

ORDINANCE NO. 2101

AN ORDINANCE RELATING TO THE INCURRENCE OF INDEBTEDNESS; PROVIDING FOR THE SALE AND ISSUANCE OF A LIMITED TAX GENERAL OBLIGATION NOTE IN THE MAXIMUM PRINCIPAL AMOUNT OF \$1,400,000, TO REFUND ON A CURRENT BASIS, THE CITY'S 1999 LIMITED TAX GENERAL OBLIGATION NOTES; PROVIDING FOR THE DATE, DENOMINATION, FORM, TERMS, REGISTRATION PRIVILEGES, MATURITY, INTEREST RATE AND COVENANTS OF THE NOTE; PROVIDING FOR THE ANNUAL LEVY OF TAXES TO PAY THE PRINCIPAL THEREOF AND THE INTEREST THEREON; ESTABLISHING A DEBT SERVICE FUND FOR THE NOTE; AND PROVIDING FOR THE SALE AND DELIVERY OF SUCH NOTE TO BANK OF AMERICA, N.A.

WHEREAS, the City of Redmond (the "City") purchased certain real property from the United States government for city purposes, located at 9551 N.E. Avondale Road in the City (the "Property").

WHEREAS, pursuant to Ordinance No. 2018, as amended by Ordinance No. 2020, the City issued and sold in 1999 Limited Tax General Obligation Notes (the "1999 Notes") in the aggregate principal amount of \$1,330,000 for the purpose of refunding on a current basis the City's 1997 Limited Tax General Obligation Notes, which provided part of the costs necessary to purchase the Property; and

WHEREAS, the 1999 Notes mature on April 1, 2001;

WHEREAS, the current refunding and defeasance of the 1999 Notes is necessary to extend the maturity of the financing on the Property;

WHEREAS, the incurrence of indebtedness by the City will not cause the total indebtedness of the City to be incurred without the assent of the voters of the City to exceed the limitations set forth in Chapter 39.36 RCW; and

WHEREAS, pursuant to Chapter 39.53 RCW, the City is authorized to sell and issue, without an election, limited tax general obligation notes to refund, on a current basis, the 1999 Notes; and

WHEREAS, Bank of America, N.A. (the "Purchaser") has offered, by way of the Purchase Offer (the "Purchase Offer"), to purchase such limited tax general obligation note in the amount set forth in such offer upon the terms and conditions hereinafter set forth; NOW, THEREFORE,

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

Section 1. Finding, Purpose and Description of Note. The City authorizes the sale and issuance of its "Limited Tax General Obligation Note, 2001" (the "Note") for the purpose of providing the funds necessary to refund on a current basis and defease the 1999 Notes and to pay certain costs related to the sale and issuance of the Note (the "Project").

The Note shall be issued as a single note in the maximum principal amount of \$1,400,000; shall be dated the date of issue; shall mature on March 31, 2002; shall bear interest (computed on the basis of a 365/366-day year) at the variable rate of an amount equal to sixty (60) percent of the Prime Rate as from time to time is publicly announced by Bank of America, N.A. (the "Bank") in San Francisco, California, as its "Prime Rate," payable at maturity or earlier redemption. The Note 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 City, in its

capacity as registrar and paying agent for the Note (the “Registrar”), deems necessary for purposes of identification.

If the Note is not paid upon proper presentment at its maturity or redemption date, the City shall have the obligation to pay interest at the same rate from and after such maturity or earlier redemption date until such Note, both principal and interest, is paid in full.

Section 2. 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. Principal of and interest on the Note shall be payable at the office of the Registrar only upon presentation and surrender of the Note at maturity or earlier redemption by the person who is named as the registered owner thereof (the “Owner”) on the registration books for the Note maintained by the Registrar (the “Note Register”) on such date.

Section 3. Redemption; Open Market Purchase. The Note shall be subject to optional redemption prior to maturity, in whole or in part on any date, at a redemption price of par, plus accrued interest to the date fixed for redemption, upon three days notice to the Owner.

Section 4. Debt Limit Not Exceeded. The City finds and covenants that the Note is issued within all constitutional and statutory debt limitations presently applicable to the City.

Section 5. Pledge of Full Faith, Credit and Resources. The Note is a limited tax general obligation of the City. Unless the principal of and interest on the Note are paid from other sources, including, but not limited to, the proceeds of the sale of the Property, so long as the Note is outstanding, the City hereby irrevocably covenants to include in its budgets and to make annual levies of taxes upon all property within the City subject to taxation without a vote in amounts which, together with any other money legally available therefor, shall be sufficient to pay such principal and interest as the same shall become due. The City hereby irrevocably

pledges its full faith, credit and resources to the annual levy and collection of such taxes and for the prompt payment of such principal and interest. All of such taxes shall be paid into the Note Fund hereinafter created.

The City hereby irrevocably covenants that the annual tax provided for herein to be levied for the payment of the principal of and interest on the Note shall be within and as a part of the tax levy permitted the City without a vote of the people and that a sufficient portion of each such annual tax levy to be made so long as the Note is outstanding, together with any other money legally available therefor, shall be and is hereby set aside, pledged and appropriated for the payment of the principal of and interest on the Note as the same shall become due.

Section 6. Form of Note. The Note shall be typewritten, printed, lithographed or multicopied on good bond paper in a form consistent with this Ordinance and Washington law.

Section 7. Execution of Note. The Note shall be signed on behalf of the City with the facsimile or manual signatures of the Mayor and the City Clerk, and shall have the seal of the City impressed or a facsimile thereof imprinted 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 shall have been authenticated or delivered by the Registrar or issued by the City, the Note nevertheless may be authenticated, delivered and issued and upon such authentication, 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 8. Registration. The Registrar shall keep, or cause to be kept, the Note Register at the office of the Registrar.

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 2 hereof. All such payments made as provided in Section 2 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 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.

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 Internal Revenue Code of 1986, as amended (the "Code").

Section 9. 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 (a) evidence satisfactory to the City of the destruction or loss of the original Note and of the ownership thereof, and (b) 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 10. Defeasance. If money and/or “Government Obligations” (as such obligations are defined in Chapter 39.53 RCW, as now in existence or hereafter amended) maturing at such times(s) and bearing such interest to be earned thereon (without any reinvestment thereof) as will provide a series of payments which shall be sufficient, together with any money initially deposited, to provide for the payment of the principal of and interest on all or a portion of the Note, when due in accordance with its terms and in accordance with a refunding plan adopted by the City, are set aside in a special fund (hereinafter called the “trust account”) to effect such payment and are pledged irrevocably for the purpose of effecting such payment, then no further payments need be made into the Note Fund for the payment of the principal of and the interest on the Note, the Owner thereof shall cease to be entitled to any lien, benefit or security of this Ordinance except for the right to receive the money and the principal and interest proceeds on the obligations set aside in the trust account, and the Note shall no longer be deemed to be outstanding hereunder.

Section 11. Sale of the Note. The Purchaser has presented the Purchase Offer to the City pursuant to which the Purchaser has offered to purchase the Note, under the terms and conditions provided in the Purchase Offer, which written Purchase Offer is on file with the City Clerk and is incorporated herein by this reference. The City Council finds that entering into the Purchase Offer is in the City’s best interest and therefore accepts the offer contained in the Purchase Offer and authorizes the execution of the Purchase Offer by City officials.

The Note will be printed or multicopied at City expense and will be delivered to the Purchaser in accordance with the terms of the Purchase Offer with the approving legal opinion of Gottlieb, Fisher & Andrews, PLLC, bond counsel of Seattle, Washington, relative to the issuance of the Note, printed on or attached to the Note. Bond counsel has not been engaged

to participate in the preparation or review of, or express any opinion concerning the completeness or accuracy of any official statement or other disclosure documentation used in connection with the offer or sale of the Note by any person, and bond counsel's opinion shall so state. 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.

Section 12. Delivery of Note; Temporary Note. The proper City officials are authorized and directed to execute and/or approve, 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 printing, execution and prompt delivery of the Note to the Purchaser and for the proper application and use of the proceeds of the sale thereof.

If the definitive Note is not ready for delivery by the date established for closing (the "Closing"), the City Finance Director, upon the approval of the Purchaser, may cause to be issued and delivered to the Purchaser a temporary Note with appropriate omissions, changes and additions. Any temporary Note shall be entitled and subject to the same benefits and provisions of this ordinance with respect to the payment, security and obligation thereof as the definitive Note authorized hereby. Such temporary Note shall be exchangeable without cost to the Owner thereof for the definitive Note when the latter is ready for delivery.

Section 13. Establishment of Note Fund; Application of Note Proceeds. There is hereby created and established in the office of the City Finance Director a special fund to be designated as the "Limited Tax General Obligation Note Fund, 2001" (the "Note Fund").

The accrued interest on the Note, if any, received by the City upon the sale of the Note shall be deposited into the Note Fund and shall be applied to the payment of interest

coming due on the Note. Net principal proceeds of the sale of the Note shall be deposited, upon receipt, in the Limited Tax General Obligation Note Fund, 1999 and used to pay on the maturity date for the 1999 Notes the principal of and interest due on the 1999 Notes. The remaining net principal proceeds of the sale of the Note shall be deposited in the Coast Guard Property Acquisition Project Fund to pay the costs related to the sale and issuance of the Note.

Section 14. Tax-Exemption Covenants. The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exclusion of the interest on the Note from gross income for purposes of federal income taxation, and will take or require to be taken such acts as may be permitted by Washington law and as may from time to time be required under applicable law to continue the exclusion of the interest on the Note from gross income 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 would cause the Note to be an “arbitrage bond” within the meaning of Section 148 of the Code.

The Note is intended to qualify for the \$5,000,000 small governmental issuer exception to the arbitrage rebate requirement, set forth in the Code. The City covenants that, if the City issues more than \$5 million in tax-exempt bonds in the calendar year 2001, it will 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, 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 the City is a bond issuer the arbitrage certifications of which may not be relied upon.

The City 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 tax exemption thereof 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 2001.

Section 15. Contract; Severability. 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 16. 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
/s/ MAYOR, ROSEMARIE IVES

ATTEST/AUTHENTICATED:
/s/CITY CLERK, BONNIE MATTSON

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
/s/ JAMES E. HANEY

FILED WITH THE CITY CLERK:	March 20, 2001
PASSED BY THE CITY COUNCIL:	March 20, 2001
SIGNED BY THE MAYOR:	March 20, 2001
PUBLISHED:	March 24, 2001
EFFECTIVE DATE:	March 29, 2001
ORDINANCE NO. <u>2101</u>	