

ORDINANCE NO. 5092

AN ORDINANCE OF THE CITY OF ALBANY, OREGON AUTHORIZING THE ISSUANCE AND NEGOTIATED SALE OF CERTIFICATES OF PARTICIPATION, SERIES 1994 IN AN AMOUNT NOT TO EXCEED \$3,000,000 (CITY HALL PROJECT); AUTHORIZING EXECUTION OF A CERTIFICATE PURCHASE AGREEMENT; DESIGNATING AN AUTHORIZED REPRESENTATIVE, AN UNDERWRITER, BOND COUNSEL, ESCROW AGENT, FINANCIAL ADVISOR, PAYING AGENT AND REGISTRAR; AND DECLARING AN EMERGENCY.

WHEREAS, Oregon Revised Statutes Sections 271.390 and 287.047 authorize cities to enter into lease purchase agreements and to provide for the issuance of Certificates of Participation for the financing of renovation and remodeling of new city hall building, and purchase and installation of fixtures and equipment (the "City Hall Project").

WHEREAS, the City of Albany (the "City"), has purchased from available City funds a certain building structure. The City intends to renovate, remodel and reconstruct such building for use as a municipal city hall and to finance the remodeling, reconstruction and the acquisition of fixtures and equipment by the issuance of Certificates of Participation payable pursuant to the terms of a Lease-Purchase and Escrow Agreement (the "Agreement") subject to the requirements of Section 46 of the City Charter wherein the lease payments, as the primary source of payment of the Certificates, shall be subject to annual appropriation by the City.

WHEREAS, the costs of such renovations, fixtures and equipment is estimated not to exceed \$3,000,000, including the costs of issuance of the Certificates of Participation, now, therefore

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Issuance of Certificates of Participation. The City Council of the City authorizes the issuance and negotiated sale of not to exceed \$3,000,000 Certificates of Participation, Series 1994 (the "Certificates"). The Certificates shall be issued in denominations of \$5,000 each, or integral multiples thereof, as negotiable general fund obligations of the City, subject to annual appropriation, and subject to the limitations of Article XI, Section 11b of the Oregon State Constitution. The Certificates shall bear a true effective interest rate not to exceed seven percent (7.00%) per annum payable semiannually.

Section 2. Designation of Authorized Representative. The City designates the City Manager or the Finance Director as the "Authorized Representative" of the City to negotiate the private negotiated sale of the Certificates and to determine and designate the dated date, the maturity dates,

the Certificates principal serial maturities, but not to exceed twenty (20) years, the optional redemption dates, and premiums, if any, term Certificate maturity or maturities, with or without premium and to determine the semiannual interest payment dates and such other provisions and terms of the Certificates as are deemed necessary and desirable for the issuance, sale and closing of the Certificates.

Section 3. Title and Execution of Certificates. The Certificates shall be entitled "City of Albany, Oregon, Certificates of Participation, Series 1994 (City Hall Financing) and shall bear the manual signature of the escrow agency/vendor as described in the Agreement between the City and First Interstate Bank of Oregon, N.A. as escrow agent/vendor (the "Escrow Agent"). The Certificates shall be initially issued in book-entry form with a single typewritten Certificate for each maturity and shall be issued in the registered name of the nominee of The Depository Trust Company, New York, New York in book-entry-only form. The Certificates of Participation will be issued without Certificates being made available to the bond holders.

Section 4. Book-Entry-Only System. Ownership of the Certificates shall be recorded through entries on the books of banks and broker-dealer participants and correspondents that are related to entries on The Depository Trust Company book-entry-only system. The Certificates shall be initially issued in the form of a separate, fully registered, typewritten Certificate for each maturity of the Certificates (the "Global Certificates"). Each Global Certificate shall be registered in the name of Cede & Co. as nominee (the "Nominee") of The Depository Trust Company (the "Depository") as the "Registered Owner", and such Global Certificates shall be lodged with the Depository until redemption or maturity of the Certificate issue. The Paying Agent shall remit payment for the maturing principal and interest on the Certificates to the Registered Owner for distribution by the Nominee for the benefit of the bondholder (the "Beneficial Owner" or "Record Owner") by recorded entry on the books of the Depository participants and correspondents. While the Certificates are in book-entry-only form, the Certificates will be available in denominations of \$5,000 or any integral multiple thereof.

The Authorized Representative shall file with the Depository a Letter of Representation to induce the Depository to accept the Certificates as eligible for deposit at the Depository. The Underwriter for the Certificates issue is authorized to provide the Depository with the Preliminary Official Statement, together with the completed Depository's underwriting questionnaire.

The execution and delivery of the Letter of Representation and the providing to the Depository of the Preliminary Official Statement and the underwriting questionnaire shall not in any way impose upon the City any obligation whatsoever with respect to persons having interests in the Certificates other than the Registered Owners of the Certificates as shown on the registration books maintained by the Paying Agent and Registrar. The Paying Agent and Registrar, in writing, shall accept the book-entry-only system and shall agree to take all action necessary to at all times comply with the Depository's operational arrangements for the book-entry-only system. The Authorized Representative may take all other action to qualify the Certificates for the Depository's book-entry-only system.

In the event (a) the Depository determines not to continue to act as securities depository for the Certificates, or (b) the City determines that the Depository shall no longer so act, then the City will discontinue the book-entry-only system with the Depository. If the City fails to identify another qualified securities depository to replace the Depository, the Certificates shall no longer be a book-entry-only issue but shall be registered in the registration books maintained by the Paying Agent and Registrar in the name of the Registered Owner as appearing on the registration books of the Paying Agent and Registrar and thereafter in the name or names of the owners of the Certificates transferring or exchanging Certificates in accordance with the provisions of Section 10 herein.

With respect to Certificates registered in the registration books maintained by the Paying Agent and Registrar in the name of the Nominee of the Depository, the City, and the Paying Agent and Registrar shall have no responsibility or obligation to any participant or correspondent of the Depository or to any Beneficial Owner on behalf of which such participants or correspondents act as agent for the Registered Owner with respect to:

(i) the accuracy of the records of the Depository, the Nominee or any participant or correspondent with respect to any ownership interest in the Certificates,

(ii) the delivery to any participant or correspondent or any other person, other than a Registered Owner as shown in the registration books maintained by the Paying Agent and Registrar, of any notice with respect to the Certificates, including any notice of redemption,

(iii) the selection by the Depository of the beneficial interest in Certificates to be redeemed in the event the City redeems the Certificates in part, or

(iv) the payment to any participant, correspondent or any other person other than the Registered Owner of the Certificates as shown in the registration books maintained by the Paying Agent and Registrar, of any amount with respect to principal or interest on the Certificates. Notwithstanding the book-entry-only system, the City may treat and consider the Registered Owner in whose name each Certificate is registered in the registration books maintained by the Paying Agent and Registrar as the Registered Owner and absolute owner of such Certificate for the purpose of payment of principal and interest with respect to such Certificate, or for the purpose of giving notices of redemption and other matters with respect to such Certificate, or for the purpose of registering transfers with respect to such Certificate, or for all other purposes whatsoever. The City shall pay or cause to be paid all principal of and interest on the Certificates only to or upon the order of the Registered Owner, as shown in the registration books maintained by the Paying Agent and Registrar, or their representative attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligation with respect to payment thereof to the extent of the sum or sums so paid.

Upon delivery by the Depository to the City and to the Registered Owner of a Certificate of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee then the word "Nominee" in this Ordinance shall refer to such new nominee of the

Depository, and upon receipt of such notice, the City shall promptly deliver a copy thereof to the Paying Agent and Registrar.

Section 5. Lease Purchase and Escrow Agreement. The Authorized Representative is authorized to negotiate, finalize and execute for and on behalf of the City the Agreement providing for the issuance of Certificates of Participation in an amount not to exceed \$3,000,000 to be issued to finance the renovation, remodeling and reconstruction of the building for the purposes of a new city hall and the acquisition and installation of fixtures and equipment. The Agreement shall provide that the Lease Payments shall be payable only from appropriated funds annually as set forth in the City's adopted budget for each year that Lease Payments are due and payable. The City shall be obligated to pay such Lease Payments upon appropriation therefor, but the City shall have no legal obligation to appropriate such funds. The City may grant a mortgage and security interest in the land and building and in the fixtures and equipment as security for the payment of the Lease Payments. The Escrow Agent may exercise certain remedies upon termination of the Agreement, or in the event of failure to make payment of appropriated Lease Payments, or other default of the City, the remedies may permit the Certificate of Participation holders to require the Escrow Agent to take possession of the City Hall facilities to lease, rent or sell such facilities pursuant to the terms of the Agreement provided, however, the Certificate of Participation holders may not accelerate the payment of the unappropriated Lease Payments and any funds recovered pursuant to the exercise of the remedies of default may be applied to the payment of the appropriated and unpaid Lease Payments and the non-appropriated Lease Payments for the benefit of the Certificate of Participation holders and any funds remaining after exercise of such remedies shall be distributed to the City.

In addition, the Agreement may provide for the issuance by the City of additional certificates to be issued on a parity of lien with the Certificates of Participation authorized by this Ordinance for the purposes of refunding or defeasing the Certificates or the acquisition, construction and equipping of additional city hall facilities.

The Agreement shall provide for the City to establish a Certificate of Participation Debt Service Fund to which shall be deposited appropriated funds to pay debt service due in each fiscal year for the payment of the Lease Payments maturing in such fiscal year and for the creation of a Certificate of Participation Reserve Fund to which shall be deposited funds from the proceeds of the Certificates or from other available funds of the City in an amount as may be permitted by federal law and as approved by the Authorized Representative. Such deposited funds shall additionally secure the payment of the Certificates.

Section 6. Optional Redemption. The Certificates may be subject to optional redemption at par value together with accrued interest to the date fixed for the redemption, in whole, or in part, in integral multiples of \$5,000, by lot within a maturity.

Notice of redemption shall be published as provided by law and shall be given by registered or certified mail not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption to the registered owners of each Certificate to be redeemed at the address shown on the registration books of the Paying Agent and the Registrar acting for and on behalf of the City. If the

book-entry-only system has been discontinued the Certificates are redeemable at the office of the Paying Agent and Registrar.

Section 7. Payment of the Certificates. The Certificates shall be payable upon presentation of the Certificates at maturity at the principal corporate trust office of the Paying Agent in Portland, Oregon. Payment of each installment of interest due semiannually shall be made by check or draft of the Paying Agent mailed on each interest payment date to the registered owner thereof whose name and address appears on the registration books of the City maintained by the Paying Agent as of the close of business on the 15th day of the month next preceding any interest payment date.

Section 8. Form of Certificates. The Certificates shall be issued substantially in the form as approved by the City.

Section 9. Appointment of Paying Agent and Registrar. The City designates First Interstate Bank of Oregon, N.A., Portland, Oregon, as the Paying Agent and Registrar of the Certificates. The Authorized Representative is authorized to negotiate and execute on behalf of the City the Paying Agent and Registrar Agreement. This Agreement shall provide for compliance with Oregon Administrative Rule 170-61-010. In addition, the City requests and authorizes the Paying Agent and Registrar to execute the Certificate of Authentication as of the date of delivery of the Certificates.

Section 10. Transfer of Certificates. If the book-entry system is discontinued the Certificates will be issued in printed certificate form. Then the Certificates shall be transferable, or subject to exchange, for fully registered Certificates in the denomination of \$5,000 each or integral multiples thereof by the registered owner thereof in person, or by the owner's attorney, duly authorized in writing, at the office of the Registrar. The Registrar shall maintain a record of the names and addresses of the registered owners of the Certificates. The records of the registered Certificate ownership are not public records within the meaning of Oregon Revised Statutes Section 192.410(4).

All Certificates issued upon transfer of or in exchange for Certificates shall be valid obligations of the City evidencing the same debt and shall be entitled to the same benefits as the Certificates surrendered for such exchange or transfer. All fees, expenses and charges of the Paying Agent and Registrar shall be payable by the City. The Registrar shall not be required to transfer or exchange any Certificate after the close of business on the 15th day of the month next preceding any interest payment date or transfer or exchange any Certificate called or being called for redemption.

Section 11. Printing of Certificates. If the Certificates are not in book-entry form, then the Authorized Representative is authorized to contract for the printing of the Certificates. The Authorized Representative may provide for the printing of, in addition to the original issue of Certificates, if any, additional Certificates to be printed in blank form as to registration and to be designated by appropriate number for the Registrar for delivery to the registered owner upon transfer or exchange of Certificates. The additional Certificates shall be dated as of the dated date of the original issue of the Certificates, shall be signed by the manual or facsimile signature of the Escrow Agent/Vendor and the Paying Agent and Registrar shall manually sign the Certificate of Authentication as of the date of delivery or transfer of the Certificates.

Section 12. Security for the Certificates. The Certificates represent undivided proportional ownership interest in the Lease Payments, subject to annual appropriation, payable by the City under the Agreement. The City is obligated to pay Lease Payments, as that term is defined in the Agreement, to the extent that money received from appropriated funding sources is sufficient to make such payments. The Lease Payments are payable solely from available Appropriated Funds, and to the extent that the Appropriated Funds are insufficient, the City Hall building, the parking facilities and all equipment financed with proceeds of the Certificates may be pledged as security for the Certificates. The Certificates are not secured by the full faith and credit of the City, and are not a general obligation of the City or of the Escrow Agent.

Section 13. Covenant as to Arbitrage. The proceeds of the Certificates shall be used and invested in such manner that the Certificates shall not become "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations. The City covenants that, within its lawful powers, it will not do, and will refrain from doing, anything in the issuance of the Certificates and in the investment and expenditure of the proceeds thereof which would result in the interest on the Certificates becoming taxable for federal income tax purposes.

Section 14. Designation as Qualified Tax-Exempt Obligations. The City hereby designates the Certificates for purposes of paragraph (3) of Section 265(b) of the Code as "qualified tax-exempt obligations" and covenants that the Certificates 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 tax purposes (excluding, however, private activity bonds other than qualified 501(c)(3) bonds) including the Certificates, have been or shall be issued by the City, including all subordinate entities of the City, if any, during the calendar year 1994.

Section 15. Appointment of Underwriter. The City designates and appoints Seattle-Northwest Securities Corporation as Underwriter of the negotiated sale of the Certificates.

Section 16. Appointment of Financial Advisor. The City designates Public Financial Management, Inc., in Portland, Oregon, as the Financial Advisor to the City for the issuance of the Certificates. In addition, Public Financial Management, Inc. shall evaluate the terms of the negotiated sale of the Certificates as the expert advisor.

Section 17. Appointment of Bond Counsel. Messrs. Ater Wynne Hewitt Dodson & Skerritt of Portland, Oregon are appointed Bond Counsel for the issuance of the Certificates.

Section 18. Preliminary and Final Official Statement. The City shall cause the Underwriter to prepare a preliminary official statement for the Certificates and such preliminary official statement may be distributed to prospective investors. In addition, an official statement shall be prepared by the Underwriter and ready for delivery to the purchasers of the Certificates no later than the seventh (7th) business day after the sale of the Certificates. When advised that the final official statement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make

the statements contained in the official statement not misleading in the light of the circumstances under which they are made, the Authorized Representative is authorized to certify the accuracy of the official statement on behalf of the City.

Section 19. Closing of the Sale and Delivery of the Certificates. The Authorized Representative is authorized to negotiate with the Underwriter as to the terms and conditions of a Certificate Purchase Agreement providing for the private negotiated sale of the Certificates, to execute the Certificate Purchase Agreement for and on behalf of the City and to execute such additional documents, including a Tax Certificate, and any and all other documents necessary for the sale and delivery of the Certificates as herein authorized including the approval of and execution of the Lease-Purchase and Escrow Agreement. Such acts of the Authorized Representative are for and on behalf of and are authorized by the City Council.

Section 20. Emergency. It is hereby declared that the City must proceed promptly with the sale and delivery of the Certificates in order that the remodeling, renovations and reconstruction of the acquired building commence promptly for the present lease of the existing City Hall expires April 30, 1995. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health and safety and this Ordinance shall be in full force and effect from and after its adoption by the City Council and approval by the Mayor.

ADOPTED by the City Council this 17th day of November, 1993.

APPROVED by the Mayor this 17th day of November, 1993.

By 
Mayor

ATTEST:

By 
City Recorder