

RESOLUTION NO. 4620

A RESOLUTION AUTHORIZING THE ISSUANCE OF REVENUE OBLIGATIONS IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$600,000; DECLARING OFFICIAL INTENT TO REIMBURSE EXPENDITURES; AND RELATED MATTERS.

THE CITY COUNCIL OF THE CITY OF ALBANY, OREGON HEREBY RESOLVES:

SECTION 1: FINDINGS

The City Council (the "Council") of the City of Albany, a municipal corporation of the State of Oregon (the "City") finds:

a. That it is financially feasible and in the City's best interests to provide funds to finance the cost of the acquisition of real and personal property, commonly known as the Archibald Property, to be used as a City water intake facility, pumping station and raw water transmission facility (the "Project");

b. The City is authorized to finance the Project pursuant to the authority of Oregon Revised Statutes Section 271.390, laws of the State of Oregon and the City Charter and to enter into financing agreements, lease purchase agreements or other contracts of purchase (collectively, the "Financing Agreement") for any real or personal property that the Council determines is needed;

c. The Financing Agreement will not be a general obligation of the City, nor a charge upon its tax revenues, but will be payable solely from the net revenues of the City's water system which the City pledges to payment of the obligations, subject to the terms of the City's water bond resolutions, and subordinate to the City's obligation to pay its outstanding water revenue bonds and any future water revenue bonds issued on a parity of a lien with such outstanding water revenue bonds;

d. It is in the best interests of the City to enter a Financing Agreement to finance the Project; and

e. The Council anticipates incurring expenditures ("Expenditures") to finance the costs of the Project and wishes to declare its official intent to reimburse itself for the Expenditures made on the Project from the proceeds of the Financing Agreement. The interest on the Financing Agreement will be excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code").

SECTION 2: FINANCING AGREEMENT AUTHORIZED

a. The Council hereby authorizes the City's payment obligation in the Financing Agreement which may be evidenced by certificates of participation or revenue obligations (collectively, the "Obligations") in an aggregate principal amount not exceeding \$600,000. The Obligations shall be issued upon such financial terms and covenants as may be approved by the City Manager, the Assistance City Manager, the Finance Director or their designee (the "Authorized Officer"). The terms of the Obligations shall be established as provided in Section 4 hereof.

b. The Obligations are payable solely from the net revenues of the City's water system, subject to and subordinate to the City's obligation to pay its outstanding water revenue bonds and any future water revenue bonds issued on a parity of a lien with such outstanding water revenue bonds.

SECTION 3: TAX-EXEMPT STATUS AND COVENANT AS TO ARBITRAGE

The City covenants to use the proceeds of the Obligations and the facilities financed with the Obligations, and to otherwise comply with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), so that interest paid on any of the Obligations designated as tax-exempt will not be includable in gross income of the Owners of such Obligations for federal income tax purposes. The City specifically covenants:

- a. To comply with "arbitrage" provisions of Section 148 of the Code, and to pay any required rebates; and
- b. To operate the facilities financed with the proceeds of the Obligations so that any Obligations designated as tax-exempt are not "private activity bonds" under Section 141 of the Code; and
- c. Comply with all reporting requirements.

SECTION 4: ESTABLISHMENT OF TERMS AND NEGOTIATED SALE OF OBLIGATIONS

The Authorized Representative is hereby authorized, on behalf of the City to:

- a. Establish the principal amount, dated date, denominations, payment dates, redemption provisions; if any, and all other terms of the Obligations in accordance with this Resolution;
- b. Execute and deliver a Financing Agreement and the Obligations evidencing the City's payment obligation under such Financing Agreement;
- c. Enter into covenants regarding the use of the proceeds of the Obligations and the projects financed with the proceeds of the Obligations, to maintain the tax-exempt status of the Obligations;
- d. Pledge the net revenues of the City's water system, subject to the terms of the City's water bond resolutions, and subordinate to the City's obligation to pay its outstanding water revenue bonds and any future water revenue bonds issued on a parity of a lien with such outstanding water revenue bonds;
- e. Execute and deliver any certificates, documents or agreements that are necessary to acquire the Project; and
- f. Execute and deliver any other certificates, documents or agreements that are necessary to issue, sell and deliver the Obligations in accordance with this Resolution.

SECTION 5: DECLARING INTENT TO REIMBURSE

The City hereby declares its official intent to reimburse itself with Obligation proceeds for any of the Expenditures incurred by it prior to the issuance of the Obligations.

SECTION 6: APPOINTMENT OF SPECIAL COUNSEL

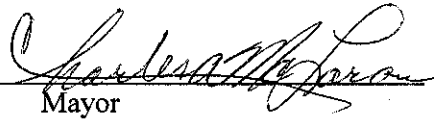
Ater Wynne LLP, is hereby appointed as special counsel ("Special Counsel") for the Obligations.

SECTION 7: EFFECTIVE DATE OF RESOLUTION

This Resolution shall take effect immediately upon its adoption by the City Council.

DONE and DATED this 13 day of February, 2002.

CITY OF ALBANY, OREGON

By: 
Mayor

ATTEST:

By: 
City Recorder

FIRST DRAFT
FEBRUARY 5, 2002

TAX-EXEMPT FINANCING AGREEMENT

Between the

CITY OF ALBANY, OREGON

“City”

and

ALFRED LEE AND PATRICIA I. ARCHIBALD

“Sellers”

Relating to

\$600,000

City of Albany, Oregon

Revenue Obligations

(Acquisition of Archibald Property)

Series 2002

Dated: March __, 2002

ATER WYNNE LLP

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Exhibit A -FINANCING PAYMENTS

TAX-EXEMPT FINANCING AGREEMENT

This Tax-Exempt Financing Agreement is dated as of March 1, 2002, and is entered into by and between the **City of Albany, Oregon**, a municipal corporation, (the "City") and **Alfred Lee Archibald and Patricia I. Archibald** (together, the "Sellers"). The parties hereby agree as follows:

ARTICLE I. - RECITALS, DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Definitions.

All capitalized terms not defined in this Financing Agreement shall have the meanings defined for those terms in the Resolution. Unless the context clearly requires use of a different definition, the following capitalized terms shall have the meanings defined for those terms in this section:

"City" means the City of Albany, located in Linn and Benton Counties, Oregon.

"Code" means the Internal Revenue Code of 1986, as amended.

"Financing Agreement" means this Tax-Exempt Financing Agreement, including the exhibits, and any amendments to this Financing Agreement and its exhibits.

"Financing Amount" means the sum of the principal components of the Financing Payments, as shown in the attached Exhibit A.

"Obligation" means Obligation No. 1, dated March __, 2002, issued by the City in the principal amount of \$600,000.

"Payment Dates" means each _____ and _____ of each year, commencing _____, until the Financing Amount is paid in full, as shown on the attached Exhibit A.

"Project" means the acquisition of certain real property as described in Section 1.2(b).

"Resolution" means Resolution No. 4620 adopted by the City Council of the City on February 13, 2002.

"Sale Agreement" means that certain Sale Agreement and Receipt for Earnest Money entered into between the City and the Sellers dated December 26, 2001.

Section 1.2 Recitals.

(a) The City recites:

The City has adopted the Resolution which authorized execution and delivery of this Financing Agreement and the Obligation.

The City is authorized to finance the Project pursuant to the authority of Oregon Revised Statutes Section 271.390 and the laws of the State of Oregon and to enter into financing agreements, lease purchase agreements or other contracts of purchase for any real or personal property that the City Council of the City determines is needed;

(b) The City and the Sellers recite:

(i) The Sellers desire to sell to the City and the City desires to purchase from the Sellers certain real property with all improvements located on it commonly known as the Archibald Property, consisting of 107 acres more or less, in the principal purchase amount of \$776,000, and having the following legal description :

10 South, 03 West, Section 24 00800 (Tax Lot A) and
10 South, 03 West, Section 23 00800 (Tax Lot B),
Linn County, Oregon

(c) The City pledges the net revenues of the City's water system to payment of the Obligation, subject to the terms of the City's water bond resolutions, and subordinate to the City's obligation to pay its outstanding water revenue bonds and any future water revenue bonds issued on a parity of a lien with such outstanding water revenue bonds.

Section 1.3 Rules of Construction.

References to section numbers in documents which do not specify the document in which the section is located shall be construed as references to section numbers in this Financing Agreement.

ARTICLE II. - REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY AND THE SELLERS

Section 2.1 Representations, Warranties and Covenants of City.

The City represents, covenants and warrants for the benefit of the Sellers as follows:

(a) The City is a municipal corporation duly organized and existing under the Constitution and laws of the State of Oregon.

(b) The City is authorized under ORS 271.390 and the Resolution to enter into this Financing Agreement and to perform all of its obligations under this Financing Agreement.

(c) The City represents, covenants and warrants that all required action has been taken to ensure the enforceability of this Financing Agreement (except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights or contractual obligations generally).

(d) All Financing Payments and deposits required herein shall be paid to the Sellers at the address stated herein, or as otherwise instructed in writing.

(e) The estimated weighted average life of this Financing Agreement does not exceed the weighted average life of the Project being financed with this Agreement, as required by ORS 271.390.

Section 2.2 Representations, Warranties and Covenants of the Sellers.

The Sellers represent, covenant and warrant for the benefit of the City as follows:

(a) The consummation of the transactions contemplated by this Financing Agreement will not violate the provisions of any agreement to which the Sellers are a party.

(b) The execution, delivery and performance by the Sellers of this Financing Agreement and all related agreements, instruments and documents to which the Sellers are a party have been duly authorized and constitute legal, valid and binding obligations of the Sellers, enforceable against the Sellers in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally.

Section 2.3 Tax Covenants.

To maintain the exclusion from gross income for federal income tax purposes of the interest component of each Financing Payment due under this Financing Agreement, the City and the Sellers covenant to comply with each applicable requirement of Section 103 and Sections 141 through 150 of the Code and the City and the Sellers agree to comply with any covenants of the City and the Sellers related to the tax-exempt status of the interest components of Financing Payments which is contained in any of the certificates or other documents executed by the City and the Sellers in connection with delivery of the Financing Agreement and the Obligation. The City and the Sellers also agree to not take any action or omit to take any action necessary to help maintain the tax-exempt status of the interest components of the Financing Payments. The Sellers hereby agree to comply with any written instructions received from the City in order to maintain such exclusion.

ARTICLE III. - THE FINANCING AND THE PAYMENTS

Section 3.1 The Financing.

The City shall pay the purchase price of \$776,000 to the Sellers; \$10,000 which was paid as part of the City's offer to purchase, \$166,000 of which shall be funds from the City's water fund and \$600,000 of which shall be financed with this Financing Agreement as evidenced by the Obligation. The City agrees to pay the \$600,000 principal amount in installments, with interest, by making the Financing Payments as provided in this Financing Agreement. This Financing Agreement shall commence on the Closing Date and shall end on the date all Financing Payments which the City is required to pay under this Financing Agreement have been paid.

Section 3.2 The Financing Payments.

The Obligation represents an ownership interest in and a right to receive a proportionate share of the principal component of the Financing Payments plus a proportionate share of the interest components of the Financing Payments which are allocable to that principal component.

The City shall pay the Financing Amount to the Sellers in semi-annual installments, with interest, on the scheduled Payment Dates shown in Exhibit A. Each Payment shall be paid in immediately available funds, in lawful money of the United States of America. The interest component of the Payment shall be computed on the basis of a 360-day year composed of twelve 30 day months and shall be amortized over a ten (10) year period.

Section 3.3 Prepayment.

The Financing Payments are not subject to prepayment.

Section 3.4 Nature of City's Obligations.

(a) The City pledges the net revenues of the City's water system, subject to the terms of the City's water bond resolutions, and subordinate to the City's obligation to pay its outstanding water revenue bonds and any future water revenue bonds issued on a parity of a lien with such outstanding water revenue bonds to pay amounts due under the Financing Payments.

(b) The City hereby agrees that its obligation to pay all Financing Payments is absolute and unconditional, and shall not be subject to any of the following:

- (i) any setoff, counterclaim, recoupment, defense or other right which the City may have against the Sellers, any contractor or anyone else for any reason whatsoever;
- (ii) any insolvency, bankruptcy, reorganization or similar proceedings by the City;
- (iii) abatement through damage, destruction or non-availability of the Project, or
- (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing.

Section 3.5 Estoppel.

The City hereby certifies, recites and declares that all things, conditions and acts required by the Constitution and Statutes of the State of Oregon and by this Financing Agreement to exist, to have happened and to have been performed precedent to and in the execution and the delivery of this Financing Agreement, do exist, have happened and have been performed in due time, form and manner, as required by law, and that this Financing Agreement is a valid and binding obligation of the City which is enforceable against the City in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws or judicial decisions or principles of equity relating to or affecting the enforcement of creditors' rights or contractual obligations generally.

ARTICLE IV. - ASSIGNMENT

Section 4.1 By the Sellers.

The Sellers shall not assign their rights and obligations under this Financing Agreement to any entity or person without the prior written approval by the City.

Section 4.2 By the City.

The rights and obligations of City under this Financing Agreement may be assigned or transferred to any entity which succeeds or replaces the City, or any entity into which the City may be merged, but only if the assignee or transferee assumes all of the City's obligations under this Financing Agreement. The rights and obligations of City under this Financing Agreement shall not otherwise be assigned or transferred.

ARTICLE V. - TITLE; FUTURE ENCUMBRANCES AND PARITY OBLIGATIONS

Section 5.1 Title.

Upon execution of this Financing Agreement and acquisition of the Project, the Sellers shall execute and deliver to the City a statutory warranty deed, conveying the Project to the City, free and clear of all liens and encumbrances, except permitted exceptions as stated in Section 5 of the Sale Agreement.

ARTICLE VI. - EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default Defined.

The following shall be events of default under this Financing Agreement and the terms "events of default" and "default" shall mean, whenever they are used in this Financing Agreement, any one or more of the following events:

- (i) The City's failure to pay the Financing Payments, when due; or
- (ii) The commencement by the City of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect or an assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with creditors, or the taking of any action by the City in furtherance of any of the foregoing.

Section 6.2 Remedies on Default.

If an Event of Default occurs, the Sellers may exercise any remedy available at law or in equity. No remedy shall be exclusive. The Sellers may waive any Event of Default, but no such waiver shall extend to a subsequent Event of Default.

ARTICLE VII. - MISCELLANEOUS

Section 7.1 Notices.

All notices, obligations or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to:

The City: City of Albany, Oregon
333 Broadalbin S.W.
Albany, Oregon 97321-0144
Attn: Finance Department

The Sellers: Alfred Lee and Patricia I. Archibald
P.O. Box 306
Albany, Oregon 97321

Section 7.2 Binding Effect.

This Financing Agreement shall inure to the benefit of and shall be binding upon the Sellers and the City and their respective successors and assigns.

Section 7.3 Severability.

In the event any provisions of this Financing Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

Section 7.4 Amendments.

The City, with the consent of the Sellers, may amend, change or modify this Financing Agreement as may be required. Before the City shall enter into, and the Sellers shall consent to, any amendment, change or modification to this Financing Agreement, there shall have been delivered to the Sellers and the City an opinion of Special Counsel stating that such amendment, change or modification is authorized or permitted by this Financing Agreement, complies with their terms, will, upon the execution and delivery thereof, be valid and binding upon Sellers and the City in accordance with its terms and will not adversely affect the exclusion from gross income for federal income tax purposes of interest with respect to the Obligation.

Section 7.5 Execution in Counterparts.

This Financing Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.6 Applicable Law.

This Financing Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any action regarding this Financing Agreement or the transactions contemplated hereby shall be brought in an appropriate court for the City of Albany, Oregon.

Section 7.7 Headings.

The headings, titles and table of contents in this Financing Agreement are provided for convenience and shall not affect the meaning, construction or effect of this Financing Agreement. All references herein to Sections, and other subdivisions which do not specify the document in which the subdivision is located shall be construed as references to this Financing Agreement.

IN WITNESS WHEREOF, the Sellers have executed this Financing Agreement and the City has caused this Financing Agreement to be executed in its name by its duly authorized officer, all as of the date first above written.

CITY OF ALBANY, OREGON

By: _____
Authorized Representative

SELLERS:

By: _____
Alfred Lee Archibald

By: _____
Patricia I. Archibald

Interest Rate 5.50%
 Original Loan Amount 03/01/02 600,000.00

Payment Schedule	Date	Principal	Interest	Total Payment	Balance
Payment #1	09/01/02	22,778.94	16,635.62	39,414.56	577,221.06
Payment #2	03/01/03	23,671.45	15,743.11	39,414.56	553,549.61
Payment #3	09/01/03	24,066.83	15,347.73	39,414.56	529,482.78
Payment #4	03/01/04	24,893.68	14,520.88	39,414.56	504,589.10
Payment #5	09/01/04	25,424.31	13,990.25	39,414.56	479,164.79
Payment #6	03/01/05	26,345.83	13,068.73	39,414.56	452,818.96
Payment #7	09/01/05	26,859.69	12,554.87	39,414.56	425,959.27
Payment #8	03/01/06	27,796.96	11,617.60	39,414.56	398,162.31
Payment #9	09/01/06	28,375.10	11,039.46	39,414.56	369,787.21
Payment #10	03/01/07	29,328.99	10,085.57	39,414.56	340,458.22
Payment #11	09/01/07	29,975.01	9,439.55	39,414.56	310,483.21
Payment #12	03/01/08	30,899.66	8,514.90	39,414.56	279,583.55
Payment #13	09/01/08	31,662.82	7,751.74	39,414.56	247,920.73
Payment #14	03/01/09	32,652.78	6,761.78	39,414.56	215,267.95
Payment #15	09/01/09	33,446.03	5,968.53	39,414.56	181,821.92
Payment #16	03/01/10	34,455.55	4,959.01	39,414.56	147,366.37
Payment #17	09/01/10	35,328.68	4,085.88	39,414.56	112,037.69
Payment #18	03/01/11	36,358.85	3,055.71	39,414.56	75,678.84
Payment #19	09/01/11	37,316.29	2,098.27	39,414.56	38,362.55
Payment #20	03/01/12	38,362.55	1,052.08	39,414.63	0.00
Totals		600,000.00	188,291.27	788,291.27	