

A099-159

Requested by: Chairman of the
Assembly at the
request of the
Mayor
Prepared by: Cynthia M. Weed
For Reading: DECEMBER 14, 1999

**MUNICIPALITY OF ANCHORAGE, ALASKA
ORDINANCE NO. AO 99-159**

AN ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE,
ALASKA, PROVIDING FOR THE ISSUANCE OF LEASE
REVENUE BONDS OF THE MUNICIPALITY IN THE
AGGREGATE AMOUNT OF NOT TO EXCEED \$70,000,000
FOR THE PURPOSE OF PROVIDING FUNDS TO PAY ALL
OR A PART OF THE COST OF ACQUIRING,
CONSTRUCTING AND EQUIPPING A NEW
CORRECTIONAL FACILITY TO BE LEASED TO THE
STATE OF ALASKA AND TO PAY COSTS OF ISSUANCE,
INCLUDING RESERVES AS NECESSARY; PROVIDING
FOR THE FORM AND MANNER OF SALE OF THE
BONDS; AUTHORIZING THE PREPARATION AND
APPROVAL OF A PRELIMINARY AND FINAL OFFICIAL
STATEMENT; AUTHORIZING A TRUST AGREEMENT
AND AN AGREEMENT FOR ONGOING DISCLOSURE;
AND AUTHORIZING THE SALE OF SUCH BONDS.

WHEREAS, the Municipality of Anchorage, a unified home rule municipality organized
under the Constitution and laws of the State of Alaska (the "Municipality"), owns and maintains
certain correctional facilities within the Municipality ;and

WHEREAS, the Municipality and the State of Alaska Department of Administration
("DOA") currently are parties to a lease agreement ("Sixth Avenue Lease") with respect to a
facility known as the Sixth Avenue Jail, which is in need of replacement; and

WHEREAS, the State of Alaska (the "State") has been authorized by the Second Session
of the 20th Alaska Legislature (Ch. 15, SLA 1998) (the "1998 Act") to lease correctional facility

1 space ("Facility") from the Municipality upon satisfaction of certain conditions set forth in
2 Section 5(b) of the 1998 Act; and

3 WHEREAS, DOA is authorized by AS 36.30.080 and 36.30.085 to enter into leases and
4 participate in lease financings, and DOA as the leasing agent of the State pursuant to
5 AS 36.30.080 shall act on behalf of DOC in implementing the 1998 Act; and

6 WHEREAS, the Municipality and the State, acting through its Department of Corrections
7 ("DOC") have agreed upon the terms of a Construction Agreement, dated as of May 18, 1999,
8 with respect to the construction and equipping of the Facility (referred to therein as the
9 "Project") and a Prisoner Care Agreement dated as of May 18, 1999; and

10 WHEREAS, the Municipality has agreed to enter into a ground lease of its property on
11 which the Project will be situated on the condition that DOA simultaneously enter into an
12 Agreement of Lease with the Municipality pursuant to which DOA will agree, *inter alia*, to make
13 payments sufficient to pay the principal of and interest on the revenue bonds of the Municipality
14 herein authorized; and

15 WHEREAS, the Constitution and statutes of the State of Alaska and Article XV of the
16 Home Rule Charter of the Municipality permit the Municipality to issue obligations payable out
17 of revenues without ratification by an election; and

18 WHEREAS, in order to pay all or a part of the cost of the Project and costs of issuance
19 and provide for reserves if necessary, the Municipality has determined to sell a series of lease
20 revenue bonds, payable from the payments to be made by DOA under the Agreement to Lease
21 and

22 WHEREAS, it is necessary to establish the form and manner of sale of such revenue
23 bonds and to make provision for establishing the additional terms thereof;

Section 1 Purpose The purpose of this ordinance is to authorize the issuance and sale of not to exceed \$70,000,000 of lease revenue bonds to provide moneys, together with funds, if any, to be provided by the Municipality, to pay for all or a part of the costs of the Project, to fund reserves, as necessary, and to pay costs of issuance and to fix the form, certain covenants and manner of sale for said revenue bonds

Section 2 Definitions Defined terms used in this ordinance have the meanings given such terms in Appendix 1, attached hereto and incorporated by this reference herein.

Section 3 Authorization; Description of the Bonds

(a) *Authorization* For the purpose of paying part of the costs of the Project and paying costs incidental to the foregoing and to the issuance of the Bonds, the Municipality shall issue its revenue bonds in the aggregate principal amount of not to exceed \$70,000,000 (the "Bonds")

(b) *Designation; Description* The Bonds shall be designated as the "Municipality of Anchorage, Alaska, Lease Revenue Bonds, Correctional Facility, Series 2000," shall be fully registered as to both principal and interest, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, provided that no Bond shall represent more than one maturity. The Bonds shall be numbered separately in such manner with any additional designation as the Registrar deems necessary for purposes of identification, shall be dated as of the Dated Date and shall bear interest from the Dated Date, payable on each Bond Payment Date specified in the Bond Purchase Contract.

The exact principal amount of the Bonds and the principal maturity schedule shall be determined at the time of marketing of the Bonds and shall be consistent with the pricing guidelines established in Section 16 of this ordinance.

1 (c) *Bonds Not General Obligations.* The Bonds shall be obligations only of
2 the Lease Payment Fund and shall be payable and secured as provided herein. The Bonds are not
3 general obligations of the Municipality. The Bonds shall not constitute an indebtedness of the
4 Municipality within the meaning of the Charter or constitutional provisions and limitations of the
5 State.

6 Section 4. Place and Medium of Payment. The principal of and interest on the Bonds
7 shall be payable in lawful money of the United States of America. Interest on the Bonds shall be
8 calculated on the basis of a 360-day year and twelve 30-day months. For so long as all Bonds
9 are in fully-immobilized form, such payments of principal and interest thereon shall be made as
10 provided in the operational arrangements of DTC as referred to in the Letter of Representations.

11 In the event that the Bonds are no longer in fully-immobilized form, interest on the Bonds
12 shall be paid by check or draft mailed to the Registered Owners of the Bonds at the addresses for
13 such Registered Owners appearing on the Bond Register on the 15th day of the month preceding
14 the interest payment date. Principal of the Bonds shall be payable upon presentation and
15 surrender of such Bonds by the Registered Owners at the principal office of the Registrar.

16 Section 5 Registration, Transfer and Exchange

17 (a) *Appointment of Registrar.* The Bonds shall be issued only in registered
18 form as to both principal and interest. U.S. Bank Trust National Association, Seattle,
19 Washington, is appointed initially to serve as the authenticating agent, paying agent and bond
20 registrar (the "Registrar"). The Municipality is hereby authorized to enter into a written
21 agreement with the Registrar to evidence the Registrar's commitment to act as Registrar in
22 accordance with the terms set forth in this ordinance and providing for the payment of the fees
23 and expenses of the Registrar. The Registrar may be removed at any time at the option of the

Municipality upon prior notice to the Registrar, the Bond Insurer, DTC, each NRMSIR and SID, if any, and a successor Registrar appointed. Each Registrar shall warrant at the time of acceptance of its duties hereunder that it (i) is a trust company or bank in good standing located in or incorporated under the laws of a state of the United States; (ii) is duly authorized to exercise trust powers; (iii) is subject to examination by a federal or state authority; and (iv) will maintain a reported capital and surplus of not less than \$75,000,000 unless otherwise approved in writing by the Bond Insurer (for so long as the Municipal Bond Insurance Policy remains in full force and effect with respect to the Bonds). No resignation or removal of the Registrar shall be effective until a successor shall have been appointed and until the successor Registrar shall have accepted the duties of the Registrar hereunder.

The Registrar shall keep, or cause to be kept, at its principal corporate trust office, sufficient books for the registration and transfer of the Bonds which shall at all times be open to inspection by the Municipality (the "Bond Register"). The Registrar is authorized, on behalf of the Municipality, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of such Bonds and this ordinance and to carry out all of the Registrar's powers and duties under this ordinance. The Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bonds.

(b) *Letter of Representations/Book-Entry System.* In order to induce DTC to accept the Bonds as eligible for deposit at DTC, the Municipality has executed and delivered the Letter of Representations. The Bonds initially issued shall be held in fully immobilized form by DTC acting as depository pursuant to the terms and conditions set forth in the Letter of Representations.

(c) *Municipality and Registrar Not Responsible for DTC.* Neither the Municipality nor the Registrar will have any responsibility or obligation to DTC participants or the persons for whom they act as nominees with respect to the Bonds in respect of the accuracy of any records maintained by DTC or any DTC participant, the payment by DTC or any DTC participant of any amount in respect of the principal or interest on the Bonds, any notice which is permitted or required to be given to Registered Owners under this ordinance (except such notices as shall be required to be given by the Municipality to the Registrar and the Bond Insurer or to DTC), or any consent given or other action taken by DTC as the Registered Owner.

(d) *DTC as Registered Owner.* The Municipality and the Registrar, each in its discretion, may deem and treat the Registered Owner as the absolute owner thereof for all purposes, and neither the Municipality nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in this section, but such registration may be transferred as herein provided. All such payments made as described in this section shall be valid and shall satisfy and discharge the liability of the Municipality upon such Bond to the extent of the amount or amounts so paid. The Municipality and the Registrar shall be entitled to treat DTC as the absolute owner of all Bonds for all purposes of this ordinance and any applicable laws, notwithstanding any notice to the contrary received by the Registrar or the Municipality. Neither the Municipality nor the Registrar will have any responsibility or obligation, legal or otherwise, to any other party including DTC or its successor (or substitute depository or its successor), except to the Registered Owners.

1 **(e) *Use of DTC/Book-Entry System.***

2 **(1) *Bonds Registered in the Name Designated by DTC.*** The Bonds
3 shall be registered initially in the name of "Cede & Co.," as nominee of DTC, with one Bond for
4 each maturity in a denomination corresponding to the total principal therein designated to mature
5 on such date. Registered ownership of such immobilized Bonds, or any portions thereof, may
6 not thereafter be transferred except (i) to any successor of DTC or its nominee, *provided that* any
7 such successor shall be qualified under any applicable laws to provide the service proposed to be
8 provided by it; (ii) to any substitute depository appointed by the Municipality pursuant to
9 subparagraph (2) below or such substitute depository's successor; or (iii) to any person as
10 provided in paragraph (4) below.

11 **(2) *Substitute Depository*** Upon the resignation of DTC or its
12 successor (or any substitute depository or its successor) from its functions as depository or a
13 determination by the Municipality that it is no longer in the best interest of owners of beneficial
14 interests in the Bonds to continue the system of book entry transfers through DTC or its
15 successor (or any substitute depository or its successor), the Municipality may thereafter appoint
16 a substitute depository. Any such substitute depository shall be qualified under any applicable
17 laws to provide the services proposed to be provided by it.

18 **(3) *Issuance of New Bonds to Successor/Substitute Depository.*** In the
19 case of any transfer pursuant to clause (i) or (ii) of paragraph (1) above, the Registrar shall, upon
20 receipt of all outstanding Bonds, together with a written request on behalf of the Municipality,
21 issue a single new Bond for each maturity of such Bonds then outstanding, registered in the
22 name of such successor or such substitute depository, or their nominees, as the case may be, all
23 as specified in such written request of the Municipality

(4) *Termination of Book-Entry System* In the event that (i) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (ii) the Municipality determines that it is in the best interest of the owners of beneficial interests in the Bonds that they be able to obtain Bond certificates, the ownership of Bonds may then be transferred to any person or entity as herein provided, and the Bonds shall no longer be held in fully immobilized form. The Municipality shall deliver a written request to the Registrar, together with a supply of definitive Bonds, to issue Bonds as herein provided in any authorized denomination. Upon receipt of all then Outstanding Bonds by the Registrar together with a written request on behalf of the Municipality to the Registrar, new Bonds shall be issued in such denominations and registered in the names of such persons as are requested in such written request

(f) *Transfer or Exchange of Registered Ownership, Change in Denominations.* If the Bonds are no longer held in immobilized, book-entry form, the registered ownership of any Bond may be transferred or exchanged, but no transfer of any Bond shall be valid unless it is surrendered to the Registrar with the assignment form appearing on such Bond duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Registered Owner or transferee therefor, a new Bond (or Bonds at the option of the new Registered Owner) of the same date, maturity and interest rate and for the same aggregate principal amount in any authorized denomination, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and canceled Bond. Any Bond may be surrendered to the Registrar and exchanged,

without charge, for an equal aggregate principal amount of Bonds of the same date, maturity and interest rate, in any authorized denomination. The Registrar shall not be obligated to transfer or exchange any Bond during the 15 days preceding any interest payment date or principal payment date. No charge shall be imposed upon Registered Owners in connection with any transfer or exchange, except for taxes or governmental charges related thereto.

(g) *Registration Covenant.* The Municipality covenants that, until all Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

Section 6 Right of Prior Redemption and Purchase The Bonds may be subject to optional, extraordinary optional or mandatory redemption prior to their scheduled maturity as determined in accordance with the terms of Section 16 of this ordinance.

Section 7. Notice of Redemption. Notice of any intended redemption of Bonds shall be given not less than 30 nor more than 45 days prior to the date fixed for redemption by United States mail to Registered Owners of the Bonds to be redeemed at their addresses as they appear on the Bond Register on the day the notice is mailed; *provided, however*, that for so long as the Bonds are registered in the name of Cede & Co. or its registered assigns, all notices shall be given only as provided in the Letter of Representations. The requirements of this section shall be deemed to be complied with when notice is mailed as herein provided, whether or not it is actually received by the Registered Owner.

All official notices of redemption shall be dated and shall state:

- (a) the redemption date;
- (b) the redemption price;

(c) if fewer than all outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts per maturity) of the Bonds to be redeemed;

(d) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date; and

(e) the place where such Bonds are to be surrendered for payment of the redemption price, which place shall be designated by the Registrar.

On or before any redemption date, the Municipality shall deposit with the Registrar an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Municipality shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. All Bonds which have been redeemed shall be cancelled and destroyed by the Registrar and shall not be reissued.

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

Section 8. Form of Bonds. The Bonds shall be in substantially the following form

with such additions and modifications as shall be appropriate to reflect the final negotiated terms
of the Bonds.

UNITED STATES OF AMERICA

No. _____ \$ _____

STATE OF ALASKA
ANCHORAGE, ALASKA

LEASE REVENUE BOND
CORRECTIONAL FACILITY, SERIES 2000

INTEREST RATE _____ MATURITY DATE _____ CUSIP NO. _____

REGISTERED OWNER. CEDE & CO.

PRINCIPAL AMOUNT _____

Anchorage, Alaska (the "Municipality"), a home rule municipality of the State of Alaska, hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or its registered assigns, solely out of the special fund of the Municipality known as the "Lease Payment Fund" (the "Lease Payment Fund") created by authority of Ordinance No. AO 99-____ of the Municipality (the "Bond Ordinance") on the Maturity Date identified above, the Principal Amount indicated above together with interest thereon at the Interest Rate shown above, payable on August 1, 2000, and semiannually thereafter on the first days of February and August, or until such Principal Amount shall have been paid or duly provided for. Payments of principal of and interest on this bond shall be made as provided in The Depository Trust Company Operational Arrangements Memorandum dated December 12, 1994, as amended from time to time and referred to in the Blanket Issuer Letter of Representations dated July 1, 1995, between the Municipality and The Depository Trust Company (together, the "Letter of Representations") for so long as this bond is held in book entry only form. U.S. Bank Trust National Association, Seattle, Washington has been appointed as the authentication agent, paying agent and registrar for the bonds of this issue (the "Registrar").

This bond is one of an issue of bonds (the "Bonds") of like date and tenor except as to number, rate of interest, and date of maturity, aggregating the principal sum of \$_____ and is issued pursuant to the Constitution and statutes of the State of Alaska and the Home Rule Charter and duly adopted ordinances and resolutions of the Municipality, including particularly, the Bond Ordinance for the purpose of paying all or a portion of the costs of the acquisition, construction and furnishing a correctional facility to be leased to the State of Alaska (the

1 "Project"). The definitions contained in the Bond Ordinance shall apply to capitalized terms
2 contained herein.

3
4 The Bonds are subject to optional, extraordinary optional and/or mandatory redemption
5 in the manner, at the times and at the redemption prices as follows: _____.

6
7 Notice of any such intended redemption shall be given in the manner agreed upon
8 pursuant to the Letter of Representations and the operational arrangements of DTC referred to
9 therein and in the Bond Ordinance. From and after the date fixed for redemption, interest on any
10 Bonds so called for redemption shall cease to accrue, provided funds for such redemption are on
11 deposit in the Lease Payment Fund.

12
13 The Municipality does hereby pledge and bind itself to set aside and cause to be paid into
14 the Lease Payment Fund the various amounts required by the Bond Ordinance to be paid into and
15 maintained in said Fund all within the times provided in the Bond Ordinance. The Municipality
16 has further pledged and bound itself to pay into such Lease Payment Fund, as collected, all Lease
17 Payments.

18
19 The pledge contained herein and in the Bond Ordinance may be discharged by making
20 provision, at any time, for the payment of the principal of and interest on this Bond in the manner
21 provided in the Bond Ordinance.

22
23 Said amounts so pledged to be paid into the Lease Payment Fund are hereby declared to
24 be a lien and charge upon Lease Payments superior to all other charges of any kind or nature and
25 equal in rank to the lien and charge thereon for amounts pledged to the payment of any bonds
26 hereafter issued.

27
28 It is hereby certified that all acts, conditions and things required by the Constitution and
29 statutes of the State of Alaska and the Home Rule Charter, resolutions and ordinances of the
30 Municipality to be done precedent to and in the issuance of this Bond have happened, been done
31 and performed.

32
33 IN WITNESS WHEREOF, the Municipality of Anchorage, Alaska, has caused this Bond
34 to be executed with the manual or facsimile signature of its Municipal Manager and to be
35 countersigned with the manual or facsimile signature of its Municipal Clerk and the official seal
36 of the Municipality to be impressed or imprinted hereon, this 1st day of February, 2000.

37 MUNICIPALITY OF
38 ANCHORAGE, ALASKA

39 By /s/manual or facsimile signature
40 Municipal Manager

41
42 Countersigned:

43
44 /s/manual or facsimile signature
45 Municipal Clerk
46

(Form of Certificate of Authentication)

Date of Authentication

This Bond is one of the Municipality of Anchorage, Alaska Lease Revenue Bonds Correctional Facility, Series 2000, described in and issued pursuant to the within mentioned Bond Ordinance.

U. S. BANK TRUST NATIONAL
ASSOCIATION, Registrar

By _____
Authorized Signer

In the event the Bonds are no longer held in book-entry only form, the form of Bonds may be modified to conform to printing requirements and the terms of this ordinance.

Section 9. Execution of Bonds. The Bonds shall be executed on behalf of the Municipality with the manual or facsimile signature of the Municipal Manager of the Municipality, attested with the manual or facsimile signature of the Municipal Clerk and authenticated by the manual signature of an authorized representative of the Registrar official seal of the Municipality shall be impressed or imprinted or otherwise reproduced on each Bond. In case any of the officers who shall have signed, attested or registered any of the Bonds shall cease to be such officer before such Bonds have been actually issued and delivered, Bonds shall be valid nevertheless and may be issued by the Municipality with the same effect as though the persons who had signed, attested or registered such Bonds had not ceased to be such officers.

Section 10 Lost, Stolen, Destroyed or Mutilated Bonds In case any Bonds shall at any time become mutilated or be lost, stolen or destroyed, the Municipality in the case of such a mutilated Bond shall, and in the case of such a lost, stolen or destroyed Bond in its discretion may, execute and deliver a new Bond of the same interest rate and maturity and of like tenor and

effect in exchange or substitution for and upon the surrender and cancellation of such mutilated Bond, or in lieu of or in substitution for such destroyed, stolen or lost Bond, or if such stolen, destroyed or lost Bond shall have matured, instead of issuing a substitute therefor, the Municipality may at its option pay the same without the surrender thereof. Except in the case where a mutilated Bond is surrendered, the applicant for the issuance of a substitute Bond shall furnish to the Registrar evidence satisfactory to it of the theft, destruction or loss of the original Bond, and of the ownership thereof, and also such security and indemnity as may be required by the Municipality, and no such substitute Bond shall be issued unless the applicant for the issuance thereof shall reimburse the Municipality for the expenses incurred by the Municipality in connection with the preparation, execution, issuance and delivery of the substitute Bond, and any such substitute Bond shall be equally and proportionately entitled to the security of this ordinance with all other Bonds issued hereunder, whether or not the Bond alleged to have been lost, stolen or destroyed shall be found at any time or be enforceable by anyone.

Section 11. Lease Payment Fund. There is hereby authorized to be created a special fund of the Municipality known as the "Lease Payment Fund" (the "Lease Payment Fund"), which fund is a trust fund to be maintained in the custody of the Registrar to be drawn upon for the sole purpose of paying the principal of and interest and premium, if any, on the Bonds. The Lease Payment Fund shall be held by the Registrar and may be further subdivided into subaccounts for purposes of paying debt service and/or holding reserves for the payment of debt service on the Bonds. The Municipality hereby covenants and agrees that all Lease Payments shall be deposited in the Lease Payment Fund as received. The payments into the Lease Payment Fund for the payment of the Bonds shall constitute a charge and lien upon Lease Payments of equal rank with the charge and lien on said Lease Payments for the payment

required to be made into the Lease Payment Fund for the payment of the principal of, premium if any, and interest on any Future Parity Bonds.

3

The Municipality hereby irrevocably obligates and binds itself to set aside and pay into the Lease Payment Fund out of Lease Payments or out of any other moneys legally available therefor on or before the date on which any Bond Payment is due such amounts as will be sufficient to pay Bond Payments scheduled to become due on the date of maturity of such Bonds.

The Lease Payment Fund shall be drawn upon solely for the purpose of paying the principal of and premium, if any, and interest on Parity Bonds. Moneys set aside from time to time with the Registrar for such payments shall be held in trust for the owners of Parity Bonds in respect of which the same shall have been so set aside. Until so set aside, all moneys in the Lease Payment Fund shall be held in trust for the benefit of the owners of all Parity Bonds at the time outstanding equally and ratably.

Section 12. Specific Covenants. The Municipality hereby makes the following covenants with the Registered Owner of each of the outstanding Bonds for as long as any of the same remain outstanding.

(a) *Insurance.* The Municipality will at all times carry or cause to be carried fire insurance and such other forms of insurance with respect to the Facility in such amounts and with such deductibles as under good business practice are ordinarily carried on such buildings, equipment, property and facilities.

(b) *Books and Accounts.* The Municipality will cause proper books and accounts with respect to the operation of the Facility to be maintained; will cause its books and accounts to be audited annually by a certified public accountant, copies of which audits shall upon request be furnished to the purchaser or purchasers or owners of the Bonds. Said audi

1 shall show whether or not the Municipality has in all respects performed and complied with the
2 covenants set forth in this ordinance, including the payments into the Lease Payment Fund herein
3 provided for.

4 (c) *Disposal of Properties* The Municipality will not mortgage, sell, lease, or
5 in any manner encumber or dispose of all or substantially all the Property (voluntarily or
6 involuntarily), except to the State, unless provision is made for payment into the Lease Payment
7 Fund of a sum sufficient to pay the principal of, premium, if any, and interest on all outstanding
8 Parity Bonds payable therefrom, nor will it mortgage, sell, lease, or in any manner encumber or
9 dispose of voluntarily or involuntarily any part of the Facility unless

10 (i) the State has executed a consent to such mortgage, sale or lease
11 and confirmed that its obligations under the Agreement of Lease remain in full force and effect,
12 and

13 (ii) an opinion of Bond Counsel is provided to the Municipality to the
14 effect that such sale, mortgage, lease or disposition will not by itself adversely affect the tax-
15 exempt status of interest on the Bonds.

16 Section 13. Tax Covenants

17 (a) *Covenants Regarding Arbitrage and Private Activity Bonds* The
18 Municipality hereby covenants that it will not make any use of the proceeds of sale of the Bonds
19 or any other funds of the Municipality which may be deemed to be proceeds of such Bonds
20 pursuant to Section 148 of the Code which will cause the Bonds to be "arbitrage bonds" within
21 the meaning of said section and the applicable regulations thereunder. The Municipality will
22 comply with the requirements of Section 148 of the Code (or any successor provision thereof

1 applicable to the Bonds) and the applicable regulations thereunder throughout the term of the
2 Bonds.

3 The Municipality will take any action determined by the Municipality, after consultation
4 with its bond counsel, to be legal and practicable and required to be taken by the Municipality
5 under future federal laws or regulations in order to maintain the exemption of the interest on the
6 Bonds from federal income taxation

7 (b) *Arbitrage Rebate.*

8 (1) *General Rule.* The Municipality will pay to the United States of
9 America in accordance with the provisions of this section (i) rebate installment payments which
10 when added to the future value as of the Computation Date of all previous rebate payments made
11 with respect to the Bonds, equal at least 90% of the Rebatable Arbitrage with respect to the
12 Bonds, and (ii) a final rebate installment payment in an amount which, when added to the future
13 value of all previous rebate payments made with respect to the Bonds, equals 100% of the
4 Rebatable Arbitrage.

15 (2) *Computation of Rebatable Arbitrage.* As of any Computation
16 Date, the Rebatable Arbitrage for the Bonds is the excess of the future value, as of such date, of
17 all Receipts over the future value, as of such date, of all Payments

18 (3) *Payment Procedure.*

19 (i) The first rebate installment payment will be made for a
20 Computation Date that is no later than five years after the issue date of the Bonds. Subsequent
21 rebate installment payments will be made for a Computation Date that is not later than five years
22 after the previous Computation Date for which rebate installment payment was made Each

rebate installment payment will be paid no later than 60 days after the Computation Date to which the payment relates.

(ii) A final rebate payment will be paid within 60 days of the date the Bonds are Discharged or such other period as is permitted by Internal Revenue Service regulations.

(iii) Each payment of Rebatable Arbitrage will be made to the Internal Revenue Service Center, Ogden, Utah 84201 and will be accompanied by IRS Form 8038-T.

(c) *Qualification Under Section 265(b) of the Code.* The Municipality has not designated the Bonds as “qualifying tax-exempt obligations” pursuant to Section 265(b) of the Code for investment by financial institutions. The Municipality has issued and anticipates that it will issue more than \$10,000,000 in tax exempt obligations during 2000.

(d) *Private Person Use Limitation for Bonds.* The Municipality covenants that for as long as the Bonds are outstanding, it will not permit:

(1) More than 10% of the Net Proceeds of the Bonds to be used for any Private Person Use; and

(2) More than 10% of the principal or interest payments on the Bonds in a Bond Year to be directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (B) derived from payments (whether or not made to the Municipality) in respect of property, or borrowed money, used or to be used for any Private Person Use.

1 The Municipality further covenants that, if:

2 (3) More than five percent of the Net Proceeds of the Bonds are to be
3 used for any Private Person Use; and

4 (4) More than five percent of the principal or interest payments on the
5 Bonds in a Bond Year are (under the terms of this ordinance or any underlying arrangement)
6 directly or indirectly

7 (A) secured by any interest in property used or to be used for
8 any Private Person Use or secured by payments in respect of property used or to be used for any
9 Private Person Use, or

10 (B) derived from payments (whether or not made to the
11 Municipality) in respect of property, or borrowed money, used or to be used for any Private
12 Person Use, then, (i) any Private Person Use of the projects described in subsection (3) hereof or
13 Private Person Use payments described in subsection (4) hereof that is in excess of the five
14 percent limitations described in such subsections (3) or (4) will be for a Private Person Use that
15 is related to the state or local governmental use of the Project, and (ii) any Private Person Use
16 will not exceed the amount of Net Proceeds of the Bonds used for the state or local governmental
17 use portion of such projects to which the Private Person Use of such portion of the project
18 relates. The Municipality further covenants that it will comply with any limitations on the use of
19 the projects by other than state and local governmental users that are necessary, in the opinion of
20 its bond counsel, to preserve the tax exemption of the interest on the Bonds. The covenants of
21 this section are specified solely to assure the continued exemption from regular income taxation
22 of the interest on the Bonds

Section 14. Future Parity Bonds.

(a) *Limitations on Issuance of Additional Bonds.* Except as provided subsection (b) below, the Municipality shall not issue any series of obligations payable from Revenues or Lease Payments (*i.e.*, on a parity of lien with Parity Bonds at the time Outstanding) except that the Municipality reserves the right to issue future obligations for refunding purposes only having a parity of lien upon the Revenues and the Lease Payment Fund ("Future Parity Bonds") upon compliance with the following conditions:

(i) as long as the Agreement to Lease is not in default or otherwise has been terminated the Municipality shall have been requested by the State to issue Future Parity Bonds;

(ii) the Municipality, DOA and the Registrar shall have entered into and approved an amendment to or restatement of the Agreement to Lease providing for Lease Payments sufficient to pay all payments of all principal of, interest and premium, if any, on the Future Parity Bonds, and

(iii) the amendment or restatement of the Agreement to Lease or a memorandum thereof shall have been recorded in the official land records of the Municipality;

(iv) the Municipality shall have received an opinion of Bond Counsel to the effect that the issuance of such Future Parity Bonds shall not adversely affect the tax-exempt status of the outstanding Parity Bonds; and

(v) the aggregate annual debt service and aggregate principal amount on the Bonds and Future Parity Bonds may not exceed the limits imposed in the 1998 Act.

Notwithstanding herein to the contrary, the Municipality may issue Future Parity Bonds for refunding purposes at any time without the consent of Owners or the Insurer to refund all or

portion of Outstanding Bonds but only if debt service in each year on the refunding Future Parity Bonds does not exceed by more than \$5,000 the debt service due in the same year on the Bonds which are refunded.

Section 15. Defeasance. In the event that money and/or Acquired Obligations maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any or all of the Bonds in accordance with their terms are set aside in a special trust account in the Lease Payment Fund to effect such redemption or retirement and such money and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Lease Payment Fund for the payment of the principal of and interest on such Bonds, and such Bonds shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive the funds so set aside and pledged, and such Bonds shall be deemed not to be outstanding hereunder.

Section 16. Sale of Bonds. The Bonds shall be sold at negotiated sale to the Underwriters. The Chief Fiscal Officer of the Municipality is hereby authorized to negotiate terms for the purchase of the Bonds and execute a purchase contract with the Underwriters. The Assembly has been advised by the Underwriter that market conditions are fluctuating and, as a result, the most favorable market conditions may occur on a day other than a regular meeting date of the Assembly. The Assembly has determined that it would be inconvenient to hold a special meeting on short notice and, accordingly, has determined that it would be in the best interest of the Municipality to delegate to the Chief Fiscal Officer for a limited time the authority to approve final principal maturities on the Bonds and interest rates on the Bonds and other terms and conditions. The Department of Revenue shall be provided an opportunity to review proposed terms of sale in order to confirm compliance with the 1998 Act. The final interest

for the Bonds shall be determined by agreement among the Underwriters, financial advisors, the Chief Fiscal Officer and the Department of Revenue and shall be set forth as an exhibit to the purchase contract for the Bonds. The Chief Fiscal Officer is hereby authorized to approve the final principal maturities and final maturity amounts of the Bonds and the final interest rates and yields for the Bonds in the manner provided hereafter for so long as the true interest cost on the Bonds does not exceed 6.5%. In determining the maturities, principal amounts, redemption terms and rate or rates of interest of the Bonds, the Chief Fiscal Officer shall, in consultation with the financial advisors to the State and the Municipality, take into account those factors which, in his judgment, will result in the lowest true interest cost on the Bonds to their maturity, including, but not limited to current financial market conditions and current interest rates for obligations comparable in tenor and quality to the Bonds. The Chief Fiscal Officer is hereby authorized to execute the final form of the purchase contract for the Bonds, upon his approval of the final principal maturities on the Bonds, redemption provisions and the interest rates set forth therein. The authority granted to the Chief Fiscal Officer by this Section 16 shall expire in 90 days from the date of approval of this ordinance, and if final interest rates have not been approved by the Chief Fiscal Officer in accordance with the delegated authority of this Section 16 within 90 days, no final Bond terms shall be approved without further advice and consultation of the Assembly at a regular or special meeting.

Section 17. Application of Bond Proceeds The Municipality shall create three special accounts (i) Capitalized Interest Account; (ii) Costs of Issuance Account; and (iii) Project Account (collectively, herein referred to as the "Project Fund"). From the monies derived from the sale of the Bonds;

1 **(a)** the accrued interest to the date of delivery of the Bonds shall be deposited
2 in the Lease Payment Fund and shall be used to pay the interest on the Bonds coming due on
3 August 1, 2000;

4 **(b)** the balance of the proceeds of the Bonds shall be deposited in the various
5 accounts within the Project Fund designated in the closing memorandum executed by the Chief
6 Fiscal Officer (or his designee) on the date of delivery of the Bonds.

7 Money in the Capitalized Interest Account shall be transferred by the Municipality to the
8 Registrar on or prior to each Bond Payment Date occurring from the Closing Date until the
9 Commencement Date in order to pay the interest accruing on the Bonds on such Bond Payment
10 Date. Any money remaining in the Capitalized Interest Account on the Commencement Date
11 shall be paid to the Registrar for deposit to the Lease Payment Fund, and the Capitalized Interest
12 Account shall be closed. Money in the Costs of Issuance Account may be disbursed by the
13 Municipality to pay costs of issuance of the Bonds. Any money remaining in the Costs of
14 Issuance Account nine months following the Closing Date shall be paid to the Registrar for
15 deposit to the Lease Payment Fund, and the Costs of Issuance Account shall be closed. Bond
16 proceeds in the Project Account may be disbursed to reimburse the Municipality without interest
17 up to a maximum of \$5,000,000 for advancing its own money to pay costs of design, engineering
18 and construction management. The remaining Bond proceeds in the Project Account shall be
19 disbursed to pay the Project costs in accordance with the terms of the Construction Agreement.
20 Interest earnings on the Bond proceeds held in Project Fund shall accrue to the benefit of the
21 Project Account during the construction period (except for payments due with respect to
22 Rebatable Arbitrage). The Municipality shall maintain records sufficient to calculate the
23 payments, if any, due with respect to Rebatable Arbitrage and shall calculate the amount of

Rebatable Arbitrage due periodically, at least once each year, so that appropriate retention may be made to meet obligations with respect to Rebatable Arbitrage. Bond proceeds held in the Project Fund may be invested in any legal investment for funds of the Municipality. Notwithstanding the foregoing, if the Municipality has been informed that, or has learned that, an Event of Default or an Event of Nonappropriation has occurred and is continuing, the Municipality shall invest any available moneys held in the Lease Payment Fund and Bond proceeds in any legal investment for municipalities.

Following completion of the Project, remaining Bond proceeds, if any, shall be deposited in the Lease Payment Fund.

Section 18. General Authorization to Municipal Officials. After the sale, the Municipal Manager, the Chief Fiscal Officer or their representatives are hereby authorized and directed to do everything necessary to complete such sale and delivery of the Bonds to the Underwriters upon payment of the purchase price thereof.

Section 19. Authorization of Documents. In order to carry out the purposes of this ordinance, the Municipal Manager is authorized and directed to execute and deliver the Ground Lease to the Registrar, but only upon the condition that the Registrar enter into the Agreement of Lease with DOA. The Chief Fiscal Officer is hereby further authorized to enter into the Trust Agreement with the Registrar. Pursuant to the Trust Agreement, the Registrar is authorized and directed to enter into the Ground Lease and the Agreement to Lease.

Section 20. Approval of Official Statements. The Chief Fiscal Officer is hereby authorized to review and approve on behalf of the Municipality the preliminary Official Statement and to execute a certificate evidencing compliance with the Rule with such additions and changes as may be deemed necessary or advisable to him. The Chief Fiscal Officer

hereby authorized and directed to review and approve on behalf of the Municipality a final
official statement with respect to the Bonds

Section 21. Undertaking to Provide Ongoing Disclosure. The Municipality will
execute an agreement for ongoing disclosure with the Registrar in form and substance
satisfactory to the Underwriters, and the Chief Fiscal Officer is hereby authorized and directed to
negotiate and execute such agreement

Section 22. Municipal Bond Insurance Policy. The payments of the principal of and
interest on the Bonds may be insured by the issuance of the Municipal Bond Insurance Policy.
The Chief Fiscal Officer, with the assistance of the Underwriter, shall solicit proposals from
municipal bond insurance companies, and the Chief Fiscal Officer, in consultation with the
financial advisors, is hereby authorized to review such proposals and may select the proposal
which is deemed to be the most cost effective and further to execute a commitment with such
insurance company (the "Insurer" which may include such covenants and conditions as shall be
approved by the Chief Fiscal Officer.

Section 23. Amendatory and Supplemental Ordinances

(a) The Assembly from time to time and at any time may approve an
ordinance or ordinances supplemental hereof, which ordinance or ordinances thereafter shall
become a part of this ordinance, for any one or more of the following purposes

(1 To add to the covenants and agreements of the Municipality in this
ordinance contained, other covenants and agreements thereafter to be observed, or to surrender
any right or power herein reserved to or conferred upon the Municipality

(2 To make provisions for the issuance of Future Parity Bonds in
accordance with the terms of this ordinance

1 (3) To make such provisions for the purpose of curing any ambiguities
2 or of curing, correcting or supplementing any defective provision contained in this ordinance or
3 in regard to matters or questions arising under this ordinance as the Assembly may deem
4 necessary or desirable and not inconsistent with this ordinance and which shall not materially
5 and adversely affect the interest of the Registered Owners or Beneficial Owners of any Parity
6 Bonds.

7 (4) To provide for the issuance of Parity Bonds in a different form of
8 book-entry or certificated obligations

9 Any such supplemental ordinance of the Assembly may be approved without the consent
10 of the Registered Owner or Beneficial Owner of any of the Parity Bonds at any time outstanding,
11 notwithstanding any of the provisions of subsection (b) of this section

12 (b) With the consent of the Registered Owners of not less than 60% in
13 aggregate principal amount of any Parity Bonds at the time Outstanding, the Assembly may
14 approve an ordinance or ordinances supplemental hereto for the purpose of adding any
15 provisions to or changing in any manner or eliminating any of the provisions of this ordinance or
16 of any supplemental ordinance; *provided, however*, that no such supplemental ordinance shall:

17 (1) Extend the fixed maturity of any of the Parity Bonds, or reduce the
18 rate of interest thereon, or reduce the amount or change the date of any sinking fund payment
19 requirement, or extend the time of payments of interest from their due date, or reduce the amount
20 of the principal thereof, or reduce any premium payable on the redemption thereof, without the
21 consent of the Registered Owner of each Parity Bond so affected; or

(2) Reduce the aforesaid percentage of Registered Owners of Parity Bonds required to approve any such supplemental ordinance without the consent of the Registered Owners of all of the Parity Bonds then outstanding; or

(3) Remove the pledge and lien of this ordinance on Revenues or the moneys in the Lease Payment Fund.

It shall not be necessary for the consent of the Registered Owners of the Parity Bonds under this subsection (b) to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

(c) Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the Municipality under this ordinance and all Registered Owners of Parity Bonds outstanding hereunder shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendment, and all the terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this ordinance for any and all purposes

(d) Parity Bonds executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this section may bear a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, Parity Bonds so modified as to conform, in the opinion of the Assembly, to any modification of this ordinance contained in any such supplemental ordinance may be prepared by the Municipality and delivered without cost to the owners of Parity Bonds then outstanding, upon surrender for cancellation of such Bonds or Parity Bond in equal aggregate principal amounts.

