
ORDINANCE NUMBER 63-O-99

AN ORDINANCE providing for the issuance of not to exceed \$38,540,000 General Obligation Corporate Purpose Bonds, Series 1999, of the City of Evanston, Cook County, Illinois, and providing for the levy and collection of a direct annual tax for the payment of the principal of and interest on said bonds.

Adopted by the City Council
on the 24th day of May 1999.

Published in Pamphlet Form by
the Authority of the City
Council on the 25th day of
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PREAMBLES

WHEREAS

A. The City of Evanston, Cook County, Illinois (the "City"), has a population in excess of 25,000 as determined by the last official census and, accordingly, pursuant to the provisions of the 1970 Constitution of the State of Illinois and particularly Article VII, Section 6(a) thereof, the City is a home rule unit and as such may exercise any power or perform any function pertaining to its government and affairs, including, but not limited to, the power to tax and to incur debt.

B. Pursuant to the provisions of said Section 6 of Article VII of the 1970 Constitution, the City has the power to incur debt payable from ad valorem tax receipts maturing within 40 years from the time it is incurred and without prior referendum approval.

C. The City has a Capital Improvement Plan (the "Plan"), which has been reviewed and revised annually, and is currently in effect for the years 1999 through 2003.

D. It is deemed by the City Council of the City (the "City Council") to be necessary and advisable and in the best interests of the inhabitants of the City to obtain funds to pay a portion of the costs of (a) certain capital projects (the "Plan Projects") set forth in the current Plan at an estimated cost of \$3,470,000, (b) improvement of alleyways (the "Alleyways Projects") at an estimated cost of \$380,000, (c) redevelopment project costs (the "Downtown TIF Projects") in the Downtown Redevelopment Project Area at an estimated cost of \$200,000, and (d) various capital corporate improvements, fleet vehicle purchases, and other equipment

acquisitions (the "Savings Projects") at an estimated cost of \$1,050,000 (collectively, all of said projects being the "1999 Bonds Capital Improvements") and subject to amendment for such other corporate purposes as the City Council may determine as hereinafter provided.

E. The estimated total cost to the City of the 1999 Bonds Capital Improvements (collectively the "1999 Capital Funding") is the sum of \$5,100,000 plus the estimated available amount of interest earnings on said sum prior to its expenditure.

F. It is necessary for the payment of the costs of the 1999 Capital Funding that money be borrowed at this time and in evidence of such borrowing, general obligation bonds of the City be issued in the principal amount of not to exceed \$5,100,000, and that such indebtedness be incurred in accordance with the home rule powers of the City, as aforesaid, and without submitting the question of incurring such indebtedness to the electors of said City for their approval.

G. The City has heretofore issued and there are now outstanding the following legal and validly binding and subsisting obligations of the City:

**GENERAL OBLIGATION CORPORATE PURPOSE BONDS
SERIES 1994 DATED APRIL 15, 1994**

Original Principal Amount:	\$24,210,000
Originally Due Serially on <i>December 1</i> in the Years:	1995 to 2014
Amount Remaining Outstanding:	\$20,825,000
Amount To Be Refunded:	\$15,075,000

**REMAINING OUTSTANDING BONDS AND BONDS TO
BE REFUNDED DUE AND DESCRIBED AS FOLLOWS:**

DECEMBER 1 OF THE YEAR	AMOUNT (\$)	RATE OF INTEREST (%)	AMOUNT TO BE REFUNDED
1999	1,050,000	5.50	None
2000	1,075,000	5.50	None
2001	1,150,000	5.50	None
2002	1,200,000	5.50	None
2003	1,275,000	5.50	None
2004	1,325,000	5.50	All
2005	1,075,000	5.50	All
2006	1,150,000	5.50	All
2007	1,200,000	5.50	All
2008	1,275,000	5.50	All
2009	1,350,000	5.50	All
2010	1,450,000	5.50	All
2011	1,525,000	5.65	All
2012	1,625,000	5.75	All
2013	1,700,000	5.75	All
2014	1,400,000	5.75	All

of which bonds (the “*Series 1994 Bonds*”), those to be refunded (the “*Series 1994 Callable Bonds*”) are subject to redemption prior to maturity at the option of the City, on any date on or after December 1, 2003, at the redemption price of par and accrued interest.

**GENERAL OBLIGATION CORPORATE PURPOSE BONDS
SERIES 1995, DATED APRIL 15, 1995**

Original Principal Amount:	\$10,835,000
Originally Due Serially on <i>December 1</i> in the Years:	1996 to 2015
Amount Remaining Outstanding:	\$9,610,000
Amount To Be Refunded:	\$6,085,000

**REMAINING OUTSTANDING BONDS AND BONDS TO
BE REFUNDED DUE AND DESCRIBED AS FOLLOWS:**

DECEMBER 1 OF THE YEAR	AMOUNT (\$)	RATE OF INTEREST (%)	AMOUNT TO BE REFUNDED
1999	520,000	5.30	None
2000	540,000	5.30	None
2001	565,000	5.30	None
2002	605,000	5.30	None
2003	630,000	5.30	None
2004	665,000	5.30	None
2005	700,000	5.30	All
2006	415,000	5.30	All
2007	435,000	5.40	All
2008	460,000	5.50	All
2009	490,000	5.55	All
2010	515,000	5.60	All
2011	545,000	5.625	All
2012	575,000	5.65	All
2013	615,000	5.65	All
2014	650,000	5.65	All
2015	685,000	5.70	All

of which bonds (the “*Series 1995 Bonds*”), those to be refunded (the “*Series 1995 Callable Bonds*”) are subject to redemption prior to maturity at the option of the City, on any date on or after December 1, 2004, at the redemption price of par and accrued interest.

**GENERAL OBLIGATION CORPORATE PURPOSE BONDS
SERIES 1996, DATED MAY 1, 1996**

Original Principal Amount:	\$18,595,000
Originally Due Serially on December 1 in the Years:	1997 to 2016
Amount Remaining Outstanding:	\$17,010,000
Amount To Be Refunded:	\$9,675,000

**REMAINING OUTSTANDING BONDS AND BONDS TO
BE REFUNDED DUE AND DESCRIBED AS FOLLOWS:**

DECEMBER 1 OF THE YEAR	AMOUNT (\$)	RATE OF INTEREST (%)	AMOUNT TO BE REFUNDED
1999	920,000	4.50	None
2000	985,000	4.50	None
2001	1,040,000	5.00	None
2002	1,105,000	5.00	None
2003	1,175,000	5.00	None
2004	980,000	5.00	None
2005	1,040,000	5.00	None
2006	1,105,000	5.00	All
2007	745,000	5.25	All
2008	790,000	5.35	All
2009	845,000	5.40	All
2010	900,000	5.50	All
2011	955,000	5.50	All
2012	1,015,000	5.60	All
2013	1,080,000	5.65	All
2014	1,145,000	5.70	All
2015	580,000	5.70	All
2016	605,000	5.70	All

of which bonds (the "*Series 1996 Bonds*"), those to be refunded (the "*Series 1996 Callable Bonds*") are subject to redemption prior to maturity at the option of the City, on any date on or after June 1, 2006, at the redemption price of par and accrued interest.

H. The City Council of the City has considered and determined that interest rates available in the bond market are currently more favorable for the City than they were at the time when the Series 1994 Bonds, the Series 1995 Bonds, and the Series 1996 Bonds (collectively, the "*Prior Bonds*") were issued and that it is possible, proper and advisable to refund the Series 1994 Callable Bonds, the Series 1995 Callable Bonds, and the Series 1996 Callable Bonds (collectively, the "*Callable Bonds*"), and to provide for the payment and redemption thereof at their respective earliest dates of redemption, at this time to take advantage of the debt service savings which will result from such lower interest rates (which refunding may hereinafter be referred to as the "*Refunding*").

I. The City Council does hereby determine that it is advisable and in the best interests of the City to borrow not to exceed \$38,540,000 at this time pursuant to the Act as hereinafter defined for the purpose of paying the costs of the Refunding and, in evidence of such borrowing, issue its full faith and credit bonds in the aggregate principal amount of not to exceed such \$38,540,000.

NOW THEREFORE Be It Ordained by the City Council of the City of Evanston, Cook County, Illinois, in the exercise of its home rule powers, as follows:

Section 1. Definitions. Words and terms used in this Ordinance shall have the meanings given them, unless the context or use clearly indicates another or different meaning is intended. Words and terms defined in the singular may be used in the plural and vice-versa. Reference to any gender shall be deemed to include the other and also inanimate persons such as corporations, where applicable.

A. The following words and terms are as defined in the preambles hereto.

Alleyway Projects

Callable Bonds

City

City Council

Downtown TIF Projects

Plan

Plan Projects

Prior Bonds

Refunding

1999 Bonds Capital Improvements

1999 Capital Funding

Savings Projects

Series 1994 Bonds

Series 1995 Bonds

Series 1996 Bonds

Series 1994 Callable Bonds

Series 1995 Callable Bonds

Series 1996 Callable Bonds

B. The following words and terms are defined as set forth.

“*Act*” means the Illinois Municipal Code, as supplemented and amended, and the home rule powers of the City under Section 6 of Article VII of the Illinois Constitution of 1970; and in the event of conflict between the provisions of said code and home rule powers, the home rule powers shall be deemed to supersede the provisions of said code.

“*Bonds*” means the not to exceed \$38,540,000 General Obligation Corporate Purpose Bonds, Series 1999, authorized to be issued by this Ordinance.

“*Bond Moneys*” means the Pledged Taxes and any other moneys deposited into the Debt Service Fund and investment income earned in the Bond Fund.

“*Bond Order*” means the Bond Order as authorized to be executed by the Designated Officials of the City in Section (13) of this Ordinance, substantially in the form (with related certificates) as attached hereto as *Exhibit A*, and by which the final terms of the Bonds will be established.

“*Bond Register*” means the books of the City kept by the Bond Registrar to evidence the registration and transfer of the Bonds.

"Bond Registrar" means American National Bank and Trust Company of Chicago, Chicago, Illinois, a bank having trust powers, or a successor thereto or a successor designated as bond registrar hereunder.

"Book Entry Form" means the form of the Bonds as fully registered and available in physical form only to the Depository.

"Code" means the Internal Revenue Code of 1986, as amended.

"Continuing Disclosure Undertaking" means the undertaking by the City for the benefit of the Purchasers as authorized in Section (22) hereof and substantially in the form as attached hereto as *Exhibit B*.

"County Clerk" means the County Clerk of The County of Cook.

"Debt Service Fund" means the Debt Service Fund established and defined in Section (15) of this Ordinance.

"Depository" means The Depository Trust Company, a New York limited trust company, its successors, or a successor depository qualified to clear securities under applicable state and federal laws.

"Designated Officials" means the City Manager and Finance Director of the City, acting together.

"Escrow Agent" means American National Bank and Trust Company of Chicago, Chicago, Illinois, a bank having trust powers, or a successor thereto or a successor designated as Escrow Agent hereunder.

"Escrow Agreement" means the agreement by and between the City and the Escrow Agent as authorized in Section (14) hereof and set forth as *Exhibit C*.

"Financial Advisor" means R.V. Norene & Associates, Inc., the financial advisor to the City for the sale of the Bonds.

"Ordinance" means this Ordinance, numbered ___-O-99, and passed by the City Council on the 24th day of May 1999.

"Paying Agent" means American National Bank and Trust Company of Chicago, Chicago, Illinois, a bank having trust powers, or a successor thereto or a successor designated as paying agent hereunder.

"Pledged Taxes" means the taxes levied on the taxable property within the corporate limits of the City to pay principal of and interest on the Bonds as provided in Section (12) hereof.

"Project Fund" means the Project Fund as established and defined in Section (15) of this ordinance.

"Rebate Fund" means the Rebate Fund authorized to be established and as defined in Section (17) of this Ordinance.

"Record Date" means the 15th day of the month preceding any regular or other interest payment date occurring on the first day of any month and 15 days preceding any interest payment date occasioned by the redemption of Bonds on other than the first day of a month.

"Tax-exempt" means, with respect to the Bonds, the status of interest paid and received thereon as not includible in the gross income of the owners thereof under the Code for federal income tax purposes except to the extent that such interest will be taken into account in computing an adjustment used in determining the alternative minimum tax for certain corporations and in computing the "branch profits tax" imposed on certain foreign corporations.

"Term Bonds" means Bonds subject to mandatory redemption by operation of the Debt Service Fund and designated as term bonds in the Bond Order.

C. Definitions also appear in the preambles hereto or in specific sections, as appear below. The headings in this Ordinance are for the convenience of the reader and are not a part of this Ordinance.

Section 2. Incorporation of Preambles. The City Council hereby finds that all of the recitals contained in the preambles to this Ordinance are true, correct and complete and does incorporate them into this Ordinance by this reference.

Section 3. Determination To Issue Bonds. It is necessary and in the best interests of the City to provide for the 1999 Capital Funding for the public health, safety and welfare, and to pay all related costs and expenses incidental thereto, and to borrow money and issue a portion of the Bonds for such purposes. It is further necessary and in the best interests of the City to provide for the Refunding to achieve a net debt service savings, to pay all related costs and expenses incidental thereto, and to borrow money and issue the remainder of the Bonds for such purposes. It is hereby found and determined that such borrowing of money is for a proper public purpose or purposes and is in the public interest, and is authorized by the Act.

Section 4. Bond Details. There shall be issued and sold the Bonds in the aggregate principal amount of not to exceed \$38,540,000. The Bonds shall each be designated "*General Obligation Corporate Purpose Bond, Series 1999*"; be dated June 15, 1999 (the "*Dated Date*"); and shall also bear the date of authentication thereof. The Bonds shall be fully registered and in Book Entry Form, shall be in denominations of \$5,000 or integral multiples thereof (but no single Bond shall represent principal maturing on more than one date), and shall be numbered consecutively in such fashion as shall be determined by the Bond Registrar. The \$4,050,000 portion of the Bonds to be issued to pay the costs of acquiring and constructing the Alleyway Projects, the Plan Projects, and the Downtown TIF Projects, and all related costs and expenses

incidental thereto, shall mature serially on December 1 of the years and in the amounts as follows (subject to the right of prior redemption hereinafter stated):

YEAR	AMOUNT (\$)	YEAR	AMOUNT (\$)
2000	200,000	2010	170,000
2001	210,000	2011	175,000
2002	215,000	2012	185,000
2003	220,000	2013	195,000
2004	175,000	2014	205,000
2005	185,000	2015	210,000
2006	190,000	2016	220,000
2007	195,000	2017	235,000
2008	205,000	2018	245,000
2009	160,000	2019	255,000

Total = 4,050,000

The portion of the Bonds to be issued to pay the costs of acquiring and constructing the Savings Projects and to pay the costs of the Refunding, and all related costs and expenses incidental thereto, shall mature serially on December 1 of the years from 1999 and up to and including the year 2016 as shall be set forth in the Bond Order, and in such principal amounts as shall be set forth therein; *provided, however*, that the *sum* of the principal of and interest on such portion of the Bonds due (or subject to mandatory redemption) in any given annual period from December 2 to the following December 1 shall not exceed the *sum* of the principal of and interest on the Callable Bonds during such period, *plus*, in each year, the sum of \$10,000. Each Bond shall bear interest, at a rate not to exceed 9% per annum, from the later of its Dated Date as herein provided or from the most recent interest payment date to which interest has been paid or duly provided for, until the principal amount of such Bond is paid or duly provided for, such interest (computed upon the basis of a 360-day year of twelve 30-day months) being payable on June 1 and December 1 of each year, commencing on December 1, 1999. Interest on each Bond shall be paid by check or draft of the Paying Agent, payable upon presentation thereof in lawful money of the United States of America, to the person in whose name such Bond is registered at

the close of business on the applicable Record Date and mailed to the registered owner of the Bond as shown in the Bond Registrar or at such other address furnished in writing by such Registered Owner, or as otherwise may be agreed with the Depository for so long as the Depository is the registered owner as of a given Record Date. The principal of or redemption price due on the Bonds shall be payable in lawful money of the United States of America upon presentation thereof at the principal corporate trust office of the Paying Agent located in the City of Chicago, Illinois, or at successor Paying Agent and locality.

Section 5. Book Entry Provisions. The Bonds shall be initially issued in the form of a separate single fully registered Bond for each of the maturities of the Bonds. Upon initial issuance, the ownership of each such Bond shall be registered in the Bond Register in the name of the Depository or a designee or nominee of the Depository (such depository or nominee being the "*Book Entry Owner*"). Except as otherwise expressly provided, all of the outstanding Bonds from time to time shall be registered in the Bond Register in the name of the Book Entry Owner (and accordingly in Book Entry Form as such term is used in this Ordinance). Any City officer, as representative of the City is hereby authorized, empowered and directed to execute and deliver a Letter of Representations or Blanket Letter of Representations (either being the "*Letter of Representations*") substantially in the form common in the industry, or with such changes therein as the officer executing the Letter of Representations on behalf of the City shall approve, his or her execution thereof to constitute conclusive evidence of his approval of such changes, as shall be necessary to effectuate Book Entry Form. Without limiting the generality of the authority given with respect to entering into such Letter of Representations, it may contain provisions relating to (a) payment procedures, (b) transfers of the Bonds or of beneficial interests therein, (c) redemption notices and procedures unique to the Depository, (d) additional notices or communications, and (e) amendment from time to time to conform with changing customs and

practices with respect to securities industry transfer and payment practices. With respect to Bonds registered in the Bond Register in the name of the Book Entry Owner, none of the City, the Comptroller, the Paying Agent or the Bond Registrar shall have any responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Bonds from time to time as securities depository (each such broker-dealer, bank or other financial institution being referred to herein as a "*Depository Participant*") or to any person on behalf of whom such a Depository Participant holds an interest in the Bonds. Without limiting the meaning of the immediately preceding sentence, the City, the Comptroller, the Paying Agent and the Bond Registrar shall have no responsibility or obligation with respect to (a) the accuracy of the records of the Depository, the Book Entry Owner, or any Depository Participant with respect to any ownership interest in the Bonds, (b) the delivery to any Depository Participant or any other person, other than a registered owner of a Bond as shown in the Bond Register or as otherwise expressly provided in the Letter of Representations, of any notice with respect to the Bonds, including any notice of redemption, or (c) the payment to any Depository Participant or any other person, other than a registered owner of a Bond as shown in the Bond Register, of any amount with respect to principal of or interest on the Bonds. No person other than a registered owner of a Bond as shown in the Bond Register shall receive a Bond certificate with respect to any Bond. In the event that (a) the City determines that the Depository is incapable of discharging its responsibilities described herein and in the Letter of Representations, (b) the agreement among the City, the Paying Agent and Bond Registrar, and the Depository evidenced by the Letter of Representations shall be terminated for any reason, or (c) the City determines that it is in the best interests of the City or of the beneficial owners of the Bonds either that they be able to obtain certificated Bonds or that another depository is preferable, the City shall notify the Depository and the Depository shall notify the Depository Participants of the availability of

Bond certificates, and the Bonds shall no longer be restricted to being registered in the Bond Register in the name of the Book Entry Owner. Alternatively, at such time, the City may determine that the Bonds shall be registered in the name of and deposited with a successor depository operating a system accommodating Book Entry Form, as may be acceptable to the City, or such depository's agent or designee, but if the City does not select such alternate Book Entry system, then the Bonds shall be registered in whatever name or names registered owners of Bonds transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

Section 6. Execution; Authentication. The Bonds shall be executed on behalf of the City by the manual or duly authorized facsimile signature of its Mayor and attested by the manual or duly authorized facsimile signature of its City Clerk, as they may determine, and shall have impressed or imprinted thereon the corporate seal or facsimile thereof of the City. In case any such officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All Bonds shall have thereon a certificate of authentication, substantially in the form hereinafter set forth, duly executed by the Bond Registrar as authenticating agent of the City and showing the date of authentication. No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until such certificate of authentication shall have been duly executed by the Bond Registrar by manual signature, and such certificate of authentication upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance. The certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Bond

Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 7. Term Bonds, Mandatory Redemption and Covenants; Optional Redemption.

The Bonds may be subject to mandatory redemption (as Term Bonds) as provided in the Bond Order; *provided, however,* that in such event the amounts due as provided for under such mandatory redemption shall be the amounts used to satisfy the test set forth in Section (4) of this Ordinance for the maximum amounts of principal due on the Bonds in any given period. Bonds designated as Term Bonds shall be made subject to mandatory redemption by operation of the Debt Service Fund at a price of not to exceed par and accrued interest, without premium, on a given date of the years and in the amounts as shall be determined in the Bond Order. The City covenants that it will redeem any Term Bonds pursuant to the mandatory redemption requirement for such Term Bonds and levy taxes accordingly. The Bonds shall also be subject to redemption prior to maturity at the option of the City, from any available funds, in whole or in part on any date, not longer than ten and one-half (10-1/2) years from the Dated Date, as provided in the Bond Order, and if in part, in such order of maturities (and, if applicable, order of mandatory redemption payments) as shall be specified in the Bond Order, and if less than an entire maturity, in integral multiples of \$5,000, selected by lot by the Bond Registrar as hereinafter provided, at the redemption price (expressed as a percentage of the principal amount being redeemed) of not to exceed 103% of par plus accrued interest to the date fixed for redemption, as provided in the Bond Order. Notwithstanding any other provision of this Ordinance, the Bond Order may provide for non-callable Bonds for the first ten and one-half (10-1/2) years.

With respect to any redemption of Bonds, unless moneys sufficient to pay the redemption price of the Bonds to be redeemed shall have been received by the Paying Agent prior to the

giving of the notice of redemption, such notice may, at the option of the City, state that such redemption shall be conditional upon the receipt of such moneys by the Paying Agent on or prior to the date fixed for redemption. If such moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds, and the Bond Registrar shall give notice, in the same manner in which the notice of redemption shall have been given, that such moneys were not so received and that such Bonds will not be redeemed.

Section 8. Term Bonds Purchase or Redemption. If the City redeems pursuant to optional redemption as hereinabove provided or purchases Term Bonds of any maturity and cancels the same from Bond Moneys as hereinafter described, then an amount equal to the principal amount of Term Bonds so redeemed or purchased shall be deducted from the mandatory redemption requirements provided for Term Bonds of such maturity, first, in the current year of such requirement, until the requirement for the current year has been fully met, and then in any order of such Term Bonds as due at maturity or subject to mandatory redemption in any year, as the City shall determine. If the City redeems pursuant to optional redemption or purchases Term Bonds of any maturity and cancels the same from moneys other than Bond Moneys, then an amount equal to the principal amount of Term Bonds so redeemed or purchased shall be deducted from the amount of such Term Bonds as due at maturity or subject to mandatory redemption requirement in any year, as the City shall determine.

Section 9. Redemption Procedure. For a mandatory redemption, the Bond Registrar shall proceed to redeem Bonds without any further order or direction from the City whatsoever. For an optional redemption, the City shall, at least 45 days prior to a redemption date (unless a shorter time period shall be satisfactory to the Bond Registrar), notify the Bond Registrar of such redemption date and of the maturities (and, if applicable, the scheduled mandatory redemption affected) and principal amounts of Bonds to be redeemed. For purposes of any redemption of

less than all of the Bonds of a single maturity, the particular Bonds or portions of Bonds to be redeemed shall be selected by lot not more than 60 days prior to the redemption date by the Bond Registrar for the Bonds of such maturity by such method of lottery as the Bond Registrar shall deem fair and appropriate; *provided*, that such lottery shall provide for the selection for redemption of Bonds or portions thereof so that any \$5,000 Bond or \$5,000 portion of a Bond shall be as likely to be called for redemption as any other such \$5,000 Bond or \$5,000 portion. The Bond Registrar shall promptly notify the City and the Paying Agent in writing of the Bonds or portions of Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed. Unless waived by the registered owner of Bonds to be redeemed, official notice of any such redemption shall be given by the Bond Registrar on behalf of the City by mailing the redemption notice by first class U.S. mail not less than 30 days and not more than 60 days prior to the date fixed for redemption to each registered owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar. All official notices of redemption shall include the name of the Bonds and at least the information as follows:

- (a) the redemption date;
- (b) the redemption price;
- (c) if less than all of the outstanding Bonds of a particular maturity are to be redeemed, the identification (and, in the case of partial redemption of Bonds within such maturity, the respective principal amounts) of the Bonds to be redeemed;
- (d) a statement 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 of payment shall be the principal corporate trust office of the Paying Agent.

Unless moneys sufficient to pay the redemption price of the Bonds to be redeemed shall have been received by the Paying Agent prior to the giving of such notice of redemption, such notice may, at the option of the City, state that said redemption shall be conditional upon the receipt of such moneys by the Paying Agent on or prior to the date fixed for redemption. If such moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds, and the Bond Registrar shall give notice, in the same manner in which the notice of redemption was given, that such moneys were not so received and that such Bonds will not be redeemed. Official notice of redemption having been given as described, the Bonds or portions of Bonds so to be redeemed shall, subject to the stated condition above, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Neither the failure to mail such redemption notice, nor any defect in any notice so mailed, to any particular registered owner of a Bond, shall affect the sufficiency of such notice with respect to other registered owners. Notice having been properly given, failure of a registered owner of a Bond to receive such notice shall not be deemed to invalidate, limit or delay the effect of the notice or redemption action described in the notice. Such notice may be waived in writing by a registered owner of a Bond entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by registered owners shall be filed with the Bond Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In lieu of the foregoing notice, so long as the Bonds are held in Book Entry Form, notice

may be given as provided in the Letter of Representations, and the giving of such notice shall constitute a waiver by the Depository and the Book Entry Owner, as registered owner, of the foregoing notice. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Paying Agent at the redemption price. The procedure for the payment of interest due as part of the redemption price shall be as herein provided for payment of interest otherwise due. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond or Bonds of like tenor, of authorized denominations, of the same maturity, and bearing the same rate of interest in the amount of the unpaid principal. If any Bond or portion of Bond called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the redemption date at the rate borne by the Bond or portion of Bond so called for redemption. All Bonds which have been redeemed shall be cancelled and destroyed by the Bond Registrar and shall not be reissued. Upon the payment of the redemption price of Bonds being redeemed, 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. As part of their respective duties hereunder, the Bond Registrar and Paying Agent shall prepare and forward to the City a statement as to notice given with respect to each redemption together with copies of the notices as mailed.

Section 10. Registration of Bonds; Persons Treated as Owners. The City shall cause books (the "*Bond Register*" as defined) for the registration and for the transfer of the Bonds as provided in this Ordinance to be kept at the principal corporate trust office of the Bond Registrar in the City of Chicago, Illinois, which is hereby constituted and appointed the registrar of the City for the Bonds. The City is authorized to prepare, and the Bond Registrar or such other agent as the City may designate shall keep custody of, multiple Bond blanks executed by the City for

use in the transfer and exchange of Bonds. Subject to the provisions of this Ordinance relating to the Bonds in Book Entry Form, any Bond may be transferred or exchanged, but only in the manner, subject to the limitations, and upon payment of the charges as set forth in this Ordinance. Upon surrender for transfer or exchange of any Bond at the principal corporate trust office of the Bond Registrar, duly endorsed by or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Bond Registrar and duly executed by the registered owner or an attorney for such owner duly authorized in writing, the City shall execute and the Bond Registrar shall authenticate, date and deliver in the name of the transferee or transferees or, in the case of an exchange, the registered owner, a new fully registered Bond or Bonds of like tenor, of the same maturity, bearing the same interest rate, of authorized denominations, for a like aggregate principal amount. The Bond Registrar shall not be required to transfer or exchange any Bond during the period from the close of business on the Record Date for an interest payment to the opening of business on such interest payment date or during the period of 15 days preceding the giving of notice of redemption of Bonds or to transfer or exchange any Bond all or a portion of which has been called for redemption. The execution by the City of any fully registered Bond shall constitute full and due authorization of such Bond, and the Bond Registrar shall thereby be authorized to authenticate, date and deliver such Bond; *provided, however*, the principal amount of Bonds of each maturity authenticated by the Bond Registrar shall not at any one time exceed the authorized principal amount of Bonds for such maturity less the amount of such Bonds which have been paid. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of or interest on any Bond shall be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum

or sums so paid. No service charge shall be made to any registered owner of Bonds for any transfer or exchange of Bonds, but the City or the Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds.

Section 11. Form of Bond. The Bonds shall be in substantially the form hereinafter set forth; *provided, however,* that if the text of the Bond is to be printed in its entirety on the front side of the Bond, then the second paragraph of the front side of the Bond and the legend "See Reverse Side for Additional Provisions" shall be omitted and paragraphs on the reverse side of the Bond shall be inserted immediately after the first paragraph on the front side.

[Form of Bond - Front Side]

REGISTERED
NO. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF ILLINOIS
COUNTY OF COOK
CITY OF EVANSTON
GENERAL OBLIGATION CORPORATE PURPOSE BOND, SERIES 1999

See Reverse Side for
Additional Provisions.

Interest Maturity Dated
Rate: Date: December 1, _____ Date: June 15, 1999 CUSIP: _____

Registered Owner:

Principal Amount: _____ Dollars

KNOW ALL PERSONS BY THESE PRESENTS that the City of Evanston, Cook County, Illinois, a municipality, home rule unit and political subdivision of the State of Illinois (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns as hereinafter provided, on the Maturity Date identified above (subject to right of prior redemption as hereinafter stated), the Principal Amount identified above and to pay interest (computed on the basis of a 360-day year of twelve 30-day months) on such Principal Amount from the later of the Dated Date of this Bond identified above or from the most recent interest payment date to which interest has been paid or duly provided for, at the Interest Rate per annum identified above, such interest to be payable on June 1 and December 1 of each year, commencing December 1, 1999, until the Principal Amount is paid or duly provided for. The principal of or redemption price on this Bond is payable in lawful money of the United States of America upon presentation hereof at the principal corporate trust office of American National Bank and Trust Company of Chicago, in the City of Chicago,

Illinois, as paying agent (the "*Paying Agent*"). Payment of interest shall be made to the Registered Owner hereof as shown on the registration books of the City maintained by American National Bank and Trust Company of Chicago, in the City of Chicago, Illinois, as bond registrar (the "*Bond Registrar*"), at the close of business on the applicable record date (the "*Record Date*"). The Record Date shall be the 15th day of the month preceding any regular interest payment date or a redemption on the first day of any month and the 15th day preceding any other interest payment date which may be occasioned by a redemption of Bonds on a day other than the first day of any month. Interest shall be paid by check or draft of the Paying Agent, payable upon presentation in lawful money of the United States of America, mailed to the address of such Registered Owner as it appears on such registration books or at such other address furnished in writing by such Registered Owner to the Bond Registrar, or as otherwise agreed by the City and the Bond Registrar and a qualified securities clearing corporation as depository, or nominee, for so long as this Bond shall be in Book Entry Form as provided for same.

Reference is hereby made to the further provisions of this Bond set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as if set forth at this place.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and Laws of the State of Illinois to exist or to be done precedent to and in the issuance of this Bond, have existed and have been properly done, happened and been performed in regular and due form and time as required by law; that the indebtedness of the City, represented by the Bonds, and including all other indebtedness of the City, howsoever evidenced or incurred, does not exceed any constitutional or statutory or other lawful limitation; and that provision has been made for the collection of a direct annual tax, in addition to all other taxes, on

all of the taxable property in the City sufficient to pay the interest hereon as the same falls due and also to pay and discharge the principal hereof at maturity.

This Bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Bond Registrar.

IN WITNESS WHEREOF the City of Evanston, Cook County, Illinois, by its City Council, has caused this Bond to be executed by the manual or duly authorized facsimile signature of its Mayor and attested by the manual or duly authorized facsimile signature of its City Clerk and its corporate seal or a facsimile thereof to be impressed or reproduced hereon, all as appearing hereon and as of the Dated Date identified above.



Mayor, City of Evanston
Cook County, Illinois

Attest:



City Clerk, City of Evanston
Cook County, Illinois

[SEAL]

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____, _____

This Bond is one of the Bonds described in the within-mentioned Ordinance and is one of the General Obligation Corporate Purpose Bonds, Series 1999, of the City of Evanston, Cook County, Illinois.

American National Bank and Trust
Company of Chicago,
as Bond Registrar

[FORM OF BOND - REVERSE SIDE]

This bond is one of a series of bonds (the "*Bonds*") in the aggregate principal amount of \$_____ issued by the City for the purpose of paying the costs of the 1999 Capital Funding and of refunding certain General Obligation Corporate Purpose Bonds, of various series, of the City, and of paying expenses incidental thereto, all as described and defined in the Ordinance Number ___-O-99, duly adopted by the City Council on the 24th day of May 1999, authorizing the Bonds (the "*Ordinance*"), pursuant to and in all respects in compliance with the applicable provisions of the Illinois Municipal Code, as supplemented and amended, and as further supplemented and, where necessary, superseded, by the powers of the City as a home rule unit under the provisions of Section 6 of Article VII of the Illinois Constitution of 1970 (such code and powers being the "*Act*"), and with the Ordinance, which has been duly approved by the Mayor of the City, and published in pamphlet form, in all respects as by law required.

[The Bonds due on December 1 of the years 200_ and 20__ are Term Bonds and are subject to mandatory redemption by operation of the Debt Service Fund at a price of par and accrued interest, without premium, on December 1 of the years and in the amounts as follows:

For the Term Bonds due December 1, 200*:

YEAR	AMOUNT (\$)
200*	
200*	

with \$_____ remaining to be paid at maturity in 200*.

For the Term Bonds due December 1, 20__:

YEAR	AMOUNT (\$)
20__	
20__	
20__	

with \$_____ remaining to be paid at maturity in 20__.]

Those of the Bonds due on or after December 1, 2009, are subject to redemption prior to maturity, at the option of the City, from any available funds, in whole or in part, on any date on or after December 1, 2008, and if in part, in any order of maturity (and, if applicable, any order of mandatory redemption payment) as selected by the City, and if less than an entire maturity, in integral multiples of \$5,000, selected by lot by the Bond Registrar, at the redemption price of par plus accrued interest to the date of redemption.

In each case of redemption, such further terms and provision for notice of redemption shall be as set forth in the Ordinance.

This Bond may be transferred or exchanged, but only in the manner, subject to the limitations, and upon payment of the charges as set forth in the Ordinance. The Bond Registrar shall not be required to transfer or exchange any Bond during the period from the close of business on the Record Date for an interest payment to the opening of business on such interest payment date or during the period of 15 days preceding the giving of notice of redemption of

Bonds or to transfer or exchange any Bond all or a portion of which has been called for redemption.

The City, the Bond Registrar and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and the City, the Bond Registrar and the Paying Agent shall not be affected by any notice to the contrary.

ASSIGNMENT

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

[Here insert identifying number such as TID, SSN, or other]

(Name and Address of Assignee)

the within Bond and does hereby irrevocably constitute and appoint

as attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Signature guaranteed: _____

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.

Section 12. Tax Levy. For the purpose of providing funds required to pay the interest on the Bonds promptly when and as the same falls due, and to pay and discharge the principal thereof at maturity, *there is hereby levied upon all of the taxable property within the City, in the years for which any of the Bonds are outstanding, a direct annual tax sufficient for that purpose.*

Such levy shall be fully set forth in the Bond Order. The Pledged Taxes and other moneys on deposit (collectively, the "*Bond Moneys*") in the Debt Service Fund and allocable to the Bonds shall be applied to pay principal of and interest on the Bonds as follows:

A. Bond Moneys shall be applied to the payment of interest when due and principal or redemption price when due at maturity or as redeemed pursuant to mandatory redemption from the Debt Service Fund, or

B. On or before 65 days preceding a mandatory redemption date, and provided notice is given to the Bond Registrar on or before said 65th day preceding a mandatory redemption date, Bond Moneys up to the amount of the redemption requirement on such mandatory redemption date plus interest due on Term Bonds on such date may be applied (1) to the purchase of Term Bonds of the maturity for which such mandatory redemption requirement was established at prices (including commissions and charges, if any) not exceeding par and accrued interest to such mandatory redemption date or (2) to the redemption of such Bonds, without premium, pursuant to optional redemption provisions applicable thereto. Upon the purchase or redemption of Term Bonds of any maturity pursuant to this paragraph (B), an amount equal to the principal amount of such Bonds or applicable portion thereof so purchased or redeemed shall be deducted from the mandatory redemption requirement as provided for Term Bonds of such maturity, first, in the current year of such requirement, until the requirement for the current year has been fully met, and then in any order of payment on the Term Bonds as due at maturity or subject to mandatory redemption in any year as the City shall at such time determine.

Interest or principal coming due at any time when there are insufficient funds on hand from the Pledged Taxes to pay the same shall be paid promptly when due from current funds on hand in advance of the collection of the Pledged Taxes herein levied; and when the Pledged Taxes shall

have been collected, reimbursement shall be made to said funds in the amount so advanced. The City covenants and agrees with the purchasers and registered owners of the Bonds that so long as any of the Bonds remain outstanding, the City will take no action or fail to take any action which in any way would adversely affect the ability of the City to levy and collect the foregoing tax levy. The City and its officers will comply with all present and future applicable laws in order to assure that the Pledged Taxes may be levied, extended and collected as provided herein and deposited into the Debt Service Fund. Whenever other funds from any lawful source are made available for the purpose of paying any principal of or interest on the Bonds so as to enable the abatement of the taxes levied herein for the payment of same, the City Council shall, by proper proceedings, direct the deposit of such funds into the Debt Service Fund and further shall direct the abatement of the taxes by the amount so deposited. A certified copy or other notification of any such proceedings abating taxes may then be filed with the County Clerk in a timely manner to effect such abatement.

Section 13. Filing with County Clerk. Promptly, as soon as this Ordinance becomes effective, a copy hereof, certified by the City Clerk of the City, shall be filed with the County Clerk; and the County Clerk shall in and for each of the years required, being 1999 to 2018, inclusive, ascertain the rate percent required to produce the aggregate tax hereinbefore provided to be levied in each of said years, as shall be set forth in the Bond Order; and the County Clerk shall (to the extent said tax has not been abated as provided herein) extend the same for collection on the tax books in connection with any other taxes that may be levied in said years in and by the City for general corporate purposes of the City; and in said years such annual tax shall be levied and collected by and for and on behalf of the City in like manner as provided by law for the levy and collection of taxes for general corporate purposes for said years, without limit as to either rate or amount, and in addition to and in excess of all other taxes.

Section 14. Sale of Bonds; Bond Order. The Designated Officials are hereby authorized to proceed, without any further authorization or direction whatsoever from the City Council, to sell and deliver the Bonds upon the terms as prescribed in this Section, pursuant to the Bond Order. The Bonds shall be sold and delivered to the best bidder at public sale (the "Underwriters") at the price of not less than 98% of the par value of the principal amount thereof, plus accrued interest to the date of delivery. Such sale shall be made upon the advice (in the form of a written certificate or report) of the Financial Advisor that the net interest cost rate on the Bonds, calculated in accordance with customary market practice, does not exceed 9.00% and that the terms of the Bonds are fair and reasonable in view of current conditions in the bond markets. As an additional limitation on the sale of that portion of the Bonds to be sold to provide for the Refunding, the Financial Advisor's certificate or report (as hereinabove described) must set forth that the Refunding will provide a present value debt service savings to the City in an amount not less than the lesser of (a) \$770,875 or (b) 2.50% of the aggregate principal amount of the Callable Bonds which are in fact refunded as part of the Refunding. Nothing in this Section shall require the Designated Officials to sell the Bonds if in their judgment, aided by the Financial Advisor, the conditions in the bond markets shall have markedly deteriorated from the time of adoption thereof, but the Designated Officials shall have the authority to sell the Bonds in any event so long as the limitations set forth in this Ordinance and the conditions of this Section shall have been met. Upon the sale of the Bonds, the Designated Officials and any other officers of the City as shall be appropriate, shall be and are hereby authorized and directed to approve or execute, or both, such documents of sale of the Bonds as may be necessary, including, without limitation, the Bond Order, Preliminary Official Statement, Official Statement, Bond Purchase Contract (as hereinafter defined), and closing documents. Prior to the execution and delivery of any such Bond Purchase Contract, the Designated Officials shall find

and determine that no person holding any office of the City either by election or appointment, is in any manner financially interested either directly, in his or her own name, or indirectly in the name of any other person, association, trust or corporation in said Contract with the Underwriters for the purchase of the Bonds. The distribution of the Preliminary Official Statement relating to the Bonds presented before this meeting is hereby in all respects authorized and approved, and the proposed use by the Underwriters of an Official Statement (in substantially the form of the Preliminary Official Statement but with appropriate variations to reflect the final terms of the Bonds) is hereby approved. A bond purchase contract for the sale of the Bonds to the Underwriters (the "*Bond Purchase Contract*"), as comprised of the Official Notice of Sale and Official Bid Form, is hereby in all respects authorized and approved. Upon the sale of the Bonds, the Designated Officials shall prepare the Bond Order, to be substantially in the form of *Exhibit A* attached hereto, which shall include the pertinent details of sale as provided herein, and such shall be entered into the records of the City and made available to all City Council members at the next public meeting thereof. The Designated Officials shall also file with the County Clerk the Bond Order or like document including a statement of taxes.

Section 15. Creation of Funds and Appropriations. Bond proceeds and other funds of the City as noted are hereby appropriated as follows:

A. Accrued interest and premium, if any, on the Bonds shall be and is hereby appropriated for the purpose of paying the first interest due on the Bonds and to such end is hereby ordered to be deposited into the "General Obligation Corporate Purpose Bonds, Series 1999, Debt Service Fund" (the "*Debt Service Fund*"), hereby created, which shall be the fund for the payment of principal of and interest on the Bonds.

B. The Pledged Taxes shall either be deposited into the Debt Service Fund and used solely and only for paying the principal of and interest on the Bonds or be used to reimburse a

fund or account from which advances to the Debt Service Fund may have been made to pay principal of or interest on the Bonds prior to receipt of Pledged Taxes. Interest income or investment profit earned in the Debt Service Fund shall be retained in the Debt Service Fund for payment of the principal of or interest on the Bonds on the interest payment date next after such interest or profit is received or, to the extent lawful and as determined by the City Council, transferred to such other fund as may be determined. The City hereby pledges, as equal and ratable security for the Bonds, all present and future proceeds of the Pledged Taxes for the sole benefit of the registered owners of the Bonds, subject to the reserved right of the City Council to transfer certain interest income or investment profit earned in the Debt Service Fund to other funds of the City, as described in the preceding sentence.

C. The amount necessary from the proceeds of the Bonds shall be used to pay costs of issuance of the Bonds and shall be deposited into a separate fund, hereby created, designated the "*Expense Fund*". Any disbursements from such fund shall be made from time to time as necessary. Any excess in said fund shall be deposited into the Project Fund hereinafter created after six months from the date of issuance of the Bonds.

D. Provided that the Refunding portion of the Bonds is to be sold and delivered, the amount necessary from the proceeds of the Bonds, together with such money in the debt service funds for the Prior Bonds as may be advisable for the purpose, shall be used to provide for the Refunding, and the payment of such expenses as may be designated, pursuant to the provisions of an Escrow Agreement with the Escrow Agent as is designated, all in accordance with the provisions of the Escrow Agreement, substantially in the form attached hereto as *Exhibit C* to this Ordinance, made a part hereof by this reference, and hereby approved; the officers appearing signatory to such Escrow Agreement are hereby authorized and directed to execute same, their

execution to constitute conclusive proof of action in accordance with this Ordinance, and approval of all completions or revisions necessary or appropriate to effect the Refunding.

E. The remaining proceeds of the Bonds shall be set aside in a separate fund, hereby created, and designated as the "*Series 1999 Capital Project Fund*" (the "*Project Fund*"), hereby created, and be used to pay costs of the 1999 Bonds Capital Improvements, including costs of issuance of the Bonds which for any reason are not paid from the Expense Fund. Alternatively, the Comptroller may allocate proceeds of the Bonds otherwise designated for the Expense Fund or the Project Fund to one or more related funds of the City already in existence; *provided, however*, that this shall not relieve the Comptroller of the duty to account for the proceeds as herein provided. (Any such one or more funds shall also be referred to hereinafter, collectively, as the "*Project Fund*".) Further, the Comptroller shall account for the specific purposes within the 1999 Bonds Capital Improvements — the Alleyways Projects, the Plan Projects, the Downtown TIF Projects, and the Savings Projects, individually, as the same have assigned estimates of cost in the preambles, *except*, that the amount available for the Savings Projects shall be as determined by the Refunding.

The City Council reserves the right, as it becomes necessary from time to time, to revise the list of projects hereinabove set forth, to change priorities, to revise cost allocations between projects and to substitute projects, in order to meet current needs of the City; subject, however, to limitations of the Act and to the tax covenants set forth herein.

Section 16. General Tax Covenants. The City agrees to comply with all provisions of the Code which, if not complied with by the City, would cause the Bonds not to be Tax-exempt. In furtherance of the foregoing provisions, but without limiting their generality, the City agrees: (a) through its officers, to make such further specific covenants, representations as shall be truthful, and assurances as may be necessary or advisable; (b) to comply with all representations,

covenants and assurances contained in this Ordinance or in certificates or agreements as may be prepared by counsel approving the Bonds; (c) to consult with such counsel and to comply with such advice as may be given; (d) to file such forms, statements and supporting documents as may be required and in a timely manner; and (e) if deemed necessary or advisable by its officers, to employ and pay fiscal agents, financial advisors, attorneys and other persons to assist the City in such compliance.

Section 17. Specific Tax Covenants. The following certifications, representations and covenants are made relating to the Tax-exempt status of the Bonds.

17.01. Covenant. The City covenants not to take any action or to neglect or refuse to take any action which would cause the Bonds not to be Tax-exempt.

17.02. Additional Definitions. Certain additional definitions for this Section are as follows:

"Bond Counsel" means Chapman and Cutler, Chicago, Illinois, or any other nationally recognized firm of attorneys experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds.

"Capital Expenditures" means costs of a type that would be properly chargeable to a capital account under the Code (or would be so chargeable with a proper election) under federal income tax principles if the City were treated as a corporation subject to federal income taxation, taking into account the definition of Placed-in-Service set forth herein.

"Closing" means the first date on which the City is receiving the purchase price for the Bonds.

"Commingled Fund" means any fund or account containing both Gross Proceeds and an amount in excess of \$25,000 that are not Gross Proceeds if the amounts in the fund or account are invested and accounted for, collectively, without regard to the source of funds deposited in the fund or account. An open-ended regulated investment company under Section 851 of the Code is not a Commingled Fund.

"Control" means the possession, directly or indirectly through others, of either of the following discretionary and non-ministerial rights or powers over another entity:

- (a) to approve and to remove without cause a controlling portion of the governing body of a Controlled Entity; or

(b) to require the use of funds or assets of a Controlled Entity for any purpose.

"Controlled Entity" means any entity or one of a group of entities that is subject to Control by a Controlling Entity or group of Controlling Entities.

"Controlling Entity" means any entity or one of a group of entities directly or indirectly having Control of any entities or group of entities.

"Controlled Group" means a group of entities directly or indirectly subject to Control by the same entity or group of entities, including the entity that has Control of the other entities.

"Costs of Issuance" means the costs of issuing the Bonds, including underwriter's discount and legal fees, but not including the fees for any Credit Facility described at 17.25 of this Section.

"Credit Facility" means a municipal bond insurance policy, if any, procured for the Bonds and issued by a Credit Facility Provider.

"Credit Facility Provider" means an insurance company issuing a Credit Facility for the Bonds.

"De minimis Amount of Original Issue Discount or Premium" means (a) any original issue discount or premium that does not exceed two percent of the stated redemption price at maturity of the Bonds plus (b) any original issue premium that is attributable exclusively to reasonable underwriter's compensation.

"Escrow Account" means the fund created and held by the Escrow Agent pursuant to the Escrow Agreement.

"External Commingled Fund" means a Commingled Fund in which the City and all members of the same Controlled Group as the City own, in the aggregate, not more than ten percent of the beneficial interests.

"GIC" means (a) any investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate and (b) any agreement to supply investments on two or more future dates (*e.g.*, a forward supply contract).

"Government Securities" means the direct obligations of the United States of America held and to be held under the Escrow Agreement.

"Gross Proceeds" means amounts in the Debt Service Fund, Expense Fund, the Escrow Account and the Project Fund.

"Placed-in-Service" means the date on which, based on all facts and circumstances (a) a facility has reached a degree of completion that would permit its operation at substantially its design level and (b) the facility is, in fact, in operation at such level.

"Prior Bond Proceeds" means amounts actually or constructively received from the sale of the Prior Bonds, including (a) amounts used to pay underwriter's discount or compensation and accrued interest, other than accrued interest for a period not greater than one year before the Prior Bonds were issued but only if it is to be paid within one year after the Prior Bonds were issued and (b) amounts derived from the sale of any right that is part of the terms of a Prior Bond or is otherwise associated with a Prior Bond (e.g., a redemption right).

"Prior Projects" means all of the facilities financed, directly or indirectly, with the proceeds of the Prior Bonds, or, in the case of the portion of the Prior Bonds issued for the refunding of the City's Bond Anticipation Bonds, the facilities so financed by said Bond Anticipation Bonds.

"Project Portion of the Bonds" means that portion of the Bonds to be used for the Project.

"Qualified Administrative Costs of Investments" means (a) reasonable, direct administrative costs (other than carrying costs) such as separately stated brokerage or selling commissions (other than a broker's commission paid on behalf of either the City or the provider of a GIC to the extent such commission exceeds the present value of annual payments equal to 0.05 percent of the weighted average amount reasonably expected to be invested each year of the term of the GIC (for this purpose, present value is computed using the taxable discount rate used to compute the commission or, if not readily ascertainable, a reasonable taxable discount rate)), but not legal and accounting fees, recordkeeping, custody and similar costs; (b) all administrative costs, direct or indirect, incurred by a publicly offered regulated investment company or an External Commingled Fund; or (c) in the case of purpose investments, costs or expenses paid directly to purchase, carry, sell or retire the investment and costs of issuing, carrying, or repaying the Bonds, and any placement agent fee or underwriter's discount.

"Qualified Tax Exempt Obligations" means (a) any obligation described in Section 103(a) of the Code, the interest on which is excludable from gross income of any owner thereof for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed by Section 55 of the Code; (b) an interest in a regulated investment company to the extent that at least ninety-five percent of the income to the holder of the interest is interest that is excludable from gross income under Section 103 of the Code of any owner thereof for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed by Section 55 of the Code; and (c) certificates of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 C.F.R. part 344.

"Rebate Fund" means the fund, if any, established when necessary as described at 17.17 of this Section.

"Rebate Provisions" means the rebate requirements contained in Section 148(f) of the Code and in the Regulations.

"Refunding Portion of the Bonds" means that portion of the Bonds to be used for the refunding of the Callable Bonds.

"Regulations" means United States Treasury Regulations dealing with the tax-exempt bond provisions of the Code.

"Reimbursed Expenditures" means amounts, if any, used from Sale Proceeds and investment earnings thereon to reimburse the City for an expenditure paid prior to Closing.

"Sale Proceeds" means amounts actually or constructively received from the sale of the Bonds, including (a) amounts used to pay underwriter's discount or compensation and accrued interest, other than accrued interest for a period not greater than one year before Closing but only if it is to be paid within one year after Closing and (b) amounts derived from the sale of any right that is part of the terms of a Bond or is otherwise associated with a Bond (e.g., a redemption right).

"Sale Proceeds Funds" means funds into which Sale Proceeds are deposited, being the Debt Service Fund (amount of accrued interest and capitalized interest, if any, only), Expense Fund, the Escrow Account and the Project Fund.

"Tax Certificate" means any certificate or certificates (or relevant portions) to be executed by an officer of the City charged (among others) with the responsibility of issuing the Bonds (including the Mayor, the City Clerk, the City Manager and the Comptroller) setting forth certifications, representations or covenants relating to the Tax-exempt status of the Bonds, treated collectively.

"Transferred Proceeds" means proceeds of the Prior Bonds, plus investment earnings thereon, which have not been spent prior to the date principal on the Prior Bonds is discharged by payment from the Escrow Account.

"Yield" means that discount rate which when used in computing the present value of all payments of principal and interest paid and to be paid on an obligation (using semiannual compounding on the basis of a 360-day year) produces an amount equal to the obligation's purchase price (or in the case of the Bonds, the issue price as noted in 17.21), including accrued interest.

"Yield Reduction Payment" means a rebate payment or any other amount paid to the United States in the same manner as rebate amounts are required to be paid or at such

other time or in such manner as the Internal Revenue Service may prescribe that will be treated as a reduction in Yield of an investment under the Regulations.

17.03. Purpose of the Bonds. The Bonds are being issued (a) to finance the Project and (b) to provide for the Refunding, each in a prudent manner consistent with the revenue needs of the City. A breakdown of the sources and uses of funds will be provided at Closing. The percentage amount of the sum of (i) Sale Proceeds plus (ii) investment earnings thereon, less (iii) Costs of Issuance paid from Sale Proceeds or investment earnings thereon, less (iv) Sale Proceeds or investment earnings thereon deposited in a reasonably required reserve or replacement fund, which are expected to be used for construction purposes with respect to property owned by a governmental unit or a Section 501(c)(3) organization, shall be set forth in the Tax Certificate.

17.04. The Project — Binding Commitment and Timing. The City has incurred or will, within six months of the Closing, incur a substantial binding obligation (not subject to contingencies within the control of the City or any member of the same Controlled Group as the City) to a third party to expend at least five percent of the Sale Proceeds on the Project. It is expected that the work of acquiring and constructing the Project and the expenditure of amounts deposited into the Project Fund will continue to proceed with due diligence until on or before June 15, 2002, at which time it is anticipated that all Sale Proceeds and investment earnings thereon will have been spent. The investment earnings on the Project Fund are expected to be spent to pay costs of the Project or interest on the Bonds not later than the date set forth in the preceding sentence; the investment earnings on the Debt Service Fund are expected to be spent to pay interest on the Bonds, or to the extent permitted by law, investment earnings on amounts in the Project Fund and the Bond Fund may be commingled with substantial revenues from the governmental operations of the City, and the earnings are reasonably expected to be spent for governmental purposes within six months of the date earned or commingled.

17.05. Reimbursement. Except for Reimbursed Expenditures, to be identified by Tax Certificate at Closing, none of the Sale Proceeds or investment earnings thereon will be used to reimburse the City for an expenditure paid prior to the date of Closing. The City may make a Reimbursement Allocation to allocate a portion of the Sale Proceeds and investment earnings thereon to Reimbursed Expenditures incurred in connection with the acquiring, constructing, renovating, improving and equipping the Project and will, after such Reimbursement Allocation, treat such proceeds as being spent. In connection with any Reimbursement Allocation, the City represents as follows:

(a) Certain Reimbursed Expenditures (the "*Preliminary Expenditures*") relate to architectural, engineering, surveying, soil testing, Costs of Issuance and similar costs that were incurred prior to commencement of the acquisition, construction, or rehabilitation of the Project and do not include any costs related to land acquisition, site preparation and similar costs incident to commencement of construction.

(b) The amount of Preliminary Expenditures does not exceed 20% of the Sale Proceeds being used to finance the portion of the Project with respect to which the Preliminary Expenditures were incurred.

(c) Except as described in (h) below, in the case of non-Preliminary Expenditures, the City declared an official intent to reimburse such expenditures not later than 60 days after the date such expenditures were paid. At the time the official intent described above was declared, the City reasonably expected to reimburse the non-Preliminary Expenditures related thereto with the proceeds of a future borrowing. With respect to Expenditures paid within the 60 day period ending on this date and with respect to which no declaration of intent was previously made, the City hereby declares its intent to reimburse such expenditures.

(d) The City hereby allocates Sale Proceeds in the amount to be identified by Tax Certificate at Closing to reimburse the Reimbursed Expenditures (the "Reimbursement Allocation"). Except as described in (h) below, and except in the case of Preliminary Expenditures, the Closing is within 18 months after the later of (i) the first date on which a Reimbursed Expenditure was paid or (ii) the first date on which the property relating to a Reimbursed Expenditure was Placed-in-Service or abandoned, but in no event more than three years after the first date on which a Reimbursed Expenditure was paid.

(e) All Reimbursed Expenditures represent Capital Expenditures or Costs of Issuance.

(f) The City acknowledges that if within one year after Closing the City deposits any money or other property into any fund or account (other than amounts deposited into a bona fide debt service fund) to pay principal of or interest on the Bonds or any other tax-exempt obligations of the City or of a member of the same Controlled Group as the City in an amount corresponding to Gross Proceeds used to reimburse a Reimbursed Expenditure (unless such money or other property constitutes proceeds of a borrowing by the City), it may adversely affect the Tax-exempt status of the Bonds.

(g) No Reimbursement Allocation will employ any action that results in the City issuing more Bonds, issuing Bonds earlier, or allowing Bonds to remain outstanding longer than is reasonably necessary to accomplish the governmental purposes of the Bonds, based upon all of the facts and circumstances.

(h) The restrictions in (c) and (d) above do not apply to (i) Costs of Issuance or (ii) an amount not in excess of \$100,000.

17.06. Working Capital. All amounts in the Sale Proceeds Funds will be used, directly or indirectly, to finance Capital Expenditures or provide for the Refunding other than the following:

(a) an amount not to exceed five percent of the Sale Proceeds of the Project Portion of the Bonds for working capital expenditures directly related to Capital Expenditures financed by the Bonds;

- (b) payments of interest on the Project Portion of the Bonds for a period commencing at Closing and ending on the later of the date three years after Closing;
- (c) Costs of Issuance and Qualified Administrative Costs of Investments;
- (d) payments of rebate or Yield Reduction Payments made to the United States under the Regulations; and
- (e) principal of or interest on the Bonds paid from unexpected excess Sale Proceeds and investment earnings thereon.

17.07. Consequences of Contrary Expenditure. The City acknowledges that if amounts in the Sale Proceeds Funds and investment earnings thereon are spent for purposes other than as described at 17.06 hereof, a like amount of then available funds of the City will be treated as unspent Sale Proceeds.

17.08. Investment of Bond Proceeds. Not more than 50% of the Sale Proceeds of the Project Portion of the Bonds and investment earnings thereon are or will be invested in investments (other than Qualified Tax Exempt Obligations) having a Yield that is substantially guaranteed for four years or more. No portion of the Bonds is being issued solely for the purpose of investing a portion of Sale Proceeds or investment earnings thereon at a Yield higher than the Yield on the Bonds.

17.09. No Grants. None of the Sale Proceeds or investment earnings thereon will be used to make grants to any person.

17.10. Hedges. Neither the City nor any member of the same Controlled Group as the City has entered into or expects to enter into any hedge (*e.g.*, an interest rate swap, interest rate cap, futures contract, forward contract or an option) with respect to the Bonds or the Prior Bonds. The City acknowledges that any such hedge could affect the calculation of Bond Yield under the Regulations, and that the Internal Revenue Service could recalculate Bond Yield if the failure to account for the hedge fails to clearly reflect the economic substance of the transaction.

17.11. Abusive Transactions. Neither the City nor any member of the same Controlled Group as the City has employed a device or entered into any arrangements or understandings in connection with the issuance of the Bonds or the advance refunding of the Prior Bonds, or in connection with any transaction or series of transactions related to the issuance of the Bonds or the advance refunding of the Prior Bonds, to obtain a material financial advantage based on arbitrage. Neither the City nor any member of the same Controlled Group as the City will realize any material financial advantage based on arbitrage in connection with the issuance of the Bonds or the advance refunding of the Callable Bonds, or in connection with any transaction or series of transactions related to the issuance of the Bonds or the advance refunding of the Callable Bonds. In particular, neither the City nor any member of the same Controlled Group as the City will receive a rebate or credit resulting from any payments having been made in connection with the issuance of the Bonds or the advance refunding of the Callable Bonds.

17.12. *Use of Proceeds.* (a) Only the Debt Service Fund, Expense Fund, Escrow Account and Project Fund are immediately to be established in this Ordinance. Sale Proceeds shall and debt service fund moneys from the bond funds for the Prior Bonds may be deposited into such funds or accounts at Closing.

(b) Principal of and interest on the Bonds will be paid from the Debt Service Fund.

(c) Costs of Issuance incurred in connection with the issuance of the Bonds will be paid from the Expense Fund. Within 6 months of Closing, the Expense Fund will be closed and any excess transferred to the Project Fund.

(d) The costs of the Project will be paid from the Project Fund, and no other moneys (except for investment earnings on amounts in the Project Fund) are expected to be deposited therein.

(e) The Bonds will be allocated between the Refunding Portion of the Bonds and the Project Portion of the Bonds. The percentages of the issue price allocable to each portion is shown on the Tax Certificate. Allocation of specific maturities to each portion will be made at such time as is necessary.

17.13. *Purpose of Debt Service Fund.* The Debt Service Fund will be used primarily to achieve a proper matching of revenues and earnings with principal and interest payments on the Bonds in each bond year. It is expected that the Debt Service Fund will be depleted at least once a year, except for a reasonable carry over amount the greater of (a) the earnings on the investment of moneys in the Debt Service Fund for the immediately preceding bond year or (b) 1/12th of the principal and interest payments on the Bonds for the immediately preceding bond year.

17.14. *Facts as to Prior Bonds.* (a) The Prior Bonds were issued pursuant to ordinances of the City as follows:

PRIOR BONDS	ISSUED	ORDINANCE	ADOPTED ON
Series 1994 Bonds	28 Apr 1994	22-O-94	28 Mar 1994
Series 1995 Bonds	2 May 1995	28-O-95	27 Mar 1995
Series 1996 Bonds	14 May 1996	32-O-96	9 Apr 1996

All of the Prior Bonds were issued for one of the following purposes (a) Costs of Issuance thereof, (b) to currently refund certain of the City's Bond Anticipation Bonds, which were issued for Costs of Issuance thereof, capitalized interest thereon, and to pay Capital Expenditures relative to lawful corporate projects, and (c) to pay Capital Expenditures of lawful corporate projects.

(b) At Closing, all Prior Bond proceeds or money or property of any kind (including cash) on deposit in any fund or account, regardless of where held or the source thereof, with respect to the Prior Bonds or any credit enhancement or liquidity device relating to the foregoing,

or otherwise restricted to pay the City's obligations relating to the Prior Bonds, will be set forth in the Tax Certificate.

(c) The debt service fund established in connection with the issuance of each series of the Prior Bonds was and continues to be used primarily to achieve a proper matching of revenues and earnings with principal and interest payments on such series of the Prior Bonds in each bond year. Each such debt service fund has been depleted at least once a year, except for a reasonable carry over amount the greater of (i) the earnings on the investment of moneys in each such account for the immediately preceding bond year or (ii) one-twelfth (1/12th) of the principal and interest payments on such respective series of the Prior Bonds.

(d) At the time each series of the Prior Bonds was issued, the City reasonably expected to spend at least 85% of the non-refunding proceeds (including investment earnings) of such series of bonds within three years of the date such bonds were issued, and such proceeds were so spent. Not more than 50% of the proceeds of the Prior Bonds issued for the Prior Projects were invested in investments having a Yield that was substantially guaranteed for four years or more.

(e) The Callable Bonds will be called on their first optional redemption date.

(f) The Prior Bonds do not include, directly or indirectly in a series, any advance refunding obligations.

(g) The City has not been notified that any of the Prior Bonds or any obligation refunded by the Prior Bonds is under examination by the Internal Revenue Service, and to the best of the City's knowledge neither the Prior Bonds nor any obligation refunded by the Prior Bonds is under examination by the Internal Revenue Service.

17.15. No Other Gross Proceeds. (a) Except (i) for the funds identified in the definition of Gross Proceeds, (ii) for Prior Bond Proceeds which may become Transferred Proceeds as shown in the Tax Certificate, (iii) for investment earnings that have been commingled as described in paragraph 17.04 and (iv) for a Credit Facility, if any; after the issuance of the Bonds, neither the City nor any member of the same Controlled Group as the City has or will have any property, including cash or securities that constitutes:

(1) Sale Proceeds;

(2) amounts in any fund and account with respect to the Bonds (other than the Rebate Fund);

(3) amounts that have a sufficiently direct nexus to the Bonds or to the governmental purpose of the Bonds to conclude that the amounts would have been used for that governmental purpose if the Bonds were not used or to be used for that governmental purpose (the mere availability or preliminary earmarking of such amounts for a governmental purpose, however, does not itself establish such a sufficient nexus);

(4) amounts in a debt service fund, redemption fund, reserve fund, replacement fund or any similar fund to the extent reasonably expected to be used directly or indirectly to pay principal of or interest on the Bonds or any amounts for which there is provided, directly or indirectly, a reasonable assurance that the amount will be available to pay principal of or interest on the Bonds or any credit enhancement or liquidity device with respect to the Bonds (including the Credit Facility as defined), even if the City encounters financial difficulties;

(5) any amounts held pursuant to any agreement (such as an agreement to maintain certain levels of types of assets) made for the benefit of the holders of the Bonds or any credit enhancement provider (including the Credit Facility as defined), including any liquidity device or negative pledge (any amount pledged to pay principal of or interest on an issue held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of holders of the Bonds or a guarantor of the bonds); or

(6) amounts actually or constructively received from the investment and reinvestment of the amounts described in (1) or (2) above.

(b) No compensating balance, liquidity account, negative pledge of property held for investment purposes or similar arrangement exists with respect to, in any way, the Bonds or any credit enhancement or liquidity device related to the Bonds (including the Credit Facility as defined).

(c) Other funds of the City exist which may be utilized from time to time, at the discretion of the City Council, to pay the Bonds and to abate the taxes levied in this Ordinance accordingly. These funds or accounts are not pledged and may be utilized for such other lawful purposes as the City may determine. If utilized to pay the Bonds, such funds will not be identified or earmarked for such purpose except upon deposit into the Bond Fund within the 13-month temporary period provided for that fund.

(d) The term of the Bonds is not longer than is reasonably necessary for the governmental purposes of the Bonds. The average reasonably expected economic life of the Project is at least 15 years. The average reasonably expected remaining economic life of the facilities constituting the Prior Projects is at least 15 years. The weighted average maturity of the Bonds does not exceed 15 years and does not exceed 120 percent of the average reasonably expected economic life of such facilities.

17.16. Compliance with Rebate Provisions. The City covenants to take such actions and make, or cause to be made, all calculations, transfers and payments that may be necessary to comply with the Rebate Provisions applicable to the Bonds. The City will make, or cause to be made, rebate payments with respect to the Bonds in accordance with law.

17.17. Rebate Fund. The appropriate officers of the City are hereby authorized to create and establish a special fund to be known as the "General Obligation Corporate Purpose Bonds, Series 1999, Rebate Fund" (the "*Rebate Fund*"), which, if created, shall be continuously held,

invested, expended and accounted for in accordance with this Ordinance and the Tax Certificate. Moneys in the Rebate Fund shall not be considered moneys held for the benefit of the holders of the Bonds. Except as provided in the Regulations, moneys in the Rebate Fund (including earnings and deposits therein) shall be held in trust for payment to the United States as required by the Rebate Provisions and by the Regulations.

17.18. Records. The City agrees to keep and retain or cause to be kept and retained until six years after the Bonds are paid in full adequate records with respect to the investment of all Gross Proceeds and amounts in the Rebate Fund. Such records shall include (a) purchase price; (b) purchase date; (c) type of investment; (d) accrued interest paid; (e) interest rate; (f) principal amount; (g) maturity date; (h) interest payment date; (i) date of liquidation; (j) receipt upon liquidation and (k) the information described below in 17.19(c). If any investment becomes Gross Proceeds on a date other than the date such investment is purchased, the records required to be kept shall include the fair market value of such investment on the date it becomes Gross Proceeds. If any investment is retained after the date the last Bond is retired, the records required to be kept shall include the fair market value of such investment on the date the last Bond is retired. Amounts or investments will be segregated whenever necessary to maintain these records.

17.19. Fair Market Value; Certificates of Deposit and Investment Agreements. The City will continuously invest all amounts on deposit in the Rebate Fund, together with the amounts, if any, to be transferred to the Rebate Fund, in any investment permitted under this Agreement and the Ordinance. The City shall take into account prudent investment standards and the date on which such moneys may be needed. Except as provided in the next sentence, all amounts that constitute Gross Proceeds and all amounts in the Rebate Fund shall be invested at all times to the greatest extent practicable, and no amounts may be held as cash or be invested in zero yield investments other than obligations of the United States purchased directly from the United States. In the event moneys cannot be invested, other than as provided in this sentence due to the denomination, price or availability of investments, the amounts shall be invested in an interest bearing deposit of a bank with a yield not less than that paid to the general public or held uninvested to the minimum extent necessary.

Gross Proceeds and any amounts in the Rebate Fund that are invested in certificates of deposit or in guaranteed investment contracts ("GICs") shall be invested only in accordance with the following provisions:

- (a) Investments in certificates of deposit of banks or savings and loan associations that have a fixed interest rate, fixed payment schedules and substantial penalties for early withdrawal shall be made only if either (i) the Yield on the certificate of deposit (A) is not less than the Yield on reasonably comparable direct obligations of the United States and (B) is not less than the highest Yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public or (ii) the investment is an investment in a GIC and qualifies under paragraph (b) below.

(b) Investments in GICs shall be made only if:

(i) the bid specifications are in writing, include all material terms of the bid and are timely forwarded to potential providers (a term is material if it may directly or indirectly affect the yield on the GIC);

(ii) the terms of the bid specifications are commercially reasonable (a term is commercially reasonable if there is a legitimate business purpose for the term other than to reduce the yield on the GIC);

(iii) all bidders for the GIC have equal opportunity to bid so that, for example, no bidder is given the opportunity to review others bids (a last look) before bidding;

(iv) any agent used to conduct the bidding for the GIC does not bid to provide the GIC;

(v) at least three of the providers solicited for bids for the GIC are reasonably competitive providers of investments of the type purchased (*i.e.*, providers that have established industry reputations as competitive providers of the type of investments being purchased);

(vi) at least three of the entities that submit a bid do not have a financial interest in the Bonds;

(vii) at least one of the entities that provided a bid is a reasonably competitive provider that does not have a financial interest in the Bonds;

(viii) the bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the City or any other person (whether or not in connection with the Bonds) and that the bid is not being submitted solely as a courtesy to the City or any other person for purposes of satisfying the federal income tax requirements relating to the bidding for the GIC;

(ix) the determination of the terms of the GIC takes into account the reasonably expected deposit and drawdown schedule for the amounts to be invested;

(x) the highest-yielding GIC for which a qualifying bid is made (determined net of broker's fees) is in fact purchased; and

(xi) the obligor on the GIC certifies the administrative costs that it is paying or expects to pay to third parties in connection with the GIC.

(c) If a GIC is purchased, the City will retain the following records with its bond documents until three years after the Bonds are redeemed in their entirety:

(i) a copy of the GIC;

(ii) the receipt or other record of the amount actually paid for the GIC, including a record of any administrative costs paid and the certification under paragraph (b)(xi) of this section;

(iii) for each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results; and

(iv) the bid solicitation form and, if the terms of the GIC deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

Moneys to be rebated to the United States shall be invested to mature on or prior to the anticipated rebate payment date. All investments made with Gross Proceeds or amounts in the Rebate Fund shall be bought and sold at fair market value. The fair market value of an investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction. Except for investments specifically described in this section and United States Treasury obligations that are purchased directly from the United States Treasury, only investments that are traded on an established securities market, within the meaning of regulations promulgated under Section 1273 of the Code, will be purchased with Gross Proceeds. In general, an "*established securities market*" includes: (i) property that is listed on a national securities exchange, an interdealer quotation system or certain foreign exchanges; (ii) property that is traded on a Commodities Futures Trading Commission designated board of trade or an interbank market; (iii) property that appears on a quotation medium; and (iv) property for which price quotations are readily available from dealers and brokers. A debt instrument is not treated as traded on an established market solely because it is convertible into property which is so traded.

An investment of Gross Proceeds in an External Commingled Fund shall be made only to the extent that such investment is made without an intent to reduce the amount to be rebated to the United States Government or to create a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the rebate or Yield restriction requirements not been relevant to the City. An investment of Gross Proceeds shall be made in a

Commingled Fund other than an External Commingled Fund only if the investments made by such Commingled Fund satisfy the provisions of this Section 17.19.

The foregoing provisions of this Section 17.19 satisfy various safe harbors set forth in the Regulations relating to the valuation of certain types of investments. The safe harbor provisions of this Section 17.19 are contained herein for the protection of the City, who has covenanted not to take any action to adversely affect the tax-exempt status of the interest on the Bonds. The City will contact Bond Counsel if it does not wish to comply with the provisions of this Section 17.19 and forego the protection provided by the safe harbors provided herein. Modifications to these tax covenants can be made in accordance with Section 17.34 hereof.

17.20. Arbitrage Elections. Upon consultation with Bond Counsel, City officers may make arbitrage elections in a Tax Certificate or other certificate given in the future.

17.21. Issue Price. For purposes of determining the Yield on the Bonds, the purchase price of the Bonds is equal to the first offering price at which the Purchaser has sold at least ten percent of each maturity of the Bonds or is equal to par, plus accrued interest, if the Purchaser does not intend to resell the Bonds.

17.22. Yield Limits. (a) Except as provided in (b) or (c) as follows, all Gross Proceeds shall be invested at market prices and at a Yield (after taking into account any Yield Reduction Payments) not in excess of the Yield on the Bonds.

(b) The following may be invested without Yield restriction:

- (1) amounts invested in Qualified Tax Exempt Obligations;
- (2) amounts on deposit in the Rebate Fund;
- (3) amounts other than Bond proceeds on deposit in the Debt Service Fund that have not been on deposit under the Ordinance for more than 13 months, so long as the Debt Service Fund continues to qualify as a bona fide debt service fund as described in paragraph 17.13 hereof;
- (4) amounts on deposit in the Expense Fund prior to its closing six months after the Closing;
- (5) amounts on deposit in the Project Fund prior to the earlier of three years after Closing or the completion (or abandonment) of the Project;
- (6) amounts in the Debt Service Fund to be used to pay accrued interest or to pay capitalized interest on the Project Portion of the Bonds prior to the earlier of three years after Closing;
- (7) all amounts other than Sale Proceeds for the first 30 days after they become Gross Proceeds; and

(8) all amounts derived from the investment of Sale Proceeds and investment earnings thereon (except for amounts in the Escrow Account) for a period of one year from the date received.

(c) An amount the lesser of \$100,000 or five percent of the Sale Proceeds may be invested without regard to Yield restriction.

17.23. Continuing Nature of Yield Limits. Except as provided at 17.34, once moneys are subject to the Yield limits of 17.22 hereof, such moneys remain Yield restricted until they cease to be Gross Proceeds.

17.24. Federal Guarantees. Except for investments in the Escrow Account or meeting the requirements of 17.22(b) hereof, investments of Gross Proceeds shall not be made in (a) investments constituting obligations of or guaranteed, directly or indirectly, by the United States (except obligations of the United States Treasury, obligations guaranteed by the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the Student Loan Marketing Association, any guarantee by the Bonneville Power Authority pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of enactment of the Tax Reform Act of 1984, or investments in obligations issued pursuant to Section 21B(d)(3) of the Federal Home Loan Bank Act, as amended (*e.g.*, Refcorp Strips)); or (b) federally insured deposits or accounts (as defined in Section 149(b)(4)(B) of the Code). No portion of the payment of principal or interest on the Bonds or any credit enhancement or liquidity device relating to the foregoing (including the Credit Facility as defined) is or will be guaranteed, directly or indirectly (in whole or in part), by the United States (or any agency or instrumentality thereof). No portion of the Gross Proceeds has been or will be used to make loans the payment of principal or interest with respect to which is or will be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof).

17.25. Treatment of Certain Credit Facility Fees. If appropriate representations are made in the Certificate of the Credit Facility Provider, as to which the City has no reason to believe are untrue, the fee paid to the Credit Facility Provider with respect to the Credit Facility may be treated as interest in computing Bond Yield. Neither the City nor any member of the same Controlled Group as the City is a Related Person as defined in Section 144(a)(3) of the Code to the Credit Facility Provider. The fee paid to the Credit Facility Provider shall not exceed ten percent of the Sale Proceeds. Other than the fee paid to the Credit Facility Provider, neither the Credit Facility Provider nor any person who is a Related Person to the Credit Facility Provider within the meaning of Section 144(a)(3) of the Code will use any Sale Proceeds or investment earnings thereon.

17.26. Escrow Account. The Yield on the Government Securities purchased for the Refunding with Sale Proceeds of the Bonds, taking into account any Transferred Proceeds, shall be less than the Yield on the Bonds. This shall be demonstrated at Closing.

17.27. Payment and Use Tests. (a) No more than five percent of the Prior Bond Proceeds (including proceeds of the City's Bond Anticipation Bonds) and investment earnings

thereon were used, and no more than five percent of the Sale Proceeds of the Project Portion of Bonds plus investment earnings thereon will be used, directly or indirectly, in whole or in part, in any activity carried on by any person other than a state or local governmental unit.

(b) The payment of more than five percent of the principal of or the interest on the Bonds or the Prior Bonds will not be, directly or indirectly (i) secured by any interest in (A) property used or to be used in any activity carried on by any person other than a state or local governmental unit or (B) payments in respect of such property or (ii) on a present value basis, derived from payments (whether or not to the City or a member of the same Controlled Group as the City) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit.

(c) No more than the lesser of \$5,000,000 or five percent of the proceeds of the Prior Bonds (including proceeds of the City's Bond Anticipation Bonds), and investment earnings thereon, were used, and no more than the lesser of \$5,000,000 or five percent of the Sale Proceeds of the Bonds and investment earnings thereon will be used, directly or indirectly, to make or finance loans to any persons.

(d) No users of the Project or the Prior Projects other than state or local governmental units will use more than five percent of the Project or the Prior Projects, in the aggregate, on any basis other than the same basis as the general public; and no person other than a state or local governmental unit will be users of more than five percent of the Project or the Prior Projects, in the aggregate, as a result of (i) ownership, (ii) actual or beneficial use pursuant to a lease or a management, service, incentive payment, research or output contract, or (iii) any other similar arrangement, agreement or understanding, whether written or oral.

(e) The City has not and will not enter into any arrangement that conveys to any person, other than a state or local government unit, special legal entitlements to any portion of the Project or the Prior Projects that is available for use by the general public. No person, other than a state or local governmental unit, is receiving or will receive any special economic benefit from use of any portion of the Project or the Prior Projects that is available for use by the general public.

(f) No more than the lesser of five percent of the Prior Bonds or \$5,000,000 of the proceeds of the Prior Bonds were used, and no more than the lesser of five percent of the proceeds of the Bonds or \$5,000,000 have been or will be used, to provide professional sports facilities. For purposes of this paragraph, the term "professional sports facilities" (i) means real property or related improvements used for professional sports exhibitions, games or training, regardless of whether the admission of the public or press is allowed or paid and (ii) includes any use of a facility that generates a direct or indirect monetary benefit (other than reimbursement for out-of-pocket expenses) for a person who uses such facilities for professional sport exhibitions, games or training.

17.28. *I.R.S. Form 8038-G.* The information contained in the Information Return for Tax-Exempt Governmental Obligations, Form 8038-G, shall be true and complete. The City will file Form 8038-G (and all other required information reporting forms) in a timely manner.

17.29. Termination; Interest of City in Rebate Fund. The terms and provisions set forth in this Section shall terminate at the later of (a) 75 days after the Bonds have been fully paid and retired or (b) the date on which all amounts remaining on deposit in the Rebate Fund, if any, shall have been paid to or upon the order of the United States and any other payments required to satisfy the Rebate Provisions of the Code have been made to the United States. Notwithstanding the foregoing, the provisions of 17.19 hereof shall not terminate until the sixth anniversary of the date the Bonds are fully paid and retired.

17.30. No Common Plan of Financing. Since a date which is not less than 15 days prior to the date of adoption of this Ordinance, neither the City nor any member of the same Controlled Group as the City has sold or delivered any obligations other than the Bonds that are reasonably expected to be paid out of substantially the same source of funds as the Bonds. Neither the City nor any member of the same Controlled Group as the City will sell or deliver within 15 days after the date hereof any obligations other than the Bonds that are reasonably expected to be paid out of substantially the same source of funds as the Bonds. No obligations other than the Bonds are being sold on the same date as the Bonds, will be issued at Closing or were or are being offered pursuant to a single offering document.

17.31. No Sale of Project or Prior Projects. (a) Other than as provided in the next sentence, none of the facilities constituting the Project or the Prior Projects has been, is expected to be, or will be sold or otherwise disposed of, in whole or in part, prior to the earlier of (i) the last date of the reasonably expected economic life to the City of the property (determined on the date of issuance of the Bonds) or (ii) the last maturity date of the Bonds. The City may dispose of personal property in the ordinary course of an established government program prior to the earlier of (i) the last date of the reasonably expected economic life to the City of the property (determined on the date of issuance of the Bonds) or (ii) the last maturity of the Bonds, provided: (A) the weighted average maturity of the Bonds financing the personal property is not greater than 120 percent of the reasonably expected actual use of that property for governmental purposes; (B) the City reasonably expects on the issue date that the fair market value of that property on the date of disposition will be not greater than 25 percent of its cost; (C) the property is no longer suitable for its governmental purposes on the date of disposition; and (D) the City deposits amounts received from the disposition in a commingled fund with substantial tax or other governmental revenues and the City reasonably expects to spend the amounts on governmental programs within six months from the date of the commingling.

(b) The City acknowledges that if Bond-financed property is sold or otherwise disposed of in a manner contrary to (a) above, such sale or disposition may constitute a "deliberate action" within the meaning of the Regulations that may require remedial actions to prevent the Bonds from becoming private activity bonds. The City shall promptly contact Bond Counsel if a sale or other disposition of Bond-financed property is considered by the City.

17.32. Future Events. The City acknowledges that any changes in facts or expectations from those set forth herein may result in different Yield restrictions or rebate requirements from those set forth herein. The City shall promptly contact Bond Counsel if such changes do occur.

17.33. *Excess Proceeds.* Gross Proceeds allocable to the Refunding Portion of the Bonds and investment earnings thereon and all unspent Prior Bond Proceeds as of the date of Closing and investment earnings thereon shall not exceed by more than one percent of the Sale Proceeds of the Refunding Portion of the Bonds the amount that will be used for:

- (i) payment of principal, of or interest, or call premium on the Callable Bonds;
- (ii) payment of pre-issuance accrued interest on the Bonds;
- (iii) payment of cost of issuance of the Bonds;
- (iv) payment of administrative costs allocable to repaying the Callable Bonds, carrying and repaying the Bonds or investments of the Bonds;
- (v) Prior Bond Proceeds that will be used or maintained for the governmental purpose of the Prior Bonds; and
- (vi) costs of any Credit Facility allocable to the Bonds.

17.34. *Permitted Changes; Opinion of Bond Counsel.* The Yield restrictions contained at 17.22 or any other restriction or covenant contained in this Section 17 need not be observed or may be changed if the City receives an opinion of Bond Counsel to the effect that such nonobservance or change will not result in the loss of any exemption for the purpose of federal income taxation to which interest on the Bonds is otherwise entitled.

17.35. *Expectations.* The City Council has reviewed the facts, estimates and circumstances set forth herein. To their collective knowledge, such facts and estimates are true and are not incomplete in any material respect. On the basis of such facts and estimates, the City adopts the expectations contained herein. On the basis of such facts, estimates, circumstances and expectations, it is not expected that the Sale Proceeds or any other moneys or property will be used in a manner that will cause the Bonds to be arbitrage bonds within the meaning of the Rebate Provisions and the Regulations. Such expectations are reasonable and there are no other facts, estimates and circumstances that would materially change such expectations.

Section 18. Continuing Disclosure. The Mayor or the City Clerk of the City is hereby authorized, empowered and directed to execute and deliver the Continuing Disclosure Undertaking (the "*Continuing Disclosure Undertaking*") substantially in the form attached hereto as *Exhibit B* to this Ordinance, made a part hereof by this reference, and hereby approved; the officer signatory to such Continuing Disclosure Undertaking being hereby authorized and directed to execute same, his or her execution to constitute conclusive proof of action in accordance with this Ordinance, and approval of all completions or revisions necessary

or appropriate to such undertaking. When the Continuing Disclosure Undertaking is executed and delivered on behalf of the City as herein provided, the Continuing Disclosure Undertaking will be binding upon the City and the officers, employees and agents of the City, and the officers, employees and agents of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Continuing Disclosure Undertaking as executed. Notwithstanding any other provision of this Ordinance, the sole remedies for failure to comply with the Continuing Disclosure Undertaking shall be the ability of the beneficial owner of any Bond to seek mandamus or specific performance by court order, to cause the City to comply with its obligations under the Continuing Disclosure Undertaking.

Section 19. Taxes Previously Levied. The taxes previously levied to pay principal of and interest on the Prior Bonds, to the extent such principal and interest is provided for from the proceeds of the Bonds or from the Escrow Account under the Escrow Agreement as hereinabove described, shall be abated. The filing of a certificate of abatement with the County Clerk shall constitute authority and direction for the County Clerk to make such abatement. Taxes previously levied which are either on hand or cannot be abated (already in the process of extension) shall be used for lawful corporate capital projects identified in the City's current Capital Improvement Plan and for which funds are otherwise not currently available, thus decreasing the City's need to borrow for such purposes in the future.

Section 20. Pertaining to the Bond Registrar. If requested by the Bond Registrar or the Paying Agent, or both, any officer of the City is authorized to execute standard forms of agreements between the City and the Bond Registrar or Paying Agent with respect to the obligations and duties of the Bond Registrar or Paying Agent under this Ordinance. In addition to the terms of such agreements and subject to modification thereby, the Bond Registrar and

Paying Agent by acceptance of duties under this Ordinance agree (a) to act as bond registrar, paying agent, authenticating agent, and transfer agent as provided herein; (b) as to the Bond Registrar, to maintain a list of Bondholders as set forth herein and to furnish such list to the City upon request, but otherwise to keep such list confidential to the extent permitted by law; (c) as to the Bond Registrar, to cancel and/or destroy Bonds which have been paid at maturity or upon redemption or submitted for exchange or transfer; (d) as to the Bond Registrar, to furnish the City at least annually a certificate with respect to Bonds cancelled and/or destroyed; and (e) to furnish the City at least annually an audit confirmation of Bonds paid, Bonds outstanding and payments made with respect to interest on the Bonds. The City covenants with respect to the Bond Registrar, and the Bond Registrar further covenants and agrees as follows: (A) The City shall at all times retain a Bond Registrar with respect to the Bonds; it will maintain at the designated office(s) of such Bond Registrar a place or places where Bonds may be presented for payment, registration, transfer or exchange; and it will require that the Bond Registrar properly maintain the Bond Register and perform the other duties and obligations imposed upon it by this Ordinance in a manner consistent with the standards, customs and practices of the municipal securities industry. (B) The Bond Registrar shall signify its acceptance of the duties and obligations imposed upon it by this Ordinance by executing the certificate of authentication on any Bond, and by such execution the Bond Registrar shall be deemed to have certified to the City that it has all requisite power to accept and has accepted such duties and obligations not only with respect to the Bond so authenticated but with respect to all the Bonds. Any Bond Registrar shall be the agent of the City and shall not be liable in connection with the performance of its duties except for its own negligence or willful wrongdoing. Any Bond Registrar shall, however, be responsible for any representation in its certificate of authentication on Bonds. (C) The City may remove the Bond Registrar at any time. In case at any time the Bond Registrar shall resign,

shall be removed, shall become incapable of acting, or shall be adjudicated a bankrupt or insolvent, or if a receiver, liquidator, or conservator of the Bond Registrar or of the property thereof shall be appointed, or if any public officer shall take charge or control of the Bond Registrar or of the property or affairs thereof, the City covenants and agrees that it will thereupon appoint a successor Bond Registrar. The City shall give notice of any such appointment made by it to each registered owner of any Bond within twenty days after such appointment in the same manner, or as nearly the same as may be practicable, as for a redemption of Bonds. Any Bond Registrar appointed under the provisions of this Section shall be a bank, trust company, or national banking association maintaining its principal corporate trust office in Illinois, and having capital and surplus and undivided profits in excess of \$10,000,000. The City Clerk of the City is hereby directed to file a certified copy of this Ordinance with the Bond Registrar and the Paying Agent.

Section 21. Defeasance. Any Bond or Bonds which (a) are paid and cancelled, (b) which have matured and for which sufficient sums been deposited with the Paying Agent to pay all principal and interest due thereon, or (c) for which sufficient funds and Defeasance Obligations have been deposited with the Paying Agent or similar institution to pay, taking into account investment earnings on such obligations, all principal of and interest on such Bond or Bonds when due at maturity or as called for redemption, pursuant to an irrevocable escrow or trust agreement, shall cease to have any lien on or right to receive or be paid from the Pledged Taxes and shall no longer have the benefits of any covenant for the registered owners of outstanding Bonds as set forth herein as such relates to lien and security of the outstanding Bonds. All covenants relative to the Tax-exempt status of the Bonds; and payment, registration, transfer, and exchange; are expressly continued for all Bonds whether outstanding Bonds or not. For purposes of this section, "*Defeasance Obligations*" means (a) direct and general full faith

and credit obligations of the United States Treasury ("*Directs*"), (b) certificates of participation or trust receipts in trusts comprised wholly of Directs or (c) other obligations unconditionally guaranteed as to timely payment by the United States Treasury.

Section 22. Publication of Ordinance. A full, true and complete copy of this Ordinance shall be published within ten days after passage in pamphlet form by authority of the City Council.

Section 23. Superseder and Effective Date. All ordinances, resolutions and orders, or parts thereof, in conflict herewith, are to the extent of such conflict hereby superseded; and this Ordinance shall be in full force and effect immediately upon its passage, approval and publication.

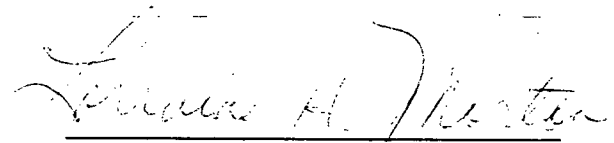
AYES Newman, Drummer, Wynne, Bernstein, Kent, Moran, Engelman,
Rainey, Feldman

NAYS: None

ABSENT: None

ADOPTED: May 24, 1999

APPROVED: May 24, 1999




Mayor, City of Evanston
Cook County, Illinois

RECORDED In City Records: May 24, 1999.

PUBLISHED in pamphlet form by authority of the City Council on May 25, 1999.

Attest:



City Clerk, City of Evanston
Cook County, Illinois