

ORDINANCE NO. 89-0-460

AN ORDINANCE REPEALING ORDINANCE NO. 88-0-436 AND AUTHORIZING THE ISSUANCE AND SALE OF \$3,200,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION SEWER BONDS, SERIES 1990, OF THE CITY OF BROOKINGS, OREGON, FOR THE PURPOSE OF RECONSTRUCTION OF THE MAIN OUTFALL AND WASTEWATER TREATMENT PLANT, INTERCEPTING SEWERS, PUMP STATIONS, PRESSURE LINES AND ALL EQUIPMENT NECESSARY THEREFOR; PRESCRIBING THE FORM AND DETAIL OF SAID GENERAL OBLIGATION BONDS AND THE COVENANTS AND AGREEMENTS MADE BY THE CITY TO FACILITATE AND PROTECT THE PAYMENT THEREOF; AUTHORIZING THE ANNUAL LEVY OF A DIRECT AD VALOREM TAX FOR THE PAYMENT OF PRINCIPAL OF AND INTEREST ON THE BONDS; PROVIDING FOR THE COLLECTION, SEGREGATION AND APPLICATION OF THE REVENUES OF THE SEWER SYSTEM OF THE CITY FOR THE PURPOSE OF PAYING THE COST OF OPERATION AND MAINTENANCE OF SAID SYSTEM AND PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS; AND DECLARING AN EMERGENCY.

WHEREAS, the Council of the City of Brookings, Oregon (the "City"), submitted to the legal voters of the City, the question of amending the Charter of the City by adding a new and additional Chapter XVII, authorizing the Council of the City to issue and sell not exceeding \$3,200,000 general obligation bonds, payable from direct ad valorem taxes or net revenues of the Sewer System, for the purpose of reconstruction of the main outfall and wastewater treatment plant, intercepting sewers, pump stations, pressure lines and all equipment necessary therefor (the "Project"); and

WHEREAS, said election was duly held in accordance with the constitution and laws of the State of Oregon, and the Charter of the City, and it was found and determined that a majority of the qualified voters of the City voting voted in favor of the amendment to the Charter; and

WHEREAS, Ordinance No. 88-0-436 authorized the general obligation sewer bonds in the principal amount of \$3,200,000 for the purpose of paying the cost of the Project; and

WHEREAS, the City postponed issuance of the general obligation sewer bonds in the principal amount of \$3,200,000 because of litigation with Harbor Sanitary District; and

WHEREAS, the City issued \$750,000 in Sewer Bond Anticipation Notes on April 1, 1989 to fund engineering and design costs of the Project; and

WHEREAS, it is hereby found and determined that it is now necessary to issue and deliver forthwith general obligation sewer bonds in the principal amount of \$3,200,000 for the purpose of

paying the cost of the Project including exercising the right to redeem the Sewer Bond Anticipation Notes on April 1, 1990; and

WHEREAS, the City does not have outstanding any other bonds or obligations payable from the revenues derived by the City from the operation of the Sewer System:

THE CITY OF BROOKINGS ORDAINS AS FOLLOWS:

Section 1. Repeal. The City does hereby repeal Ordinance No. 88-0-436.

Section 2. Issue. For the above purposes, the City shall issue its General Obligation Sewer Bonds, Series 1990, in the amount of THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$3,200,000), to be dated January 1, 1990, to be in denominations of Five Thousand Dollars (\$5,000) or integral multiples thereof, to be in fully registered form, to bear interest payable on January 1 and July 1 of each year until maturity or prior redemption, commencing July 1, 1990, and to mature serially on January 1 of each year as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1991	\$ 50,000	2004	\$120,000
1992	55,000	2005	130,000
1993	60,000	2006	140,000
1994	60,000	2007	150,000
1995	65,000	2008	160,000
1996	70,000	2009	170,000
1997	75,000	2010	185,000
1998	80,000	2011	195,000
1999	85,000	2012	210,000
2000	90,000	2013	225,000
2001	100,000	2014	245,000
2002	105,000	2015	260,000
2003	115,000		

Interest on the Bonds and, upon presentation and surrender thereof, the principal thereof and premium, if any, shall be payable in lawful money of the United States of America by check or draft by the City's paying agent, or its successor. Interest shall be payable on each interest payment date to the person in whose name the Bond is registered (the "Registered Owner") at the close of business on the 15th day (whether or not a business day) of the immediately preceding month. Interest on the Bonds shall cease at maturity or on a date prior thereto on which they have been duly called for redemption unless the Registered Owner thereof shall present the same for payment and payment is refused.

Section 3. Redemption. The City reserves the right to redeem all or any portion of the Bonds maturing after January 1, 1997, in inverse order of maturity and by lot, assigned in proportion to their principal amount within a maturity, on January 1, 1997, and on any interest payment date thereafter, at par plus accrued interest to the redemption date.

Unless waived by any Registered Owner of Bonds to be redeemed, official notice of any such redemption shall be given by the Registrar on behalf of the City by mailing a copy of an official redemption notice by registered or certified mail at least 30 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar.

All official notices of redemption shall be dated and shall state:

- (1) the redemption date,
- (2) the redemption price,
- (3) if less than all outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,
- (4) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and
- (5) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Registrar.

Prior to any redemption date, the City shall deposit with the Registrar an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, such Bonds shall be paid by the Registrar at the redemption price. Installments of interest due on or prior to the redemption

to the Registered Owner specified above, or registered assigns, the principal amount specified above on the above maturity date, together with interest thereon from the date hereof at the rate per annum indicated above, all subject to the provisions referred to herein with respect to the redemption of the principal of this Bond before maturity. Interest is payable semiannually on January 1 and July 1 in each year until maturity or prior redemption commencing July 1, 1990. Interest on this Bond is payable through the office of the City's paying agent and registrar (the "Registrar") by check or draft mailed to the name and address of the Registered Owners as appears on the bond register as of the fifteenth day of the month prior to the date on which interest comes due. Bond principal is payable upon presentation and surrender of this Bond to the Registrar.

ADDITIONAL PROVISIONS OF THIS BOND APPEAR ON THE REVERSE SIDE; THESE PROVISIONS HAVE THE SAME EFFECT AS IF THEY WERE PRINTED HEREIN.

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all conditions, acts, and things required to exist, to happen, and to be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form, and manner as required by the Constitution and Statutes of the State of Oregon and the Charter of the City; that the issue of which this Bond is a part, and all other obligations of such City, are within every debt limitation and other limit prescribed by such Constitution, Statutes and Charter; and that the Council of the City has provided for the levying annually of a direct ad valorem tax upon all the property within the City, so taxable for its purposes, in an amount sufficient with other available funds, to pay the interest on and the principal of the Bonds of such issue as such obligations become due and payable.

IN WITNESS WHEREOF, the Council of the City of Brookings, Oregon, has caused this Bond to be signed by facsimile or manual signature of its Mayor and attested by facsimile or manual signature of its Recorder, has caused its corporate seal to be affixed or imprinted hereon, and has caused this Bond to be dated as of the date set forth above.

(SEAL)

City of Brookings, Oregon

By _____
Mayor

ATTEST:

Recorder

THIS BOND SHALL NOT BE VALID UNLESS
PROPERLY AUTHENTICATED BY THE
REGISTRAR IN THE SPACE INDICATED BELOW.

DATED: _____

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This is one of the City's General
Obligation Sewer Bonds, Series 1990,
issued pursuant to the Bond Ordinance
described herein.

United States National Bank of Oregon, as Registrar

By _____
Authorized Officer

[ON REVERSE SIDE]

ADDITIONAL PROVISIONS

This Bond is one of the General Obligation Sewer Bonds, Series 1990, of the City, issued in the aggregate principal amount of \$3,200,000 by the City for the purpose of reconstruction of the main outfall and wastewater treatment plant, intercepting sewers, pump stations, pressure lines and all equipment necessary therefor in full and strict accordance and compliance with all of the provisions of the Constitution and Statutes of the State of Oregon and the Charter of the City. The Bonds are qualified tax-exempt obligations designated by the City for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

The City reserves the right to redeem all or any portion of the Bonds maturing after January 1, 1997, in inverse order of maturity and by lot, assigned in proportion to their principal amount, within a maturity on January 1, 1997, and on any interest payment date thereafter, at par plus accrued interest to the redemption date.

Notice of redemption shall be mailed to the Registered Owners of the Bonds to be redeemed not less than thirty days prior to the intended redemption date, and otherwise given as required by law. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon partial

redemption of any Bond, a new Bond or Bonds will be delivered to the owner without charge, representing the remaining amount outstanding.

The Bonds are issuable in the form of registered Bonds without coupons in the denominations of \$5,000 or any integral multiple thereof. Bonds may be exchanged for Bonds of the same aggregate principal amount, but different authorized denominations.

The principal of and interest on the Bonds is also payable from, and secured by a pledge of, the net revenues of the Sewer System of the City as further provided in the Bond Ordinance authorizing the issuance of the Bonds adopted on November 20, 1989 (the "Bond Ordinance").

Any transfer of this Bond must be registered, as provided in the Bond Ordinance of the City upon the Bond register kept for that purpose at the office of the Registrar. The City and the Registrar may treat the person in whose name this Bond is registered (the "Registered Owner") as its absolute owner for all purposes, as provided in the Bond Ordinance.

The Registered Owner may exchange or transfer any Bond only by surrendering it, together with a written instrument of exchange or transfer which is satisfactory to the Registrar and duly executed by the Registered Owner or his duly authorized attorney, at the office of the Registrar in the manner and subject to the conditions set forth in the Bond Ordinance and subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____

Please insert social security or other identifying number of assignee

the within Bond and does hereby irrevocably constitute and appoint _____ as attorney to transfer this Bond on the books kept for registration thereof with the full power of substitution in the premises.

Dated: _____

principal of the Sewer Bond Anticipation Notes, Series 1989, of the City at their redemption on April 1, 1990.

Upon completion of the Project as hereinbefore provided, any surplus remaining in the Construction Fund shall be deposited in the Series 1990 Sewer Bonds Principal and Interest Account created by Section 8 of this Ordinance.

Section 7. Sewer Revenue Fund. The City covenants and agrees that from and after the delivery of the Bonds, and continuing so long as any of the Bonds remain outstanding and unpaid, all of the revenues of the Sewer System of the City will be paid and deposited into a separate fund hereby created in the treasury of the City and to be known and hereinafter referred to as the "Sewer Revenue Fund," and that said revenues shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the City and shall not be mingled with any other moneys, revenues, funds or accounts of the City. The Sewer Revenue Fund shall be administered and applied solely for the purposes and in the manner hereinafter provided in this Ordinance.

Section 8. Ratification and Creation of Funds and Accounts. There is hereby created and ordered to be established in the treasury of the City three separate accounts known respectively as the:

- (a) "Sewer System Operation and Maintenance Account" (herein called the "Operation and Maintenance Account");
- (b) "Principal and Interest Account for General Obligation Sewer Bonds, Series 1990" (herein called the "Series 1990 Sewer Bonds Principal and Interest Account"); and
- (c) "Sewer System Surplus Account" (herein called the "Surplus Account").

The accounts referred to in paragraphs (a), (b) and (c) aforesaid shall be maintained and administered by the City in accordance with the provisions of this Ordinance so long as any of the Bonds remain outstanding.

Section 9. Application of Moneys in Funds and Accounts. The City covenants and agrees that from and after the delivery of the Bonds, and continuing so long as any of the Bonds shall remain outstanding and unpaid, the City will, on the first day of each month, administer and allocate all of the moneys then held in the Sewer Revenue Fund as follows:

(a) There shall first be paid and credited on the first day of each month from the Sewer Revenue Fund to the Operation and Maintenance Account an amount sufficient to pay the estimated cost of operating and maintaining the Sewer System during the ensuing month.

All amounts paid and credited to the Operation and Maintenance Account shall be expended and used by the City solely for the purpose of paying the reasonable and proper expenses of operating and maintaining the Sewer System of the City and keeping said System in good repair and working order, including, without limiting the generality of the foregoing, salaries, wages, costs of materials and supplies, annual audits, periodic consulting engineers' reports, insurance, and the cost of purchased water, if any.

(b) There shall next be paid and credited on the first day of each month from the Sewer Revenue Fund to the Series 1989 Sewer Bonds Principal and Interest Account to the extent necessary to meet at stated maturity thereof the payment of all interest on and principal of the Bonds, the following sums:

(i) Beginning with the first of said monthly deposits and continuing on the first day of each month thereafter to and including June 1, 1990, an equal pro rata portion of the amount of interest becoming due on the Bonds on July 1, 1990; and thereafter, beginning on July 1, 1990, and continuing on the first day of each month thereafter so long as any of the Bonds shall remain outstanding and unpaid, an amount not less than 1/6 of the amount of interest that will become due on the Bonds on the next succeeding interest payment date;

(ii) Beginning with the first of said monthly deposits and continuing on the first day of each month thereafter to and including December 1, 1990, an equal pro rata portion of the amount of principal becoming due on the Bonds on January 1, 1991; and thereafter, beginning on January 1, 1991, and continuing on the first day of each month thereafter so long as any of the Bonds shall remain outstanding and unpaid, an amount not less than 1/12 of the amount of principal of Bonds that will become due on the next succeeding stated maturity; and

(iii) On the first day of each month preceding a month in which fees of the Registrar are scheduled to become due, such amounts as may be required to pay such fees of the Registrar.

All amounts paid and credited to the Series 1990 Sewer Bonds Principal and Interest Account shall be expended and used by the City for the sole purpose of paying the interest on and

principal of the Bonds as and when the same become due and the fees of the Registrar for acting as bond registrar and paying agent.

If at any time the moneys in the Sewer Revenue Fund shall be insufficient to make in full the payments and credits at the time required to be made by the City to the principal and interest accounts established by the City to pay the principal of and interest on the outstanding bonds of the City payable from revenues of the Sewer System, including only the Bonds and any other bonds of the City hereafter issued and standing on a parity with the Bonds payable from revenues of the Sewer System, the available moneys in the Sewer Revenue Fund shall be divided among such principal and interest accounts in proportion to the respective principal amounts of said series of bonds of the City at the time outstanding which are payable from the moneys in said principal and interest accounts.

(c) After all payments and credits required at the time to be made by the City under the provisions of paragraphs (a) and (b) of this Section have been made, all moneys remaining in the Sewer Revenue Fund shall be paid and credited to the Surplus Account. Moneys in the Surplus Account may be expended and used for the following purposes as determined by the governing body of the City:

(i) paying the cost of the operation, maintenance and repair of the Sewer System if no other funds are available therefor;

(ii) preventing default in, anticipating payments into or increasing the amounts in the other accounts referred to in this Section, or establishing or increasing the amount of any principal and interest account or bond reserve account created by the City for the payment of any bonds of the City payable from revenues of the Sewer System hereafter issued under the conditions hereinafter specified and standing on a parity with the Bonds;

(iii) calling, redeeming and paying prior to maturity, or, at the option of the City, purchasing in the open market at the best price obtainable not exceeding the call price (if any bonds are callable), the Bonds or any other bonds of the City payable from revenues of the Sewer System hereafter issued under the conditions hereinafter specified and standing on a parity with the Bonds, including principal, interest and premium, if any; or

(iv) any governmental or municipal purpose permitted by law.

Section 10. Deficiency of Payments into Funds or

Accounts. If at any time the Revenues shall be insufficient to make any payment on the date or dates hereinbefore specified, the City will make good the amount of such deficiency by making additional payments or credits out of the first available net revenues of the Sewer System thereafter received by the City, such payments and credits being made and applied in the order hereinbefore specified in Section 9 of this Ordinance.

The City shall also take such action necessary to levy such additional taxes necessary to cure any default or deficiency as authorized under Section 4, hereof.

Section 11. Authentication, Registration and Transfer.

- (1) All Bonds shall be in registered form. The City hereby appoints United States National Bank of Oregon, Portland, Oregon, to serve as paying agent and registrar for the Bonds (the "Registrar"). A successor Registrar may be appointed for the Bonds by ordinance or resolution of the City. The Registrar shall provide notice to Registered Owners of any change in the Registrar not later than the interest payment date following the change in Registrar.
- (2) No Bond shall be entitled to any right or benefit under this Ordinance unless it shall have been authenticated by an authorized officer of the Registrar. The Registrar shall authenticate all Bonds to be delivered at closing of this Bond issue, and shall additionally authenticate all Bonds properly surrendered for exchange or transfer pursuant to this Ordinance and any Bond issued in lieu of any mutilated, destroyed, lost or stolen Bond.
- (3) The ownership of all Bonds shall be entered in the Bond register maintained by the Registrar, and the City and the Registrar may treat the person listed as Registered Owner in the Bond register as the owner of the Bond for all purposes.
- (4) The Registrar shall mail each interest payment to the name and address of the Registered Owners as they appear on the Bond register at the close of business on the fifteenth day, whether or not a business day, of the month preceding an interest payment date (the "Record Date"). If payment is so mailed, neither the City nor the Registrar shall have any further liability to any party for such interest payment. The principal of the Bonds and

premium, if any, shall be payable at the office of the Registrar upon presentation and surrender of the Bonds.

- (5) Bonds may be exchanged for an equal principal amount of Bonds of the same maturity which are in different denominations, and Bonds may be transferred to other owners if the Registered Owner submits the following to the Registrar:
 - (a) written instructions for exchange or transfer satisfactory to the Registrar, signed by the Registered Owner or his attorney in fact and guaranteed or witnessed in a manner satisfactory to the Registrar; and
 - (b) the Bonds to be exchanged or transferred.
- (6) The Registrar shall not be required to exchange or transfer any Bonds submitted to it during any period beginning with a Record Date and ending on the next following interest payment date; however, such Bonds shall be exchanged or transferred promptly following that interest payment date. In addition, no transfer or exchange of Bonds shall be required to be made during the period beginning fifteen days before any selection of Bonds for redemption and ending on the day of such selection, or for any Bond selected for redemption in whole or in part.
- (7) The Registrar shall note the date of authentication on each Bond. The date of authentication shall be the date on which the Registered Owner's name is listed on the Bond Register maintained by the Registrar.
- (8) For purposes of this Section, Bonds shall be considered submitted to the Registrar on the date the Registrar actually receives the materials described in subsection (5) of this Section 11.
- (9) The City may require payment by the Registered Owner of a sum sufficient to pay any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds. All other expenses incurred by the City or the Registrar in connection with any transfer or exchange of Bonds shall be paid by the City.
- (10) The City may alter these provisions regarding registration and transfer by mailing notification

of the altered provisions to all Registered Owners. The altered provisions shall take effect on the date stated in the notice, which shall not be earlier than 45 days after notice is mailed.

Section 12. Tax Covenants. The City covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). The City will not directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City, or take or omit to take any action that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code. To that end, the City will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds. In the event that any time the City is of the opinion that for purposes of this Section 12 it is necessary to restrict or limit the yield on the investment of any moneys held in any fund or account under this Ordinance, the City shall take such action as may be necessary.

Notwithstanding any provision of this Section, if the City receives an opinion of nationally recognized bond counsel to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Bonds pursuant to Section 103 of the Code, the City may rely conclusively on such opinion in complying with the provisions hereof.

Section 13. Sale of Bonds. The City Manager shall cause to be published in the Curry Coastal Pilot, Brookings, Oregon, the Daily Journal of Commerce, Portland, Oregon, and The Bond Buyer, New York, New York, notices of sale of the Bonds in the form substantially as shown on Exhibit A attached hereto and by this reference incorporated herein, or summaries, as provided by law. The Bonds shall be sold upon the terms provided in the attached Exhibit A. The Bonds shall be sold on the date and at the time and place stated in Exhibit A, unless the Mayor or City Manager establishes a different date, time, or place.

Section 14. General Covenants. The City hereby covenants and agrees with the Registered Owners of all outstanding Bonds as follows:

- (1) That it will promptly cause the principal and interest on the Bonds to be paid as it becomes due.
- (2) That it will not issue bonds or other obligations having a claim superior to the claim of the Bonds

upon the net revenues of the Sewer System.

Section 15. Parity Bonds. The City may issue Parity Bonds to provide funds to finance the completion of the Project, the construction of new sewer facilities, the repair and improvement of the existing Sewer System, or the refunding of outstanding Bonds upon the following conditions:

- (1) No Default as defined in Section 16 has occurred and is continuing; and
- (2) At the time of the issuance of the Parity Bonds there is no deficiency in any of the funds or accounts under this Ordinance.

All bonds issued in accordance with this Section shall have a lien on the net revenues of the Sewer System which is equal to the lien of the Bonds and of all Parity Bonds issued in accordance with this Section. Parity Bonds issued hereunder need not have a general obligation pledge.

Section 16. Default.

A. The following events shall constitute Default:

- (1) Failure to pay Bond principal or interest when due; or
- (2) Failure to perform any other obligation of the City imposed by this Ordinance or the Bonds, but only if:
 - (i) the failure continues for a period of more than ninety (90) days after demand has been made on the City to remedy the failure; and
 - (ii) the City fails to take reasonable steps to remedy the failure within that ninety-day period; or
- (3) Imposition of a receivership upon, or liquidation of, the Sewer System; or,
- (4) Written admission by the City that the City is unable to pay its debts as they become due.

B. Upon Default, any Registered Owner may exercise any remedy available at law or in equity.

Section 17. Discharge. When all of the Bonds, and the

interest thereon, have been discharged as provided in this Section, all pledges, covenants and other rights granted by this Resolution shall cease. The City may discharge all Bonds due on any date by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full; or if any Bond or interest thereon should not be paid when due, the same may nevertheless be discharged by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued from the due date to the date of such deposit. The City may also discharge all prepayable Bonds called for redemption on any date when they are prepayable according to their terms, by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full, provided that notice of the redemption thereof has been duly given as provided herein. The City may also discharge all Bonds at any time by irrevocably depositing in escrow with a suitable bank or trust company for the purpose of paying all principal and interest due on such Bonds prior to the date upon which all of the same will be prepayable according to their terms, and paying all remaining Bonds on that date, a sum of cash and securities of the types described in ORS 288.650 in such aggregate amount, bearing interest at such rates and maturing or callable at the holder's option on such dates as shall be required to provide funds sufficient for this purpose; provided that notice of the redemption of all prepayable Bonds on or before such date has been duly given as required herein.

Section 18. Custodian of Fund. The City Treasurer is hereby appointed custodian of the funds and accounts set forth in this Ordinance and shall invest and reinvest moneys in the said funds and accounts, under the direction of the Council, in investments as provided in ORS 294.125. Income earned from investment of money in any fund or account shall be credited to that fund or account, except as otherwise provided herein or in ORS 294 and 287. The City Treasurer shall disburse moneys in the funds and accounts for the purposes of said funds and accounts without further authorization or direction by the Council.

Section 19. Other Proceedings. The officers of the City are authorized and directed to prepare and furnish to the attorneys passing on the legality of the Bonds, certified copies of all proceedings, ordinances, resolutions and records and all such certificates and affidavits and other instruments as may be required to evidence the legality and marketability of the Bonds, and all certified copies, certificates, affidavits and other instruments so furnished shall constitute representations of the City as to the correctness of all facts stated or recited therein.

Section 20. Small Issuer Exemption from Bank Nondeductibility Restriction. The City hereby designates the Bonds for purposes of paragraph (3) of Section 265(b) of the Code and covenants that the Bonds do not constitute 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 excludable (under Section 103(a) of the Code) from gross income for federal income taxes (excluding, however, private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), including the Bonds, have been or shall be issued by the City, including all subordinate entities of the City, during the calendar year 1990.

Section 21. Small Issuer Exception from Rebate Requirements. In accordance with Section 148(f)(4)(C) of the Code, the City represents and covenants that it is a governmental unit with general taxing powers; that the Bonds are not private activity Bonds as defined in Section 141 of the Code; that 95% or more of the net proceeds of the Bonds (i.e., the face amount of the Bonds, plus accrued interest and premium, if any, less original issue discount, if any) are to be used for the local governmental activities of the City and that the aggregate face amount of all obligations of the City (including all subordinate entities of the City), the interest on which is not includable in federal gross income (other than private activity Bonds as defined in Section 141 of the Code), issued during the calendar year 1990 will not exceed \$5,000,000, excluding, however, such obligations which are not outstanding on the date of issuance of the Bonds or which are to be redeemed (other than in an advance refunding) from the proceeds of the Bonds.

Section 22. Emergency Clause. In that there is an emergency need to raise funds to pay for the cost of the Project as soon as possible so that the Project may proceed to completion, this Ordinance shall take effect and be in full force from and after its passage and approval.

First Reading: November 20, 1989
Second Reading: November 20, 1989

PASSED by the unanimous vote of the Council, with a quorum in attendance, this 20th day of November, 1989.

SIGNED by me in authentication of its passage this 20th day of November, 1989.

Fred Hemmel
Mayor

ATTEST:

Beverly Shields
City Recorder

1\17155001\Sewer-M.Ord

EXHIBIT A

OFFICIAL NOTICE OF BOND SALE

\$3,200,000
CITY OF BROOKINGS
STATE OF OREGON
GENERAL OBLIGATION SEWER BONDS, SERIES 1990

NOTICE IS HEREBY GIVEN that sealed bids for the purchase of the within-described General Obligation Sewer Bonds, Series 1990 (the "Bonds"), will be received on behalf of the City of Brookings, Oregon (the "City"), until 11:00 o'clock a.m. (Pacific Time) on December 7, 1989, at the offices of Ragen, Tremaine, Krieger, Schmeer & Neill, 2300 First Interstate Tower, 1300 S.W. Fifth Avenue, Portland, Oregon 97201, at which time they will be publicly opened and announced.

The bids shall be considered and acted upon by the City within four business hours.

ISSUE: The Bonds will be in the aggregate principal amount of THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$3,200,000) consisting of registered Bonds in denominations of FIVE THOUSAND DOLLARS (\$5,000) or integral multiples thereof, all dated January 1, 1990.

INTEREST RATE: The maximum net effective rate of interest on the Bonds shall not exceed ten percent (10%) per annum. Interest is payable semiannually on January 1 and July 1 of each year until maturity or prior redemption commencing July 1, 1990. Bidders must specify the interest rate or rates which the Bonds hereby offered for sale shall bear. The bids shall comply with the following conditions: (1) each interest rate specified in any bid must be a multiple of 1/8th or 1/20th of one percent (1%); (2) no Bond shall bear more than one rate of interest; (3) each Bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; (4) all Bonds maturing at any one time shall bear the same rate of interest and (5) the interest rate for the last five maturities shall not be less than the interest rate specified for the immediately prior maturity.

MATURITIES: The Bonds shall mature serially on January 1 of each year as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1991	\$ 50,000	2000	\$ 90,000	2009	\$170,000
1992	55,000	2001	100,000	2010	185,000
1993	60,000	2002	105,000	2011	195,000
1994	60,000	2003	115,000	2012	210,000
1995	65,000	2004	120,000	2013	225,000
1996	70,000	2005	130,000	2014	245,000
1997	75,000	2006	140,000	2015	260,000
1998	80,000	2007	150,000		
1999	85,000	2008	160,000		

REGISTRATION: The Bonds will be issued in fully registered form, transferable at the office of the Registrar upon surrender thereof together with a written instrument of transfer, and may also be exchanged at the expense of the City for similar Bonds of different authorized denominations. Bonds may not be converted to bearer form.

REDEMPTION: The City reserves the right to redeem all or any portion of the Bonds maturing after January 1, 1997, in inverse order of maturity and by lot, assigned in proportion to their principal amount within a maturity, on January 1, 1997, and on any interest payment date thereafter, at par plus accrued interest to the redemption date.

Notice of redemption shall be given by mailing notice thereof to the registered owners not less than 30 days prior to the redemption date, and as otherwise required by law. Any failure to give notice shall not invalidate the redemption of the Bonds. Interest on any Bond or Bonds so called for redemption shall cease on the redemption date designated in the notice.

PAYMENT: Principal of the Bonds shall be payable, either at maturity or upon earlier redemption, upon presentation and surrender at the office of the registrar and paying agent of the City, which is currently the corporate trust office of United States National Bank of Oregon, in Portland, Oregon. Interest shall be paid to the registered owners of the Bonds as shown on the registration books on the 15th day of the month preceding each interest payment date, by check mailed to each owner's address as then shown on the registration books.

PURPOSE: The Bonds are being issued for reconstruction of the main outfall and wastewater treatment plant, intercepting sewers, pump stations, pressure lines and all equipment necessary therefor. The Bonds were authorized at a special election held within the City on August 9, 1988.

SECURITY: The Bonds are general obligations of the City. The City has covenanted to levy an ad valorem tax annually which, with other available funds, will be sufficient to pay Bond principal and interest as they come due.

The principal of and interest on the Bonds is also payable from, and secured by a pledge of, the net revenues of the sewer system of the City.

LEGAL OPINION: The approving opinion of Ragen, Tremaine, Krieger, Schmeer & Neill, Bond Counsel, of Portland, Oregon, will be provided at no cost to the purchaser, and will be printed on the Bonds at the expense of the City.

TAX EXEMPT STATUS: In the opinion of Bond Counsel, assuming compliance by the City with its covenants relating to the tax-exempt status of the Bonds, interest on the Bonds will be exempt from taxation

by the United States under present federal income tax laws (except for certain taxes on corporations) and from personal income taxation by the State of Oregon under present state law.

BANK PURCHASE. The City has designated the Bonds as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

BEST BID: The sale of the Bonds will be awarded to the responsible bidder whose proposal will result in the lowest true interest cost to the City. Each bidder is requested to supply the total interest cost and net effective interest rate that the City will pay upon the issue if the bid is accepted, but this statement shall not be deemed a part of the bid. The purchaser must pay accrued interest, computed on a 360-day basis, from the date of the Bonds to the date of delivery. The cost of printing the Bonds will be borne by the City.

REOFFERING PRICE: Simultaneously with or before delivery of the Bonds, the successful bidder shall furnish to the City a certificate acceptable to Bond Counsel to the effect that (1) the successful bidder has purchased the Bonds for its own account without the intention to resell the Bonds, or (2) the successful bidder has made a bona fide private placement of the Bonds and the terms of such private placement, or (3) the successful bidder has made a bona fide public offering of the Bonds and the initial reoffering prices or the revised initial reoffering prices, as the case may be, and that a substantial amount of each maturity of the Bonds was sold to the public at or below such initial reoffering prices or revised initial reoffering prices, as the case may be.

DELIVERY: Delivery of the Bonds will be made without cost to the successful bidder at such bank in the City of Portland, Oregon, as the successful bidder shall name, or at any such other place as may be agreed upon with the successful bidder at the expense of the bidder. Payment for the Bonds must be made in Federal funds. Delivery will be made within thirty days.

FORM OF BID. All bids must be for not less than all the Bonds hereby offered for sale, and for not less than ninety-eight percent (98%) of the par value thereof and accrued interest to the date of delivery. Each bid together with bidder's check as herein specified must be enclosed in a sealed envelope addressed to the City and designated "Proposal for Bonds."

BID CHECK: All bids must be unconditional and accompanied by a certified or cashier's check on a bank doing business in the State of Oregon for Sixty-Four Thousand Dollars (\$64,000.00) payable to the order of the City to secure the City from any loss resulting from the failure of the bidder to comply with the terms of its bid. Checks will be forfeited to the City as liquidated damages in case the bidder to whom the Bonds are awarded withdraws its bid or fails to complete its purchase in accordance with the terms thereof. No interest shall be allowed on the deposit but the check of the successful bidder will be

retained as part payment of the Bonds or for liquidated damages as described above. Checks of the unsuccessful bidders will be returned by the City promptly.

RIGHT OF REJECTION: The City reserves the right to reject any or all bids, and to waive any irregularities.

OFFICIAL STATEMENT: The City has prepared a preliminary official statement relating to the Bonds, a copy of which will be furnished upon request to its financial consultant, Moore, Breithaupt & Associates, 147 Commercial Street, N.E., Salem, Oregon 97301, telephone (503) 364-9326.

POTENTIAL BID: The financial consultant may submit a bid or participate in a bidding syndicate.

CUSIP: CUSIP numbers will be imprinted upon all Bonds of this issue at the City's expense. Failure to print, or improperly imprinted numbers, will not constitute basis for the purchaser to refuse to accept delivery.

NO LITIGATION: At the time of payment for the delivery of said Bonds, the City will furnish the successful bidder a certificate that there is no litigation pending affecting the validity of the Bonds.

FURTHER INFORMATION: Additional information regarding the City and this sale may be obtained from Mr. Richard Kahanek, Interim Manager, City of Brookings, 898 Elk Drive, Brookings, Oregon 97415, telephone (503) 469-2163 or the City's financial consultant set forth above.

Richard Kahanek, Interim Manager
City of Brookings, Oregon

1\171155001\EX-A-M.Doc

[Date]

\$3,200,000
CITY OF BROOKINGS, CURRY COUNTY
STATE OF OREGON
GENERAL OBLIGATION SEWER BONDS, SERIES 1990

DRAFT

We have acted as bond counsel in connection with the issuance by the City of Brookings, Curry County, Oregon, (the "City") of \$3,200,000 General Obligation Sewer Bonds, dated January 1, 1990, (the "Bonds"). The Bonds are Issuable in fully registered form in the denominations of \$5,000 or any integral multiple thereof. The Bonds mature on January 1 in the years and amounts set forth below and bear interest from date of issue until paid at the annual rates set forth opposite such years and amounts, respectively:

<u>Year</u>	<u>Amount</u>	<u>Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Rate</u>
1991	50,000		2004	120,000	
1992	55,000		2005	130,000	
1993	60,000		2006	140,000	
1994	60,000		2007	150,000	
1995	65,000		2008	160,000	
1996	70,000		2009	170,000	
1997	75,000		2010	185,000	
1998	80,000		2011	195,000	
1999	85,000		2012	210,000	
2000	90,000		2013	225,000	
2001	100,000		2014	245,000	
2002	105,000		2015	260,000	
2003	115,000				

Interest is payable on January 1 and July 1 in each year, commencing July 1, 1990, to the holder of record as of the close of business on the fifteenth day of the immediately preceding month. Bonds maturing after January 1, 1997, are subject to redemption and prepayment at the option of the District, in inverse order of maturities and by lot, assigned in proportion to their principal amount within any maturity, on January 1, 1997, and any interest payment date thereafter, at a price equal to the principal amount thereof plus accrued interest. The interest on the Bonds is payable by check or draft mailed by United States National Bank of Oregon, Portland, Oregon, or a successor bond registrar and paying agent, and the principal thereof is payable to the registered owner upon presentation at the office of the bond registrar and paying agent.

The Bonds have been designated "qualified tax-exempt obligations" by the City for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

We have not been engaged or undertaken to review the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds (except to the extent, if any, stated in the Official Statement) and we express no opinion relating thereto (excepting only the matters set forth as our opinion in the Official Statement).

We have examined the law and such certified proceedings and other papers, including the ordinance of the City authorizing issuance of the Bonds (the "Ordinance"), as we deem necessary to render this opinion. As to questions of fact material to our opinion we have relied upon the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

1. The Bonds are valid and binding general obligations of the City.

2. All taxable property in the City is subject to ad valorem taxation without limitation as to rate or amount to pay the Bonds. The City is required by law to include in its annual tax levy the principal and interest coming due on the Bonds to the extent the necessary funds are not provided from other sources.

3. The Bonds are also payable from, and secured by a pledge of, the net revenues of the sewer system of the City as further provided in the Ordinance.

4. The interest on the Bonds (a) is excluded from gross income for federal income tax purposes and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, it should be noted that with respect to corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations. The opinion set forth in clause (a) above is subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be (or continue to be) excluded from gross income for federal income tax purposes. Failure to comply with certain of such requirements could cause the interest on the Bonds to be so included in gross income retroactive to the date of issuance of the Bonds. The City has covenanted to comply with all such requirements. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

5. The interest on the Bonds is exempt from Oregon personal income taxes.

The rights of the holders of the Bonds and the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

Sincerely,

DRAFT

PGB:jmf