

**ORDINANCE NO. 92-O-489**

**AN ORDINANCE OF THE CITY OF BROOKINGS, OREGON, AUTHORIZING THE ISSUANCE AND SALE OF LIMITED TAX IMPROVEMENT BONDS, SERIES 1992, IN AN AMOUNT OF \$2,427,553.60 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 BONDS AND THE COVENANTS AND AGREEMENTS MADE BY THE CITY TO FACILITATE AND PROTECT THE PAYMENT THEREOF; AUTHORIZING NEGOTIATION OF THE BOND SALE; AND DESIGNATING A PAYING AGENT AND BOND REGISTRAR, AN UNDERWRITER AND BOND COUNSEL; AND DECLARING AN EMERGENCY. [Effective May 12, 1992]**

**[See Ordinance No. 92-O-489 in its entirety in original ordinance books]**

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**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 prepared the final assessment rolls for the Water Improvements and the Sewer Improvements, sent notice of such assessments along with notice of a hearing on said proposed final assessments, and, after such hearing and after considering any comments on said proposed final assessments, finally assessed the properties benefitted by the Water Improvements and the Sewer Improvements and caused such final assessments to be spread upon the benefitted properties; and**

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

**WHEREAS, pursuant to ORS 287.502, et seq., the City issued Limited General Obligation Bond Anticipation Notes (the "Notes"), dated June 15, 1990, to provide the interim financing of the Water Improvements and Sewer Improvements until the City received permanent financing through issuing limited general obligation Bancroft Bonds to the extent of applications for payment in installments by benefitted properties; and**

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

**WHEREAS, the maturity date of the Notes is June 15, 1992;**

**WHEREAS, pursuant to Ordinance No. 92-O-488, passed by the City on April 8, 1992, the City has made up Bond Lien Dockets in accordance with ORS 223.320 for Water Improvements and Sewer Improvements within the Dawson Tract Area, Oregon Driftwood Shores Area and West Harris Heights Area; and**

**WHEREAS, the assessments remaining unpaid for the improvements and for which applications to pay under the Bancroft Bonding Act have been filed with the City and shown in said Bond Lien Dockets (and for which Bancroft Bonds have not been issued) are two million, four hundred twenty seven thousand, five hundred fifty three and 60/100, (\$2,427,553.60).**

**Sections:**

<b>Section 1.</b>	<b>Issue.</b>
<b>Section 2.</b>	<b>Redemption.</b>
<b>Section 3.</b>	<b>Security.</b>
<b>Section 4.</b>	<b>Bond Counsel.</b>
<b>Section 5.</b>	<b>Sale of Bonds.</b>
<b>Section 6.</b>	<b>Bond Printing.</b>
<b>Section 7.</b>	<b>Authentication, Registration and Transfer.</b>
<b>Section 8.</b>	<b>Qualified Tax-Exempt Obligation.</b>
<b>Section 9.</b>	<b>Tax Covenants.</b>
<b>Section 10.</b>	<b>Small Issuer Exception from Rebate Requirements.</b>
<b>Section 11.</b>	<b>Establishment of Fund.</b>
<b>Section 12.</b>	<b>Discharge.</b>
<b>Section 13.</b>	<b>Custodian of Funds.</b>
<b>Section 14.</b>	<b>Other Proceedings.</b>
<b>Section 15.</b>	<b>Emergency clause.</b>

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

**Section 1. Issue.** The City shall issue its Limited Tax Improvement Bonds, Series 1992, in the amount not to exceed \$2,427,553.60 to be dated June 1, 1992, to be in denominations of Five Thousand Dollars (\$5,000) each, or integral multiples thereof, to bear interest payable on June 1 and December 1 of each year, commencing on December 1, 1992, and to mature and be subject to redemption as to be negotiated with the Underwriter of the Bonds.

**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.**

**A. Optional Redemption. The bonds maturing on June 1, 2000 shall be subject to optional redemption at par on June 1, 1999. The City reserves the right to redeem all or any portion of the Bonds on June 1, 1999, and on any date thereafter, at par plus accrued interest to the redemption date. If less than all Bonds are redeemed then the Bonds to be redeemed shall be selected by the Registrar by lot.**

**B. Mandatory Redemption. The City Manager is authorized, in reliance upon the Expert Advisor, to determine if the Bonds shall be subject to mandatory redemption. If the City Manager determines that mandatory redemption of the Bonds is in the City's financial interest, the City Manager may negotiate the terms of the mandatory redemption with the underwriter.**

**C. Notice of Redemption. 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 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.**

**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 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 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.**

**Section 3. Security. The City has assessed benefitted properties within the above-named projects for the costs of local improvements, and has received applications to pay assessments in installments in an amount at least equal to the principal amount of the Bonds in the specific amounts set opposite the project name and number above. All installment assessment payments shall be placed in a Bancroft Bond Redemption Fund and applied to the payment of principal of, premium, if any, and interest on the Bonds. The full faith and credit of the City and any taxes which the City may levy within the limitations of section 11b, Article XI of the Oregon Constitution are pledged to the successive owners of each of the Bonds for the punctual payment of such obligations, when due, and the City shall levy annually, as provided by law, a direct ad valorem tax within the limitations of section 11b, Article XI of the Oregon Constitution upon all of the taxable property within the City in an amount sufficient, with other available funds, to pay principal of, premium, if any, and interest on the Bonds as they become due and payable. The City covenants with the Registered Owners of the Bonds to levy such a tax annually during each year that any of the Bonds, or bonds issued to refund them, are outstanding.**

**Section 4. Bond Counsel. Messrs. Davis Wright Tremaine of Portland, Oregon, are hereby appointed Bond Counsel for the issuance of the Bonds.**

**Section 5. Authorization of Negotiated Sale of the Bonds; Appointing Underwriter; and Negotiating Purchase Contract. The City Council finds and determines that the negotiated sale of the Bonds is advisable for the reasons that the rates of interest available from a negotiated sale as conducted for this financing and other terms of the Bonds are deemed desirable by and advantageous to the City and a public sale of the Bonds would further delay the financing plan.**

**The City Manager is hereby authorized to negotiate the terms of the Purchase Contract for the Bonds and to execute the Purchase Contract on behalf of the City. Prior to beginning any negotiations for the Purchase Contract the City Manager shall cause to be published in those publications the City Manager determines to be appropriate notices of sale of the Bonds. The Purchase Contract shall state the principal amount of Bonds to be issued, the price to be paid to the City for the Bonds, the Bonds interest rate(s), the denominations and term of the Bonds, the schedule of payment of bond principal and interest, and the terms and conditions under which the Bonds may be redeemed prior to maturity. The terms of the Purchase Contract shall be approved by the City Council by Ordinance prior to issuance of the Bonds. The City Manager shall report the terms of the Purchase Contract to the City Council, and the City Council shall by further Ordinance approve the terms of the Purchase Contract or interim financing prior to execution of the Purchase Contract. The Purchase Contract may include discount, which discount, if provided for, shall not exceed 2.0 percent. The Purchase Contract recommended by the City Manager to the City Council for approval shall meet the overall financial objectives of the City for this financing, after consideration of the report by an Expert Advisor pursuant to ORS 287.028, as amended, evaluating the terms of the Purchase Contract. The firm of Moore Breithaupt and Associates is hereby appointed the City's Expert Advisor.**

**If for any reason the Purchase Contract cannot be executed and the Bonds issued before the Notes mature on June 15, 1992, the City Manager is further authorized to negotiate the terms of any interim financing to repay the principal amount of the Notes when due. The City Manager is not required to publish any notice before negotiating the terms of any interim financing. The terms of any contract for interim financing shall be approved by the City Council by Ordinance prior to execution of the contract.**

**Section 6. Form of Bond. The Bonds shall be issued substantially in the form as approved by the City Manager and Bond Counsel.**

**Section 7. Registration and Transfer.**

**(1) All Bonds shall be registered. The Manager is hereby authorized to negotiate the services of a Bond Registrar and Paying Agent for the Bonds. A successor Registrar may be appointed for the Bonds by order or resolution of the City. The Registrar shall provide notice to Registered Owners of any change in the registrar not later than the bond or interest payment date following the change of Registrar.**

**(2) The Bonds shall be issued in book-entry form only. The Bonds initially shall be held in fully immobilized form by the Depository Trust Company of New York, New York ("DTC") acting as depository pursuant to the terms and conditions set forth in the Letter of Representation attached hereto as Exhibit A. To induce DTC to accept the Bonds as eligible for deposit at DTC, the City Manager is authorized to execute the Letter of Representation, with such changes as hereafter may be approved by him, and such approval shall be conclusively presumed by the City Manager's execution thereof. Neither the City nor the Registrar shall have any responsibility or obligation to DTC participants or the persons for whom they act as nominees with respect to the Bonds regarding accuracy of any records maintained by DTC or DTC participants of any amount in respect of principal of or interest on the Bonds, or any notice which is permitted or required to be given to Registered Owners hereunder (except such notice as is required to be given by the City to the Bond Registrar or to DTC).**

**(3) The ownership of all Bonds shall be entered in the Bond Register (the "Register") maintained by the Registrar, and the City and the Registrar may treat the person listed as the owner in the Register (the "Registered Owner") 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 Owner as it appears on the Register on the fifteenth (15th) day of the month preceding such interest payment date ("Record Date," herein). If**

payment is so mailed, neither the City nor the Registrar shall have any further liability to any party for such 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 which are in different denominations, and Bonds may be transferred to other owners if the Registered Owner submits to the Registrar: 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.

(6) The Registrar shall not be required to exchange or transfer any Bonds during any period beginning with a Record Date and ending on the next following payment date; however, such Bonds shall be exchanged or transferred promptly following that payment date. In addition, no transfer or exchange of Bonds shall be required to be made during the period beginning fifteen (15) 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) 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.

(8) 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.

(9) 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 forty-five (45) days after notice is mailed.

**Section 8. Qualified Tax-Exempt Obligation.** The City hereby designated the Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986 (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 million aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) 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 1992.

**Section 9. 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 12 it is necessary to restrict or limit the yield on the investment of any moneys held in any fund or account under this Resolution, 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 10. 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 ninety-five percent (95%) or more of the net proceeds of the Bonds 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 1992 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 11. Establishment of Fund.** There is hereby created the Limited Tax Improvement Bonds, Series 1992 Fund (the "Fund") which shall be held as a separate and distinct fund and shall at all times be invested in the manner provided in Section 16, as a special fund for the purpose of payment of all costs incidental to the construction and financing of the improvements, including paying off the Notes, payment of the principal of, premium, if any, and interest on the Bonds and payments, if any, required to be made to the United States Treasury. The Fund shall be maintained until all balances of principal and interest on the Bonds and all amounts due are fully paid. There shall be established within the Fund the following accounts:

(a) **Construction Account.** There shall be deposited to the Construction Account all proceeds received from the sale of the Bonds which are not required to be deposited to the Bancroft Bond Redemption Account together with any additional moneys appropriated by the City. All costs and expenses of making the Water Improvements and Sewer Improvements and issuing the Bonds, including paying off the Notes, which payment may be made directly without deposit into the Construction Account, shall be paid

**from time to time as incurred and allowed from the Construction Account, and the moneys in said account shall be used for no other purposes; provided, that after all claims and expenses with respect to the improvements have been duly paid and satisfied, the moneys in the Construction Account shall be used to reimburse to the general fund of the City any sums heretofore advanced from such fund to pay costs of the improvements, and if upon completion of the improvements and approval thereof by the City's engineer, there shall remain any unexpended balance in the Construction Account, such balance shall be transferred to the Bancroft Bond Redemption Account.**

**(b) Bancroft Bond Redemption Account. There shall be credited to the Series 1992 Account of the Bancroft Bond Redemption Fund (the "Bond Account") the following amounts:**

- (i) any accrued interest paid as part of the purchase price for the Bonds;**
- (ii) any funded interest on the Bonds;**
- (iii) any balance remaining in the Construction Account after completion of the Water Improvements and Sewer Improvements;**
- (iv) all collections of assessments and the interest thereon;**
- (v) the proceeds of the collection of delinquent installments or foreclosures, net of expenses; and**
- (vi) all collections from the levy of the limited tax required by Section 3 hereof.**

**Moneys in the Bancroft Bond Redemption Account shall be used only for payment of the principal of, premium, if any, and interest on the Bonds as such payments become due, or to prepay and redeem the Bonds when and as the same shall become prepayable, all pursuant to ORS 223.285 as set forth in Section 2 hereof;**

**provided that moneys other than tax revenues may be used to pay Registrar and Paying Agent fees for the Bonds.**

**The Bancroft Bond Redemption Account is designed to achieve a proper matching of revenues and debt service within each bond year. The City has made a reasonable effort to schedule payment of as much debt service as is practicable in each year before the first redemption date, of June 1, 1999. The City shall call for redemption on June 1, 1999, Bonds in sufficient amount to empty the Bond Account (taking into account scheduled principal maturity of Bonds) of all prepayments of assessments. Thereafter, the City shall annually deplete the Bond Account such that the Bond Account shall be reduced at some point during each year to an amount equal to the greater of the earnings on the Bond Account or 1/12th of the annual debt service on the Bonds.**

**Section 12. 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 Ordinance 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 provide 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 13. 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 City Council, in investments as provided in ORS Chapter 294. 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 297. The City Treasurer shall disburse moneys in the funds and accounts for the purposes of said funds and accounts only with further written authorization or direction by the City Council.**

**Section 14. 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.**

**The officers of the City are hereby authorized and directed to assist in the preparation of the Preliminary Official Statement, to review the information contained in any Preliminary Official Statement which may be prepared, and to execute and deliver the City's approval of such Preliminary Official Statement for the sale of the Bonds to be in such form as said officials shall approve as conclusively evidenced by such execution, and to take such other action to comply with Securities and Exchange Commission Rule 15c2-12. The use and public distribution of such Preliminary Official Statement by the Underwriter are hereby authorized and approved.**

**Section 15. Emergency clause. It is hereby determined that it is in the interest of the public welfare, peace and safety of the city of Brookings that this**

**ordinance be immediately adopted because the outstanding notes are due June 15, 1992, and therefore an emergency is declared to exist, and that this ordinance shall be in full force and effect from and after the date of its' passage.**

**First Reading:\_\_\_\_\_ May 11, 1992**  
**Second Reading:\_\_\_\_\_ May 11, 1992**  
**Passage:\_\_\_\_\_ May 11, 1992**  
**Effective Date:\_\_\_\_\_ May 11, 1992**

**Signed by me in authentication of its passage this \_\_\_\_\_ 12th \_\_\_\_\_ day of \_\_\_\_\_ May \_\_\_\_\_, 1992.**

\_\_\_\_\_  
**Fred Hummel**  
**Mayor**

**ATTEST:**

**Beverly S. Shields**  
**City Recorder**