

TOWN OF GRANITE FALLS, WASHINGTON

ORDINANCE NO. 321

AN ORDINANCE RELATING TO THE SEWER UTILITY OF THE TOWN; SPECIFYING, ADOPTING AND ORDERING THE CARRYING OUT OF A SYSTEM OR PLAN OF ADDITIONS TO AND BETTERMENTS AND EXTENSIONS OF THE SYSTEM OF SEWERAGE OF THE TOWN; PROVIDING FOR THE ISSUANCE AND SALE OF \$75,000 PAR VALUE OF "SEWER REVENUE BONDS, 1981," FOR THE PURPOSE OF PROVIDING PART OF THE FUNDS NECESSARY TO CARRY OUT SUCH SYSTEM OR PLAN; FIXING THE DATE, FORM, MATURITIES, INTEREST RATES, TERMS AND COVENANTS OF SUCH BONDS; CREATING CERTAIN SPECIAL FUNDS; AND PROVIDING FOR THE SALE AND DELIVERY OF SUCH BONDS TO FOSTER & MARSHALL INC. OF SEATTLE, WASHINGTON.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF GRANITE FALLS, WASHINGTON, as follows:

Section 1. As used in this ordinance the following words shall have the following meanings:

(a) "Annual Debt Service" for any year shall mean all the principal and interest due upon any issue or issues of bonds in such year, except the principal of such bonds due in any Term Bond Maturity Year of such bonds having Term Bonds, and plus all mandatory redemption and sinking fund requirements for Term Bonds which requirements will mature or become due in such year, less all capitalized interest payable from the proceeds of such bonds.

(b) "Bond Fund" shall mean the "Sewer Revenue Bond Fund, 1981," created by this ordinance for the uses and purposes herein provided.

(c) "Bonds" shall mean the \$75,000 par value of "Sewer Revenue Bonds, 1981," issued pursuant to this ordinance.

(d) "Future Parity Bonds" shall mean any revenue bonds of the Town issued after the date of the issuance of the Bonds, the payment of the principal of and interest on which constitutes a charge or lien on the Gross Revenue of the System and any utility local improvement districts hereafter created the assessments in which are to be paid into the Bond Fund equal in rank with the charge or lien upon such Gross Revenue and assessments required to be paid into the Bond Fund to pay and secure the payment of the principal of and interest on the Bonds.

(e) "Gross Revenue of the System" shall mean the gross revenue of the System from any source whatsoever, except general

taxes, utility local improvement district assessments, grants, proceeds from the sale of Town property and bond proceeds.

(f) "Maintenance and Operation Expenses" shall mean all reasonable expenses incurred by the System in causing that utility to be administered, operated and maintained in good repair, working order and condition, and shall include payments made to any other municipal corporation or entity for sewage treatment and disposal in lieu of or in addition to the operation of the Town's own sewage treatment and disposal facilities, but shall not include depreciation, Town-levied taxes for Town purposes, charges levied by the Town in lieu of taxes, and payments attributable to the acquisition of capacity rights in facilities of such municipal corporation or entity.

(g) "Maximum Annual Debt Service" shall mean the maximum amount of Annual Debt Service which will mature or become due in any future year.

(h) "Net Revenue of the System" shall mean the Gross Revenue of the System less the Maintenance and Operations Expenses of the System.

(i) "Principal and Interest Account" shall mean the account of that name created in the Bond Fund for the payment of the principal of and interest on the Bonds and any Future Parity Bonds.

(j) "Reserve Account" shall mean the account of that name created in the Bond Fund for the purpose of securing the payment of the principal of and interest on the Bonds and the Future Parity Bonds.

(k) "System" shall mean the Town's system of sewerage, including the storm and surface water system of the Town and including all additions to and betterments and extensions of such system at any time made or constructed, and if the Town shall pursuant to law hereafter combine the waterworks utility or garbage utility of the Town with the Town's system of sewerage, then System shall mean the utilities so combined.

(l) "Term Bond Maturity Year" of any issue or series of Future Parity Bonds shall mean the year declared as a Term Bond Maturity Year by the ordinance providing for the issuance of such issue or series of Future Parity Bonds.

(m) "Term Bonds" shall mean those numbered outstanding bonds of any single issue or series of Future Parity Bonds scheduled to mature in a Term Bond Maturity Year.

(n) "Town" shall mean the Town of Granite Falls, Washington.

Section 2. There is specified and adopted a system or plan of additions and betterments to and extensions of the system of sewerage of the Town set forth in Exhibit A, attached hereto and by this reference made a part hereof. Included in such system or plan are the equipment, joints, fittings, manholes, valves and other appurtenances necessary to the improvements described therein. The Town reserves the right to make any changes in such system or plan which do not change the purposes thereof.

The system or plan shall be carried out pursuant to the plans and specifications of Gray & Osborne, Inc., P.S., consulting engineers for the Town.

The estimated cost of carrying out such system or plan is approximately \$3,300,000, which shall be paid from grants from the United States of America, Environmental Protection Agency and Farmers Home Administration, the State of Washington, Department of Ecology, a Snohomish County block grant, the Town's sewer revenue bonds authorized by this ordinance and any other money which may be used for such purposes.

Section 3. The Town shall carry out the system or plan specified and adopted in Section 2. For the purpose of providing part of the funds necessary to carry out such system or plan, including the cost of issuance and sale of the Bonds, there shall be issued and sold "Sewer Revenue Bonds, 1981," of the Town (herein defined as the "Bonds") in the principal sum of \$75,000. The Bonds shall be in the denomination of \$5,000 each; shall be numbered from 1 to 15, inclusive; shall be dated August 1, 1981; and shall bear interest payable semiannually on each February 1 and August 1, as evidenced by coupons to be attached to the Bonds representing interest to maturity. If any Bond is not redeemed when duly presented at its maturity or call date thereof, the Town shall be obligated to pay interest at the coupon rate for each such Bond from and after the maturity or call date until such Bond, both principal and interest, shall have been paid in full or until sufficient money for such payment in full is on deposit in the Bond Fund and such Bond has been duly called for payment. Both principal of and interest on the Bonds are payable in lawful money of the United States of America at the office of the Town Treasurer or, at the option of the holder, at either fiscal agency of the State of Washington in Seattle, Washington, or New York, New York, solely out of the Bond Fund, and the Bonds shall be a valid claim of the holder thereof only as against the Bond Fund and the fixed amount of the Gross Revenue of the System pledged to such fund. The Bonds shall not be a general obligation of the Town.

The Bonds shall be numbered, bear interest and mature on August 1 of each year in accordance with the following schedule:

<u>Bond Numbers (Inclusive)</u>	<u>Amounts</u>	<u>Interest Rates</u>	<u>Maturity Years</u>
1	\$ 5,000	12.50 %	1983
2	5,000	12.50 %	1984
3	5,000	12.50 %	1985
4	5,000	12.20 %	1986
5 to 6	10,000	10.65 %	1987
7 to 8	10,000	10.80 %	1988
9 to 10	10,000	11.00 %	1989
11 to 12	10,000	11.25 %	1990
13 to 15	15,000	11.50 %	1991

Section 4. Bonds Nos. 1 to 12, inclusive, are issued without the right or option of the Town to redeem the same prior to their respective maturity dates. The Town reserves the right to redeem Bonds Nos. 13 to 15, inclusive, maturing in the year 1991 as a whole, or in part in inverse numerical order, on August 1, 1990, or any interest payment date thereafter, at 101% of par plus accrued interest to the date of redemption.

Notice of such intended redemption shall be published once in the official newspaper of the Town, or if there is no official newspaper, then in a newspaper of general circulation in the Town, at least once not less than 30 nor more than 45 days prior to the call date, and a copy of such notice shall be mailed within the same period to Foster & Marshall Inc. at its main office in Seattle, Washington, or to its successor. In addition, such redemption notice shall be sent to Moody's Investors Service, Inc., and Standard & Poor's Corporation, at their offices in New York, New York, but the mailing of such notice to such New York firms shall not be a condition precedent to the redemption of such Bonds. Interest on any Bonds so called for redemption shall cease on such call date upon payment of the redemption price into the Bond Fund.

The City further reserves the right to purchase any or all of the Bonds on the open market at any time at a price not in excess of par with respect to Bonds Nos. 1 to 12, inclusive, and with respect to Bonds Nos. 13 to 15, inclusive, not in excess of 101% of par, plus accrued interest to the date of such purchase.

Section 5. The Bonds and coupons shall be printed or lithographed on good bond paper in a form consistent with this ordinance. The Bonds shall be signed by the facsimile signature of the Mayor and attested by the manual signature of the City Clerk, and the seal of the City shall be impressed thereon, and the coupons shall bear the facsimile signatures of the Mayor and the City Clerk.

Section 6. The "Sewer Revenue Bond Fund, 1981" (the "Bond Fund"), is created in the office of the Town Treasurer and divided into the Principal and Interest Account and the Reserve Account. As long as any Bonds are outstanding against the Bond Fund, the Town

Treasurer shall set aside and pay into the Bond Fund out of the Net Revenue of the System a fixed amount, without regard to any fixed proportion, as follows:

(a) Into the Principal and Interest Account, monthly, on or before the first day of each month beginning on August 1, 1981, one-twelfth of the next ensuing twelve month's requirements for interest on the Bonds and beginning on August 1, 1982, one-twelfth of the next ensuing twelve month's requirements for both principal of and interest on the Bonds; and

(b) Into the Reserve Account monthly, on or before the first day of each month, beginning on September 1, 1981, one-sixtieth of an amount equal to the Maximum Annual Debt Service for the Bonds, which total reserve equal to the Maximum Annual Debt Service requirement for the Bonds shall be accumulated by no later than August 1, 1986.

The Reserve Account may be accumulated from any other money which the Town may have available for such purpose in addition to using such Net Revenue therefor. The Reserve Account shall be maintained in such total required reserve amount, except for withdrawals therefrom as authorized herein, at all times so long as any of the Bonds are outstanding, except that when the total amount in the Bond Fund shall equal the total amount of principal and interest for all outstanding Bonds to the last maturity thereof, no further payment need be made into the Bond Fund.

In the event that there should be a deficiency in the Principal and Interest Account to meet the maturing installments of either principal or interest, as the case may be, such deficiency shall be made up from the Reserve Account by the withdrawal of cash therefrom for that purpose. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up from the Net Revenue of the System first available after making necessary provision for the required payments into the Principal and Interest Account. The money in the Reserve Account shall otherwise be held intact and may be applied against the last outstanding Bonds.

All money in the Bond Fund shall be kept on deposit in the official bank depository of the Town or may be invested in any investment permitted the Town by law redeemable at a fixed price and maturing not later than July 1, 1991. Earnings on any investment in the Principal and Interest Account shall be deposited in the Principal and Interest Account, and earnings on any investment in the Reserve Account shall be deposited in the Reserve Account until the total required reserve amount shall have been accumulated therein, after which such earnings shall be deposited in the Principal and Interest Account. †

It is declared that in creating the Bond Fund and in fixing the amounts to be paid into it, the Town Council has had due regard to the Maintenance and Operation Expenses of the System and debt service requirements for the Bonds and declares that it is not setting aside into the Bond Fund a greater amount than in its judgment will be available over and above the Maintenance and Operation Expenses of the System and those debt service requirements.

If the Town fails to set aside and pay into the Bond Fund the amounts above set forth, the holder of any of the outstanding bonds that will be payable out of the Bond Fund may bring action against the Town and compel such setting aside and payment.

Section 7. The Gross Revenue of the System and any utility local improvement district assessments payable into the Bond Fund are pledged for the payment of the Bonds and any Future Parity Bonds and this pledge shall constitute a prior charge or lien upon such Revenue of the System, subject only to Maintenance and Operation Expenses of the System.

Section 8. The Town covenants and agrees with the owner and holder of each Bond at any time outstanding, as follows:

(a) It will establish, maintain and collect such rates and charges for sanitary sewerage disposal service for so long as any of the Bonds is outstanding as will make available for the payment of the Bonds an amount, together with other Gross Revenue of the System and utility local improvement district assessments payable into the Bond Fund, after deducting Maintenance and Operation Expenses, equal to at least 1.3 times the Maximum Annual Debt Service of the Bonds and Future Parity Bonds, except that during any assessment payment period of any utility local improvement district the assessments in which are payable into the Bond Fund, the amount need only be equal to 1.1 times the Maximum Annual Debt Service of the Bonds and Future Parity Bonds.

(b) It will at all times maintain and keep the System in good repair, working order and condition and also will at all times operate the System and the business in connection therewith in an efficient manner and at a reasonable cost.

(c) It will not sell, lease, mortgage or in any manner encumber or dispose of all of the property of the System unless provision is made for payment into the Bond Fund of a sum sufficient to pay the principal of and interest on the outstanding Bonds and any Future Parity Bonds, and it will not sell, lease, mortgage or in any manner encumber or dispose of any

part of the property of the System that is used, useful and material to the operation thereof, unless provision is made for replacement thereof, or for payment into the Bond Fund of the total amount of revenue received which shall not be less than an amount which shall bear the same ratio to the amount of the outstanding Bonds and Future Parity Bonds as the revenue available for debt service for such outstanding bonds for the twelve month's preceding such sale, lease, encumbrance or disposal from the portion of the system sold, leased, encumbered or disposed of bears to the revenue available for debt service for such bonds from the entire System for the same period. Any such money so paid into the Bond Fund shall be used to retire such outstanding bonds at the earliest possible date.

(d) It will, while any of the Bonds remain outstanding, keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the System and will furnish the original purchaser or purchasers of the Bonds or any subsequent holder or holders thereof at the written request of such holder or holders complete operating and income statements of the System in reasonable detail covering any calendar year not more than 90 days after the close of such calendar year and will grant any holder or holders of at least twenty-five percent of the outstanding Bonds the right at all reasonable times to inspect the entire System and all records, accounts and data of the Town relating thereto. Upon request of any holder of any of such Bonds, it will also furnish to such holder a copy of the most recently completed audit of the Town's accounts by the State Auditor of Washington.

(e) It will not furnish sanitary sewage disposal service to any customer whatsoever free of charge and will promptly take legal action to enforce collection of all delinquent accounts.

(f) It will carry the types of insurance on its System properties in the amounts normally carried by private sewer companies engaged in the operation of sewerage systems. If, as and when the United States of America or some agency thereof shall provide for War Risk Insurance, the Town further agrees to take out and maintain such insurance on all or such portions of the System on which such War Risk Insurance may be written in an amount or amounts to cover adequately the value thereof. The cost of any

such insurance shall be considered a part of Maintenance and Operation Expenses.

(g) It will pay all Maintenance and Operation Expenses and otherwise meet the obligations of the Town as herein set forth.

(h) It will make no use of the proceeds of the Bonds or other funds of the Town at any time during the term of the Bonds which, if such use had been reasonably expected at the date that the Bonds are issued, would have caused such Bonds to be arbitrage bonds within the mean of Section 103(c) of the United States Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder.

Section 9. The Town further covenants with the owner and holder of each of the Bonds for as long as any of the same is outstanding that it will not create any special fund or funds for the payment of the principal of and interest on any other revenue bonds which will have any priority over or which will rank on a parity with the payments required by this ordinance to be made out of the Gross Revenue of the System into the Bond Fund, except that it reserves the right to issue Future Parity Bonds if the following conditions are satisfied:

(a) All payments then required by this ordinance and any ordinance hereafter enacted pertaining to Future Parity Bonds hereafter issued in accordance with the provisions of this section shall have been made into the Bond Fund and maintained intact therein.

(b) The ordinance authorizing the issuance of such Future Parity Bonds shall provide that an amount equal to the Maximum Annual Debt Service of the additional bonds proposed to be issued shall be accumulated as a reserve in the Bond Fund, that amount to be accumulated by monthly deposits commencing not later than one month after the date of issuance of such additional bonds and to be accumulated within five years after the date of issuance and that reserve to be maintained in such amounts so long as any of those additional bonds are outstanding to the last maturity thereof, except that in the case of refunding bonds the ordinance authorizing the issuance of such refunding bonds shall provide that the money in the Reserve Account in the Bond Fund for the bonds to be refunded shall be retained in the Bond Fund as a reserve for the refunding bonds or the money in any other reserve account or fund for the bonds being refunded shall be transferred to the Reserve Account in the Bond Fund, but if such amount does not equal the Maximum Annual Debt Service of such additional refunding

bonds such required reserve for those refunding bonds shall be accumulated in the same manner and within the same time as set forth herein for additional Future Parity Bonds.

(c) There shall be on file with the Town Clerk a certificate of a professional engineer experienced in municipal utilities and licensed to practice in the State of Washington to the effect that the Net Revenue of the System for any twelve consecutive calendar months out of the immediately preceding twenty-four consecutive calendar months, plus annualized revenues from customers of the System for less than that twelve-month period, plus the additional revenues anticipated to be received from the proposed improvement in connection with which such additional Future Parity Bonds are to be issued, together with the annualized increase in revenues reasonably anticipated to result from any change in the schedule of rates to be put into effect prior to the issuance of such additional bonds and after giving effect to any probable future increase or decrease in the costs of Maintenance and Operation and to any probable future increase or decrease in Gross Revenue of the System resulting from growth or shrinkage in the number of System users, plus remaining annual assessment installments of any utility local improvement district the assessments in which are payable into the Bond Fund, are deemed sufficient to equal at least 1.3 times the Maximum Annual Debt Service of all then outstanding bonds payable from the Bond Fund, including the additional proposed Future Parity Bonds to the final maturity date thereof, except that during any assessment payment period of any utility local improvement district the assessments in which are payable into the Bond Fund, the amount need only be equal to 1.1 times the Maximum Annual Debt Service of such outstanding bonds and proposed Future Parity Bonds and except that if such additional bonds proposed to be so issued are for the sole purpose of refunding outstanding sewer revenue bonds and/or water and sewer revenue bonds such certification of coverage shall not be required if the amount required for the payment of the principal and interest in each year for the refunding bonds is not increased over the amount required for the bonds to be refunded thereby and the maturities of those refunding bonds are not extended beyond the maturities of the bonds to be refunded thereby.

Nothing contained in this section shall prevent the Town from issuing revenue bonds or warrants, the payment of the principal of and interest on which is a charge upon the Gross Revenue of the System junior or inferior to the payments required to be made out of such revenue into the Bond Fund.

Section 10. In the event the Town shall issue advance refunding bonds pursuant to the laws of the State of Washington, or have money available from any other lawful source, to pay the principal of and interest on the Bonds or use portions thereof included in the refunding plan as the same become due and payable and to refund all such then outstanding Bonds and to pay the costs of refunding, and shall have irrevocably set aside for and pledged to such payment and refunding, money and/or direct obligations of the United States of America or other legal investments sufficient in amount, together with known earned income from the investments thereof, to make such payments and to accomplish the refunding as scheduled (hereinafter called the "trust account") and shall irrevocably make provisions for redemption of such Bonds, then in that case all right and interest of the owners or holders of the Bonds to be so retired or refunded and the appurtenant coupons (hereinafter collectively called the "defeased Bonds") in the covenants of this ordinance, in the Gross Revenue of the System and funds and accounts obligated to the payment of such Bonds shall thereafter cease and become void, except such owners and holders shall have the right to receive payment of the principal of and interest on the defeased Bonds from the trust account and, in the event the funds in the trust account are not available for such payment, shall have the residual right to receive payment of the principal of and interest on the defeased Bonds from the Gross Revenue of the System without any priority of lien or charge against such Gross Revenue or covenants with respect thereto except to be paid therefrom. After the establishing and full funding of such trust account, the Town may then apply any money in any other fund or account established for the payment or redemption of the defeased Bonds to any lawful purposes as it shall determine, subject only to the rights of the holders of any other bonds then outstanding.

In the event that the refunding plan provides that the Bonds being refunded or the refunding bonds to be issued be secured by cash and/or direct obligations of the United States of America or other legal investments pending the prior redemption of those Bonds being refunded and if such refunding plan also provides that certain cash and/or direct obligations of the United States of America or other legal investments are irrevocably pledged for the prior redemption of those Bonds included in the refunding plan, then only the debt service on the Bonds which are not defeased Bonds and the refunding bonds, the payment of which is not so secured by the refunding plan, shall be included in the computation of coverage for issuance of Future Parity Bonds and the annual computation of coverage for determining compliance with the rate covenants.

Section 11. There is created in the office of the Town Treasurer the "Sewer Construction Fund, 1981," of the Town (the "Construction Fund") to pay the costs of carrying out the system or plan specified and adopted by Section 2 of this ordinance and paying the cost of the issuance and sale of the Bonds. The Construction Fund may be divided into subaccounts. The principal proceeds received from the sale of the Bonds, all grant money and all money

to be used to pay costs of carrying out such system or plan shall be deposited in the Construction Fund. Pending the expenditure of money from the Construction Fund, any money therein may be invested in any investment permitted by law to towns, and the earnings from such investments shall be deposited in the Construction Fund.

After all of the costs of carrying out such system or plan are paid, money in such Construction Fund shall be deposited into the Principal and Interest Account in the Bond Fund and be used to pay debt service on the Bonds or to purchase and redeem Bonds.

Section 12. Foster & Marshall Inc. of Seattle, Washington, has submitted an order to purchase the Bonds under the terms and conditions set forth therein, which offer is on file with the Town Clerk and is by this reference incorporated herein. The Town Council deems it to be in the best interests of the Town that such offer be accepted and, therefore, hereby accepts the same. The Bonds shall, therefore, be delivered immediately upon their execution to the purchaser upon payment for the Bonds in accordance with such offer. Upon the delivery of the Bonds the Town shall furnish the purchaser the opinion of Roberts & Shefelman (Roberts, Shefelman, Lawrence, Gay & Moch), municipal bond counsel of Seattle, Washington, approving the legality of the issuance thereof. Bond counsel shall not be required to review and shall express no opinion concerning the completeness or accuracy of any official statement, offering circular or other sales material issued or used in connection with the Bonds.

The accrued interest, if any, shall be deposited in the Principal and Interest Account in the Bond Fund, and the principal proceeds received shall be deposited in the Sewer Construction Fund, 1981.

The Mayor and/or City Clerk are authorized and directed to execute on behalf of the City all closing documents required to be furnished at the time of the delivery of the Bonds to the purchaser thereof.

Section 13. This ordinance shall become effective after its passage, approval and publication as provided by law.

PASSED by the Town Council of the Town of Granite Falls, Washington, at a regular open public meeting thereof and APPROVED by the Mayor, this 22nd day of July, 1981.

Howard Hughes
Mayor

ATTEST:

Mildred M. Allen
Town Clerk

APPROVED AS TO FORM:

Town Attorney