

RESOLUTION NO. 5067

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALBANY, LINN AND BENTON COUNTIES, OREGON, AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX-EXEMPT FINANCING AGREEMENT, ESCROW AGREEMENT AND PURCHASE AGREEMENT AND THE RELATED NEGOTIATED SALE, EXECUTION AND DELIVERY OF REVENUE OBLIGATIONS, SERIES 2004 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,000,000 TO FINANCE OR REFINANCE THE CONSTRUCTION, DESIGN AND EQUIPPING OF A PUBLIC SWIMMING POOL; AUTHORIZING THE PREPAYMENT AND/OR DEFEASANCE OF A LEASE PURCHASE AND ESCROW AGREEMENT RELATING TO THE CITY OF ALBANY, OREGON, CERTIFICATES OF PARTICIPATION, SERIES 1994, CITY HALL PROJECT; DESIGNATING AUTHORIZED REPRESENTATIVES AND DELEGATING RESPONSIBILITIES; AND RELATED MATTERS.**

THE CITY COUNCIL OF THE CITY OF ALBANY, LINN AND BENTON COUNTIES, OREGON (THE "CITY") DOES RESOLVE AS FOLLOWS:

**Section 1: Findings.** The City Council (the "Council") finds:

a. The City is authorized pursuant to Oregon Revised Statutes ("ORS") Section 271.390, the laws of the State of Oregon and the City Charter to enter into financing agreements, lease-purchase agreements or other contracts of purchase for any real or personal property that the Council determines is needed and to provide for the issuance of certificates of participation in the payment obligations of the City under such financing agreements, lease-purchase agreements or other contracts of purchase; and

b. It is in the best interests of the City to authorize the execution and delivery of a Tax-Exempt Financing Agreement (the "Financing Agreement"), an Escrow Agreement (the "Escrow Agreement") and a Purchase Agreement (the "Purchase Agreement") which provide the terms for the execution, delivery and sale of certificates of participation evidencing payments under the Financing Agreement and which are secured solely by revenues and not by any property taxes; and

c. It is in the best interests of the City to authorize and cause the prepayment and/or defeasance of certain of the City's payment obligations under the Lease Purchase and Escrow Agreement, relating to the City of Albany, Oregon, Certificates of Participation, Series 1994, City Hall Project, dated as of January 1, 1994 (the "1994 Lease Purchase Agreement") to achieve debt service savings and to effect favorable reorganization of the debt structure of the City; and

d. It is also in the best interests of the City to authorize and cause the prepayment and/or defeasance of certain of the principal components payable under the certificates of participation executed and delivered pursuant to the 1994 Lease Purchase Agreement (the "1994 Obligations") to achieve debt service savings and to effect favorable reorganization of the debt structure of the City; and

e. The City intends use the proceeds of the Financing Agreement to finance or refinance all or a portion of the following projects (collectively, the "Project"):

1. Construction, design and equipping of a public swimming pool and related buildings;
2. Prepayment and/or defeasance of the City's remaining payment obligations under the 1994 Lease Purchase Agreement and prepayment and/or defeasance of the related

certificates of participation that become due and payable on or after January 1, 2005;  
and

3. Costs related to the execution and delivery of the Revenue Obligations, Series 2004 (the "2004 Obligations").

f. The City adopts this Resolution to provide the terms under which the City may enter into the Financing Agreement, the Escrow Agreement and the Purchase Agreement; to provide the terms of execution, delivery and sale of the 2004 Obligations evidencing and representing the payment obligations of the City under the Financing Agreement; to provide the terms of the prepayment and/or defeasance of the City's payment obligations under the 1994 Lease Purchase Agreement and the prepayment and/or defeasance of the certificates of participation that evidence and represent the City's payment obligations under the 1994 Lease Purchase Agreement; and to authorize certain officials and employees of the City to take action on the City's behalf.

## **Section 2: Authorization of the 2004 Obligations and Related Agreements:**

The City hereby authorizes the execution and delivery of the Financing Agreement, the Purchase Agreement, the Escrow Agreement and related documents and the execution and delivery of the 2004 Obligations by the Escrow Agent, designated in Section 16 hereof, in an aggregate principal amount not to exceed Four Million Dollars (\$4,000,000.00). The proceeds of the 2004 Obligations received by the City pursuant to the terms of the Financing Agreement and the Escrow Agreement shall be used to pay all or a portion of the costs of the Project. The 2004 Obligations shall become due and payable no later than December 31, 2020. The true interest cost of the 2004 Obligations shall not exceed five percent (5%) per annum. The 2004 Obligations shall be subject to a book-entry only system of ownership and transfer as provided in Section 7 hereof.

The remaining terms of the 2004 Obligations, the Financing Agreement, the Purchase Agreement, the Escrow Agreement and the various other documents relating to the execution and delivery of the 2004 Obligations, the prepayment and/or defeasance of the City's payment obligations under the 1994 Lease Purchase Agreement and the prepayment and/or defeasance of the related certificates of participation shall be established as provided in Section 10 hereof.

The City hereby authorizes the negotiated sale of the 2004 Obligations to Seattle-Northwest Securities Corporation ("Seattle-Northwest") on terms to be established as provided in Section 10 hereof.

**Section 3: Authorized Representative.** The City authorizes and directs the City Manager, the Assistant City Manager/Chief Financial Officer or their designee (each, an "Authorized Representative") to act on behalf of the City and execute and deliver the Financing Agreement, the Escrow Agreement, the Purchase Agreement and other documents related to the execution and delivery of the 2004 Obligations and to determine the remaining terms of the 2004 Obligations to be established as provided in Section 10 hereof.

**Section 4: Security.** The City's payment obligations under the Financing Agreement (the "Financing Payments") shall be payable from any unobligated, non-property tax revenues legally available to the City designated for that purpose. The Financing Payments shall not be a general obligation of the City and shall not be payable from any property taxes. Payment of the Financing Payments shall not be subject to annual appropriation. The registered owners (the "Registered Owners") of the 2004 Obligations shall not have a lien on or security interest in the Project or any other property of the City except as expressly set forth in the Financing Agreement, the Escrow Agreement or the 2004 Obligations.

**Section 5: Form of Obligations.** The 2004 Obligations shall be prepared in book-entry only form by Bond Counsel in substantially the form approved by the Escrow Agent. The 2004 Obligations may be printed or typewritten.

**Section 6: Authentication, Registration, Payment, Exchange and Transfer.**

a. None of the 2004 Obligations shall be entitled to any right or benefit under this Resolution unless an authorized officer of the Registrar (the "Registrar") shall have authenticated it. The date of authentication shall be the date the Registered Owner's name is listed on the register for the 2004 Obligations (the "Register").

b. All 2004 Obligations shall be in registered form. The Registrar shall authenticate all 2004 Obligations to be delivered on the closing date of the transaction and shall additionally authenticate all 2004 Obligations properly surrendered for exchange or transfer pursuant to this Resolution.

c. The ownership of all 2004 Obligations shall be entered in the Register maintained by the Registrar, and the City and the Registrar may treat the person listed as owner in the Register as the owner of the Certificate for all purposes.

d. The Registrar shall mail or cause to be delivered the amount due under each Certificate to the registered owner at the address appearing on the Register on the fifteenth (15th) day of the month preceding the 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 payment.

e. The 2004 Obligations may be exchanged for certificates representing the same aggregate principal component payment amounts with the same principal payment date in different authorized denominations, and the 2004 Obligations may be transferred to other owners if the Registered Owners submit the following to the Registrar:

(1) 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

(2) the 2004 Obligations to be exchanged or transferred.

f. The Registrar shall not be required to exchange or transfer any 2004 Obligations submitted to it during any period beginning with a Record Date and ending on the next following payment date; however, such 2004 Obligations shall be exchanged or transferred promptly following that payment date.

g. The Registrar shall not be required to exchange or transfer any 2004 Obligations that have been designated for prepayment if such 2004 Obligations are submitted to the Registrar during the fifteen (15) -day period preceding the designated prepayment date.

h. For purposes of this section, 2004 Obligations shall be considered submitted to the Registrar on the date the Registrar actually receives the materials described in subsection e. of this Section 6.

i. In the event any 2004 Obligation is mutilated, lost, stolen or destroyed, the Registrar may issue a new 2004 Obligation of like principal payment date, interest component and denomination if the

asserted owner of such 2004 Obligation provides to the Registrar and the City an affidavit, certificate or other reliable proof that the Registrar or the City reasonably finds protects the City from conflicting claims for payment under the 2004 Obligations. Pursuant to ORS 288.435, the Registrar may waive the requirements of ORS 288.420 and the City may waive the requirements of ORS 288.430 with respect to the 2004 Obligations.

j. The City may alter these provisions regarding registration, exchange and transfer by mailing notification of the altered provisions to all Registered Owners and the Registrar. 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 7: Book-Entry System.**

During any time that the 2004 Obligations are held in a book-entry only system (the "Book-Entry System"), the registered owner of all of the 2004 Obligations shall be The Depository Trust Company, New York, New York ("DTC"), and the 2004 Obligations shall be registered in the name of Cede & Co., as nominee for DTC. The City has entered into or shall enter into a Blanket Issuer Letter of Representations (the "Letter") wherein the City represents that it will comply with the requirements stated in DTC's Operational Arrangements as they may be amended from time to time.

Under the Book-Entry System, the 2004 Obligations shall be initially executed and delivered in the form of a single fully registered certificate, one for each maturity of the 2004 Obligations. Upon initial execution and delivery, the ownership of such 2004 Obligations shall be registered by the Registrar on the registration books in the name of Cede & Co., as nominee of DTC. The City and the Registrar may treat DTC (or its nominee) as the sole and exclusive registered owner of the 2004 Obligations registered in its name for the purposes of payment of the principal component evidenced and represented by such 2004 Obligations, prepayment price of, and premium, if any, or interest component evidenced and represented by the 2004 Obligations, selecting the 2004 Obligations or portions thereof to be redeemed, if any, giving notice as required under this Resolution, registering the transfer of 2004 Obligations, obtaining any consent or other action to be taken by the owners and for all other purposes whatsoever; and neither the Registrar nor the City shall be affected by any notice to the contrary. The Registrar shall not have any responsibility or obligation to any person claiming a beneficial ownership interest in the 2004 Obligations under or through DTC or any Participant, or any other person which is not shown on the registration books of the Registrar as being a registered owner, with respect to the accuracy of any records maintained by DTC or any Participant; the payment by DTC or any Participant of any amount in respect of the principal component evidenced and represented by or prepayment price of or interest component evidenced and represented by the 2004 Obligations; any notice or direction which is permitted or required to be given to or received from owners under this Resolution or the 2004 Obligations; the selection by DTC or any DTC Participant of any person to receive payment in the event of a partial prepayment of the 2004 Obligations; or any consent given or other action taken by DTC as owner; nor shall any DTC Participant or any such person be deemed to be a third party beneficiary of any owners' rights under this Resolution or the 2004 Obligations. The Registrar shall pay from moneys available under the Escrow Agreement all principal components evidenced and represented by and premium, if any, and interest components evidenced and represented by the 2004 Obligations only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations under the Financing Agreement and the Registrar's obligations under the Escrow Agreement and the 2004 Obligations with respect to the principal components evidenced and represented by and premium, if any, and interest evidenced and represented by the 2004 Obligations to the extent of the sum or sums so paid. So long as the 2004 Obligations are held in the Book-Entry System, no person other than DTC shall receive an authenticated 2004 Obligation for each separate stated principal

component payment date evidencing the obligation of the Registrar to make payments of principal components evidenced and represented by the 2004 Obligations and premium, if any, and interest components evidenced and represented by the 2004 Obligations pursuant to this Resolution. Upon delivery by DTC to the Registrar of DTC's written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions of this Resolution with respect to transfers of 2004 Obligations, the term "Cede & Co.," in this Resolution shall refer to such new nominee of DTC.

At any time it determines that it is in the best interests of the owners, the City may notify the Registrar, and the Registrar will subsequently notify DTC, whereupon DTC will notify the DTC Participants, of the availability through DTC of 2004 Obligations. In such event, the Registrar shall issue, transfer and exchange, at the City's expense, 2004 Obligations as requested in writing by DTC in appropriate amounts. DTC may determine to discontinue providing its services with respect to the 2004 Obligations at any time by giving written notice to the Registrar and discharging its responsibilities with respect thereto under applicable law. If DTC resigns as securities depository for the 2004 Obligations, such 2004 Obligations shall be delivered pursuant to this section. Under such circumstances (if there is no successor securities depository), the Registrar shall be obligated to deliver 2004 Obligations as described in this Resolution, provided that the expense in connection therewith shall be paid by the City. In the event 2004 Obligations are executed and delivered, the provisions of this Resolution shall apply to, among other things, the transfer and exchange of such 2004 Obligations and the method of payment of principal components evidenced and represented by the 2004 Obligations, premium, if any, and interest components evidenced and represented by such 2004 Obligations. Whenever DTC requests the Registrar to do so, the Registrar will cooperate with DTC in taking appropriate action after written notice (a) to make available one or more separate certificates evidencing the 2004 Obligations to any DTC Participant having 2004 Obligations credited to its DTC account, or (b) to arrange for another securities depository to maintain custody of certificates evidencing the 2004 Obligations.

**Section 8: Optional and Mandatory Prepayment.** Amounts payable by the City under the Financing Agreement and amounts payable under the 2004 Obligations may be subject to optional prepayment and mandatory prepayment prior to stated principal component payment dates as determined by the Authorized Representative pursuant to Section 10 hereof.

**Section 9: Tax-Exempt Status and Covenant as to Arbitrage.** The City covenants to use the proceeds of the Financing Agreement and the facilities financed or refinanced with the proceeds of the Financing Agreement, and to otherwise comply with the provisions of the Code so that interest components paid pursuant to any of the 2004 Obligations designated as tax-exempt pursuant to Section 10 hereof will not be includable in gross income of the Registered Owners of such 2004 Obligations for federal income tax purposes. The City specifically covenants:

- a. To comply with "arbitrage" provisions of Section 148 of the Code, and to pay any required rebates; and
- b. To operate the Project or to cause the Project to be operated so that any 2004 Obligations designated as tax-exempt are not "private activity bonds" under Section 141 of the Code; and
- c. Comply with all reporting requirements.

**Section 10: Delegation for Establishment of Terms and Sale of the Obligations.** Each Authorized Representative is hereby authorized and directed, on behalf of the City without further approval of the City Council to:

- a. establish the principal and interest component payment dates, principal component amounts, optional and mandatory prepayment provisions, if any, interest component amounts, premiums and discounts, denominations and all other terms for the Financing Agreement and the 2004 Obligations;
- b. negotiate the terms with Seattle-Northwest under which the 2004 Obligations shall be sold and to enter into a Purchase Agreement for the sale of the 2004 Obligations;
- c. select the principal components payable under the 1994 Lease Purchase Agreement to be prepaid by the City, cause such principal components to be irrevocably called for prepayment on a date approved by an Authorized Representative, cause notice of prepayment to be given as required by the 1994 Lease Purchase Agreement, cause such principal components to be prepaid and/or take any action required to cause the principal components payable under the 1994 Lease Purchase Agreement to be defeased pursuant to the terms of the 1994 Lease Purchase Agreement;
- d. select the principal components of the 1994 Obligations to be prepaid, cause such principal components to be irrevocably called for prepayment on a date approved by an Authorized Representative, cause notice of prepayment to be given to the holders of the 1994 Obligations as required by the 1994 Lease Purchase Agreement, cause such principal components to be prepaid and/or take any action required to cause the 1994 Obligations to be defeased pursuant to the terms of the 1994 Lease Purchase Agreement;
- e. negotiate the terms of, and execute and deliver the Financing Agreement and the Escrow Agreement;
- f. appoint an escrow agent (the "Escrow Agent") for the 2004 Obligations;
- g. approve and authorize the preparation and distribution of preliminary and final official statements relating to the 2004 Obligations;
- h. obtain ratings on the 2004 Obligations if determined by the Authorized Representative to be in the best interest of the City;
- i. approve the form of the 2004 Obligations and take such actions as are necessary to qualify the 2004 Obligations for the book-entry system of The Depository Trust Company;
- j. apply for and negotiate the terms of municipal bond insurance for the 2004 Obligations if in the best interest of the City as determined by the Authorized Representative, and if purchased, direct expenditure of Obligation proceeds to pay any bond insurance premium and to execute and deliver any insurance commitment or insurance agreement determined by the Authorized Representative to be in the best interest of the City and in pursuant to Section 11 hereof;
- k. make any covenants necessary or desirable to obtain favorable financing terms for the 2004 Obligations and to secure the City's payment obligations under the Financing Agreement with a revenue pledge of the City;

l. approve, execute and deliver closing documents and certificates relating to the execution and delivery of the Financing Agreement, the Escrow Agreement, the Purchase Agreement and the 2004 Obligations;

m. enter into covenants regarding the use of the proceeds of the 2004 Obligations received by the City pursuant to the Financing Agreement and the use of the Project to maintain the tax-exempt status of the 2004 Obligations;

n. approve, execute and deliver a Continuing Disclosure Certificate pursuant to the Securities and Exchange Commission Rule 15c2-12, as amended (17 C.F.R. § 240.15c2-12 (the "Rule");

o. if market conditions require and if the Authorized Representative determines based on the advice of Seattle-Northwest that it is necessary for the sale of the 2004 Obligations, fund a debt service reserve account with the proceeds of the 2004 Obligations or such other funds as may be available or to provide a debt service reserve surety in lieu of funding the debt service reserve account with proceeds of the 2004 Obligations or such other funds;

p. execute and deliver a certificate specifying the action taken pursuant to this Section 10, and any other certificates, documents or agreements that an Authorized Representative determines are desirable to execute, sell and deliver the 2004 Obligations in accordance with this Resolution.

#### **Section 11: Provisions Relating to Bond Insurance.**

"Bond Insurer" means the provider of a Bond Insurance Policy. "Bond Insurance Policy" means a municipal bond insurance policy insuring the payment of principal components and interest components payable under all or select 2004 Obligations. The provisions of this Section 11 shall apply to the Bond Insurer in the event and to the extent provided in an Authorized Representative's closing certificate with respect to the 2004 Obligations insured by such Bond Insurer, so long as (i) its Bond Insurance Policy is in effect, (ii) the Bond Insurer has not asserted that its Bond Insurance Policy is not in effect, (iii) the Bond Insurer is not in default thereunder, (iv) the Bond Insurer is not insolvent, and (v) the Bond Insurer has not waived any such rights; provided, that, notwithstanding the foregoing, such rights shall continue with respect to amounts previously paid and due and owing the Bond Insurer.

a. Any amendment to this Resolution requiring the consent of Owners of the 2004 Obligations or the portion thereof secured by a Bond Insurance Policy (the "Insured 2004 Obligations") shall also require the prior written consent of the Bond Insurer with respect to such Insured 2004 Obligations.

b. Any amendment to this Resolution not requiring the consent of Owners of the Insured Bonds shall require the prior written consent of the Bond Insurer with respect to such Insured 2004 Obligations if its rights shall be materially and adversely affected by such amendment.

c. Pursuant to the provisions of the Financing Agreement regarding defaults and remedies, if an Event of Default (as defined in the Financing Agreement) shall have occurred and be continuing, the Bond Insurer with respect to the Insured 2004 Obligations shall be deemed to be the Owner of such Insured 2004 Obligations in connection with any consent or direction, appointment, request or waiver to be provided thereunder.

d. The Bond Insurer with respect to the Insured 2004 Obligations shall have the right to institute any suit, action or proceeding at law or in equity under the same terms as an Owner of such Insured 2004 Obligations in accordance with this Resolution and the Escrow Agreement.

e. The Bond Insurer shall, to the extent it makes any payment of principal components or interest components pursuant to the Insured 2004 Obligations it insures, become subrogated to the rights of the recipients of such payments in accordance with the terms of its Bond Insurance Policy.

f. Principal components and/or interest components paid by a Bond Insurer under its Bond Insurance Policy shall not be deemed paid for purposes of this Resolution, the Financing Agreement and the Escrow Agreement, and the Insured 2004 Obligations with respect to which such payments were made shall remain Outstanding and continue to be due and owing until paid by the City in accordance with this Resolution, the Financing Agreement and the Escrow Agreement.

g. In the event of any defeasance of the Insured 2004 Obligations, the City shall provide the applicable Bond Insurer with copies of all documents as required to be delivered to the Registrar under this Resolution, the Financing Agreement and the Escrow Agreement.

h. The City shall not discharge this Resolution unless all amounts due or to become due to the Bond Insurer have been paid in full or duly provided for.

**Section 12: Notices to the Bond Insurer; Payment Procedures.**

a. The City shall send or cause to be sent to the Bond Insurer copies of notices required to be sent to Owners or the Paying Agent pursuant to this Resolution or the Escrow Agreement.

b. The City shall observe and perform any payment procedures under the Bond Insurance Policy required by the Bond Insurer as a condition to the issuance and delivery of such Bond Insurer's Bond Insurance Policy.

**Section 13: Continuing Disclosure.** The City shall undertake in the Continuing Disclosure Certificate for the benefit of registered owners of the 2004 Obligations to provide to each Nationally Recognized Municipal Securities Information Repository ("NRMSIRs"), and if and when one is established, the State Information Depository ("SID"), on an annual basis on or before 270 days after the end of each fiscal year, commencing with the fiscal year ending June 30, 2005, the information required pursuant to paragraph (b)(5)(i)(A), (B) and (D) of the Rule. In addition, the City will undertake for the benefit of the registered owners of the 2004 Obligations to provide in a timely manner to the NRMSIRs or to the Municipal Securities Rulemaking Board ("MSRB") notices of certain material events required to be delivered pursuant to paragraph (b)(5)(i)(C) of the Rule. The City reserves the right to make any required filing by using the Disclosure USA website maintained by the Municipal Advisory Council of Texas, or any similar system that is acceptable to the SEC.

**Section 14: Defeasance.** The City may defease its obligations under the Financing Agreement by setting aside, with a duly appointed escrow agent, in a special escrow account irrevocably pledged to the payment of the principal and interest components of the Financing Agreement to be defeased, cash or direct obligations of the United States of America, including obligations of any federal agencies to the extent they are unconditionally guaranteed by the United States of America, in an amount which, in the opinion of a nationally recognized expert in the field of mathematical calculations relating to tax-exempt obligations, is sufficient without reinvestment to pay all principal components and interest components of the defeased Financing Agreement until the principal payment date or any earlier prepayment date. The obligations of the City under the Financing Agreement that have been defeased pursuant to this Section shall be deemed paid and no longer outstanding, and shall cease to be entitled to any lien, benefit or security under this Resolution, the Financing Agreement or the Escrow Agreement except the right to receive payment from such special escrow account.



**Section 15: Appointment of Special Counsel.** The City hereby appoints Orrick, Herrington & Sutcliffe LLP of Portland, Oregon, as special counsel to the City with respect to the 2004 Obligations.

**Section 16 Effective Date of Resolution.** This Resolution shall take effect immediately upon its adoption by the City Council.

DATED AND EFFECTIVE by the City Council of the City of Albany, Linn and Benton Counties, Oregon, this 1st day of December, 2004.

**CITY OF ALBANY,  
LINN AND BENTON COUNTIES, OREGON**

By:

  
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Council President

ATTEST

By:

  
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City Clerk