

ORDINANCE NO. 4876

AN ORDINANCE OF THE CITY OF ALBANY, OREGON
AUTHORIZING THE ISSUANCE AND SALE OF
\$3,500,000 SECOND LIEN WATER REVENUE BONDS, SERIES
1989, CLOSING SUPERIOR LIEN ON PRIOR BONDS; SECOND
LIEN PLEDGE OF REVENUES, CREATING SPECIAL ACCOUNTS,
AUTHORIZING ADDITIONAL BONDS, 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 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 costs related to the issuance of the Bonds.

WHEREAS, a Notice of Intent to Issue 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, 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 1989, now therefore,

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

Section 1. Issuance of Bonds. The City Council authorizes the issuance and sale of \$3,500,000 of the City of Albany, Oregon Second Lien Water Revenue Bonds, Series 1989 (the "Bonds"). The Bonds shall be negotiable revenue bonds of the City and shall bear interest payable semi-annually. The 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 Bonds. The Bonds shall be entitled "City of Albany, Oregon Second Lien Water Revenue Bonds, Series 1989" 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 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 August 1, 1989, 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>
1990	\$ 85,000	6.00%
1991	95,000	6.10%
1992	100,000	6.20%
1993	105,000	6.30%
1994	110,000	6.40%
1995	120,000	6.50%
1996	130,000	6.55%
1997	135,000	6.60%
1998	145,000	6.70%
1999	155,000	6.75%
2000	165,000	6.80%
2001	180,000	6.90%
2002	190,000	6.95%
2003	205,000	7.00%
2004	220,000	7.10%

\$1,360,000 Term Bonds due August 1, 2009 at 7.25%

Section 4. Payment of Bonds. The principal of the Bonds shall be payable upon presentation 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 commencing February 1, 1990 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 Bonds of this issue maturing after August 1, 1999 are redeemable at the option of the City on August 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 (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 Bonds maturing August 1, 2009, 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>
August 1, 2005	235,000
August 1, 2006	255,000
August 1, 2007	270,000
August 1, 2008	290,000
August 1, 2009	310,000

Section 7. Form of Bonds. The 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 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 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 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 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 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 the delivery to the registered owner upon transfer or exchange of Bonds. The additional bonds shall be dated as of August 1, 1989, 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 Bonds.

Section 11. 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 Bonds are secured by, and payable from 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 \$1,405,000 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 \$9,035,000 (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 Bonds.

The City covenants with the registered owners of the Bonds, for so long as the 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 Bonds and any Additional 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 Bonds and any Additional Bonds. The City has no outstanding debt that ranks on a parity of lien with the Bonds.

Section 12. Rate Covenant. The City has pledged to the payment of the 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 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. The City authorizes the creation of the Debt Service Activity and a 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, 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 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 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 Bonds. The sums so set aside are pledged irrevocably to be used only to pay interest and principal of the 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

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 in the Debt Service Activity an amount equal to Maximum Annual Debt Service on the Bonds, but not to exceed ten percent of the proceeds of the Bonds.

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 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 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 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 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 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 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 Bonds.

Section 16. 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 17. Designation as Qualified Tax-Exempt Obligations. The City 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 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 Bonds, have been or shall be issued by the City, including all subordinate entities of the City, if any, during the calendar year 1989.

Section 18. Appointment of Underwriter. The City Council does find and determine that the issuance and sale of the 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 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 Bonds at private negotiated sale.

Section 19. Appointment of Bond Counsel. 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 Bonds.

Section 20. Preliminary and Official Statement. The Underwriter shall prepare a preliminary official statement and official statement for the marketing of the 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 August 14, 1989 and of the official statement.

Section 21. 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 and for the issuance of the Bonds. The City Council having considered the price, interest rates, and terms and conditions of the Contract of Purchase and being advised by the Underwriter 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 and accept the Contract of Purchase and does sell at private negotiated sale the 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 22. 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 Bonds.

Section 23. Definitions. For the purposes of this Ordinance and the issuance of the 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 Bonds.

"Annual Debt Service" for any calendar year shall mean all of the principal and interest due on the 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 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.

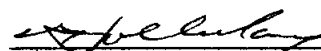
Section 24. Emergency. It is hereby declared that the City must proceed promptly with the sale and delivery of the Bonds in order that current market interest rates may be obtained through the private negotiated sale and that the City must proceed promptly with the construction and installation of financing 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 approved by the Mayor.

Passed by the City Council and by the Mayor on the 23rd day of August, 1989.



Mayor

ATTEST:



City Recorder