

ORDINANCE NO. 4956

AN ORDINANCE OF THE CITY OF ALBANY,
OREGON AUTHORIZING THE ISSUANCE AND SALE
OF \$2,000,000 SEWER REVENUE BONDS, SERIES
1991A; DESIGNATING A PAYING AGENT AND
BOND REGISTRAR, BOND COUNSEL, FINANCIAL
ADVISOR AND THE UNDERWRITER; AUTHORIZING
A NEGOTIATED SALE; AND DECLARING AN
EMERGENCY.

WHEREAS, the City Council of the City of Albany, Oregon (the "City") on March 25, 1991 adopted Resolution No. 3042 authorizing the issuance of sewer revenue bonds in an amount not to exceed \$2,000,000 to finance the extension of an inceptor sewer line to the North Albany health hazard sewer area including engineering fees, attorneys' fees, and costs of issuance of the bonds; and

WHEREAS, the City has received petitions from the North Albany health hazard sewer area petitioning for annexation into the City. If the area is annexed to the City, the City Council intends to form a local improvement district to construct lateral sewer lines in the area and to assess the costs of construction upon the benefited properties; and

WHEREAS, a Notice of Intent to Issue Bonds was published in the Albany Democrat Herald on April 5, 1991; and

WHEREAS, the City has prepared a plan showing that the estimated net revenues of the City securing the financing for the extension of the inceptor sewer line to be constructed to the North Albany health hazard sewer area, together with the payments of assessments upon benefited properties in the North Albany health hazard area and the proceeds from any assessment foreclosures to be pledged to be deposited to the Debt Service Account of the City of Albany Sewer Account, will be sufficient to pay the estimated debt incurred by the sewer revenue bond issue; and

WHEREAS, in order to proceed with the orderly construction of this improvement to the City's sewer system, it is necessary and desirable for the City to issue and sell its Sewer Revenue Bonds, Series 1991A; 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 \$2,000,000 of its Sewer Revenue Bonds, Series 1991A (the "Bonds"). The Bonds shall be negotiable revenue bonds of the City 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 1991A" and shall bear the manual signature of the Mayor of the City and the manual signature of the City Recorder.

Section 3. Terms of Bonds. The Bonds shall be dated June 1, 1991, shall be numbered sequentially beginning with Bond No. R-1, and shall mature serially on the first day of February of each year, as follows:

<u>Year</u>	<u>Amount</u>
1994	\$ 60,000
1995	60,000
1996	65,000
1997	70,000
1998	70,000
1999	75,000
2000	80,000
2001	85,000
2002	90,000
2003	100,000
2004	105,000
2005	110,000

\$1,030,000 Term Bonds due February 1, 2012

Section 4. Payment of Bonds. The principal of the Bonds shall be payable at maturity or upon prior redemption by the City 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, 1992, 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 maintained by the Paying Agent as of the close of business on the 15th day of the month next preceding any interest payment date. The Bonds shall be initially issued in book-entry-only form.

Section 5. Optional Redemption. The Bonds of this issue maturing after February 1, 2001 are redeemable at the option of the City on February 1, 2001 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.

If the book-entry-only system is not discontinued, notice of any call for redemption shall be given to the Depository Trust Company ("DTC"), as the registered owner of the Bonds, not less than thirty days prior to the redemption date. DTC shall be responsible for notifying the DTC Participants; the Beneficial Owners are responsible for making arrangements with DTC Participants to receive redemption notices. Interest on any Bond or Bonds so called for redemption shall cease on the redemption date designated in the notice. Bonds are redeemable through the principal corporate trust office of the Paying Agent.

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 owner of each Bond to be redeemed at the address shown on the registration books of the City. In addition, notice of redemption shall be mailed to Standard and Poor's Corporation and Moody's Investors Service, Inc., New York, New York.

Section 6. Mandatory Redemption. If not previously called under the provisions of Section 5 herein entitled Optional Redemption, the Series 1991A Term Bonds maturing February 1, 2012, are subject to mandatory redemption by the City prior to their maturity, in^o?t 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>
2006	\$120,000
2007	125,000
2008	135,000
2009	145,000
2010	155,000
2011	170,000
2012	180,000

Section 7. Authorization to Modify Terms of Bond Issue.
The annual principal amounts of the Bond maturities and the annual principal amounts of the Term Bonds due February 1, 2012 may be modified, by Resolution, in insubstantial amounts, upon the recommendation of the Underwriter and Financial Advisor to the City.

Section 8. Form of Bonds. The Bonds shall be substantially in the form as approved by the Finance Director, the Financial Advisor and Bond Counsel. As a book-entry-only security issue, no bonds are made available to the Bond holder as the Beneficial Owners of the Bonds. Ownership of the Bonds shall be recorded through entries on the books of the banks and broker-dealer participants and correspondents that are related to entries on The Depository Trust Company book-entry-only system. The Bonds shall be initially issued in the form of a separate single fully registered type-written bond for each maturity of the Bonds. Each Bond shall be registered in the name of Cede & Co. as nominee (the "Nominee") of The Depository Trust Company (the "Depository") as the "Registered Owner," and such Bond shall be lodged with the Depository until prepayment or maturity of the Bond issue. The Paying Agent shall remit payment for the maturing principal and interest on the Bonds to the Registered Owner for distribution by the Nominee for the benefit of the Bond holder (the "Beneficial Owner" or "Record Owner"), by recorded entry on the books of the Depository participants and correspondents. While the Bonds are in book-entry-only form, the Bonds will be available in denominations of \$5,000 or any integral multiple thereof.

Section 9. 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 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 Registrar to execute the Certificate of Authentication of each Bond as of the date of delivery of the Bonds.

Section 10. Transfer of Bonds. The Bonds are transferable, or subject to exchange, in the denomination of \$5,000 or integral multiples thereof by the 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 City. 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 11. Printing of Bonds. If the book-only-entry form is discontinued, then 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 June 1, 1991, shall be signed by the facsimile signature of the Mayor of the City and by the facsimile signature of the City Recorder and the Bond Registrar shall manually sign the Certificate of Authentication as of the date of transfer of the Bonds.

Section 12. Pledge of Revenues. The Bonds shall not be a general obligation of the City and shall not be payable from any taxes levied by the City. The City pledges to the payment of the Bonds the Net Revenues of the sewer system of the City, defined as the Gross Revenues of the City sewer system less maintenance and operation expenses, including the administrative overhead of the sewer system and the waste-water treatment and collection system maintenance and administrative expenses. Additionally, the Bonds shall be secured by a pledge of the payments on assessments upon benefited property owners within the North Albany health hazard local improvement district and from proceeds of such assessment foreclosures. Such payments and proceeds shall be deposited to the City's sewer system Debt Service Account.

Section 13. Rate Covenant. The City 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 City; and that no free use of the sewer system will be permitted.

Section 14. Other Covenants. The City further covenants:

(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 this 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 15. Creation of Special Accounts. The City authorized the creation of a Debt Service Account and a Debt Service Reserve Account ("Special Accounts") in Ordinance No. 4852 adopted February 15, 1989. Immediately upon the sale and delivery of the Bonds, the City shall deposit from the Bond proceeds, but not to exceed ten percent (10%) of the proceeds of the Bonds and/or from other sources of the City to the Debt Service Reserve Account an amount that together with amounts

then on deposit in the Debt Service Reserve Account equal the maximum annual debt service on the Bonds and any Parity Bonds, defined as the maximum amount in the aggregate of principal of and interest on the Bonds and any Parity Bonds, due in any one fiscal year.

The Debt Service Reserve Account and the moneys therein are irrevocably pledged to the payment of the Bonds, and the Parity 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 Account is insufficient to pay the maturing principal of or interest on the Bonds, then the City shall withdraw from the Debt Service Reserve Account for transfer to the Debt Service Account sufficient moneys to make such payments when due. Thereafter, the City shall transfer from the next available deposits to the Debt Service Account 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 16. Deposits to Debt Service Account. The City shall deposit monthly into the Debt Service Account of the Sewer 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 City may consider any other sums then on deposit in the Debt Service Account 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 Account may be used and applied by the City 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 City deems necessary and proper.

Section 17. 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 shall be transferred to the Debt Service Account.

Section 18. 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 City in the original aggregate principal amount of \$3,560,000 and currently outstanding in the principal amount of \$3,385,000 and the City of Albany, Oregon Sewer Revenue Bonds, Series 1989, dated February 1, 1989 issued by the City in the original aggregate principal amount of \$4,100,000 and currently outstanding in the principal amount of \$3,885,000 (the "Parity Bonds").

Section 19. Additional Bonds. The City may issue additional sewer revenue bonds (the "Additional Bonds") on a parity with the Bonds, and the Parity 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 City 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 City 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 20. Maintenance of System. The City 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 21. Maintenance of Records. The City 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 City relating thereto.

Section 22. 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 City 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 23. Owners of Bonds Rights Pursuant to Ordinance No. 4852. This Ordinance does incorporate and make binding upon the registered owners of the Bonds all provisions of Ordinance No. 4852 as to the rights and obligations of the registered owners of the Bonds and any Parity Bonds.

Section 24. Sale of Bonds. The Bonds shall be sold at private negotiated sale at a price not less than 98% 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. The City Council, by Resolution, may approve of the terms of the Purchase Contract.

Section 25. 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 26. Appointment of Financial Advisor. Pursuant to ORS Section 288.845, the City retains Moore Breithaupt & Associates to provide independent expert advice to the City 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 27. Appointment of Underwriter. The City appoints Seattle-Northwest Securities Corporation as the Managing Underwriter for the negotiated sale of the Bonds.

Section 28. Appointment of Bond Counsel. Messrs. Rankin Mersereau & Shannon of Portland, Oregon are appointed Bond Counsel for the issuance of the Bonds.

Section 29. Preliminary and Final Official Statement. The City shall prepare a preliminary official statement for the Bonds, which shall be available for distribution to prospective bidders not later than the date on which the Notice of Bond Sale is first published. 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 City.

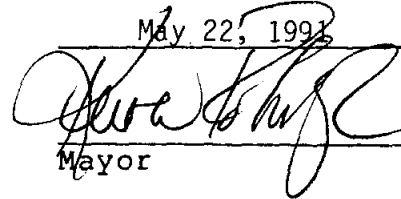
Section 30. Emergency. It is hereby declared that the City must proceed promptly with the construction and installation of the facilities and this Ordinance is necessary for the immediate preservation of the public peace, health and safety and this Ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor.

Passed by the City Council in open session this 22nd day of May, 1991.

Passed by City Council: May 22, 1991

Approved by Mayor: May 23, 1991

Effective Date: May 22, 1991



Mayor

ATTEST:



City Recorder