

ORDINANCE NO. 222

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF CITY OF GARIBALDI, IN TILLAMOOK COUNTY, OREGON GENERAL OBLIGATION INSTALLMENT SEWER BOND NO. 1 IN AN AMOUNT NOT TO EXCEED \$670,000 TO THE UNITED STATES OF AMERICA ACTING THROUGH THE UNITED STATES DEPARTMENT OF AGRICULTURE FOR THE PURPOSE OF PROVIDING A PORTION OF THE COSTS OF ACQUISITION, CONSTRUCTION, IMPROVEMENT AND EXTENSION OF A SEWER SYSTEM WITHIN AND WITHOUT THE BOUNDARIES OF THE CITY; PROVIDING FOR THE FORM AND TERMS OF SAID BOND, AUTHORIZING THE PAYMENT OF SAME, AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Garibaldi, in Tillamook County, Oregon (the "City"), has been duly authorized by a majority vote at an election held March 28, 1995, to issue a sewer bond in an amount not to exceed the sum of \$670,000, in excess of any existing bond issue, for the acquisition, construction, extension and improvement of a municipal Sewer system within and without the City, hereinafter called "Facility", and,

WHEREAS, the City staff has been directed to proceed in accordance with law to issue this bond, and concurrently therewith and subsequent thereto the City has commenced negotiations with the United States of America, acting through the United States Department of Agriculture, hereinafter called "Government," for financial assistance to construct said Facility, and,

WHEREAS, said Government has indicated a desire to consider said financial assistance and as a result, it is necessary to cause the execution and delivery of this installment bond or other evidence of indebtedness to secure any loan or loans made, or insured, by the Government and to comply with any requirements, terms, and conditions prescribed by the Government or by Government regulations and to execute contracts or enter into agreements and to take any and all other action as may be necessary, incidental or appropriate to finance, construct, complete, equip, extend or improve the Facility for and on behalf of the City; now, therefore,

City of Garibaldi in Tillamook County, Oregon, ordains as follows:

1. It is necessary to defray a portion of the costs of constructing and equipping the Facility by obtaining a loan made by the Government in accordance with the applicable provisions of the Rural Development Act of 1972, it being determined by the Government that the City is unable to obtain sufficient credit elsewhere to finance the Facility taking into consideration prevailing private and cooperative rates and terms concurrently available.

2. That the City borrow \$670,000 and issue as evidence thereof General Obligation Installment Sewer Bond for the full principal amount of the loan. The bond shall be dated with the date of delivery thereof, and shall be in substantially the following form:

United States of America
State of Oregon
Tillamook County
City of Garibaldi

General Obligation Installment Sewer Bond No. 1

KNOW ALL MEN BY THESE PRESENTS: The City of Garibaldi, in Tillamook County, Oregon, hereinafter called the "Borrower", hereby acknowledges itself indebted and for value received, promises to pay to the order of the United States of America, acting through the United States Department of Agriculture, hereinafter called the "Government," the principal sum of Six Hundred Seventy Thousand Dollars (\$670,000), plus interest on the unpaid principal balance at the rate of 5.125% per annum. The said interest shall be payable in the following installments on or before the following dates:

The sum of \$39,718 on the 27th day of September, 1996, and the sum of \$39,718 annually thereafter on the 27th day of September until the principal and said interest are fully paid, except that the final installment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable forty (40) years from the date of this bond.

All or part of the outstanding bond installments may be paid in inverse order on any interest payment date without premiums.

This bond shall be registered as to principal and interest in the name of the United States of America in an appropriate book in the Office of the Recorder of the Borrower, each registration to be noted on the back hereof by said Recorder and no transfer hereof shall be valid unless made on said book and similarly noted on the back hereof.

Both the principal and interest shall be paid to the United States of America as such registered holder at the Office of the Rural Development serving Tillamook County, Oregon.

This bond is a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

Default hereunder shall constitute default under any other instrument evidencing a debt of Borrower owing to or insured by the Government or securing or otherwise relating to such a debt, and default under any other such instrument shall constitute default hereunder upon default and the Government in its option may declare all or any part of said indebtedness immediately due and payable.

This bond is given as evidence of a loan to Borrower made by the Government pursuant to the Rural Development Act of 1972, as amended, and shall be subject to the present

regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

This bond is authorized and issued by virtue of the majority vote of the legal voters of Borrower, voting at an election called and held on the 28th day of March, 1995, and by virtue of Ordinance No. 222, duly adopted on September 16, 1996, and pursuant to the Constitution and Laws of the State of Oregon, and laws amendatory thereof and supplemental thereto.

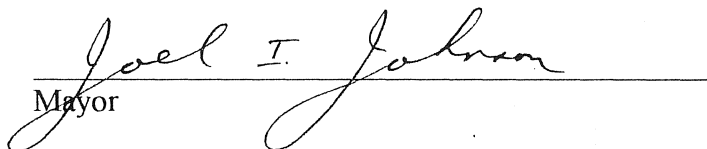
This bond with interest thereon, is a general obligation of Borrower and in addition is payable as to principal and interest from the unobligated net revenues of the sewer facilities of said Borrower. For the punctual payment of the principal of this bond with interest thereon as aforesaid, the full faith and credit of Borrower are hereby irrevocably pledged.

This bond is exchangeable at the sole expense of the Borrower at any time, upon ninety (90) days' written notice, at the request of the registered owner hereof, and upon surrender of this bond to Borrower at the Office of the Recorder of the Borrower for registered bonds of the denomination of \$5,000.00 each, or integral multiples thereof, in the aggregate principal amount equal to the unpaid principal amount of this bond, and bearing interest on the unpaid principal balance at the rate of five and one hundred twenty-five thousandths percent (5.125%) per annum.

It is hereby certified and declared that all acts, conditions and things required to exist, happen, and be performed precedent to and in the issuance of this bond have existed, have happened, and have been performed in due time, form and manner as required by law, that the amount of this bond, together with all obligations of the Borrower does not exceed any limits prescribed by the Constitution and Statutes of the State of Oregon and resolutions and ordinances of Borrower.

IN WITNESS WHEREOF, the City of Garibaldi, in Tillamook County, Oregon, has caused this bond to be manually signed by the Mayor of the City Council of the City and attested by the Recorder of said City, all on the 27th day of September, 1996.

City of Garibaldi
Tillamook County, Oregon



Mayor

Attest:



Recorder

[The following registration certificate to be printed as a separate page.]

Installment Bond No. 1 Registration Certificate

Date: September 27, 1996

Registered in name of:

**United States of America,
acting through the United States Department of Agriculture**

Recorder

3. The unobligated net revenues of the Facility, after payment of the ordinary operation and maintenance expenses thereof, hereby is pledged to the payment of the principal of and interest upon the said bond.

The City Council of said City, each year, shall include in the General Tax Levy of the City a special levy sufficient with other moneys available therefor, to pay promptly when due, the principal of and interest upon said bond.

The funds derived from such sources shall be carried by the Recorder of the City in a separate book account to be designated City of Garibaldi Sewer Bond Fund and shall be expended only in the payment of the principal of and interest on said City of Garibaldi, in Tillamook County, Oregon General Obligation Installment Sewer Bond No. 1, until all of said obligations and any that may be issued to refund them have been fully paid and redeemed or until the provisions for payment or redemption thereof has been made.

4. The Recorder shall be the custodian of all funds of the Facility and all funds shall be deposited in a bank which is a member of the Federal Deposit Insurance Corporation. The Recorder shall execute a Fidelity Bond in an amount not less than \$40,000 with a surety company approved by the Government and the United States of America shall be named as obligee in such bond and the amount thereof shall not be reduced without the prior written consent of Government. The Recorder is hereby directed to establish the following accounts into which the current funds of the Facility bond proceeds, the revenues from the Facility and other income shall be deposited which accounts shall be continually maintained, except as otherwise provided, so long as the bond hereby authorized remains unpaid.

a. Construction Account. The proceeds of the bond hereby authorized and any interim financing acquired shall be deposited in the Construction Account. Amounts in the Construction Account exceeding \$100,000.00 shall be secured by the depository bank in advance in accordance with State and Federal law. Withdrawal from the Construction Account shall be made only by check signed by the Recorder as authorized by the City Council, countersigned by the Mayor or other authorized City official and only for the purposes for which said bond was signed as specified in the estimate of costs. The City's share of any liquidated damages and other moneys paid by defaulting contractors of their sureties will be deposited in the Construction Account to assure completion of the project. When the construction of the Facility has been completed or all construction costs have been paid for in full, any balance remaining in the Construction Account shall be used to pay outstanding installments on the bond in inverse order without premium. The Construction Account shall then be closed.

b. Revenue Account. As soon as the Facility becomes revenue producing, the gross revenues shall be set aside into a separate account to be designated the Revenue Account, and moneys so deposited therein shall be expended and used only in the manner and order as follows:

i. Operations and Maintenance Account (bookkeeping account). There shall be set aside and deposited each month, before any other expenditures

therefrom, a sufficient portion of the moneys in the Revenue Account to pay the reasonable and necessary current expenses of operating and maintaining the Facility for the current month.

- ii. Debt Service Account (bookkeeping account). After the transfer required in item i. above, there shall be transferred each month from the Revenue Account, before any other expenditures or transfer therefrom, and deposited in the Debt Service Account for payment of the annual installment of the bond, a sum equal to at least one-twelfth of the annual installment becoming due on the next succeeding 27th day of September. If the City for any reason shall fail to make such monthly deposit, then an amount equal to the deficiency shall be set apart and deposited in the Debt Service Account out of the gross revenues in the ensuing month or months, which amount shall be in addition to the regular monthly deposit required during each succeeding month or months.

Whenever there shall accumulate in the Debt Service Account amounts in excess of the requirements during the next twelve months for paying principal and interest on outstanding bond installments, and in the Operation and Maintenance Account and the Reserve Account hereinafter established, amounts in excess of the requirements thereof, such excess may be used by the City to make prepayments on the bond.

5. The City covenants and agrees that so long as the bond hereby remains unpaid:

- a. It will indemnify the Government for any payments made or losses suffered by the Government as a result of or in connection with the Facility.

- b. It will comply with applicable State laws and regulations and continually operate and maintain the Facility in good condition.

- c. It will impose and collect such rates and charges for use of the Facility that gross revenues will be sufficient at all times to provide for the operation and maintenance thereof and the payments on the bond hereby authorized and the maintenance of the various funds herein created; that all use of the Facility shall be subject to the full rates prescribed in the rules and regulations of the City; and that no free use of the Facility will be permitted.

- d. It will maintain complete books and records relating to the operation of the Facility and its financial affairs and will cause such books and records to be audited annually at the end of each fiscal year and an audit report prepared, and will furnish Government, without request, a copy of each annual audit report. At all reasonable times Government shall have the right to inspect the Facility and the records, account and data of the City relating thereto.

e. It will maintain such insurance coverage as may be required by Government.

f. It will not borrow money from any source or enter into any contract or agreement or incur any other liabilities in connection with making extensions or improvements to the Facility exclusive of normal maintenance without obtaining the prior written consent of the Government.

g. It will not dispose of or transfer its title to the Facility or any part thereof, including lands and interest in lands, by sale, mortgage, lease, or other encumbrance, without obtaining prior written consent of Government.

h. It will cause to be levied and collected such taxes as may be necessary to operate and maintain the Facility in good condition and meet payments on this bond when the same become due if, for any reason, gross revenues are insufficient.

i. It covenants for the benefit of the owners of the bond to comply with all provisions of the Internal Revenue code of 1986, as amended (the "Code") which are required for bond interest to be excluded from gross income for federal income tax purposes, except for certain taxes on corporations, unless the City obtains an opinion of nationally recognized bond counsel that such compliance is not required for the interest paid on the bond to be so excluded. The City makes the following specific covenants with respect to the Code:

i. The City shall not take any action or omit any action, if it would cause the bond to become an "arbitrage bond" under Section 148 of the Code and shall pay any rebates to the United States which are required by Section 148(f) of the Code.

ii. The City shall operate the Facility financed with the bond so that the bond is not a "private activity bond" within the meaning of Section 141 of the Code.

6. If at any time it shall appear to the Government that the City is able to refinance the amount of the bond then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the City will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

7. The City hereby designates the bond as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code. The City covenants not to so designate tax-exempt obligations in the current calendar year in an aggregate amount of more than \$10,000,000. The City (and all subordinate entities thereof, if any) does not reasonably expect to issue more than \$10,000,000 of tax-exempt obligations during the current calendar year.

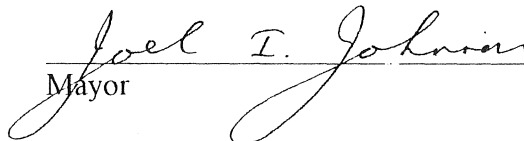
8. The City has general taxing powers. No portion of the bond proceeds will be used to finance property which is used in the trade or business of nongovernment, or is loaned to nongovernments. The bond is not a "private activity bond" within the meaning of Section 141 of the Code. At least ninety-five percent of the net proceeds of the bond will be used for financing Sewer system improvements which will be owned and operated by the City. The City (and all subordinate entities thereof, if any) does not reasonably expect to issue tax-exempt obligations in calendar year 1996 which have an aggregate face amount of more than \$5,000,000. Accordingly, under Section 148(f)(4)(c) of the Code, no rebate to the United States is required to be paid in connection with the bond.

9. The Mayor and the Recorder are hereby authorized and directed to execute for and on behalf of the City, Form FmHA 400-1, "Equal Opportunity Agreement," Form FmHA 400-4, "Assurance Agreement," as required by the provisions of Title VI of the Civil Rights Act of 1964, Form FmHA 1942-47, "Loan Resolution," Form FmHA 442-21, "Right-of-Way Certificate," Form FmHA 1942-46, "Letter of Intent to Meet Conditions," Form FmHA 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts," Form FmHA 1924-18, "Partial Payment Estimate," Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions," Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," and if an FmHA development grant is involved, Form FmHA 1942-31, "Association Water or Sewer System Grant Agreement," and Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements.

10. The City Council desires and deems it necessary and advisable for the immediate preservation of the health, peace, and safety of the City that this Ordinance become effective at once, for the reason that the Sewer facilities of said City are inadequate to meet its needs and plans for the acquisition, construction, extension improvements must be commenced at once in order to be ready for use as soon as possible and, therefore, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its passage and approval.

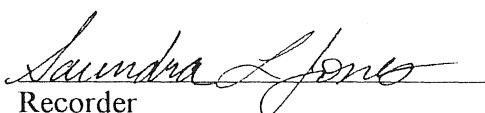
PASSED by the Board the 16th day of September, 1996

City of Garibaldi
Tillamook County, Oregon



Mayor

Attest



Recorder