

ORDINANCE NO. 4852

AN ORDINANCE OF THE CITY OF ALBANY,  
OREGON AUTHORIZING THE ISSUANCE AND SALE  
OF \$4,100,000 SEWER REVENUE BONDS;  
DESIGNATING A PAYING AGENT AND BOND  
REGISTRAR, BOND COUNSEL AND FINANCIAL  
ADVISOR; AUTHORIZING A NEGOTIATED SALE;  
AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Albany, Oregon (the "Issuer") on December 7, 1988 adopted Resolution No. 2832 authorizing the issuance of sewer revenue bonds secured by sewer revenues of the Issuer in an amount not to exceed \$4,100,000 to finance the Wastewater Treatment Plant Improvements, Infiltration/Inflow Identification and Reduction, and Waverly Drive Storm Drain, including engineering fees, attorneys' fees, and costs of issuance of the bonds; and

WHEREAS, a Notice of Intent to Issue Bonds was published in the Albany Democrat Herald on December 16, 1988 relating to the issuance of sewer revenue bonds. No petitions were filed within sixty (60) following publication of the Notice of Intent; and

WHEREAS, the Issuer has prepared a plan showing that the estimated net revenues of the improvements to be constructed to the existing Issuer sewer system are sufficient to pay the estimated debt incurred under the sewer revenue bond issue; and

WHEREAS, in order to proceed with the orderly construction of the improvements to the Issuer's sewer system, it is necessary and desirable for the Issuer to issue and sell its Sewer Revenue Bonds, Series 1989; now therefore,

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

Section 1. Issuance of Bonds. The City Council of the City authorizes the issuance and sale of \$4,100,000 of its Sewer Revenue Bonds, Series 1989 (the "Bonds"). The Bonds shall be negotiable revenue bonds of the Issuer and shall bear interest at a rate not to exceed ten percent (10%) per annum, payable semi-annually.

Section 2. Title and Execution of Bonds. The Bonds shall be entitled "City of Albany, Linn and Benton Counties, Oregon Sewer Revenue Bonds, Series 1989" and shall bear the facsimile

signature of the Mayor of the Issuer and the facsimile signature of the City Recorder.

Section 3. Terms of Bonds. The Bonds shall be issued in fully registered form, shall be in denominations of Five Thousand Dollars (\$5,000) each, or integral multiples thereof, shall be dated February 1, 1989, shall be numbered sequentially beginning with R-1, and shall mature serially on the first day of February of each year, as follows:

| <u>Year</u> | <u>Amount</u> |
|-------------|---------------|
| 1990        | \$105,000     |
| 1991        | 110,000       |
| 1992        | 115,000       |
| 1993        | 125,000       |
| 1994        | 130,000       |
| 1995        | 140,000       |
| 1996        | 150,000       |
| 1997        | 160,000       |
| 1998        | 170,000       |
| 1999        | 180,000       |
| 2000        | 195,000       |
| 2001        | 210,000       |

\$2,310,000 Term Bonds due February 1, 2009

Section 4. Payment of Bonds. The principal of the Bonds shall be payable upon delivery of the Bonds at maturity or upon prior redemption at the principal corporate trust office of the Paying Agent in Portland, Oregon. Payment of each installment of interest due on February 1 and August 1 of each year shall be made by check or draft of the Paying Agent mailed on each interest payment date to the registered owner thereof whose name and address appears on the registration books of the Issuer maintained by the Paying Agent as of the close of business on the 15th day of the month next preceding any interest payment date.

Section 5. Optional Redemption. The Bonds of this issue maturing on or after February 1, 2000 are redeemable at the option of the Issuer on and after February 1, 1999 and on any interest payment date thereafter at par value together with accrued interest to the date fixed for redemption. The Bonds are redeemable, in whole, or in part, in integral multiples of \$5,000, in inverse order of maturity and by lot within a maturity.

Notice of redemption shall be published as provided by law and shall be given by registered or certified mail not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption to the registered owners of each Bond to be redeemed at the address shown on the registration books of the Issuer. In addition, notice of redemption shall be mailed to Standard and Poor's Corporation and Moody's Investors Service, Inc., New York, New York. Bonds are redeemable at the office of the Paying Agent.

Section 6. Mandatory Redemption. If not previously called under the provisions of Section 5 herein entitled Optional Redemption, the Series 1989 Term Bonds maturing February 1, 2009, are subject to mandatory redemption by the Issuer prior to their maturity, in part and by lot at 100% of the principal amount thereof plus accrued interest thereon to the date of redemption, in the principal amounts and on the dates set forth below:

| <u>Year</u> | <u>Amount</u> |
|-------------|---------------|
| 2002        | \$225,000     |
| 2003        | 240,000       |
| 2004        | 255,000       |
| 2005        | 275,000       |
| 2006        | 295,000       |
| 2007        | 315,000       |
| 2008        | 340,000       |
| 2009        | 365,000       |

Section 7. Form of Bonds. The Bonds shall be issued substantially in the form as approved by the Finance Director, the Financial Advisor and Bond Counsel.

Section 8. Appointment of Paying Agent and Bond Registrar. The City Council appoints and designates First Interstate Bank of Oregon, N.A. of Portland, Oregon, as the Paying Agent and Bond Registrar of the Bonds. The Finance Director is authorized to negotiate and execute on behalf of the Issuer a Paying Agent and Bond Registrar Agreement. The Agreement shall provide for compliance with Oregon Administrative Rule 170-61-010. In addition, the City Council requests and authorizes the Registrar to execute the Certificate of Authentication as of the date of delivery of the Bonds.

Section 9. Transfer of Bonds. The Bonds are transferable, or subject to exchange, for fully registered Bonds in the denomination of \$5,000 or integral multiples thereof by the registered owner thereof in person, or by the owner's attorney duly authorized in writing, at the office of the Bond Registrar.

The Paying Agent shall maintain a record of the names and addresses of the registered owners of the Bonds. The records of registered bond ownership are not public records within the meaning of Oregon Revised Statutes 192.410(4).

All bonds issued upon transfer of or in exchange for Bonds shall evidence the same debt and shall be entitled to the same benefits as the Bonds surrendered for such exchange or transfer. All fees, expenses and charges of the Paying Agent and Bond Registrar shall be payable by the Issuer. The Bond Registrar shall not be required to (1) transfer or exchange any Bond after the close of business on the 15th day of the month next preceding any interest payment date or (2) transfer or exchange any Bond or Bonds called or being called for redemption.

Section 10. Printing of Bonds. The Finance Director is authorized to contract for the printing of the Bonds. The Finance Director may provide for the printing of, in addition to the original issue of Bonds, additional bonds to be printed in blank form as to registration and to be designated by appropriate number for the Bond Registrar for delivery to the registered owner upon transfer or exchange of Bonds. The additional bonds shall be dated as of February 1, 1989, shall be signed by the facsimile signature of the present Mayor of the Issuer and by the facsimile signature of the present City Recorder and the Bond Registrar shall manually sign the Certificate of Authentication as of the date of transfer of the Bonds.

Section 11. Pledge of Revenues. The Bonds shall not be a general obligation of the Issuer and shall not be payable from any taxes levied by the Issuer. The Issuer pledges to the payment of the Bonds the unobligated revenues of the sewer system of the Issuer after payment of any indebtedness previously authorized and secured by a pledge of the sewer system revenues, and after payment of the expenses of maintenance, operation and administration ("Net Revenues").

Section 12. Rate Covenant. The Issuer covenants and agrees that it shall impose and collect such sewer system user fees and charges and shall revise its rate structure as shall be necessary in order that the revenues of the sewer system will be sufficient at all times to provide for the maintenance, operation and administrative expenses of the sewer system and to provide Net Revenues not less than 1.3 times the then fiscal year annual debt service on the Bonds; that all use of the sewer system shall be subject to the full rates prescribed by the Issuer; and that no free use of the sewer system will be permitted.

Section 13. Other Covenants. The Issuer has further covenanted:

(a) Not to invest the proceeds of the Bonds in any manner which would cause such proceeds to be arbitrage bonds within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended, and applicable regulations promulgated thereunder;

(b) Not to dispose of or transfer its title to the System;

(c) To operate and maintain the System in good condition and repair;

(d) To insure the System presently existing or hereafter constructed and installed against loss by fire and other hazards included within the term "extended coverage", and other casualties in an amount not less than the full replacement cost of the System without deduction for depreciation;

(e) To maintain complete books and records relating to the operation of the System and its financial affairs and to cause such books and records to be audited annually at the end of each fiscal year and an audit report prepared. At all reasonable times, the registered owners of the Bonds, or their designated representatives, as set forth in the Bond Ordinance, shall have the right to inspect the System and the records, accounts and data of the City relating thereto; and

(f) Not to create or permit any lien or encumbrance on the System or the Net Revenue of the System prior to the lien of the Bonds or which might impair the security of the Bonds.

Section 14. Creation of Special Accounts. The Issuer authorizes the creation of a Debt Service Fund and a Debt Service Reserve Account ("Special Accounts"). Immediately upon the sale and delivery of the Bonds, the Issuer shall deposit to the Debt Service Reserve Account an amount equal to the maximum annual debt service on the Bonds, defined as the maximum amount in the aggregate of principal of and interest on the Bonds due in any one fiscal year, but not to exceed ten percent (10%) of the proceeds of the issue.

The Debt Service Reserve Account and the moneys therein are irrevocably pledged to the payment of the Bonds, and such funds may be applied upon the final maturity of the principal of and

interest on the Bonds. In the event the balance in the Debt Service Fund is insufficient to pay the maturing principal of or interest on the Bonds, then the Issuer shall withdraw from the Debt Service Reserve Account for transfer to the Debt Service Fund sufficient moneys to make such payments when due. Thereafter, the Issuer shall transfer from the next available deposits to the Debt Service Fund sufficient moneys to restore the balance in the Debt Service Reserve Account to the required amount. Term Bonds shall be deemed to be amortized annually in the amount of principal subject to mandatory redemption.

Section 15. Deposits to Debt Service Fund. The Issuer shall deposit monthly into the Debt Service Fund from the Net Revenues of the sewer system an amount not less than one-sixth (1/6) of the amount required to pay the interest due on the Bonds on the next interest payment date and a further amount not less than one-twelfth (1/12) of the amount required for the payment of principal of the Bonds to be retired on the next principal maturity date. In determining the amounts required for the monthly deposits, the Issuer may consider any other sums then on deposit in the Debt Service Fund for the payment of principal of and interest on the Bonds. The sums so deposited are pledged irrevocably to be used only to pay interest on the Bonds on each interest payment date and to pay the principal of the Bonds on each principal payment date. Net Revenues not so deposited monthly in the Debt Service Fund may be used and applied by the Issuer for capital improvements to the sewer system or for such other uses and purposes relating to the operation, maintenance, repair, restoration and enlargements of, or for administrative expenses of, the sewer system, as the Issuer deems necessary and proper.

Section 16. Investment of Funds. The moneys in the Special Accounts shall be invested as prescribed by Oregon Revised Statutes Section 294.035 for the investment of surplus funds of political subdivisions. Earnings of the Debt Service Account shall accrue to such account. Earnings of the Debt Service Reserve Account shall be applied first to the deficiency, if any, in such account and any sums in excess of the amount required to be on deposit as provided in Section 13 hereof shall be transferred to the Debt Service Account.

Section 17. Parity Bonds. The Bonds shall be issued on a parity as to security and source of payment with the City of Albany, Oregon Advance Refunding Sewer Revenue Bonds, Series 1986, dated as of October 1, 1986, issued by the Issuer in the original aggregate principal amount of \$3,560,000 and currently outstanding in the aggregate principal amount of \$3,385,000 (the "Parity Bonds").

Section 18. Additional Bonds. The Issuer may issue additional sewer revenue bonds (the "Additional Bonds") on a parity with the Bonds, which shall be secured in all respects in the same manner as the Bonds and shall be issued for the purpose of making additions, enlargements, replacements, extensions and improvements to the sewer supply system. Such Additional Bonds may be issued upon compliance with the following conditions:

(a) That no deficiency exists in the required moneys to be on deposit in the Special Accounts;

(b) Provisions shall be made to deposit to the Debt Service Reserve Account a sum sufficient to cause the balance of such account to be equal to the Maximum Annual Debt Service on the Bonds, including the Parity Bonds, and the Additional Bonds; and

(c) The Issuer shall obtain and have on file a certificate from an independent professional engineer or certified public accountant determining that the Net Revenues in any twelve (12) consecutive months within the twenty-four (24) months immediately preceding the issuance of such Additional Bonds equals 1.3 times the maximum annual debt service of the Bonds and of the proposed Additional Bonds.

In determining whether the Issuer complies with the conditions for the issuance of Additional Bonds, the following adjustments may be made to the Net Revenues in the certificate as required in subparagraph (c) above:

(i) Any rate change that has taken place or previously has been approved and is effective may be reflected in the Net Revenues of the twelve-month term;

(ii) Any increase in the Net Revenues estimated to result from any additions, betterments and improvements to and extensions of the sewer system which become operational during such twelve-month period, or were under construction at the time of such certificate, may be included in the determination;

(iii) Additional revenues to be realized from sewer system users added to the sewer system during or subsequent to the twelve-month term;

(d) The adoption of an ordinance by the Council containing provisions incorporating and making binding upon the registered owners of the Additional Bonds all provisions of this Ordinance which describe the rights and

obligations of the registered owners of the Bonds and any Parity Bonds; and

(e) Provided that the Additional Bonds, when issued in accordance with this section, shall be secured on a parity with and equally and ratably with the registered owners of any Parity Bonds payable from the Net Revenues of the sewer system on a parity with the Bonds, the Parity Bonds and the Additional Bonds, without preference, priority or distinction because of the date of the issue of such bonds or the incurrence of the additional parity debt.

Section 19. Maintenance of System. The Issuer will not dispose of or transfer its title to the sewer system and will operate and maintain the sewer system in good condition and repair.

Section 20. Maintenance of Records. The Issuer shall maintain complete books and records relating to the operation of the sewer system and its financial affairs, and will cause such books and records to be audited annually at the end of each fiscal year and an audit report to be prepared. At all reasonable times, the registered owners of the Bonds, or their designated representative, shall have the right to inspect the sewer system and the records, accounts and data of the Issuer relating thereto.

Section 21. Covenant as to Arbitrage. The proceeds of the Bonds shall be used and invested in such manner that the Bonds shall not become "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, (the "Code") and the regulations issued thereunder. The Issuer covenants that, within its lawful powers, it will not do, and will refrain from doing, anything in the issuance of the Bonds and in the investment and expenditure of the proceeds thereof, which would result in the interest on the Bonds becoming taxable for federal income tax purposes.

Section 22. Designation as Qualified Tax-Exempt Obligations. The Issuer hereby designates the Bonds for purposes of paragraph (3) of Section 265(b) of the Code as "qualified tax-exempt obligations" and covenants that the Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations, the interest on which is excludable under Section 103(a) of the Code from gross income for federal income tax purposes (excluding, however, private activity bonds other than qualified 501(c)(3) bonds) including the Bonds, have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, if any, during the calendar year 1989.



Section 23. Sale of Bonds. The Bonds shall be sold at private negotiated sale at a price not less than 97.5% of par value thereof and accrued interest to the date of delivery. The Finance Director is authorized to negotiate the terms of the sale of the Bonds and to execute a bond purchase agreement for the sale of the Bonds.

Section 24. Execution of Documents. The Finance Director is authorized to execute a Certificate As To Arbitrage and all additional documents which may reasonably be required to issue, sell and deliver the Bonds.

Section 25. Appointment of Financial Advisor. Pursuant to ORS Section 288.845, the Issuer retains Seattle-Northwest Securities Corporation to provide independent expert advice to the Issuer to evaluate:

- (a) the terms and conditions of the proposed sale;
- (b) the pricing of the proposed sale; and
- (c) any other relevant aspects of the sale.

Section 26. Appointment of Bond Counsel. Messrs. Rankin Vavrosky Doherty MacColl & Mersereau of Portland, Oregon are appointed Bond Counsel for the issuance of the Bonds.

Section 27. Preliminary and Final Official Statement. The Issuer shall prepare, with the assistance of its Financial Advisor, a preliminary official statement for the Bonds, which shall be available for distribution to prospective bidders not fewer than ten (10) calendar days preceding the date of the sewer revenue bond sale. When advised by staff that the final official statement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained in the official statement not misleading in the light of the circumstances under which they are made, the Finance Director is authorized to certify the accuracy of the official statement on behalf of the Issuer.

Section 28. Consent of Municipal Bond Insurance Association Required to Amend Ordinance. The City covenants it will not amend this Ordinance authorizing issuance of the Sewer Revenue Bonds without the prior consent of Municipal Bond Insurance Association (the "Bond Insurer") if the Bond Insurer has issued and has outstanding a policy of insurance insuring the payment of principal of and interest on the Sewer Revenue Bonds.


Section 29. Emergency. It is hereby declared that the Issuer must proceed promptly with the construction and installation of the facilities and this Ordinance is necessary for the immediate preservation of the public peace, health and safety and this Ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor.

Passed by the City Council in open session this 15th day of February, 1989.

|                         |                          |
|-------------------------|--------------------------|
| Passed by City Council: | <u>February 15, 1989</u> |
| Approved by Mayor:      | <u>February 16, 1989</u> |
| Effective Date:         | <u>February 15, 1989</u> |

  
\_\_\_\_\_  
Mayor

ATTEST:

  
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City Recorder