

Title 11 – Utilities

Chapter 5 – RUID Obligations

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Issuance of Tribal Obligations, Ord. 86 (12/10/91), Enacting Res. 91-12-112, BIA (1/30/90) (amending Ord. 65).

Swinomish Indian Tribal Community Utility Ordinance, Ord. 65 (10/10/89), Enacting Res. 89-10-95, BIA (10/23/89).

[Ed. Note: Ord. 65 was originally numbered 62.]

Subchapter I – General Provisions

11-05.010 Authority.

The issuance of bonds and obligations under this Chapter is made pursuant to Article VI, Section 1(m) of the Swinomish Constitution, approved by the United States Secretary of the Interior (“Secretary”) on January 27, 1936, and ratified by the Swinomish Indian Tribal Community on November 16, 1935, with amendments approved by the Secretary on December 14, 1949; April 17, 1950; April 27, 1966; May 31, 1966; and October 22, 1985.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

10-05.020 Definitions.

Unless the context clearly requires otherwise, the definitions in this Section apply throughout this Chapter.

- (A) **“Bond”** means any agreement that may or may not be represented by a physical instrument, including notes, warrants, or certificates of indebtedness, that evidences an indebtedness of the Tribe or a fund thereof, where the Tribe agrees to pay a specified amount of money with or without interest, at a designated time or times to either registered owners or bearers.
- (B) **“Comptroller”** means the Tribal Controller of the Swinomish Indian Tribal Community.
- (C) **“Credit Enhancement”** means a letter of credit, line of credit, bond insurance policy, or other device or facility used to secure or support a bond or obligation issued under this Chapter

- (D) **“Credit Enhancement Agreement”** means any reimbursement agreement or other agreement providing for the issuance of any credit enhancement.
- (E) **“Installment Note”** means any instrument, document, or other writing representing the issuer’s obligation to pay, and the owner’s right to receive, principal and interest in fixed amounts, for fixed periods of time, to the buyer.
- (F) **“Interest Coupon”** means any instrument, document, or other writing representing the issuer’s obligation to pay, and the owner’s right to receive, interest, especially on a bond or other obligation.
- (G) **“Line of Credit”** means a contractual relationship between a borrower and a lender, often a bank, by which the borrower can borrow up to a maximum sum of money for a range of agreed upon purposes so that the lender does not need to approve each particular transaction.
- (H) **“Local Improvement Bond”** means a bond issued to finance a Reservation Utility Improvement District (“RUID”).
- (I) **“Note”** means any instrument, document, or other writing representing the signer’s or maker’s express and absolute promise to pay a definite sum of money at a specified time.
- (J) **“Obligation”** means an agreement that evidences an indebtedness of the Tribe, other than a bond, and includes, but is not limited to, conditional sales contracts, lease obligations, and promissory notes.
- (K) **“RUID”** means a Reservation Utility Improvement District as described in this Chapter.
- (L) **“Warrant”** means an order or other writing by which the person issuing the warrant authorizes someone to pay a particular sum of money.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91); Ord. 65 (10/10/89).

Subchapter II – RUID Bonds

11-05.030 Authority to Issue Bonds.

The Tribe may provide by resolution for the payment of the whole or any portion of the cost and expense of any local improvement bonds of the Tribe for such RUID, but no bonds shall be issued in excess of the cost and expense of the improvement, nor shall they be issued prior to twenty (20) days after the thirty (30) days allowed for the payment of assessments without penalty or interest.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.040 Due Date and Interest.

Local improvement bonds shall be issued pursuant to this Chapter and shall be made payable on or before a date not to exceed thirty (30) years from and after the date of issue, which latter date may be fixed by resolution of the Senate, and bear interest at such rate or rates as authorized by the Senate. The Senate may, in addition to issuing bonds callable pursuant to tribal law whenever sufficient moneys are available, issue bonds with a fixed maturity schedule or with a fixed maximum annual retirement schedule.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.050 Amount, Terms, and Conditions.

The Senate, on behalf of the Tribe, shall determine for the bond issue its amount, date or dates, terms not in excess of the maximum term otherwise provided in law, conditions, bond denominations, interest rate or rates, which may be fixed or variable, interest payment dates, maturity or other maturities, redemption rights, registration privileges, manner of execution, price, manner of sale, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may be as provided under Section 11-05.110 hereof.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91); Ord. 65 (10/10/89).

11-05.060 Interest Payments.

The Comptroller shall pay interest on the bonds issued against local improvement funds out of the local improvement fund from which the bonds are payable.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.070 Form and Content.

- (A) **Denominations and Numbering.** Local improvement bonds shall be in such denominations as may be provided in the resolution authorizing their issue and shall be numbered from one upwards consecutively.
- (B) **Contents.** Each bond shall:
 - (1) Be signed by the Chair of the Senate and attested by the Comptroller;
 - (2) Have the seal of the Tribe affixed thereto;
 - (3) Refer to the improvement for which it is issued and the ordinance ordering it;

- (4) Provide that the principal sum therein named and the interest thereon shall be payable out of the local improvement fund created for the cost and expense of the improvement, or out of the local improvement guaranty fund, and not otherwise;
 - (5) Provide that the bond owners' remedy in case of nonpayment shall be confined to the enforcement of the special assessments made for the improvement and to the guaranty fund; and
 - (6) Be in any form, including bearer bonds or registered bonds as provided by tribal law.
- (C) **Interest Coupons.** Any interest coupons may be signed by the Chair of the Senate and attested to by the Comptroller, or in lieu thereof, may have printed thereon a facsimile of their signatures.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.080 Reproduction of Physical Instrument.

When bonds are issued by the Tribe as physical instruments, the bonds shall be printed, engraved, lithographed, typed, or reproduced and the manual or facsimile signatures of both the Chair of the Senate and the Comptroller shall be included on each bond.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.090 Sale.

Local improvement bonds may be issued to the contractor or sold by the officers authorized by Senate resolution, in the manner prescribed and at the price established by the Senate. Any portion of the bonds of any issue remaining unsold may be issued to the contractor constructing the improvement in payment thereof.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.100 Sale Proceeds.

The proceeds of all sales of bonds shall be applied in payment of the cost and expense of the improvement and the costs of issuance of the bonds.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.110 Registration of Obligations.

- (A) **Registration System.**

- (1) The Tribe shall establish a system of registering the ownership of their bonds or other obligations as to principal and interest, or principal only.
 - (2) Registration may include, without limitation:
 - (a) A book entry system of recording the ownership of a bond or other obligation whether or not a physical instrument is issued; or
 - (b) Recording the ownership of a bond or other obligation together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond or other obligation and either the reissuance of the old bond or other obligation or the issuance of a new bond or other obligation to the new owner.
- (B) **Transfer.** The system of registration shall define the method or methods by which transfer of the registered bonds or other obligations shall be effective, and by which payment of principal and any interest shall be made. The system of registration may permit the issuance of bonds or other obligations in any denomination to represent several registered bonds or other obligations of smaller denominations.
- (C) **Incidental Matters.** The system of registration may also provide for any writing relating to a bond or other obligation that is not issued as a physical instrument, for identifying numbers of other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to the owners of bonds or other obligations, for accounting, canceled certificate destruction, registration and release of securing interests, and for such other incidental matters pertaining to the registration of bonds or other obligations as the issuer may deem to be necessary or appropriate.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.120 Trustee or Agent.

- (A) **Bank.** The Tribe may appoint a national banking association or state chartered bank, maintaining a minimum capital surplus of twenty-five million dollars (\$25,000,000) (collectively the “Bank”), to act with respect to an issue of its bonds or other obligations as authenticating trustee, transfer agent, registrar, and paying or other agent and specify the rights and duties and means of compensation of any such bank so acting. The Tribe may also enter into agreements with the bank in connection with the establishment and maintenance by such bank of a nationally recognized central depository system for the transfer or pledge of bonds or other obligations.

- (B) **Reserved Authority.** Nothing in this Section precludes the Tribe or a trustee appointed by the Tribe pursuant to any other provision of law, from itself performing, either alone or jointly with other issuers, fiscal agencies, or trustees, any transfer, registration, authentication, payment of other function described in this Section.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.130 Costs of Issue.

The proceeds of any bonds issued may be used to pay incidental costs and costs related to the sale and issuance of the bonds. Such costs include payments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, establishing and funding reserve accounts and other accounts, an amount for working capital, capitalized interest for up to six (6) months, necessary and related engineering, architectural, planning, and inspection costs, and other similar activities or purposes.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.140 Lines of Credit.

The Senate, on behalf of the Tribe, is authorized to establish lines of credit with any national saving association or state chartered bank to be drawn upon in exchange for its bonds or other obligations, to delegate to its fiscal officer authority to determine the amount of credit extended, and to pay interest and other finance or service charges provided such lines of credit may be secured only by specified revenues or assets of the Tribe. The interest rates on such bonds or other obligations may be a fixed rate or rates set periodically or a variable rate or rates determined by agreement of the parties.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.150 Call of Bonds Outstanding.

- (A) **Call.** Except when local improvement bonds have been issued with a fixed maturity schedule or with a fixed maximum annual retirement schedule as authorized under tribal law, the Comptroller shall call in and pay the principal of one or more bonds of any issue in their numerical order whenever there is sufficient money in any local improvement fund, against which the bonds have been issued, over and above that which is sufficient for the payment of interest on all unpaid bonds of that issue.

- (B) **Notice.** The call shall be published in a local newspaper of suitable size and general circulation in its first publication following the date of delinquency of any installment of the assessment or as soon thereafter as practicable. The call shall state that bonds No. _____ (giving the serial number or numbers of the local improvement bonds called) will be paid on the day the next interest payments are due and that interest on those bonds will cease upon that date.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.160 Community Liability.

- (A) **Limited Liability.** Neither the holder nor owner of any local improvement bond, interest coupon, or warrant issued against a local improvement fund shall have any claim against the Tribe, the Authority, or the Commission by which it is issued, except for payment from the special assessments made for the improvement for which the bond or warrant was issued and except also for payment from the local improvement guaranty fund of the Tribe as to bonds issued after the creation of a local improvement guaranty fund of the Tribe, if any.
- (B) **Loss to Guaranty Fund.** The Tribe, the Authority or the Commission shall not be liable to the holder or owner of any bond, interest coupon, or warrant for any loss to the local improvement guaranty fund occurring in the lawful operation thereof.
- (C) **Notice.** A copy of Subsections (A) and (B) of this Section shall be plainly written, printed or engraved on each local improvement bond.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.170 Bondholders' Remedies.

- (A) **Foreclosure.** If the Tribe or the Authority fails to pay any bonds or to promptly collect any local improvement assessments when due, the owner of the bonds may proceed in his or her own name to collect the assessment and foreclose the lien thereof in any court of competent jurisdiction and recover in addition to the amount of the bond and interest thereon, five percent (5%), together with the cost of suit. Any number of holders of bonds for any single improvement may join as plaintiffs and any number of owners of property upon which the assessments are liens may be joined as defendants in the same suit.
- (B) **Improvement Guaranty Fund.** The owners of local improvement bonds issued by the Tribe after the creation of a local improvement guaranty fund shall also have recourse against the local improvement guaranty fund of the Tribe.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

Subchapter III – Other Obligations

11-05.180 Warrants Against Local Improvement Fund.

- (A) **Warrants.** The Senate may provide by resolution for the issuance of warrants in payment of the cost and expense of any local improvement, payable out of the local improvement district fund. The warrants shall bear interest at a rate or rates established by the issuing officer under the direction of the Senate and shall be redeemed either in cash or by local improvement bonds for the same improvement authorized by resolution.
- (B) **Priority.** All warrants against any local improvement fund sold by the Tribe or issued to a contractor and sold or hypothecated by him or her for a valuable consideration shall be claims and liens against the improvement fund against which they are drawn prior and superior to any right, lien, or claim of any surety upon the bond or bonds given to the Tribe or the Authority by or for the contractor to secure the performance of his or her contract or to secure the payment of persons who have performed work thereon or furnished materials, or provisions and supplies for the carrying on of the work.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.190 Warrants Acceptable in Payment of Assessments.

The Comptroller may accept warrants drawn against any local improvement fund upon such conditions as the Senate may by ordinance or resolution prescribe, in satisfaction of:

- (A) Assessments levied to supply such fund, in due order of priority of right;
- (B) Judgments rendered against property owners who have become delinquent in the payment of assessments levied to supply such fund; and
- (C) On payment of certificates of purchase in cases where property has been sold under execution or at tax sale for failure to pay assessments levied to supply such fund.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.200 Installment Notes.

- (A) **Authority to Issue.** In addition to the issuance of bonds and warrants in payment of the cost and expense of any local improvement, the Tribe may also issue and sell installment notes payable out of the local improvement district fund. Such installment notes may be issued any time after the thirty (30) day period allowed by law for the payment of assessments of any district without penalty or interest, and may bear any denomination or denominations, the aggregate of which shall represent

the balance of the cost and expense of the local improvement district that is to be borne by the property owners therein.

- (B) **Annual Payment.** Application of local improvement district funds for the reduction of the principal and interest amounts due on any notes herein provided to finance said improvements shall be made not less than once each year beginning with the issue date thereof.
- (C) **Notice.** The Comptroller shall make appropriate notice of such application of funds to the registered payees of said notes, except those notes owned by the Tribe. Such notes may be registered as provided in Section 11-05.110 of this Chapter.
- (D) **Numbering.** If more than one local improvement installment note is issued for a single district, said notes shall be numbered consecutively.
- (E) **Contents of Face of Note.** All notes shall bear on the face thereof:
 - (1) The name of the payee;
 - (2) The number of the local improvement district from whose funds the notes are payable;
 - (3) The date of issue of each note;
 - (4) The date on which the note, or the final installment thereon, shall become due;
 - (5) The rate or rates of interest, as provided by the Senate, to be paid on the unpaid balance thereof; and
 - (6) Such manual or facsimile signatures as are required by Sections 11-05.070 and 11-05.080
- (F) **Contents of Back of Note.**
 - (1) **Payment Record.** The reverse side of each installment note issued pursuant to this Section shall bear a tabular payment record that shall indicate at prescribed installment dates, the receipt of any local improvement district funds for the purpose of servicing the debt evidenced by said notes. Such receipts shall be first applied toward the interest due on the unpaid balance of the note, and any additional moneys shall be applied to a reduction of the principal amount thereof.
 - (2) **Unpaid Balance.** The tabular payment record shall, in addition to the above, show the unpaid principal balance due on each installment note.

- (3) **Signature.** The tabular payment record shall have sufficient space opposite each transaction affecting said note for the manual signature of the Comptroller or other properly designated receiving officer of the Tribe, or of any other registered payee presenting said note for such installment payments.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.210 Certificate of Default.

- (A) **Authority.** Whenever there are insufficient funds in a local improvement district fund to meet any payment of installment interest due on any note herein authorized, the Comptroller shall issue a non-interest-bearing defaulted installment interest certificate.
- (B) **Contents.** Said certificate shall consist of: (1) a written statement certifying the amount of such defaulted interest installment; (2) the name of the payee of the note to whom the interest is due; and (3) the number of the local improvement district from whose funds the note and interest hereof is payable. Such certificates may be registered as provided in Section 11-05.110. The certificate herein provided shall bear the manual signature of the Comptroller or his or her authorized agent.
- (C) **Redemption.** The defaulted installment interest certificate so issued shall be redeemed for the face amount thereof with any available funds in the local improvement guaranty fund.
- (D) **Guaranty Fund.** Whenever at the date of maturity of any installment note issued pursuant to this Section, there are insufficient funds in a local improvement district fund, due to delinquencies in the collection of assessments, to pay the final installment of the principal due thereon, the note shall be redeemed with any available funds in the local improvement guaranty fund for the amount of said final installment.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91); Ord. 65 (10/10/89).

11-05.220 Refunding of Installment Notes.

- (A) **Authority and Mechanism.** The Tribe may refund all of its installment or the principal thereof then outstanding from any one local improvement district fund by the issuance of local improvement district bonds pursuant to this Chapter and by the payment into the Tribe's general fund or funds holding such notes the then outstanding principal amount of such notes plus the interest thereon accrued to the date of such refunding.
- (B) **Limitations.**

The bonds shall be:

- (1) Payable from the same local improvement district fund from which such notes were payable;
 - (2) Payable no later than the final payment date of the notes being refunded;
 - (3) In the same total principal amount as the outstanding principal of the notes being refunded, less any sums in the local improvement district fund the Tribe applies to the redemption of such notes; and
 - (4) Sold at not less than par plus accrued interest to date of delivery.
- (C) **Interest.** Any interest payable on the bonds in excess of the interest payable on assessment installments payable into the local improvement district fund shall be paid from the general fund of the Tribe. The principal proceeds and interest accrued to date of delivery of the bonds shall be paid into the local improvement district fund, and the notes shall be redeemed on that date. The Tribe shall pay all costs and expenses of such refunding from moneys available therefor.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.230 Consolidated RUID.

For the purpose of issuing local improvement bonds only, the Senate may authorize the establishment of consolidated RUIDs. The local improvements within such consolidated districts need not be adjoining, neighboring, or nearby. If the Senate orders the creation of such consolidated RUID, the moneys received from the installment payment of the principal of and interest on assessments levied within the original local assessment districts shall be deposited in a consolidated RUID bond redemption fund to be used to redeem outstanding consolidated RUID bonds.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.240 Refunding Bonds.

- (A) **Authority.** The Senate may issue and sell bonds to refund outstanding RUID or consolidated RUID bonds on the earliest date such outstanding bonds may be redeemed following the date of issuance of such refunding bonds.
- (B) **Limitations.** Such refunding shall be subject to the following:
- (1) The refunding shall result in a net interest cost savings after paying the costs and expenses of the refunding, and the principal amount of the refunding bonds may not exceed the principal balance of the assessment roll or rolls pledged to pay the bonds being refunded at the time of the refunding.
 - (2) The refunding bonds shall be paid from the same local improvement fund or

bond redemption fund as the bonds being refunded.

- (3) The costs and expenses of the refunding shall be paid from the proceeds of the refunding bonds, or the same local improvement district fund or bond redemption fund for the bonds being refunded, except the Tribe or the Authority may advance such costs and expenses to such fund pending the receipt of assessment payments available to reimburse such advances.
- (4) The last maturity of the refunding bonds shall be no later than one (1) year after the last maturity of bonds being refunded.
- (5) The refunding bonds may be exchanged for the bonds being refunded or may be sold in the same manner permitted at the time of sale for local improvement bonds.
- (6) All other provisions of law applicable to the refunded bonds shall apply to the refunding bonds.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

Subchapter IV – Satisfaction of Bonds and Warrants

11-05.250 Abandonment.

- (A) **Outstanding Bonds.** If the Tribe has any outstanding and unpaid local improvement bonds or warrants issued in connection with a local improvement therein to which the local guaranty fund law is not applicable and that have been delinquent for more than fifteen (15) years, it may, by resolution, direct that the money, if any, remaining in a given local improvement fund for which no real property is held in trust shall be distributed by the Comptroller on a pro rata basis, without any reference to numerical order, to the holders of outstanding bonds or warrants for each such fund, excluding the accrued interests thereon.
- (B) **Abandonment.** If the outstanding bonds or warrants are not presented for payment within one (1) year after the last date of publication of notice provided for herein, the money being held in the local improvement fund of the Tribe shall be deemed abandoned, and shall be transferred to the general fund of the Tribe.

- (C) **Notice.** Before an outstanding bond or warrant may be deemed abandoned, the Tribe shall publish a notice once each week for two (2) successive weeks in a local newspaper of suitable size and general circulation that R.U.I.D. bonds for R.U.I.D. Improvement Nos. _____ to _____ inclusive must be presented to the Tribe for payment not later than one (1) year from this date, or the money being held in the local improvement fund of the Tribe shall be transferred to the Tribe general fund.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-05.260 Declaration of Obsolescence.

After the Tribe has distributed the money in a local improvement district fund in accordance with Section 11-05.250 or such bonds or warrants are not presented for payment within one (1) year after the last date of publication of notice provided for in Section 11-02.250(C) the Tribe may, by resolution, declare such bonds and warrants, without any reference to numerical order, obsolete, cancel the same, and terminate all accounting thereon, and clear such bonds and warrants off their records including any unguaranteed bonds or warrants outstanding against districts in which there remains no money in the given local improvement fund.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91); Ord. 65 (10/10/89).

11-05.270 Cancellation Procedure.

If the bonds or warrants outstanding against the RUID are unguaranteed and if there remains no money in the appropriate local improvement fund to pay them, and if no real property is held in trust for the fund, the Tribe shall give notice in the same manner as provided in Section 11-02.260(C) stating that R.U.I.D. _____ bonds or warrants) for _____ R.U.I.D. improvement Nos. _____ to _____ inclusive will be canceled as provided in Section 11-05.250 unless such bonds or warrants are presented to the Comptroller within one (1) year from the date of last publication of the notice, together with good cause shown as to why such cancellation should not take place. If such bonds or warrants are not presented, with good cause shown, within one (1) year after the last date of publication of such notice, they may be canceled as provided in Section 11-05.260.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91); Ord. 65 (10/10/89).

Subchapter V – Sewer and Water Utility Bonds

11-05.280 Authority.

The authority to issue revenue bonds and to enter into credit enhancement agreements under this Section is supplementary and in addition to any authority otherwise existing, and shall be

exercised only to finance the construction of sewer and/or water utilities or improvements thereof, as provided in this Subchapter below.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91).

11-05.290 Maximum Term.

The maximum term of any revenue bonds shall be forty (40) years unless another ordinance authorizing the Tribe or a subordinate entity thereto provides for a different maximum term, in which event the Tribe or a subordinate entity thereto may issue revenue bonds only with terms not in excess of such different maximum term.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91).

11-05.300 Special Fund for Principal and Interest.

The Senate shall create a special fund or funds, or use an existing special fund or funds, from which the principal and interest on such revenue bonds shall be payable. The Senate may also use reserve funds or any credit enhancement to pay the same.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91).

11-05.310 Covenants.

(A) **Authority.** Subject to the limitations contained in this Section, the Senate may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on revenue bonds, and premium on revenue bonds, if any, and to enter into credit enhancement agreements.

(B) **Types of Covenants.**

Such covenants or credit enhancement agreements may include, but are not limited to:

- (1) Depositing certain revenues into a special fund or funds as provided in Section 11-05.320.
- (2) Establishing, maintaining, and collecting fees, rates, charges, tariffs, or rentals, or facilities and services whose income is pledged for the payment of such bonds or credit enhancement agreements;
- (3) Operating, maintaining, managing, accounting, and auditing the Tribe;
- (4) Appointing trustees, depositories, and paying agents; and

- (5) Any and all matters of like or different character that affect the security or protection of the revenue bonds or credit enhancement agreements.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91).

11-05.320 Special Fund for Operations and Maintenance.

- (A) **Authority.** The Senate may obligate the Tribe or the subordinate entity whose activities are being financed to set aside and pay into a special fund or funds created under Section 11-05.300 a proportion or a fixed amount of certain revenues.
- (B) **Source of Revenues.** Such revenues shall come from the following source:
 - (1) The public improvements, projects, or facilities that are financed by the revenue bonds;
 - (2) The public utility or system, or an addition or extension to the public utility or system, where the improvements, projects, or facilities financed by the revenue bonds are a portion of the public utility or system;
 - (3) All the revenues of the Tribe or the subordinate entity whose activities are being financed; or
 - (4) Any other money legally available for such purposes.
- (C) **Definition of Revenue.** As used in this Section, the term “revenues” includes the operating revenues of the Authority, the Tribe or a subordinate entity to the Tribe that result from fees, rates, charges, tariffs, or rentals imposed upon the use or availability or benefit from projects, facilities, or utilities owned or operated by the Authority and from related services provided by the Tribe or the subordinate entity thereof whose activities are being financed and other revenues legally available to be pledged to secure the revenue bonds or any credit enhancement issued to secure such revenue bonds.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91).

11-05.330 Maintenance and Operating Expenses.

- (A) **Priority.** The proportion or fixed amount of revenue so obligated shall be a lien and charge against these revenues, subject only to maintenance and operating expenses. The Senate shall have due regard for the cost of maintenance and operation of the public utility, system, improvement, project, facility, addition, or extension that generates revenues obligated to be placed into the special fund or funds from which the revenue bonds or any credit enhancement issued to secure such revenue bonds are payable, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above such

cost of maintenance and operation and the proportion or fixed amount, if any, of the revenue so previously pledged.

- (C) **No Obligation.** Other revenues, including tax revenues, lawfully available for maintenance or operation of revenue-generating facilities may be used for maintenance and operation purposes even though the facilities are acquired, constructed, expanded, replaced, or repaired with moneys arising from the sale of revenue bonds. However, the use of these other revenues for maintenance and operation purposes shall not be deemed to directly or indirectly guarantee the revenue bonds or create a general obligation. The obligation to maintain and impose fees, rates, charges, tariffs, or rentals at levels sufficient to finance maintenance and operations shall remain if the other revenues available for such purposes diminish or cease.
- (D) The Senate may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91).

11-05.340 No General Obligation.

- (A) **Special Obligation.** A revenue bond or credit enhancement agreement executed by the Tribe shall not constitute a general obligation of the Tribe or the subordinate entity thereof whose activities are being financed. Instead it constitutes a special obligation of the Tribe or subordinate entity and the interest and principal on the bond or credit enhancement agreement shall only be payable from the special fund or funds established pursuant to Section 11-05.300 the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds.
- (B) **Special Fund.** The owner of a revenue bond shall not have any claim for the payment thereof against the Tribe or the subordinate entity thereof whose activities are being financed arising from the revenue bonds except for payment from the special fund or funds, the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds.
- (C) **Notice of Limitation.** The substance of the limitation included in this Section shall be plainly printed, written, engraved, or reproduced on: (1) each revenue bond that is a physical instrument; (2) the official notice of sale; and (3) each official statement associated with the bonds.

(D) **Authority to Create Accounts.** The authority to create a fund shall include the authority to create accounts within a fund.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91).

11-05.350 Covenant to Maintain Improvements.

The Tribe, when issuing revenue bonds or entering into credit enhancement agreements payable from revenues derived from projects, facilities, or utilities, shall covenant to maintain and keep these projects, facilities, or utilities in proper operating condition for their useful life.

[History] Ord. 195 (11/5/03); Ord. 86 (12/10/91).