

ORDINANCE NO. 88-O-434

**AN ORDINANCE OF THE CITY OF BROOKINGS, OREGON, AUTHORIZING THE ISSUANCE OF BOND ANTICIPATION NOTES, SERIES 1988, IN AN AMOUNT UP TO \$500,000 FOR THE FINANCING OF PART OF THE WATER AND SEWER PROJECTS. [December 2, 1988]**

**[See Ordinance No. 88-O-434 in its entirety in original ordinance books]**

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**WHEREAS, the electors of the City of Brookings, Oregon, authorized the issuance of general obligation bonds in an amount not to exceed \$1,300,000 at an election duly conducted on August 9, 1988, to provide funds with which to finance acquisition and construction of improvements to the water system servicing the City; and**

**WHEREAS, the electors of the City authorized the issuance of general obligation bonds in an amount not to exceed \$3,200,000 at an election duly conducted on August 9, 1988, to provide funds with which to finance acquisition and construction of improvements to the sewer system servicing the City (the water system improvements and sewer system improvements being collectively referred to herein as the "Projects"); and**

**WHEREAS, the City anticipates issuance of its general obligation bonds for the Projects (the "Bonds") in January, 1989 and will incur prior to that time costs for the Projects; and**

**WHEREAS, Oregon Revised Statutes 287.522 through 287.526 authorize the City to borrow money and issue its notes for the interim financing of public improvements and to determine the method and terms of sale, upon determining that certain conditions have been met; and**

**WHEREAS, this Council finds that notes issued pursuant to this authority shall not exceed in the aggregate the estimated unpaid cost of the public improvements and that the maturity date of the notes herein authorized is not later than the completion date of the improvement to be financed;**

**THE CITY OF BROOKINGS ORDAINS AS FOLLOWS:**

**Section 1. Notes Authorized.** The City Council authorizes the issuance of Bond Anticipation Notes, Series 1988 (the "Notes") in a principal amount not to exceed \$500,000 pursuant to ORS 287.522, as amended, for the purpose of funding the interim construction of the Projects and the costs of issuing these Notes. The Notes shall be dated as of the date of authentication and delivery, shall mature February 28, 1989, shall be callable at any time at par and shall bear interest payable at maturity or earlier redemption at a rate which shall not exceed a net effective rate of 7.375%. The Notes shall be in denominations as specified by the City Manager in consultation with the purchaser of such Notes.

**Section 2. Security.** The Notes are payable only from the proceeds of the sale of the Bonds as previously authorized and from other funds available therefor.

**Section 3. Purchase Contract.** The Mayor is hereby authorized to negotiate the terms and execute, on behalf of the City, a purchase agreement for the Notes with First Interstate Bank of Oregon, N.A., binding upon the City upon execution by the Mayor. The Mayor shall report the terms of the purchase contract to the City Council.

**Section 4. Temporary Notes.** The Notes herein authorized may be issued as one or more temporary Notes, which may be typewritten and exchanged for definitive Notes when available.

**Section 5. Form and Denomination.** The Notes shall be executed on behalf of the City with the manual signature of the Mayor, sealed with the seal of the City and attested by the Recorder, shall be payable at the office of the City Recorder, Brookings, Oregon. The Notes shall be issued in customary form and in convenient denominations.

**Section 6. Authority of Mayor.** The Mayor is hereby authorized to enter into any agreements and to execute any documents and deliver the Notes in accordance with this Ordinance.

**Section 7. 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 Notes or any other funds of the City, or take or omit to take any action, that would cause the Notes to be "arbitrage bond" 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 Notes.

**Section 8. Small Issuer Exemption from Bank Nondeductibility Restriction.** The City hereby designates the Notes for purposes of paragraph (3) of Section 265(b) of the Code and covenants that the Notes 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 Notes, have been or shall be issued by the City, including all subordinate entities of the City, during the calendar year 1988.

**Section 9. Small Issuer Exemption 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 Notes are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the net proceeds of the Notes (e.e., the face amount of the Notes, 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 1988 will not exceed \$5,000,000, excluding, however, such obligations which are not outstanding on the date of issuance of the Notes or which are to be redeemed (other than in an advance refunding) from the proceeds of the Notes.

**Section 10. Emergency Clause.** In that there is an emergency need to raise funds to pay for part of the cost of the Projects as soon as possible so that the Projects may proceed to completion, this Ordinance shall take effect and be in full force from and after its passage and approval.

**Effective December 2, 1988**