

ORIGINAL

ORDINANCE NO. 1950

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, PROVIDING FOR THE ISSUANCE OF ITS LOCAL IMPROVEMENT DISTRICT NO. 91-OW-55 BOND ANTICIPATION NOTE, 1997 IN A PRINCIPAL AMOUNT NOT TO EXCEED \$2,288,000, PENDING THE RECEIPT OF THE PROCEEDS OF THE LOCAL IMPROVEMENT DISTRICT BONDS AUTHORIZED TO BE ISSUED BY ORDINANCE NO. 1705, TO ESTABLISH A LINE OF CREDIT TO PROVIDE FUNDS TO REPAY AND RETIRE THE CITY'S LOCAL IMPROVEMENT DISTRICT NO. 91-OW-55 BOND ANTICIPATION NOTE, 1996; PROVIDING FOR THE DATE, DENOMINATION, FORM, REGISTRATION, MATURITY, INTEREST RATE, TERMS AND COVENANTS OF SUCH NOTE; AND PROVIDING FOR THE DELIVERY OF SUCH NOTE TO BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, SEATTLE, WASHINGTON IN EXCHANGE FOR SUCH LINE OF CREDIT.

WHEREAS, by Ordinance No. 1705 (the "LID Ordinance"), after a public hearing thereon, the City ordered the construction of the project commonly known as the Southeast Redmond Storage Tank, together with related improvements, as set forth in Exhibit A to the LID Ordinance (the "Improvements"); established Local Improvement District No. 91-OW-55 (the "District") of the City; provided that payment for the improvements be made by special assessments upon the property in the District payable by the mode of "payment by bonds"; and provided for the issuance and sale of local improvement district warrants or other short-term obligations pursuant to chapter 216, Laws of 1982 (Chapter 39.50 RCW), redeemable by cash and/or by local improvement district bonds; and

WHEREAS, by Ordinance No. 1910, as amended by Ordinance No. 1915, the City Council authorized the issuance and sale of Local Improvement District No. 91-

OW-55 Bond Anticipation Note, 1996 (the "Outstanding Note"), in a principal amount not to exceed \$2,288,000 to establish a line of credit to provide funds to repay a portion of certain interim loans (collectively, the "Interfund Loan") authorized from the Water/Sewer General Construction Funds to the Local Improvement Fund, District No. 91-OW-55 (the "Local Improvement Fund") to provide funds to pay part of the costs for the acquisition of property, preliminary planning, design work and construction costs for the Improvements; and

WHEREAS, RCW 39.46.050 authorizes local governments to establish lines of credit with any qualified public depository to be drawn upon in exchange for its obligations; and

WHEREAS, the City Council deems it to be in the best interest of the City that the City borrow money and issue and sell its short-term obligations in the form of a local improvement district bond anticipation note in a principal amount not to exceed \$2,288,000 to establish a line of credit to provide funds to repay and retire the Outstanding Note, together with the interest thereon to the date of such payment; and

WHEREAS, Bank of America National Trust and Savings Association, doing business as Seafirst Bank (the "Bank"), has submitted an offer to establish a line of credit on the terms and conditions set forth herein in exchange for the note; and

WHEREAS, the City Council deems it in the best interests of the City to accept such offer, to deliver the note to the Bank and to establish such line of credit;
NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON,
DO ORDAIN AS FOLLOWS:**

Section 1. Definitions. As used in this Ordinance, the following terms shall have the following meanings:

"Bank" means Bank of America National Trust and Savings Association, dba Seafirst Bank.

"City" means the City of Redmond, Washington.

"City Council" means the City Council of the City as the same shall be duly constituted from time to time.

"Code" means the Internal Revenue Code of 1986, as amended, together with all applicable regulations thereunder.

"Draw Request" means the written request by any person authorized to make a draw from the Line of Credit, as more fully described in Section 4 of this Ordinance.

"Guaranty Fund" means the City's Local Improvement Guaranty Fund.

"Improvements" means the construction of the project commonly known as the Southeast Redmond Storage Tank, together with related improvements, as set forth in Exhibit A to the LID Ordinance.

"LID Ordinance" means Ordinance No. 1705 of the City, which established LID No. 91-OW-55.

"LID No. 55" means Local Improvement District No. 91-OW-55.

"Line of Credit" means the line of credit authorized by this Ordinance to be established with the Bank.

"Local Improvement Fund" means the "Local Improvement Fund, District No. 91-OW-55" created in Ordinance No. 1673 of the City.

"Note" means the "City of Redmond, Washington, Local Improvement District No. 91-OW-55 Bond Anticipation Note, 1997" authorized by this Ordinance.

"Note Register" means the registration books for the Note maintained by the Registrar.

"Outstanding Note" means the "City of Redmond, Washington, Local Improvement District No. 91-OW-55 Bond Anticipation Note, 1996" authorized by Ordinance No. 1910, as amended by Ordinance No. 1915.

"Outstanding Principal Balance of the Note" means the aggregate of all funds that the City has drawn from the Line of Credit pursuant to the Note less the aggregate of all principal payments on the Note made by the City.

"Owner" means the person who is named as the registered owner of the Note on the Note Register.

"Paying Agent" means the City in its capacity as paying agent for the Note.

"Reference Rate" means the rate of interest publicly announced from time to time by the Bank in San Francisco, California, as its "Reference Rate." The Reference Rate is set based on various factors, including the Bank's costs and desired return, general economic conditions, and other factors and is used as a reference point for pricing some loans. The Bank may price loans to its customers at, above, or below the Reference Rate.

"Registrar" means the City in its capacity as registrar and transfer agent for the Note.

Section 2. Purpose and Description of Note; Prepayment. For the purpose of establishing a line of credit to provide funds to repay and retire the Outstanding Note, together with the interest thereon to the date of such repayment, and to pay the costs of issuing the Note, the City hereby authorizes the issuance of its "Local Improvement District No. 91-OW-55 Bond Anticipation Note, 1997".

The Note shall be issued as a single note in the principal amount not exceeding \$2,288,000 outstanding at any one time; shall be dated the date of its delivery; shall be issued in fully registered form as to both principal and interest; shall be numbered in such manner and with any additional designation as the Registrar deems necessary for purposes of identification; and shall mature no later than November 1, 1998.

The Note shall bear interest on the Outstanding Principal Balance of the Note at the variable rate of an amount equal to 60 percent of the Reference Rate (computed on the basis of a 365/366-day year), for the actual number of days the Outstanding Principal Balance is Outstanding. The rate will be changed on the day on

which an announcement is made by the Bank of a change in the Reference Rate. At any time and without notice, principal of the Note may be prepaid, in whole or in part, with or without all or a portion of the interest accrued thereon, without penalty, but such principal amount prepaid shall not be available to be again drawn against under the Line of Credit. The Outstanding Principal Balance of the Note, together with all interest accrued thereon, shall be payable upon the maturity of the Note.

Both the principal of and the interest on the Note shall be payable solely out of the Local Improvement Fund to be funded from the proceeds of local improvement district bonds authorized to be issued by the LID Ordinance, and other short term obligations, which the City covenants to use its best efforts to issue, prepaid special benefit assessments within LID No. 55 and/or other funds, if available for such purpose; or, if necessary, out of the Guaranty Fund.

The Note shall be a negotiable instrument to the extent provided by RCW 62A.8-102 and RCW 62A.8-105.

Section 3. Place, Manner and Medium of Payment. Both principal of and interest on the Note shall be payable in lawful money of the United States of America. Prepaid principal of and/or interest on the Note shall be paid by check or draft mailed to the Owner at the address for such Owner appearing on the Note Register on the day the payment is made. The Outstanding Principal Balance of the Note, together with all interest accrued thereon, shall be paid to the Owner at the address for such Owner appearing on the Note Register on the 15th day of the month preceding the maturity or redemption date upon presentation and surrender of the Note by the Owner at the office of the Paying Agent upon maturity or earlier redemption. The Registrar shall keep sufficient books for the registration and transfer of the Note.

The Outstanding Principal Balance of the Note on any particular day shall be the aggregate of all funds that the City has drawn from the Line of Credit from the date of the Note to that day less the aggregate of all principal payments made by the City on or

before that day. Interest on a particular principal amount so advanced shall be determined from the date of the advance of Note proceeds pursuant to a Draw Request.

Section 4. Draw Request. The Director of Finance of the City is hereby authorized to make a request for draw pursuant to the Note. A Draw Request shall be made in writing signed by the Director of Finance at any time prior to the maturity date of the Note.

Section 5. Redemption Prior to Maturity. The City reserves the right and option to redeem the Note prior to its stated maturity date, in whole or in part, on any date, by paying the Outstanding Principal Balance of the Note, together with all interest accrued thereon to the date of redemption.

Notice of any such redemption shall be given by the City not less than 5 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Owner of the Note at such Owner's address appearing on the Note Register on the day notice is mailed and to the Paying Agent.

Section 6. Form and Execution of Note. The Note shall be typewritten in form consistent with this Ordinance and Washington law. The Note shall be signed by the manual signatures of the Mayor and the City Clerk and shall have a facsimile reproduction of the seal of the City printed thereon or the seal of the City impressed thereon.

In case either or both of the officers who shall have executed the Note shall cease to be such officer or officers of the City before the Note so signed shall have been delivered by the Registrar or issued by the City, the Note nevertheless may be delivered and issued and upon such delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. The Note also may be signed and attested on behalf of the City by such persons as at the actual date of execution of the Note shall be the proper officers of the City although at the original date of the Note such persons were not such officers of the City.

Section 7. Registration; Transfer. The Registrar shall keep, or cause to be kept, at the Registrar's office, the Note Register. The Registrar is authorized to carry out all of the Registrar's powers and duties under this Ordinance.

The City may deem and treat the Owner of the Note as the absolute owner thereof for all purposes, and the City shall not be affected by any notice to the contrary. Payment of the Note shall be made only as described in Section 3 hereof. All such payments made as provided in Section 3 hereof shall be valid and shall satisfy and discharge the liability of the City upon the Note to the extent of the amount or amounts so paid.

The City covenants that, until the Note shall have been surrendered and cancelled, it will maintain a system of recording the ownership of the Note that complies with the provisions of the Code.

The registered ownership of the Note shall not be transferable, except for transfer to a successor in interest to the Owner as a result of a merger or consolidation.

Section 8. Mutilated, Lost, Stolen or Destroyed Note. If the Note becomes mutilated, lost, stolen or destroyed, the City may issue and deliver a new Note of the same number and interest rate, for the same principal amount, and of like tenor and effect in substitution therefor, all in accordance with law. If such mutilated, lost, stolen or destroyed Note has matured, the City, at its option, may pay the same without the surrender thereof. However, no such substitution or payment shall be made unless and until the applicant shall furnish evidence satisfactory to the City of the destruction or loss of the original Note and the ownership thereof, and such additional security, indemnity or evidence as may be required by or on behalf of the City. No substitute Note shall be furnished unless the applicant shall reimburse the City for its expenses in the furnishing thereof.

Section 9. Sale of Note. The Bank has offered to establish the Line of Credit in exchange for the Note under the terms and conditions provided in its line of

credit commitment and note purchase offer (the "Purchase Offer"), a copy of which is attached hereto, and is incorporated herein by this reference. The City Council finds that accepting the Purchase Offer is in the City's best interest and therefor accepts the offer contained in the Purchase Offer and authorizes the execution of the Purchase Offer by the Mayor.

The Note will be prepared at City expense and will be delivered to the Bank in accordance with the Purchase Offer, together with the approving legal opinion of Graham & James LLP/Riddell Williams P.S., bond counsel, of Seattle, Washington, attached thereto. Bond counsel has not been retained to monitor, and shall not be responsible for monitoring, the City's compliance with any federal law or regulations to maintain the tax-exempt status of the interest on the Note.

The proper City officials are authorized and directed to do everything necessary for the prompt issuance, execution and delivery of the Note to the Bank in accordance with the Purchase Offer, and for the proper application and use of the proceeds of the sale thereof.

Section 10. Delivery of Note. The proper City officials are authorized and directed to approve and/or execute, as appropriate, all documents, and to do everything necessary for the preparation and delivery of a transcript of proceedings pertaining to the Note, and the execution and delivery of the definitive Note to the Bank, each without unreasonable delay.

Section 11. Application of the Note Proceeds. All proceeds received from a Request for Draw shall be deposited into the Local Improvement Fund, and shall be used by the City to repay and retire the principal of the Outstanding Note, together with interest accrued thereon to the date of such repayment, and to pay costs of issuance of the Note.

Section 12. Tax Exemption and Bank Qualification. The City covenants that it will not take or permit to be taken on its behalf any action which would adversely affect the exclusion of the interest on the Note from the gross income for purposes of

federal income taxation, and will take or require to be taken such acts as may be permitted by, and as may be required from time to time under, applicable law to continue the exclusion of the interest on the Note from the gross income of the recipients thereof for purposes of federal income taxation. Without limiting the generality of the foregoing, the City will not invest or make or permit any use of the proceeds of the Note or of its other money at any time during the term of the Note, which will cause the Note to be "arbitrage bond" within the meaning of Section 148 of the Code.

The City further covenants that it shall calculate or cause to be calculated, and shall rebate to the United States, all earnings from the investment of Note proceeds that are in excess of the amount that would have been earned had the yield on such investments been equal to the yield on the Note, plus income derived from such excess earnings, if and to the extent and in the manner required by Section 148 of the Code.

The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

The City covenants that it will take no actions and will make no use of the proceeds of the Note or any other funds held under this Ordinance which would cause the Note to be treated as a "private activity bond" (as defined in Section 141(b) of the Code) subject to treatment under said Section 141(b) as an obligation not described in Section 103(a) of the Code, unless the exclusion from gross income of interest on the Note under the Code is not affected.

The City hereby designates the Note as a "qualified tax-exempt obligation" for purposes of Section 265 of the Code (relating to the deduction by financial institutions of the interest incurred to carry tax-exempt debt) and authorizes and directs the proper City officials to execute and deliver all documents necessary to evidence such designation to any and all interested parties. The City further covenants not to issue more than \$10,000,000 of such "qualified tax-exempt obligations" during 1997.

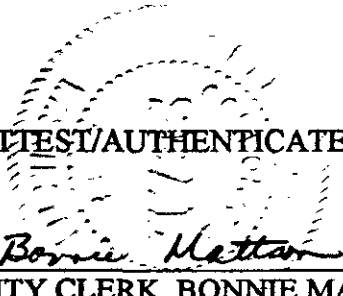
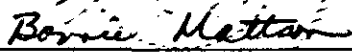
Section 13. Contract; Savings Clause. The covenants contained in this Ordinance shall constitute a contract between the City and the Owner of the Note. The City unconditionally covenants that it will keep and perform all of the covenants of the Note and this Ordinance. If any one or more of the provisions of this Ordinance shall be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining provisions of this Ordinance or the Note, and this Ordinance and the Note shall be construed and enforced as if such unconstitutional or invalid provision had not been contained herein.

Section 14. Effective Date. This Ordinance shall take effect and be in full force five days after passage and publication of an approved summary, consisting of the title.

CITY OF REDMOND, WASHINGTON


MAYOR, ROSEMARIE IVES

ATTEST/AUTHENTICATED:



CITY CLERK, BONNIE MATTSON

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: 

FILED WITH THE CITY CLERK:	August 28, 1997
PASSED BY THE CITY COUNCIL:	September 2, 1997
SIGNED BY THE MAYOR:	September 2, 1997
PUBLISHED:	September 6, 1997
EFFECTIVE DATE:	September 11, 1997
ORDINANCE NO. <u>1950</u>	