

ORDINANCE NO. 89-0-444

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF \$1,205,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 1989, OF THE CITY OF BROOKINGS, OREGON, FOR THE PURPOSE OF PROVIDING FUNDS TO REFUND PRIOR TO MATURITY CERTAIN GENERAL OBLIGATION FUNDS OF THE CITY; PRESCRIBING THE FORM AND DETAIL OF SAID GENERAL OBLIGATION REFUNDING 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 WATER 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 City of Brookings, Oregon, has outstanding five General Obligation Installment Water Bonds, issued and sold to the Farmers Home Administration of the United States Department of Agriculture (the "Government"), pursuant to Ordinance No. 249, of the City passed and approved by the Council of the City on January 8, 1974 (the "Refunded Bond Ordinance"), originally issued in the aggregate principal amount of \$2,000,000 (the "Refunded Bonds"), of which approximately \$1,685,727.28 is outstanding in aggregate as of March 6, 1989;

WHEREAS, the Government has agreed to allow the City to pay off the Refunded Bonds at a substantial discount for approximately \$1,171,066.73, such actual amount to be determined at the time of payment; and

WHEREAS, pursuant to ORS 287.252 to 287.264, as amended, the City has the authority to refund its outstanding general obligation bonds subject to certain conditions, which shall be fully complied with; 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 Water System of the City with the exception of \$1,130,000 General Obligation Water Bonds, Series 1989 (the "Prior Bonds"), dated January 1, 1989, issued pursuant to Ordinance No. 88-0-435, of the City passed and approved by the Council of the City on December 12, 1988 (the "Prior Bond Ordinance") of which all Prior Bonds currently are outstanding; and

WHEREAS, under the provisions of the Prior Bond Ordinance, the City may issue additional bonds payable from the revenues derived from the operation of the Water System which are on parity with the

Prior Bonds only if certain conditions are met, and it is hereby found and determined that the issuance of the General Obligation Refunding Bonds, Series 1989, of the City, as hereafter provided, will comply in all respects with all of said conditions set forth in the Prior Bond Ordinance:

THE CITY OF BROOKINGS ORDAINS AS FOLLOWS:

Section 1. Issue. For the above purposes, the City shall issue its General Obligation Refunding Bonds, Series 1989, in the amount of One Million Two Hundred Five Thousand Dollars (\$1,205,000), to be initially dated April 1, 1989, 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 April 1 and October 1 of each year until maturity or prior redemption, commencing October 1, 1989, and to mature serially on April 1 of each year as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1990	\$25,000	2001	\$55,000
1991	30,000	2002	60,000
1992	30,000	2003	65,000
1993	35,000	2004	70,000
1994	35,000	2005	75,000
1995	35,000	2006	80,000
1996	40,000	2007	85,000
1997	45,000	2008	90,000
1998	45,000	2009	100,000
1999	50,000	2010	105,000
2000	50,000		

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 2. Redemption. The City reserves the right to redeem all or any portion of the Bonds maturing after April 1, 1996,

in inverse order of maturity and by lot, assigned in proportion to their principal amount, within a maturity on April 1, 1996, 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 date shall be payable as

herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Registered Owner a new Bond or Bonds of the same maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be cancelled and destroyed by the Registrar and shall not be reissued.

In addition to the foregoing notice, further notice shall be given by the City Manager of the City by publishing such notice one time in Curry Pilot and one time in the Daily Journal of Commerce of Portland, Oregon, each such publication to be made at least 30 days prior to the date fixed for redemption. No defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

Section 3. Security. The full faith and credit of the City are pledged to the Registered Owners and successive Registered Owners of each of the Bonds for the punctual payment of such obligations, when due. The City shall levy annually, as provided by law, a direct ad valorem tax upon all of the taxable property within the City in sufficient amount, after taking into consideration discounts taken and delinquencies that may occur in the payment of such taxes and all other monies reasonably available for the payment of debt service on the Bonds, to pay the Bonds promptly as they mature, and the City covenants with the owners of its Bonds to levy such a tax annually during each year that any of the Bonds, or bonds issued to refund them, are outstanding.

In addition, the principal of and interest on the Bonds is payable from, and secured by a pledge of, the Net Revenues of the Water System as further provided herein.

The Bonds shall be on parity with respect to the payment of principal and interest from the Net Revenues with the Prior Bonds.

Section 4. Form of Registered Bonds. The Bonds shall be in substantially the following form:

No. R- \_\_\_\_\_

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF OREGON  
CITY OF BROOKINGS  
GENERAL OBLIGATION REFUNDING BOND, SERIES 1989

INTEREST RATE      % PER ANNUM      MATURITY DATE      DATED      CUSIP

Registered Owner:  
Principal Amount:

Dollars

THE CITY OF BROOKINGS, Oregon (the "City"), for value received acknowledges itself indebted and hereby promises to pay 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 April 1 and October 1 in each year until maturity or prior redemption commencing October 1, 1989. 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 Refunding Bonds,  
Series 1989, 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 Refunding Bonds, Series 1989, of the City, issued in the aggregate principal amount of \$1,205,000 by the City for the purpose of providing funds to refund five General Obligation Installment Water Bonds, issued pursuant to Ordinance No. 249 of the City, passed and approved on by the Council of the City on January 8, 1974 (the "Refunded Bonds"), originally issued in the amount of \$2,000,000, 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.

The City reserves the right to redeem all or any portion of the Bonds maturing after April 1, 1996, in inverse order of maturity and by lot, assigned in proportion to their principal amount, within a maturity on April 1, 1996, 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 water system of the City as further provided in the Bond Ordinance authorizing the issuance of the Bonds, adopted on April 3, 1989 (the "Bond Ordinance"). The Bonds are on parity with respect to the payment of principal and interest from the net revenues of the water system of the City and in all other respects with \$1,130,000 General Obligation Water Bonds, Series 1989, dated January 1, 1989, issued pursuant to Ordinance No. 88-0-435, of the City, passed and approved by the Council of the City on December 12, 1988.

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: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or company.

Signature Guaranteed

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
Authorized Officer

The following abbreviations, when used in the inscription on the face of the within bond, shall be construed as though they were written out in full according to applicable laws or regulations.

- TEN COM -- tenants in common
- TEN ENT -- as tenants by the entireties
- JT TEN -- as joint tenants with right of survivorship and not as tenants in common

OREGON CUSTODIANS use the following  
\_\_\_\_\_ CUST UL OREG \_\_\_\_\_ MIN  
as custodian for (name of minor)  
OR UNIF TRANS MIN ACT  
under the Oregon Uniform Transfer to Minors Act

Additional abbreviations may also be used though not in the list above.

Section 5. Disposition of Bond Proceeds, Refunded Bond Account. There shall first be deposited in the Series 1989 Refunding Bonds Principal and Interest Account hereinafter created by Section 7 of this Ordinance all accrued interest and premium, if any, received from the sale of the Bonds.

The remainder of the proceeds received from the sale of the Bonds shall be deposited in a separate account hereby created in the treasury of the City to be known as the "Refunded Bond Account" (herein called the "Refunded Bond Account") and shall be used by the City for the sole purpose of refunding the Refunded Bonds and paying the costs and expenses of such refunding.

Section 6. Water Revenue Fund Account. 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 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 "Water Revenue Fund Account," 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 Water Revenue Fund Account shall be administered and applied solely for the purposes and in the manner hereinafter provided in this Ordinance.

So long as the Prior Bonds are outstanding the Water Revenue Fund Account shall also be administered and applied for the purposes and in the manner provided in the Prior Bond Ordinance.

Section 7. Ratification and Creation of Funds and Accounts. The creation and establishment in the treasury of the City by the Prior Bond Ordinance of three separate accounts known respectively as the:

- (a) "Operation and Maintenance Account" (herein called the "Operation and Maintenance Account");
- (b) "Principal and Interest Account for General Obligation Water Bonds, Series 1989" (herein called the "Prior Bonds Principal and Interest Account");
- (c) "Water System Surplus Account" (herein called the "Surplus Account");

is hereby ratified and confirmed, and in addition to said three accounts, there are hereby created and ordered to be established in the treasury of the City two separate account to be known as the:

- (d) "Principal and Interest Account for General Obligation Refunding Bonds, Series 1989" (herein called the "Series 1989 Refunding Bonds Principal and Interest Account").

The accounts referred to in paragraphs (a) and (c) aforesaid shall be maintained and administered by the City in accordance with the provisions of this Ordinance and the Prior Bond Ordinance so long as any of the Prior Bonds or the Bonds remain outstanding. The account referred to in paragraph (b) aforesaid shall be maintained and administered in accordance with the provisions of the Prior Bond Ordinance so long as any of the Prior Bonds remain outstanding and unpaid. The account referred to in paragraph (d) aforesaid shall be maintained and administered as hereinafter provided in this Ordinance so long as any of the Bonds remain outstanding and unpaid.

Section 8. 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 Water Revenue Fund Account as follows:

(a) There shall first be paid and credited on the first day of each month from the Water Revenue Fund Account to the Operation and Maintenance Account an amount sufficient to pay the estimated cost of operating and maintaining the 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 Water 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 Water Revenue Fund Account to the Prior Bonds Principal and Interest Account any amounts at the time required to be paid and credited to said Account under the provisions of the Prior Bond Ordinance, and, at the same time such payments and credits are made and on a parity therewith, the City shall pay and credit to the Series 1989 Refunding 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 September 1, 1989, an equal pro rata portion of the amount of interest becoming due on the Bonds on October 1, 1989; and thereafter, beginning on October 1, 1989, 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 March 1, 1990, an equal pro rata portion of the amount of principal becoming due on the Bonds on April 1, 1990; and thereafter, beginning on April 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 1/12 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 1989 Refunding 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 Refunding Revenue Fund Account 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 revenue bonds of the City payable from revenues of the Water System, including only the Prior Bonds, the Bonds and any other bonds of the City hereafter issued and standing on a parity with the Bonds payable from revenues of the Water System, the available moneys in the Water Revenue Fund Account shall be divided among such principal and interest accounts in proportion to the respective principal amounts of said series bonds of the City payable from net revenues of the Water System 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 Water Revenue Fund Account 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 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 the net revenues of the Water 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 the net revenues of the Water System hereafter issued under the conditions hereinafter specified and standing on a parity with the Bonds, including principal, interest and premium, if any; and

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

So long as any of the Prior Bonds remain outstanding and unpaid, no moneys derived by the City from the operation of its Water System shall be used inconsistently with the terms of the Prior Bond Ordinance.

Section 9. 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 Water System thereafter received by the City, such payments and credits being made and applied in the order hereinbefore specified in Section 8 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 3 hereof.

Section 10. 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) Each Bond delivered under this Ordinance upon transfer or exchange for, or in lieu of, any other Bond shall carry all the rights to interest accrued and unpaid and to accrue, which were carried by such other Bond, and each such Bond shall be so dated that neither gain nor loss in interest shall result from such transfer, exchange or substitution. Each Bond shall be dated by the Registrar as of the last interest payment date preceding the date of authentication to which interest on the Bond has been paid or made available for payment, unless (i) the date of authentication is an interest payment date to which interest has been paid or made available for payment, in which case such Bond shall be dated as of the date of authentication, or (ii) the date of authentication is prior to April 1, 1989, in which case such Bond shall be dated as of April 1, 1989.
- (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 10.
- (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 11. 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 (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 11 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 12. Sale of Bonds. The City Manager shall cause to be published in the Curry Pilot, Brookings, Oregon, and the Daily Journal of Commerce, Portland, Oregon, 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 13. General Covenants. The City hereby covenants and agrees with the 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 Water System.

Section 14. Parity Bonds. The City may issue Parity Bonds to provide funds to finance the construction of new water facilities, the repair and improvement of the existing Water System or the refunding of outstanding Bonds upon the following conditions:

- (1) No Default as defined in Section 15 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 accountants under this Ordinance.

All Bonds issued in accordance with this Section shall have a lien on the net revenues of the Water System which is equal to the lien of the Bonds and all Parity Bonds issued in accordance with this Section.

Section 15. 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 Water 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 16. 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 17. Custodian of Funds. The City Treasurer is hereby appointed custodian of the Funds and accounts set forth in this Ordinance and shall invest and reinvest moneys in 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 required 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 18. 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 19. 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 1989.

Section 20. Emergency Clause. In that there is an emergency need to raise funds to pay off the Refunded Bonds as soon as possible, this Ordinance shall take effect and be in full force from and after its passage and approval.

First Reading: April 3, 1989  
Second Reading: April 3, 1989

PASSED by the unanimous vote of the Council, with a quorum in attendance, this 3rd day of April, 1989.

SIGNED by me in authentication of its passage this 4th day of April, 1989.

Fred Hummel

Mayor

ATTEST:

Beverly S. Shields  
Beverly S. Shields  
City Recorder