

ORDINANCE NO. 4908

AN ORDINANCE OF THE CITY OF ALBANY, OREGON AUTHORIZING THE ISSUANCE AND SALE OF \$1,500,000 SECOND LIEN WATER REVENUE BONDS, SERIES 1990 ISSUED AS ADDITIONAL BONDS; GRANTING SECOND LIEN PLEDGE OF REVENUES ON PARITY WITH SERIES 1989 BONDS; AUTHORIZING DEPOSITS TO SPECIAL ACCOUNTS, DESIGNATING PAYING AGENT AND BOND REGISTRAR, BOND COUNSEL AND THE UNDERWRITER; AUTHORIZING A NEGOTIATED SALE, AWARDING THE SALE TO THE UNDERWRITER AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Albany, Oregon (the "City") on April 26, 1989 adopted Resolution No. 2860 authorizing the issuance of its water revenue bonds secured by the City's unobligated water revenues in an amount not to exceed \$5,000,000 for the purpose of financing the acquisition and installation of new transmission pipelines; transmission pipeline rehabilitation; upgrading of the Maple Street Pumping Station; and Water Treatment Plant - Phase I Improvements and to pay engineering fees, attorneys fees and other related costs.

WHEREAS, a Notice of Intent to Issue Water Revenue Bonds was published in the Albany Democrat Herald on May 2, 1989 relating to the issuance of water revenue bonds, and no petitions were filed within sixty (60) days following publication of the Notice of Intent; and

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

WHEREAS, pursuant to Ordinance No. 4876 adopted by the City Council on August 23, 1989 the City issued and sold City of Albany, Oregon Second Lien Water Revenue Bonds, Series 1989 in the principal amount of \$3,500,000 (the "Series 1989 Bonds"). Pursuant to the authority of Resolution No. 2860 there is a remaining balance of second lien water revenue bonds authorized and unissued in the principal amount of \$1,500,000; and

WHEREAS, Ordinance No. 4876 authorized the issuance of Additional Bonds having a parity of lien and pledge equal to that of the Series 1989 Bonds on the net revenues of the Water System of the City and funds in the Debt Service Activity and the Debt Service Reserve Account established and created by

Ordinance No. 4876. The City Council does find and determine that the conditions for the issuance of Additional Bonds as set forth in Section 14 of Ordinance No. 4876 have been met and the City has on file a Certificate from the City Engineer determining that the Net Revenue in the 12 consecutive months within the 24 months immediately preceding this issuance of such Additional Bonds are equal to or exceed 1.25 times the maximum annual debt service on the Series 1989 Bonds and the proposed Series 1990 Bonds to be issued as Additional Bonds; and

WHEREAS, in order to proceed with the orderly completion of the construction of the improvements to the City's water supply system, it is necessary and desirable for the City to issue and sell its Second Lien Water Revenue Bonds, Series 1990, in the principal amount of \$1,500,000, now therefore,

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

Section 1. Issuance of Series 1990 Bonds. The City Council authorizes the issuance and sale of \$1,500,000 of the City of Albany, Oregon Second Lien Water Revenue Bonds, Series 1990 (the "Series 1990 Bonds"). The Series 1990 Bonds shall be negotiable revenue bonds of the City and shall bear interest payable semi-annually. The Series 1990 Bonds shall be payable in any coin or currency which at the time of payment is legal tender for the payment of public and private debts within the United States of America.

Section 2. Title and Execution of Series 1990 Bonds. The Series 1990 Bonds shall be entitled "City of Albany, Oregon Second Lien Water Revenue Bonds, Series 1990" and shall be signed by the facsimile signature of the Mayor of the City and the facsimile signature of the City Recorder.

Section 3. Terms of Series 1990 Bonds. The Series 1990 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 May 1, 1990, shall be numbered sequentially beginning with R-1, and shall mature serially on the first day of August of each year, as follows:

<u>Year</u>	<u>Amount</u>	<u>Interest Rates</u>
1991	\$35,000	6.25%
1992	40,000	6.40%
1993	40,000	6.50%
1994	45,000	6.60%
1995	50,000	6.70%
1996	50,000	6.80%
1997	55,000	6.90%
1998	60,000	7.00%
1999	60,000	7.05%
2000	65,000	7.10%
2001	70,000	7.15%
2002	75,000	7.20%
2003	80,000	7.25%

\$775,000 Term Series 1990 Bonds due August 1, 2010  
at 7.40% at \$99.50

Section 4. Payment of Series 1990 Bonds. The principal of the Series 1990 Bonds shall be payable upon presentation of the Series 1990 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 commencing February 1, 1991 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 City as maintained by the Paying Agent at the close of business on the fifteenth day of each month next preceding any interest payment date.

Section 5. Optional Redemption. The Series 1990 Bonds of this issue maturing after August 1, 2001 are redeemable at the option of the City on August 1, 2000 and on any interest payment date thereafter at par value together with accrued interest to the date fixed for redemption. The Series 1990 Bonds are redeemable, in whole, or in part, in integral multiples of \$5,000 (maturity to be selected by the City 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) day 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 City.

Section 6. Mandatory Redemption. If not previously called under the provisions of Section 5 herein, the Term Series 1990 Bonds maturing August 1, 2010, are subject to mandatory redemption by the City 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>Date</u>	<u>Amount</u>
2004	\$ 90,000
2005	95,000
2006	100,000
2007	110,000
2008	120,000
2009	125,000
2010	135,000

Section 7. Form of Series 1990 Bonds. The Series 1990 Bonds shall be issued substantially in the form as approved by the City Finance Director and Bond Counsel.

Section 8. Appointment of Paying Agent and 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 Series 1990 Bonds. The Finance Director is authorized to negotiate and execute on behalf of the City 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 Bond Registrar to execute the Certificate of Authentication as of the date of delivery of the Series 1990 Bonds.

Section 9. Transfer of Series 1990 Bonds. The Series 1990 Bonds are transferable, or subject to exchange, for fully registered Series 1990 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 Registrar. The Paying Agent shall maintain a record of the names and addresses of the registered owners of the Series 1990 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 Series 1990 Bonds shall evidence the same debt and shall be entitled to the same benefits as the Series 1990 Bonds surrendered for such exchange or transfer. All fees, expenses and charges of the Paying Agent and Bond Registrar shall be payable by the City. The Bond Registrar shall not be required to (1) transfer or

exchange any Bond after the close of business on the fifteenth day of the month next preceding any interest payment date or (2) transfer or exchange any Bond called or being called for redemption.

Section 10. Printing of Series 1990 Bonds. The Finance Director is authorized to contract for the printing of the Series 1990 Bonds. The Finance Director may provide for the printing of, in addition to the original issue of Series 1990 Bonds, additional bonds to be printed in blank form as to registration and to be designated by appropriate number for the Bond Registrar for the delivery to the registered owner upon transfer or exchange of Series 1990 Bonds. The additional bonds shall be dated as of May 1, 1990, shall be signed by the facsimile signature of the present Mayor of the City 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 Series 1990 Bonds.

Section 11. Pledge of Revenues. The Series 1990 Bonds shall not be a general obligation of the City and shall not be payable from any taxes levied by the City. The Series 1990 Bonds are secured by and payable on a parity with the Series 1989 Bonds by a second lien on the Net Revenue of the Water System owned and operated by the City and the deposits in funds of the City known as the Debt Service Activity and the Debt Service Reserve Account. The City's outstanding Advance Refunding General Obligation Water Bonds, Series 1985, dated May 1, 1985, originally issued in the amount of \$9,370,000 and currently outstanding in the amount of \$1,250,000 and the City's outstanding Advance Refunding General Obligation Water Bonds, Series 1987, dated January 1, 1987 originally issued in the amount of \$9,095,000 and currently outstanding in the amount of \$8,975,000 (the "Prior Bonds") are secured by a first lien on the Net Revenues of the Water System. The lien of the Prior Bonds is superior to the lien on the Series 1989 Bonds and the Series 1990 Bonds.

The City covenants with the registered owners of the Series 1990 Bonds, for so long as the Series 1990 Bonds and any Additional Bonds are outstanding, that the City shall not issue water bonds secured by a pledge of the Net Revenue senior to or having a priority upon Net Revenue of the Water System superior to the second lien on such Net Revenues that secure the Series 1989 Bonds and the Series 1990 Bonds and any Additional Bonds. The City has closed the lien of the Prior Bonds on the Net Revenue and no additional obligations may be issued with a lien prior to the second lien of the Series 1989 Bonds, the Series 1990 Bonds and any Additional Bonds.

Section 12. Rate Covenant. The City has pledged to the payment of the Series 1989 Bonds, the Series 1990 Bonds and any Additional Bonds the unobligated Net Revenue of the City's Water System. The City covenants and agrees that it shall fix, impose and collect such water user fees and charges and shall revise its rate structure, from time to time, in such manner as shall be necessary in order that the Gross Revenues of the Water System will be sufficient at all times to provide for the Maintenance and Operation Expenses of the Water System, including the administrative costs, to provide Net Revenue not less than 1.25 times the then fiscal year annual debt service on the Series 1989 Bonds, the Series 1990 Bonds and any Additional Bonds. All use of the water system shall be subject to the full rates prescribed by the City, and no free use of the Water System will be permitted.

Section 13. Creation of Special Accounts. As established by Ordinance No. 4876, the City shall set aside and pay in to the Debt Service Activity from the Net Revenues of the Water System, after first providing for payment of the principal of and interest due on the Prior Bonds, certain amounts as follows:

Principal and Interest:

1. Interest: Monthly, one-sixth (1/6) of the amount required to pay the interest due on the Series 1990 Bonds on the next interest payment date.
2. Principal: Monthly, one-twelfth (1/12) of the amount required for the payment of principal of the Series 1990 Bonds to be retired on the next principal maturity or mandatory redemption date.

In determining the amounts required for the monthly deposits the City may consider any other sums then on deposit in the Debt Service Activity, other than the Debt Service Reserve Account, for the payment of principal of and interest on the Series 1989 Bonds and Series 1990 Bonds. The sums so set aside are pledged irrevocably to be used only to pay interest and principal of the Series 1989 Bonds and the Series 1990 Bonds on each payment date. Net Revenue not so set aside monthly in the Debt Service Activity may be used and applied by the City for capital improvements to the Water System or for such other uses and purposes relating to the operation, maintenance and repair, restoration and enlargements, or for administrative expenses of the Water System, as the City deems necessary and proper.

Debt Service Reserve Account:

The City has covenanted to maintain at all times in the Debt Service Reserve Account within the Debt Service Activity an amount equal to the Maximum Annual Debt Service on the Series 1990 Bonds, but not to exceed ten percent of the proceeds of the Series 1990 Bonds.

Series Term Bonds shall be deemed to be amortized annually in the amount of principal subject to mandatory redemption. The Debt Service Reserve Account and the moneys therein are irrevocably pledged to the payment of the principal of and interest due on the Series 1989 Bonds, the Series 1990 Bonds and any Additional Bonds. In the event insufficient funds are available to pay the maturing principal or interest, the City may draw upon the Debt Service Reserve Account in the amount of any such deficiency. Any deficiency in the Debt Service Reserve Account shall be restored from the next available Net Revenue, and funds in the Debt Service Reserve Account may be applied upon the payment of the final maturity of the principal of and interest on the Series 1990 Bonds.

Section 14. Additional Bonds. The City reserves the right to issue Additional Bonds having a parity of lien and pledge equal to that of the Series 1989 Bonds and the Series 1990 Bonds on the Net Revenues of the Water System and on the Debt Service Activity and the Debt Service Reserve Account. The City reserves the right to issue Additional Bonds for the purposes of making additions, enlargements, replacements, extensions, and improvements to the water system upon compliance with the following conditions:

1. At the time of issuance of the Additional Bonds there shall be no deficiency in the moneys required to be set aside in the Debt Service Activity and on deposit in the Debt Service Reserve Account.
2. Proceeds of the Additional Bonds shall be deposited in the Debt Service Reserve Account in an amount sufficient to cause the balance of such account to be equal to maximum annual debt service on the Series 1989 Bonds, the Series 1990 Bonds and any Additional Bonds, but such deposit shall not exceed ten percent of the proceeds of the Additional Bonds.
3. At the time that Additional Bonds are issued, the City shall obtain and have on file a certificate from a professional engineer (who may be the City Engineer) or a certified public accountant determining that the Net Revenue in any twelve (12) consecutive months within

the 24 months immediately preceding the issuance of such Additional Bonds were equal to or exceeded 1.25 times the Maximum Annual Debt Service.

In determining whether the City complies with the conditions for the issuance of Additional Bonds, the following adjustments may be made in the computation of Net Revenues:

- a. any rate change that has taken place or previously been approved and is effective may be reflected in the computation of Net Revenue;
  - b. any increase in Net Revenue estimated to result from any additions, betterments and improvements to and extensions of the Water System which became operational during such 12-month period or were under construction at the time of such certificate may be included in the determination; and
  - c. additional revenue derived from water users added to the Water System during or subsequent to the 12-month term may be added to the computation of Net Revenues.
4. An ordinance must be adopted by the City Council containing provisions incorporating and making binding upon the registered owners of the Additional Bonds all provisions of this Ordinance which describes the rights and obligations of the registered owners of the Series 1989 Bonds and the Series 1990 Bonds.

Section 15. Other Covenants. The City further covenants

- a. Not to dispose of or transfer its title to the Water System.
- b. To operate and maintain the Water System in good condition and repair.
- c. To insure the Water 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 Water System without deduction for depreciation.
- d. To maintain complete books and records relating to the operation of the Water 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 Series 1990 Bonds, or their designated representatives shall have the right to inspect the Water System and the records, accounts and data of the City relating thereto.

- e. Not to create or permit any lien or encumbrance on the System or the Net Revenue of the Water System which might impair the security of the Series 1990 Bonds.

Section 16. Ordinance Incorporating and Describing Rights and Obligations of Registered Owners. Pursuant to the provisions of Section 14 paragraph 4 of Ordinance No. 4876 the City Council hereby does incorporate and make binding upon the registered owners of the Series 1990 Bonds all provisions of Ordinance No. 4876 describing the rights and obligations of the registered owners of the Series 1990 Bonds.

Section 17. Covenant as to Arbitrage. The proceeds of the Series 1990 Bonds shall be used and invested in such manner that the Series 1990 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 City covenants that, within its lawful powers, it will not do, and will refrain from doing, anything in the issuance of the Series 1990 Bonds and in the investment and expenditure of the proceeds thereof, which would result in the interest on the Series 1990 Bonds becoming taxable for federal income tax purposes.

Section 18. Designation as Qualified Tax-Exempt Obligations. The City hereby designates the Series 1990 Bonds for purposes of paragraph (3) of Section 265(b) of the Code as "qualified tax-exempt obligations" and covenants that the Series 1990 Bonds do not constitute a 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 for federal income tax purposes (excluding, however, private activity bonds other than qualified 501(c)(3) bonds) including the Series 1990 Bonds, have been or shall be issued by the City, including all subordinate entities of the City, if any, during the calendar year 1990.

Section 19. Rebate Exception for Small Governmental Units. The City Council finds and determines that the Series 1990 Bonds comply with the statutory requirements of Section 148(f)(4)(C) of the Code in that the City is a governmental unit having general taxing powers, the Series 1990 Bonds are not being issued for a private activity purpose, more than 95% of the net proceeds of the Series 1990 Bonds will be used for local governmental activities of the City, and the aggregate face

amount of all tax-exempt obligations which will be issued by the City during the calendar year 1990 is not reasonably expected to exceed \$5,000,000.

Section 20. Appointment of Underwriter. The City Council does find and determine that the issuance and sale of the Series 1990 Bonds, as second lien water revenue bonds secured by the Net Revenues of the Water System subject and junior to the prior first lien on the Net Revenue of the Prior Bonds is more effectively marketed by private negotiated sale rather than by public competitive sale; therefore, the City does determine that it is desirable that the Series 1990 Bonds be sold at private negotiated sale.

City Council does appoint Seattle-Northwest Securities Corporation as the Underwriter for the negotiation of the sale of Series 1990 Bonds at private negotiated sale.

Section 21. Appointment of Bond Counsel and Independent Expert. The City Council does appointment the law firm of Rankin Vavrosky Doherty MacColl & Mersereau of Portland, Oregon as bond counsel for the sale and issuance of the Series 1990 Bonds. The firm of Moore, Breithaupt & Associates is appointed the independent expert to evaluate the private negotiated sale as provided by law.

Section 22. Preliminary and Official Statement. The Underwriter shall prepare a preliminary official statement and official statement for the marketing of the Series 1990 Bonds. The Finance Director is authorized to certify the accuracy of the official statement on behalf of the City. The City does approve of and authorize the distribution of the preliminary official statement dated May 2, 1990 and of the official statement.

Section 23. Negotiated Sale. The City Council has received from the Underwriter a Contract of Purchase being the offer of the Underwriter for the private negotiated sale and purchase by the Underwriter for the issuance of the Series 1990 Bonds together with a good faith deposit pursuant to Oregon Revised Statutes 288.905 in the amount of \$30,000. The City Council having considered the price, interest rates, and terms and conditions of the Contract of Purchase and being advised by the Underwriter and by the Independent Expert that such terms, conditions, price and interest rates are fair, reasonable and comparable to the terms and conditions, price and interest rates of comparable bonds in the market place, the City Council does approve of the private negotiated sale and does find that such sale is desirable. The City Council does authorize and accept the Contract of Purchase and does sell at private negotiated sale the Series 1990 Bonds to the Underwriter pursuant to the

Contract of Purchase. The Finance Director is authorized to execute the Contract of Purchase for and on behalf of the City.

Section 24. Execution of Documents. The Finance Director is authorized to execute a Certificate as to Arbitrage and such additional documents as may reasonably be required to issue, sell and deliver the Series 1990 Bonds.

Section 25. Definitions. For the purposes of this Ordinance and the issuance of the Series 1990 Bonds the following terms shall have the meanings as hereinafter set forth:

"Additional Bonds" shall mean additional water revenue bonds issued by the City on a parity with the Series 1989 Bonds and the Series 1990 Bonds.

"Annual Debt Service" for any calendar year shall mean all of the principal and interest due on the Series 1989 Bonds, the Series 1990 Bonds and Additional Bonds in such year, except the principal of such bonds due in any Term Bond Maturity Year, and plus all mandatory redemption requirements for the Term Bonds, which requirements will mature or become due in such year.

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

"Maintenance and Operation Expense" shall mean all necessary operating expenses, current maintenance expense, expenses of reasonable upkeep and repairs, and insurance and administrative expenses of the Water System, including treatment plant operation and maintenance, but excludes depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the Water System, municipal taxes, payments to the City in lieu of taxes, or payments to the City as reimbursement of general overhead.

"Maximum Annual Debt Service" shall mean the maximum amount, in the aggregate, of principal of and interest on the Series 1989 Bonds, the Series 1990 Bonds and any Additional Bonds due in any one fiscal year. Term Bonds shall be deemed to be amortized in the annual amounts of principal subject to mandatory redemption plus annual interest on the outstanding Bonds.

"Net Revenue" shall mean the Gross Revenues of the Water System less Maintenance and Operation Expenses, but not to include depreciation.

Section 26. Emergency. It is hereby declared that the City must proceed promptly with the sale and delivery of the Series 1990 Bonds in order that current market interest rates may be obtained through the private negotiated sale and that the City must proceed with the completion of the construction and installation of financing the acquisition and improvements to the Water System as herein provided.

Therefore, 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 approved by the Mayor.

Passed by the City Council and by the Mayor on the 11 day of May, 1990.

Dala Rouse  
Mayor Council President

ATTEST:

[Signature]  
City Recorder