

ORDINANCE NO. 90-0-464

AN ORDINANCE OF THE CITY OF BROOKINGS, OREGON, AUTHORIZING THE ISSUANCE AND SALE OF LIMITED GENERAL OBLIGATION BOND ANTICIPATION NOTES, SERIES 1990A, IN AN AMOUNT OF \$2,950,000 FOR THE PURPOSE OF FINANCING THE WATER DISTRIBUTION IMPROVEMENTS AND THE SANITARY SEWER IMPROVEMENTS WITHIN THE DAWSON TRACT, OREGON DRIFTWOOD SHORES AND WEST HARRIS HEIGHTS AREAS; PRESCRIBING THE FORM AND DETAIL OF SAID NOTES AND THE COVENANTS AND AGREEMENTS MADE BY THE CITY TO FACILITATE AND PROTECT THE PAYMENT THEREOF; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 89-0-441, passed by the City of Brookings, Oregon (the "City"), on March 14, 1989, the City annexed the Dawson Tract, Oregon Driftwood Shores and West Harris Heights area to the City (the "Annexed Area," such area being set forth in Exhibit A to Ordinance No. 89-0-441; and

WHEREAS, pursuant to Ordinance No. 89-0-442, passed by the City, on March 14, 1989 (the "Water Improvements Ordinance"), the City approved the formation of a local improvement district within the Annexed Area to extend water distribution improvements and service into the Annexed Area (the "Water Improvements"); and

WHEREAS, pursuant to Ordinance No. 89-0-443, passed by the City, on March 14, 1989 (the "Sewer Improvements Ordinance"), the City approved the formation of a local improvement district within the Annexed Area to construct sanitary sewer improvements and service into the Annexed Area (the "Sewer Improvements"); and

WHEREAS, pursuant to the Water Improvements Ordinance and the Sewer Improvements Ordinance, upon completion of the Water Improvements and the Sewer improvements, and the hook-up of the Sewer improvements with the City's existing sanitary sewer system, the City shall prepare the final assessment roles for the Water Improvements and the Sewer Improvements, send notice of such assessments along with notice of a hearing on said proposed final assessments, and shall, after such hearing and after considering any comments on said proposed final assessments, finally assess the properties benefitted by the Water Improvements and the Sewer Improvements and cause such final assessments to be spread upon the benefitted properties; and

WHEREAS, the City will allow the benefitted property owners to finance the assessments against their properties as provided in the Bancroft Bonding Act (ORS 223.205, et seq.) and the City will issue general obligation Bancroft bonds to the extent of applications for payment in installments are received; and

WHEREAS, pursuant to ORS 287.502, et seq., any city authorized to issue bonds under ORS 223.205, et seq., is authorized to issue bond anticipation notes to finance the construction of public improvements of the character described in ORS 223.205; and

WHEREAS, the Water Improvements and the Sewer Improvements are of the character described in ORS 223.205; and

WHEREAS, as required under ORS 287.515(1), the City held a hearing on the Water Improvements and the Sewer Improvements on March 13, 1989, and has declared in the Water Improvements ordinance and the Sewer Improvement Ordinances its intention to construct the respective improvements; and

WHEREAS, the City intends to issue its Limited General Obligation Bond Anticipation Notes, Series 1990A (the "Notes"), to provide the interim financing of the Water Improvements and Sewer Improvements; and

WHEREAS, this Council finds that Notes issued pursuant to this authority do not exceed in the aggregate the current estimated cost of the Water Improvements and Sewer improvements and that the maturity date of the notes herein authorized is not later than two years from the date of issuance of the Notes;

THE CITY OF BROOKINGS ORDAINS AS FOLLOWS:

1. Notes Authorized. The City Council authorizes the issuance of Limited General Obligation Bond Anticipation Notes, Series 1990A (the "Notes") in a principal amount of \$2,950,000 pursuant to ORS 287.502, et seq., as amended, for the purpose of funding the interim construction of the Water Improvements and Sewer Improvements (the "Projects"), the costs of issuing these Notes and the cost of issuance of the general obligation Bancroft bonds to be used to provide permanent financing for the Projects (the "Bancroft Bonds"). The Notes shall be dated June 15, 1990, shall mature on June 15, 1992, and shall bear interest from their dated date payable on June 15 and December 15 of each year commencing on December 15, 1990, until maturity or earlier redemption, at 6.30% per annum. The Notes shall be in denominations of \$5,000.

Interest on the Notes and, upon presentation and surrender thereof, the principal thereof shall be payable in lawful money of the United States of America by check or draft by United States National Bank of Oregon, Portland, Oregon, the City's paying agent, or its successor. Interest shall be payable on each interest payment date to the person in whose name the Note is registered at the close of business on the 1st day (whether or not a business day) of the month of payment. Interest on the Notes shall cease at maturity or on a date prior thereto on which the Notes have been duly called for redemption unless the holder thereof shall present the same for payment and payment is refused.

2. Redemption. The City reserves the right to redeem all or any portion of the Notes on December 15, 1991, and on any date thereafter, at par plus accrued interest to the redemption date. If less than all Notes are redeemed then the Notes to be redeemed shall be selected by the Registrar by lot.

Unless waived by any registered owner of Notes 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 Note or Notes to be redeemed at the address shown on the 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 Notes are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Notes to be redeemed,**
- (4) that on the redemption date the redemption price will become due and payable upon each such Note 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 Notes are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Registrar.**

The Registrar shall also cause to be published the official notice of redemption as required in ORS 287.508, as may be amended.

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 Notes or portions of Notes which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Notes or portions of Notes 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 Notes or portions of Notes shall cease to bear interest. Upon surrender of such Notes for redemption in accordance with such notice, such Notes 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 Note, there shall be prepared for the registered owner a new Note or Notes of the same maturity in the amount of the unpaid principal. All Notes 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 as may be otherwise required by law. 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.

3. Security. The Notes are payable from proceeds of the Bancroft Bonds to be sold upon completion of the projects and as otherwise provided in Section 4 hereof. The full faith and credit of the City are also pledged to the punctual payment of principal of and interest on the Notes.

4. Notes Sinking Fund. The City Treasurer is directed to establish a sinking fund, commonly known as the Bancroft Bonded Debt Sinking Fund-Series 1990A Notes (the "Fund"), to which shall be deposited all proceeds from the collection of unbonded assessments, the sale of improvement bonds pursuant to ORS 223,205, et seq., and the foreclosure of improvement liens for unbonded assessments realized from the Projects with respect to such Notes.

The deposits in the Fund shall be applied to the call and payment of such Notes and such funds shall not be transferred, borrowed, diverted or used for any other purpose and for failure to hold, account for and apply such funds as provided

in this section, the City Treasurer shall be personally liable and shall also be liable on the official bond to the holders of such Notes.

5. Sale of Notes. The City Manager is authorized to the Purchase Contract for the Notes with United States National Bank of Oregon. The Mayor and Recorder of the City are hereby authorized and directed to prepare and execute the Notes in the manner hereinafter specified, to cause the Notes to be registered and authenticated with United States National Bank of Oregon, Portland, Oregon (the "Registrar"), and to deliver the Notes to United States National Bank of Oregon, N.A., Portland, Oregon (the "Purchaser"), upon payment of the purchase price of \$2,935,250.

6. 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.

7. Form and Denomination. The Notes shall be executed on behalf of the City with the manual or facsimile signature of the Mayor, sealed or imprinted with the seal of the City and attested by the manual or facsimile signature of the Recorder.

The Notes shall not be valid or prove obligatory for any purpose or be entitled to any security or benefit under this Ordinance until the Certificate of Authentication thereon shall have been dated and executed by manual signature of a duly authorized officer or employee of the Bond Registrar. The Notes shall be issued substantially in the form as set forth in Exhibit A hereto and in such names and such denominations as requested by the Purchaser.

8. Authentication Registration and Transfer,

(1) All Notes 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 Notes (the "Registrar"). A successor Registrar may be appointed for the Notes by ordinance or resolution of the City. The Registrar shall provide notice to Note owners of any change in the Registrar not later than the interest payment date following the change in Registrar.

(2) No Note shall be entitled to any right or benefit under this Ordinance unless it shall have been authenticated by an authorized officer or employee of the Registrar. The Registrar shall authenticate all Notes to be delivered at dosing of this Note issue, and shall additionally authenticate all Notes properly surrendered for exchange or transfer pursuant to this

Ordinance and any Note issued in lieu of any mutilated, destroyed, lost or stolen Notes.

(3) The ownership of all Notes shall be entered in the Note register maintained by the Registrar, and the City and the Registrar may treat the person listed as owner in the Note register as the owner of the Note for all purposes.

(4) The Registrar shall mail each interest payment to the name and address of the Note owner as they appear on the Note register at the close of business on the first day, whether or not a business day, of the month of 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 Notes shall be payable at the office of the Registrar upon presentation and surrender of the Note.

(5) Notes may be exchanged for an equal principal amount of Notes of the same maturity which are in different denominations, and Notes may be transferred to other owners if the Note owner submits the following to the Registrar:

(a) written instructions for exchange or for satisfactory to the Registrar, signed by the Note owner or his attorney in fact and guaranteed or witnessed in a manner satisfactory to the Registrar; and

(b) the Notes to be exchanged or transferred.

(6) The Registrar shall not be required to exchange or transfer any Notes submitted to it during any period beginning with a Record Date and ending on the next following interest payment date; however, such Notes shall be exchanged or transferred promptly following that interest payment date.

(7) Each Note delivered under this Ordinance upon transfer or exchange for, or in lieu of, any other Note shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note, and each such Note shall be so dated that neither gain nor loss in interest shall result from such transfer, exchange or substitution. Each Note shall be dated by the Registrar as of the last interest payment date preceding the date of authentication to which interest on the note has been paid or made available for payment unless the date of authentication is an interest payment date to which interest has been paid or made available for payment, in which case such Note shall be dated as of the date of authentication.

(8) For purposes of this Section, Notes shall be considered submitted to the Registrar on the date the Registrar actually receives the materials described in subsection (5) of this Section 7.

(9) The District may alter these provisions regarding registration and transfer by mailing notification of the altered provisions to all Note 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.

9. Construction Account. The proceeds of the Notes hereby authorized shall be deposited in the Projects Construction Account created hereunder (the "Construction Account"). The amounts in the Construction Account exceeding the insurance available from the Federal Deposit Insurance Corporation shall be secured by the depository bank in accordance with State and Federal law. Withdrawals from the Construction Account shall be made only on checks signed by the City Manager as authorized by the Council, and only for the purposes for which the Notes were issued as specified in the estimate of costs, including costs of issuance of the Notes. The City's share of any liquidated damages and other moneys paid by defaulting contractors or the sureties shall be deposited in the Construction Account to assure completion of the Project. When the construction of the Project has been completed, or all construction costs have been paid in full, any balance remaining in the Construction Account shall be used immediately to pay or apply on the payment of any such Notes as may thereafter fall due, or, if said Notes have been paid from the proceeds of the sale of its Bancroft Bonds, then the balance shall be applied to the payment of the Bancroft Bonds in the manner prescribed by the ordinance authorizing the Bancroft Bonds.

The City shall keep records of all expenditures from the Construction Account designating whether the expenditure is for the Water Improvements, Sewer improvements, or cost of issuance of the Notes or the Bancroft Bonds.

Any grant proceeds from the Environmental Protection Agency relating to the Sewer improvements shall be (i) deposited in the Construction Account and used solely for the Sewer Improvements, (ii) disbursed directly to contractors and vendors for the Sewer improvements or (iii) paid directly to the City to reimburse the City for expenses already paid by the City from funds other than those held in the Construction Account.

10. Other Documents and Proceedings. The officers and officials of the City are hereby authorized and directed to execute and carry out or cause to be

carried out the obligations which are necessary or advisable in connection with this Ordinance and the issuance, sale and delivery of the Notes, including, but not limited to, agreements with financial institutions to serve as paying agent and registrar in accordance with Section 7 hereof. The officers and officials of the City are authorized and directed to prepare and furnish to the attorneys passing on the legality of the Notes, 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 Notes, 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.

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 Notes 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 Notes or any other funds of the City, or take or omit to take any action, that would cause the Notes 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 Notes.

12. 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 1990.

13. 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 (i.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 1990 will not

exceed \$5,000,000.

14. Emergency Ordinance. Whereas the Department of Human Resources, Health Division conducted a survey in the fall of 1987, and found widespread contamination of domestic water wells and inadequacies in other water supply sources throughout the Annexed Area, and the health, safety and general welfare of the persons residing in the Annexed Area may be adversely affected, an emergency is hereby declared to exist and this Ordinance may be introduced, read and placed on its final passage at any one meeting of the Council and shall take effect and be in full force from and after its passage and approval.

PASSED by the unanimous vote of the Council with a quorum in attendance, this 11th day of June, 1990.

Fred Hummel, Mayor

EXHIBIT A - FORM OF NOTE

R-_____

**§
UNITED STATES OF AMERICA
CITY OF BROOKINGS
CURRY COUNTY, OREGON**

**LIMITED GENERAL OBLIGATION BOND ANTICIPATION NOTE
SERIES 1990A**

INTEREST RATE MATURITY DATE DATED DATE CUSIP

Registered Owner:

Principal Amount:

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 dated date indicated above at the rate per annum indicated above. Interest accruing is payable on June 15 and December 15 of each year commencing on December 15, 1990. Interest on this Note is payable through the office of United States National Bank of Oregon, Portland, Oregon, the City's paying agent and registrar (the "Registrar") by check or draft mailed to the name and address of the registered owner as it appears on the Note register on the first day of the month on which interest comes due. Note principal is payable upon presentation and surrender of this Note to the Registrar.

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

Any transfer of this Note must be registered, as provided in the ordinance of the City authorizing the issuance of the Notes adopted on June 11, 1990 (the "Ordinance"), upon the Note register kept for that purpose at the office of the Registrar. The City and the Registrar may treat the person in whose name this Note is registered as its absolute owner for all purposes, as provided in the Ordinance.

The Note owner may exchange or transfer any Note 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 Ordinance.

This Note is one of the Limited General Obligation Bond Anticipation Notes, Series 1990A, of the City, issued in the aggregate principal amount of \$2,950,000 and is issued by the District pursuant to Oregon Statutes 287.502, et seq., for the purpose of providing construction financing for certain public improvements (the "Projects"). The Notes are payable from proceeds of the Bancroft bonds to be sold upon completion of the projects and as otherwise provided in the Ordinance. The tin faith and credit of the City are also pledged to the punctual payment of principal of and interest on the Notes. The City Treasurer is directed to establish a sinking fired, commonly known as the Bancroft Bonded Debt Sinking Fund-Series 1990A Notes (the "Fund"), to which shall be deposited all proceeds from the collection of unbonded assessments, the sale of improvement bonds pursuant to ORS 223,205, et seq., and the foreclosure of improvement Hens for unbonded assessments realized from the Projects with respect to such Notes. The deposits in the Fund shall be applied to the call and payment of such Notes and such funds shall not be transferred, borrowed, diverted or used for any other purpose.

The Notes have been issued in full and complete compliance with the Constitution and laws of the State of Oregon and the Charter of the City.

The Notes are subject to redemption or payment prior to maturity on December 15, 1991,, and on any date thereafter, at par plus accrued to the redemption date. if less than all Notes are redeemed then the Notes to be redeemed shall be selected by the Registrar by lot.

Unless waived by any registered owner of Notes 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 30 days prior to the date fixed for redemption to the registered owner of the Note or Notes to be redeemed at the address shown on the Register or at such other address as is furnished in writing by such registered owner to the Registrar. Notice of redemption having been given as aforesaid, the Notes or portions of Notes 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 Notes or portions of Notes shall cease to bear interest. Upon surrender of such Notes for redemption in accordance with such notice, such Notes 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 Note, there shall be prepared for the registered owner a new Note or Notes of the same maturity in the amount of the unpaid principal.

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

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all conditions, acts, and required to exist, to happen, and to be performed precedent to and in the issuance of this Note 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 that the issue of which this Note is a part, and all other obligations of such City, are within every debt limitation and other limit prescribed by such Constitution and statutes.

CITY OF BROOKINGS, OREGON

Fred Hummel, Mayor

THIS NOTE 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 Limited General Obligation Bond Anticipation Notes, Series 1990A, issued pursuant to the Ordinance described herein.

United States National Bank of Oregon, as Registrar

By,

Authorized Individual

**CAST U ORE
as custodian under the laws of Oregon for**

**MIN
(Minor's name)**

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