

CITY OF LACEY, WASHINGTON

ORDINANCE NO. 866

AN ORDINANCE amending Sections 4 and 9 and subsection 10(C) of Ordinance No. 863.

Section 1. That Section 4 of Ordinance No. 863 is hereby amended to read as follows:

Section 4. Financing Plan. The cost of the Improvements, including engineering, design, administrative and legal costs and costs of financing, are estimated to be \$4,290,000, of which ~~\$3,300,000~~ \$2,974,936 are expected to be paid from the principal proceeds of the Bonds, approximately \$100,000 is expected to be paid from investment of the Bond proceeds, approximately ~~\$890,000~~ \$1,000,000 are expected to be paid from Assessments hereafter to be levied in ULID No. 11 and from proceeds of additional water and sewer revenue bonds of the City hereafter to be issued to finance the improvements to be made in and for the benefit of such ULID.

By ordinance, the City Council may make such changes in the elements of the Improvements as may be found necessary or desirable either prior to or during the course of acquisition, construction and installation, may allocate and reallocate application of bond proceeds among such elements and, if grants, bond proceeds (including original proceeds and investment proceeds), and ULID No. 11 assessments and/or proceeds of revenue bonds hereafter issued for improvements to be made for the benefit of said ULID and allocable to the Improvements exceed the cost of the Improvements, may apply bond proceeds to other improvements set forth in the Plan Resolution or any amendment thereof or may deposit any such excess in the Bond Fund.

Section 2. That Section 9 of Ordinance No. 863 is hereby amended to read as follows:

Section 9. Construction Fund; Disposition of Bond Proceeds. A special fund of the City known as the "Water and Sewer Construction Fund" (the "Construction Fund") has heretofore been created in the office of the Finance Director of the City for the purpose of paying costs of capital improvements to the System.

Amounts received as proceeds of the sale of the Bonds (other than the amount received on the date of delivery of the Bonds as accrued interest, which shall be deposited in the Debt Service Account of the Bond Fund and an amount equal to 10% of the bond proceeds but not to exceed \$326,000 which shall be deposited in the Reserve Account) shall be deposited in the Construction Fund and shall be used to pay costs of the Improvements described in Sections 3 and 4 of this ordinance.

Pending their expenditure, the City may

temporarily invest the proceeds of the Bonds in any investments permitted by law. The investment earnings shall be retained in the Construction Fund and expended for the purposes of such Fund.

Amounts in the Construction Fund equal to the principal proceeds and investment proceeds of the Bonds (as those terms are defined in the Code) shall be deemed to be spent for costs of the Improvements in the following order: First, the principal proceeds of the Bonds; second, the investment proceeds of the Bonds; third, from any other moneys at any time deposited in the Construction Fund and legally available to pay costs of the Improvements. If any principal or investment proceeds of the Bonds remain after completion of the Improvements, or if completion of the Improvements should be determined not to be feasible or should be substantially delayed, the City Council, promptly by ordinance, shall make such determinations and shall direct the application of any such proceeds to other capital improvements of the System. To the extent that principal or investment proceeds of the Bonds are not expended within three years from the date of issuance of the Bonds, the City shall restrict the yield on the investment of such proceeds as necessary to comply with the covenants contained in Section 15 of this ordinance; and/or such unexpended proceeds shall be transferred to the Bond Fund and promptly applied to pay debt service on Parity Bonds.

Section 3. That Section 10(C) of Ordinance No. 863 is hereby amended to read as follows:

C. A Reserve Account has heretofore been created in the Bond Fund for the purpose of securing the payment of the principal of and interest on Parity Bonds. An amount equal to 10% of the principal proceeds of the Bonds but not to exceed \$326,000 will be deposited in the Reserve Account. The City covenants and agrees that commencing with the month of October, 1990, and annually thereafter, it will pay into the Reserve Account out of Assessments and/or Revenue of the System (or, at the option of the City, out of any funds legally available for such purpose) such additional amount, if any, required in not less than approximately equal annual payments sufficient with other money in the Reserve Account to have on deposit therein by November 1, 1994, a total amount which will be equal to the Maximum Annual Debt Service on the outstanding Parity Bonds.

The City hereby further covenants and agrees that in the event it issues any Future Parity Bonds it will provide in the ordinance authorizing the issuance of the same that it will pay into the Reserve Account out of Assessments and the Revenue of the System (or, at the option of the City, out of any other funds legally available for such purpose) not less than approximately equal additional annual future payments so that by five years from the date of such Future Parity Bonds there will

have been paid into the Reserve Account an amount which, with the money already on deposit therein, will be equal to the Maximum Annual Debt Service in any calendar year thereafter to pay the principal of and interest on all outstanding Parity Bonds.

The City further covenants and agrees that when said required deposits have been made into the Reserve Account, it will at all times maintain therein an amount at least equal to the Maximum Annual Debt Service. Whenever there is a sufficient amount in the Bond Fund, including the Reserve Account, the Debt Service Account and any Sinking Fund Accounts, to pay the principal of, premium if any, and interest on all outstanding Parity Bonds, the money in the Reserve Account may be used to pay such principal, premium, if any, and interest. Money in the Reserve Account may be withdrawn to redeem and retire, and to pay the interest due to the date of such redemption and premium, if any on any outstanding Parity Bonds, as long as the moneys left remaining on deposit in the Reserve Account are equal to the Maximum Annual Debt Service.

In the event there shall be a deficiency in the Debt Service Account to meet maturing installments of either interest on or principal of and interest on the outstanding Parity Bonds payable out of such Account, such deficiency shall be made up from the Reserve Account by the withdrawal of moneys therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up out of Assessments and Revenue of the System after making necessary provision for the payments required to be made by paragraphs First, Second, Third and Fourth of Section 8 of this ordinance.

If all outstanding 1977 and 1981 Bonds are redeemed or defeased or if the consent of 65% or more of the owners of the then outstanding 1977 Bonds and of the then outstanding 1981 Bonds is obtained, the City may at any time and from time to time obtain one or more Surety Bonds in lieu of maintaining all or part of the reserve requirement, in which event the reserve limitation defined in Subsection E of this Section 10 shall apply only to amounts held on deposit in the Reserve Account. In the event any such Surety Bonds are obtained, the City covenants and agrees to maintain an amount in the Reserve Account at least equal to the difference between the Maximum Annual Debt Service and the aggregate limit on the amount payable under such Surety Bonds to pay debt service on the Bonds and any Future Parity Bonds (the "Surety Bond limit"), the amount of said difference at any time and from time to time is hereinafter referred to as the "adjusted reserve requirement." In the event that the Surety Bond limit shall be expected to be reduced by reason of expiration of the Surety Bond on a fixed date or the end of a fixed term, the City hereby covenants and agrees to replenish the Reserve Account to an amount equal to the reserve requirement or the

applicable adjusted reserve requirement no later than such date of expiration. In the event that the Surety Bond limit is reduced by reason of payment made under a Surety Bond to the Bond Registrar to pay any principal of or interest on the Bonds or any Parity Bonds, the City hereby covenants and agrees to make payments to the issuer of such Surety Bond pursuant to the terms of a reimbursement agreement effective to reinstate the maximum Surety Bond limit; and to the extent there is no applicable reimbursement agreement, the City covenants and agrees to deposit in the Reserve Account from moneys first available therefor pursuant to Section 8 of this ordinance such amounts as are necessary to provide a balance therein equal to the then applicable adjusted reserve requirement.

Section 4. This ordinance shall be effective five days from and after its passage and publication as provided by law.

PASSED by the Council of the City of Lacey at a regular meeting held this 2nd day of November, 1989.

By: Kay M. Boyd
Mayor

ATTEST:

Charlotta M. Taylor
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney