Account shall have an average aggregate weighted term to maturity not greater than five years.

The prior written consent of the Bond Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Debt Service Reserve Account.

Monies on deposit in the accounts established under Ordinance No. 5073, as amended, shall only be invested in Qualified Investments.

- (d) Notice of the optional or mandatory redemption of Bonds, other than any notice that refers to Bonds that are to be redeemed from proceeds of a refunding bond issue or from amounts to be provided by the Bond Insurer in its discretion, may be given only if sufficient funds have been deposited with the Trustee to pay the applicable redemption price of the Bonds to be redeemed.
- (e) The Bond Insurer shall be deemed to be the sole holder of the Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Bonds insured by it are entitled to take pursuant to Section 24 (pertaining to defaults and remedies) of Ordinance No. 5073 (the "Ordinance"), as amended.

In the event holders of Bonds insured by the Bond Insurer shall consent to any modification to the Ordinance, as amended, the Bond Insurer's consent shall also be required to effectuate such insured Bondholders' consent. In such circumstance Bond Insurer consent shall not be taken into consideration in determining whether the required percentage of Bondholders' consent has been obtained.

No provision of the Ordinance, as amended, expressly recognizing or granting rights in or to the Bond Insurer shall be modified without the consent of the Bond Insurer.

- (f) No amendment or supplement to the Ordinance, as amended, which does not require the consent of Bondholders on the basis that it is not to the detriment of, or does not adversely affect, Bondholders may become effective except upon obtaining the prior written consent of the Bond Insurer.
- (g) Copies of any modification or amendment to the Ordinance No. 5073, as amended, shall be sent to Standard & Poor's Corporation and Moody's Investors Service, Inc. at least 15 days prior to the effective date thereof.
- (h) In determining whether a payment default has occurred, no effect shall be given to payments made under the Bond Insurance Policy.
- (i) The Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy.
- (j) The Bond Insurer shall have the right to advance any payment required to be made by the City in order to prevent an event of default under Ordinance No. 5073, as amended, and the Paying Agent shall be required to accept such advance. The City shall be required to reimburse the Bond Insurer for any such advance.

- (k) The rights granted to the Bond Insurer under Ordinance No. 5073, as amended, to request, consent to or direct any action are rights granted to the Bond Insurer in consideration of its issuance of the Bond Insurance Policy. Any exercise by the Bond Insurer of such rights is merely an exercise of the Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit of or on behalf of the Bondholders nor does such action evidence any position of the Bond Insurer, positive or negative, as to whether Bondholder consent is required in addition to consent of the Bond Insurer.
- (l) Only (1) cash, (2) non-callable direct obligations of the United States of America, or (3) pre-refunded municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively (or any combination thereof) shall be authorized to be used to effect defeasance of the Parity Bonds and the Bonds unless the Bond Insurer otherwise approves. Such obligations shall constitute "Defeasance Obligations." In the event of an advance refunding (i) the City shall cause to be delivered, on the deposit date and upon any reinvestment of the defeasance amount, a report of an independent firm of nationally recognized certified public accountants ("Accountant") verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity date ("Verification"), (ii) the escrow agreement shall provide that no (A) substitution of a Defeasance Obligation shall be permitted except with another Defeasance Obligation and upon delivery of a new Verification and (B) reinvestment of a Defeasance Obligation shall be permitted except as contemplated by the original Verification or upon delivery of a new Verification, and (iii) there shall be delivered an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under the Ordinance; each Verification and defeasance opinion shall be addressed to the City and the Bond Insurer. Bonds shall be deemed "Outstanding" under the Ordinance unless and until they are in fact paid and retired or the above criteria is met.
- (m) Amounts paid by the Bond Insurer under the Bond Insurance Policy shall not be deemed paid for purposes of Ordinance No. 5073, as amended, and shall remain Outstanding and continue to be due and owing until paid by the City in accordance with Ordinance No. 5073, as amended. Ordinance No. 5073, as amended, shall not be discharged unless all amounts due or to become due to the Bond Insurer have been paid in full.
- (n) The notice address of the Bond Insurer is: Financial Security Assurance Inc., 350 Park Avenue, New York, New York 10022-6022, Attention: Managing Director- Surveillance.
- (o) The Bond Insurer shall be included as a third party beneficiary to Ordinance No. 5073, as amended.
- (p) The Bond Insurer shall be provided with the following information:

- (i) Annual audited financial statements within 180 days after the end of the City's fiscal year and the City's annual budget within 30 days after the approval thereof;
- (ii) upon delivery of the annual audited financial statements of the City, a certificate of the chief financial officer of the City stating that, to the best of such individual's knowledge following reasonable inquiry, no Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) has occurred, or if an event of Default has occurred, specifying the nature thereof and, if the City has a right to cure pursuant to Section 24, stating in reasonable detail the steps, if any, being taken by the City to cure such Event of Default;
- (iii) Official statement, if any, prepared in connection with the issuance of additional debt of the City, whether or not it is on a parity with the insured issue, within 30 days after the bond sale;
- (iv) Notice of any draw upon, or deficiency due to market fluctuation in the amount on deposit in, the Debt Service Reserve Account within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Reserve Account Requirement and (ii) withdrawals in connection with a refunding of Bonds;
- (v) Notice of any failure of the City to make any required deposit into debt service funds within two Business Days of knowledge thereof; notice of any other default known to the City within 5 business days after knowledge thereof;
- (vi) Notice of the redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof;
- (vii) Notice of the resignation or removal of the Paying Agent and Bond Registrar and the appointment of, and acceptance of duties by, any successor thereto;
- (viii) A full original transcript of all proceedings relating to the execution of any amendment or supplement to Ordinance No. 5073, as amended;
- (ix) All reports, notices and correspondence to be delivered under the terms of Ordinance No. 5073; and
- (x) Such additional information as FSA from time to time may reasonably request.

Section 34. Claims Upon Policy and Payments by and to the Bond Insurer.

- (A) If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on

deposit with the Paying Agent, after making all transfers and deposits required under Ordinance No. 5073, as amended, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the City shall give notice to the Bond Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall make a claim under the Bond Insurance Policy and give notice to the Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Bond Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day.

- (B) The Paying Agent shall establish a separate special purpose trust account for the benefit of Bondholders referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Bond Insurance Policy in trust on behalf of Bondholders and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to Bondholders in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. However, the amount of any payment of principal of or interest on the Bonds to be paid from the Policy Payments Account shall be noted as provided in (D) below.

Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent.

In the event the Bonds are subject to mandatory sinking fund redemption, upon receipt of the moneys due, affected Bondholders shall surrender their Bonds to the Paying Agent who shall authenticate and deliver to such Bondholder a new Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered, and upon maturity and receipt of the moneys due, Bondholders shall surrender their Bonds for cancellation. The Paying Agent shall designate any portion of payment of principal on Bonds paid by the Bond Insurer, whether by virtue of mandatory sinking fund redemption or maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a

replacement Bond to the Bond Insurer, registered in the name of Financial Security Assurance Inc., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Paying Agent's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the City on any Bond or the subrogation rights of the Bond Insurer.

- (C) Any funds remaining in the Policy Payments Account following a Payment Date shall promptly be remitted to the Bond Insurer except for funds held for the payment of Bonds pursuant to Section 28 hereof.
- (D) The Paying Agent shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Policy Payments Account and the allocation of such funds to payment of interest on and principal paid in respect of any Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon one Business Day's prior notice to the Paying Agent.
- (E) Subject to and conditioned upon payment of any interest or principal with respect to the Bonds by or on behalf of the Bond Insurer, each Bondholder, by its purchase of Bonds, hereby assigns to the Bond Insurer, but only to the extent of all payments made by the Bond Insurer, all rights to the payment of interest or principal on the Bonds, including, without limitation, any amounts due to the Bondholders in respect of securities law violations arising from the offer and sale of the Bonds, which are then due for payment. The Bond Insurer may exercise any option, vote, right, power or the like with respect to Bonds to the extent it has made a principal payment pursuant to the Bond Insurance Policy. The foregoing assignment is in addition to, and not in limitation of, rights of subrogation otherwise available to the Bond Insurer in respect of such payments. The City shall take such action and deliver such instruments as may be reasonably requested or required by the Bond Insurer to effectuate the purpose or provisions of this clause (E).
- (F) The City shall promptly notify the Bond Insurer of either of the following as to which it has actual knowledge: (i) the commencement of any proceeding by or against the City commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") and (ii) the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer (a "Preference Claim") of any payment of principal of, or interest on, the Bonds.

Each Bondholder, by its purchase of Bonds, and the City hereby agrees that the Bond Insurer may at any time during the continuation of an Insolvency Proceeding direct all matters relating to such Insolvency Proceeding, including, without limitation, (i) all matters relating to any Preference Claim, (ii) the direction of any appeal of any order relating to any

Preference Claim and (iii) the posting of any surety, supersedeas or performance bond pending any such appeal. In addition, and without limitation of the foregoing, the Bond Insurer shall be subrogated to the rights of the City and each Bondholder in any Insolvency Proceeding to the extent it is subrogated pursuant to the Bond Insurance Policy, including, without limitation, any rights of any party to an adversary proceeding action with respect to any court order issued in connection with any such Insolvency Proceeding.

- (G) The City hereby agrees to pay or reimburse the Bond Insurer any and all charges, fees, costs and expenses which the Bond Insurer may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, in connection with (i) any accounts established to facilitate payments under the Bond Insurance Policy, (ii) the administration, enforcement, defense or preservation of any rights in respect of Ordinance No. 5073, as amended, including defending, monitoring or participating in any litigation or proceeding (including any bankruptcy proceeding in respect of the City or any affiliate thereof) relating to the Ordinance, any party to Ordinance No. 5073, as amended, or the transaction contemplated by Ordinance No. 5073, as amended (the "Transaction"), (iii) the foreclosure against, sale or other disposition of any collateral securing any obligations under the Ordinance, or the pursuit of any remedies under the Ordinance, to the extent such costs and expenses are not recovered from such foreclosure, sale or other disposition, or (iv) any amendment, waiver or other action with respect to, or related to, Ordinance No. 5073, as amended, whether or not executed or completed; costs and expenses shall include a reasonable allocation of compensation and overhead attributable to time of employees of the Bond Insurer spent in connection with the actions described in clauses (ii) and (iv) above; and the Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of Ordinance No. 5073, as amended.
- (H) In addition to any and all rights of reimbursement, subrogation and any other rights pursuant hereto or under law or in equity, the City agrees to pay or reimburse the Bond Insurer any and all charges, fees, costs, claims, losses, liabilities (including penalties), judgments, demands, damages, and expenses which the Bond Insurer or its officers, directors, shareholders, employees, agents and each person, if any, who controls the Bond Insurer within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, of any nature in connection with, in respect of or relating to the transactions contemplated by Ordinance No. 5073, as amended, by reason of:
- (i) any omission or action (other than of or by the Bond Insurer) in connection with the offering, issuance, sale, remarketing or delivery of the Bonds;

- (ii) the negligence, bad faith, willful misconduct, misfeasance, malfeasance or theft committed by any director, officer, employee or agent of the City in connection with any transaction arising from or relating to Ordinance No. 5073, as amended;
 - (iii) the violation by the City of any law, rule or regulation, or any judgment, order or decree applicable to it;
 - (iv) the breach by the City of any representation, warranty or covenant under Ordinance No. 5073, as amended, or the occurrence, in respect of the City, under Ordinance No. 5073, as amended, of any "event of default" or any event which, with the giving of notice or lapse of time or both, would constitute any "event of default"; or
 - (v) any untrue statement or alleged untrue statement of a material fact contained in any Official Statement or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such claims arise out of or are based upon any untrue statement or omission in information included in an Official Statement and furnished by the Bond Insurer in writing expressly for use therein.
- (I) The City shall pay to the Bond Insurer interest on any and all amounts as are paid under the Bond Insurance Policy and as are otherwise due to the Bond Insurer from the date paid by the Bond Insurer until payment thereof in full at the Late Payment Rate. "Late Payment Rate" shall mean a per annum rate equal to the lower of (i) three percent above the interest rate that Morgan Guaranty Trust Company of New York ("Morgan") publicly announces from time to time as its prime lending rate ("Prime Rate"), such interest rate to change on the effective date of each change in the announced Prime Rate and (ii) the maximum interest rate permitted to be paid by the City under applicable law; provided that with respect to payments paid to and received by the Bond Insurer pursuant to its subrogation rights under Ordinance No. 5073, as amended, the amount of the Bonds interest rate shall be subtracted from the Late Payment Rate. In the event Morgan ceases to announce its Prime Rate, the Prime Rate shall be the prime rate of such national bank as the Bond Insurer shall designate.
- (J) Payments required to be made to the Bond Insurer shall be payable solely from the Net Revenues of the Sewer System. The obligations set forth in (G) through (I) above shall survive discharge or termination of Ordinance No. 5073, as amended.
- (K) The Bond Insurer shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the City (as such terms are defined in the Bond Insurance Policy) whether or not the Bond Insurer has received a Notice (as defined

in the Bond Insurance Policy) of Nonpayment or a claim upon the Bond Insurance Policy.

Section 35. Emergency. It is hereby declared that the City must proceed promptly with the sale and delivery of the Series 1993C Bonds in order that current market interest rates may be obtained through the private negotiated sale for the City to maximize its debt service savings to be achieved by the refunding as herein set forth. Therefore, this Ordinance is necessary for the immediately preservation of the public peace, health and safety and this Ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor.

ADOPTED by the City Council this 13th day of October, 1993.

APPROVED by the Mayor this 13th day of October, 1993.

By 

Mayor

ATTEST:

By 

City Recorder