

ORDINANCE NO. 4993

AN ORDINANCE OF THE CITY OF ALBANY, OREGON AUTHORIZING THE ISSUANCE AND SALE OF \$3,000,000 SECOND LIEN WATER REVENUE BONDS, SERIES 1992, PLEDGING A SECOND LIEN ON THE NET REVENUES OF THE WATER SYSTEM; CREATING SPECIAL ACCOUNTS; AUTHORIZING ADDITIONAL BONDS; DESIGNATING A PAYING AGENT AND BOND REGISTRAR, BOND COUNSEL THE UNDERWRITER AND AN INDEPENDENT EXPERT ADVISOR; AUTHORIZING A NEGOTIATED SALE; AWARDED THE SALE TO THE UNDERWRITER; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Albany, Oregon (the "City") on September 25, 1991 adopted Resolution No. 3089 authorizing the issuance of Water Revenue Bonds secured by and payable on a parity with the City's Second Lien Water Revenue Bonds, Series 1989 and the City's Second Lien Water Revenue Bonds, Series 1990 (the "Outstanding Second Lien Bonds"). The Water Revenue Bonds were approved in an amount not to exceed \$3,000,000 for the purpose of financing the design and construction of an eight (8) million gallon water storage reservoir and to pay engineering fees, attorneys fees and other costs related to the issuance of the Water Revenue Bonds.

WHEREAS, a Notice of Intent to Issue Water Revenue Bonds was published in the *Albany Democrat Herald* on September 30, 1991, 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 authorizing the issuance of the Series 1989 Bonds and Ordinance No. 4908 authorizing the issuance of the Series 1990 Bonds the City may issue Additional Bonds on a parity of a second lien and pledge on the Net Revenues of the Water System of the City with the Outstanding Second Lien Bonds; and

WHEREAS, the City Council does find and determine that the conditions for the issuance of Additional Bonds as set forth in Ordinance No. 4876 and Ordinance No. 4908 have been met and the City has on file a Certificate from the City Engineer determining that the Net Revenue in twelve (12) consecutive months within the twenty-four (24) months immediately preceding the issuance of the Water Revenue Bonds, as Additional Bonds, are equal to or exceed 1.25 times the maximum annual debt service on the Outstanding Second Lien Bonds and the proposed Water Revenue Bonds to be issued as Additional Bonds; and

WHEREAS, in order to proceed with the orderly 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 1992, now therefore,

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

Section 1. Issuance of Series 1992 Bonds. The City Council authorizes the issuance and negotiated sale of not to exceed \$3,000,000 of the City of Albany, Oregon Second Lien Water Revenue Bonds, Series 1992 (the "Series 1992 Bonds") dated March 1, 1992. The Series 1992 Bonds shall be issued in fully registered form and shall be in denominations of \$5,000 each, or integral multiples thereof and shall bear interest payable on March 1 and September 1 of each year commencing September 1, 1992 at a true effective interest rate not to exceed seven percent (7.0%) per annum. The Series 1992 Bonds shall mature in not to exceed a term of twenty (20) years.

Section 2. Title and Execution of Series 1992 Bonds. The Series 1992 Bonds shall be entitled "City of Albany, Oregon Second Lien Water Revenue Bonds, Series 1992" (the "Series 1992 Bonds") and shall be signed by the manual or facsimile signature of the Mayor of the City and the Series 1992 Bonds shall be attested by the manual or facsimile signature of the City Recorder.

Section 3. Negotiated Sale of Series 1992 Bonds. On behalf of the City the Finance Director is authorized to negotiate and execute a Bond Purchase Agreement with Seattle-Northwest Securities Corporation, Portland, Oregon, as Underwriter, for the purchase of the Series 1992 Bonds. The City does specifically find that the private negotiated sale of the Series 1992 Bonds is desirable.

Section 4. Authorization of Finance Director to Modify Terms of the Series 1992 Bond Issue. The City Council does authorize the Finance Director, for the purpose of the sale of the Series 1992 Bonds, to modify the terms of the Series 1992 Bonds as to the date, aggregate principal amount, principal amount of each maturity, and establish optional and mandatory redemption provisions all upon the recommendation of the Independent Expert Advisor.

Section 5. Payment of Series 1992 Bonds. The principal of the Series 1992 Bonds shall be payable upon presentation of the Series 1992 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 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 as of the close of business on the fifteenth day of each month next preceding any interest payment date.

Section 6. Form of Series 1992 Bonds. The Series 1992 Bonds shall be issued substantially in the form as approved by the Finance Director and Bond Counsel.

Section 7. 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 Series 1992 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 1992 Bonds.

Section 8. Transfer of Series 1992 Bonds. The Series 1992 Bonds are transferable, or subject to exchange, for fully registered Series 1992 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 Series 1992 Bonds. The records of registered bond ownership are not public records within the meaning of Oregon Revised Statutes Section 192.410(4).

All bonds issued upon transfer of or in exchange for Series 1992 Bonds shall evidence the same debt and shall be entitled to the same benefits as the Series 1992 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 Series 1992 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 Series 1992 Bond called or being called for redemption.

Section 9. Printing of Series 1992 Bonds. The Finance Director is authorized to contract for the printing of the Series 1992 Bonds. The Finance Director may provide for the printing, in addition to the original issue of Series 1992 Bonds, of 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 a registered owner upon transfer or exchange of Series 1992 Bonds. The additional bonds shall be dated as of the date of the Series 1992 Bonds, shall be signed by the manual or facsimile signature of the present Mayor of the City and by the manual or 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 1992 Bonds.

Section 10. Pledge of Revenues. The Series 1992 Bonds shall not be a general obligation of the City and shall not be payable from any taxes levied by the City. The Series 1992 Bonds are secured by the pledge of and payable from, a second lien on the unobligated 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 \$ 1,080,000 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 \$ 8,840,000 (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 Outstanding Second Lien Bonds and the Series 1992 Bonds.

The City covenants with the registered owners of the Series 1992 Bonds, for so long as the Series 1992 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 Outstanding Second Lien Bonds, and the Series 1992 Bonds. The City closes out 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 Outstanding Second Lien Bonds, and the Series 1992 Bonds and any Additional Bonds.

Section 11. Rate Covenant. The City covenants and agrees that it shall fix, impose and collect water user fees and charges and shall revise its rate structure, from time to time, in such manner as shall be necessary for the Gross Revenues of the Water System to be sufficient at all times to pay the Maintenance and Operation Expenses of the Water System, including the administrative costs, and to provide Net Revenue not less than 1.25 times each fiscal year annual debt service on the Prior Bonds, the Outstanding Second Lien Bonds, and the Series 1992 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 12. Creation of Special Accounts. The City has authorized the creation of the Debt Service Activity and the Debt Service Reserve Account. 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 and on a parity of second lien, the Outstanding Second Lien Bonds, additional 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 1992 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 1992 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 1992 Bonds. The sums so deposited are pledged irrevocably to be used only to pay interest on and principal of the Series 1992 Bonds on each payment date. Net Revenue not so deposited 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 covenants to deposit from the proceeds of the Series 1992 Bonds and to maintain at all times in the Debt Service Reserve Account in the Debt Service Activity an amount equal to the Maximum Annual Debt Service on the Series 1992 Bonds, but in an amount not to exceed ten percent (10%) of the proceeds of the Series 1992 Bonds.

The Series 1992 Term Bonds shall be deemed to be amortized annually in the amount of principal subject to mandatory redemption. The deposits from Series 1992 Bonds in the Debt Service Reserve Account are irrevocably pledged to the payment of the principal of and interest due on the Series 1992 Bonds. In the event sufficient funds are not 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 1992 Bonds.

**Section 13. Additional Bonds.** The City reserves the right to issue Additional Bonds having a parity of lien and pledge equal to that of the Outstanding Second Lien Bonds and the Series 1992 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 on deposit in the Debt Service Activity or 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 the Maximum Annual Debt Service on the Outstanding Second Lien Bonds, the Series 1992 Bonds and the Additional Bonds, but such deposit shall not exceed ten percent (10%) 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 twenty-four (24) months immediately preceding the issuance of such Additional Bonds was 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 1992 Bonds.

**Section 14. Other Covenants. The City further covenants:**

- a. Not to invest the proceeds of the Series 1992 Bonds in any manner which would cause such proceeds to be arbitrage bonds within the meaning of Section 148 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 Water System.
- c. To operate and maintain the Water System in good condition and repair.
- d. 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.
- e. 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 1992 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.
- f. Not to create or permit any lien or encumbrance on the Water System or the Net Revenue of the Water System which might impair the security of the Series 1992 Bonds.

Section 15. Covenant as to Arbitrage. The proceeds of the Series 1992 Bonds shall be used and invested in such manner that the Series 1992 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 1992 Bonds and in the investment and expenditure of the proceeds thereof, which would result in the interest on the Series 1992 Bonds becoming taxable for federal income tax purposes.

Section 16. Designation as Qualified Tax-Exempt Obligations. The City hereby designates the Series 1992 Bonds for purposes of paragraph (3) of Section 265(b) of the Code as "qualified tax-exempt obligations" and covenants that the Series 1992 Bonds do not constitute a private activity bond 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 1992 Bonds, have been or shall be issued by the City, including all subordinate entities of the City, if any, during the calendar year 1992.

Section 17. Rebate Exception for Small Governmental Units. The City Council finds and determines that the Series 1992 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 1992 Bonds are not being issued for a private activity purpose, more than 95% of the net proceeds of the Series 1992 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 1992 is not reasonably expected to exceed \$5,000,000.

Section 18. Appointment of Underwriter. The City Council does appoint Seattle-Northwest Securities Corporation as the Underwriter for the negotiation of the sale of Series 1992 Bonds at private negotiated sale.

Section 19. Designation of Bond Counsel. The City Council does designate the law firm of Rankin Mersereau & Shannon of Portland, Oregon as bond counsel for the sale and issuance of the Series 1992 Bonds.

Section 20. Designation of Independent Expert Advisor. The City Council designates Moore, Breithaupt & Associates as Independent Expert Advisor to the City for the issuance and sale of the Series 1992 Bonds.

Section 21. Preliminary and Official Statement. The Underwriter shall prepare a preliminary official statement and official statement for the marketing of the Series 1992 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 and the official statement.

Section 23. Ordinance Incorporating and Describing Rights and Obligations of Registered Owners. Pursuant to the provisions of Ordinance No. 4876 and Ordinance No. 4908 the City Council does incorporate and make binding upon the registered owners of the Series 1992 Bonds all provisions of Ordinance No. 4876 and Ordinance No. 4908 describing the rights and obligations of the registered owners of the Outstanding Second Lien Bonds.

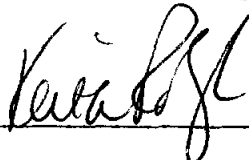
Section 24. Execution of Contract of Purchase and Other Bond Closing Documents. The Finance Director is authorized, for and on behalf of the City, to negotiate, execute and deliver to the appropriate parties the preliminary official statement and the official statement and such other and additional bond documents as are necessary and desirable for closing of the sale and delivery of the Series 1992 Bonds.

Section 25. Emergency. It is hereby declared that the City must proceed promptly with the sale and delivery of the Series 1992 Bonds in order that current market interest rates may be obtained through the private negotiated sale and that the City must proceed promptly with the construction and installation of financing the acquisition and improvements to the Water System as herein provided 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 Council: March 11, 1992

Approved by Mayor: March 11, 1992

Effective Date: March 11, 1992

  
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Mayor

ATTEST:

By Norm C. Withrow  
Deputy City Recorder