

ORDINANCE NO. 2327

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A COMBINED UTILITIES REVENUE BOND, 2013 SERIES, OF THE CITY OF LEXINGTON, NEBRASKA, IN THE PRINCIPAL AMOUNT OF FOUR MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$4,750,000) IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; APPROVING THE FORM OF SAID BOND (ISSUED AS A SINGLE PROMISSORY NOTE) AND RELATED CONTRACT FOR LOAN; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE WATERWORKS PLANT AND DISTRIBUTION SYSTEM, THE SANITARY SEWER PLANT AND SYSTEM AND THE ELECTRIC LIGHT AND POWER DISTRIBUTION SYSTEM OWNED OR TO BE OWNED BY THE CITY FOR THE PAYMENT OF SAID BOND; PROVIDING FOR THE ISSUANCE AND SALE OF SAID BOND; AUTHORIZING THE DELIVERY OF SAID BOND AND RELATED CONTRACT FOR LOAN TO THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; DETERMINING THAT INTEREST ON SAID BOND SHALL NOT BE EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SAID BOND; AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA, AS FOLLOWS:

Section 1. The Mayor and Council of the City of Lexington, Nebraska (the "City") hereby find and determine as follows:

(a) The City owns and operates its own sewage disposal plant and sanitary sewer system (as now existing or hereafter extended and improved, the "Sewer System"), waterworks plant and water system (as now existing or hereafter extended and improved, the "Water System") and electric light and power distribution system (as now existing or hereafter extended and improved, the "Electric System") (the Sewer System, the Water System and the Electric System, together with any additions, extensions and improvements thereto hereafter constructed or acquired, are herein referred to as the "Combined Utilities"), all of which are hereby determined to be revenue producing facilities under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as amended;

(b) The City has heretofore issued and outstanding the following revenue bonds which are a lien upon and secured by a pledge of the revenue and earnings of the Combined Utilities:

Combined Utilities Revenue Bonds, 2008 Series, of the City of Lexington, Nebraska, date of original issue - September 26, 2008, issued pursuant to Ordinance No. 2251 (the "2008 Ordinance") in the original principal amount of Three Million Five Hundred Forty Thousand Dollars (\$3,540,000), of which \$3,035,000 remain outstanding and unpaid (the "2008 Series Bonds");

Combined Utilities Revenue Refunding Bonds, 2009 Series, of the City of Lexington, Nebraska, date of original issue - May 12, 2009, issued pursuant to Ordinance No. 2262 (the "2009 Ordinance") in the original principal amount of Four Million Three Hundred Sixty-five Thousand Dollars (\$4,365,000), of which \$3,300,000 remain outstanding and unpaid (the "2009 Series Bonds"); and

Combined Utilities Revenue Refunding Bonds, 2011 Series, of the City of Lexington, Nebraska, date of original issue - June 1, 2011, issued pursuant to Ordinance No. 2296 (the "2011 Ordinance") in the original principal amount of One Million Six Hundred Fifty Thousand Dollars (\$1,650,000), of which \$1,510,000 remain outstanding and unpaid (the "2011 Bond").

The 2008 Series Bonds, the 2009 Series Bonds and the 2011 Series Bonds (collectively, the "Outstanding Parity Bonds") represent the only presently-outstanding indebtedness of the City for which the revenues and earnings of the Combined Utilities have been pledged. The 2008 Ordinance, the 2009 Ordinance and the 2011 Ordinance are collectively referred to herein as the "Outstanding Parity Ordinances".

(c) NDEQ has approved a project of the City for its Sewer System consisting of the acquisition, construction, improvement, repair, rehabilitation or extension of wastewater treatment works of the City which has been designated as Project No. C317676 (the "Project") and has agreed to lend from monies in NDEQ's Wastewater Treatment Facilities Construction Loan Fund or from other sources in the total principal amount of \$4,750,000 (the "2013 NDEQ Loan") and in connection with such loan has agreed to accept one or more bonds payable from the revenues of the City's Combined Utilities and to enter into an agreement entitled "Contract for Loan between Nebraska Department of Environmental Quality and the City of Lexington Project No. C317676" (the "2013 NDEQ Contract") relating to the Project;

(d) Section 19 of each of the Outstanding Parity Ordinances permit the issuance of "Additional Bonds" which are payable on a parity with the Outstanding Parity Bonds and equally and ratably secured therewith under the terms of the Outstanding Parity Ordinances provided that the Net Revenues derived by the City from its Combined Utilities for the fiscal year next preceding the issuance of the Additional Bonds (determined in accordance with the definition of such term set forth in Section 2(f) below, including, if applicable, a determination made for any period when financial statements have not yet been completed and reported on) shall have been at least equal to 1.20 times the Maximum Annual Debt Service (taking into consideration and excluding from debt service any Applicable Debt Service Reserve Transfer for any series of bonds) of the Outstanding Parity Bonds and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds (the "Net Revenues Additional Bond Requirement");

(e) the Net Revenues derived by the City from its Combined Utilities for the fiscal year ending September 30, 2012 (determined in accordance with the definition of such term set forth in Section 2(f) of each of the Outstanding Parity Ordinances, including, if applicable, a determination made for any period when financial statements have not yet been completed and reported on) are not less than \$2,150,000, and the Maximum Annual Debt Service (taking into consideration and excluding from debt service any Applicable Debt Service Reserve Transfer for any series of bonds) of the Outstanding Parity Bonds and the 2013 Bond authorized herein, is not more than \$1,187,000; therefore, the Net Revenues Additional Bond Requirement is satisfied;

(f) in connection with the 2013 NDEQ Loan, as evidenced by the 2013 NDEQ Note, it is necessary and advisable for the City to approve the execution and delivery of the 2013 NDEQ Contract and the 2013 NDEQ Note in substantially the forms attached hereto; and

(g) all conditions, acts and things required by law to exist or to be done precedent to the issuance of the City's Combined Utilities Revenue Bond, 2013 Series, authorized herein, as an "Additional Bond" under the Outstanding Parity Ordinances and as herein authorized to evidence the City's obligation under the 2013 NDEQ Loan do exist and have been done as required by law.

Section 2. In addition to the definitions provided in parentheses elsewhere in this Ordinance, the following definitions of terms shall apply, unless the context shall clearly indicate otherwise:

(a) The term "Applicable Debt Service Reserve Transfer" shall mean the amount of any required transfer from the respective sub-accounts in the Combined Utilities Bond Reserve Account for the Outstanding Parity Bonds or any issue of Additional Bonds. The amount of any Applicable Debt Service Reserve Transfer shall apply under the terms of the Outstanding Parity Ordinances and this Ordinance so long as the Reserve Requirement is being maintained in the sub-account of the Combined Utilities Bond Reserve Account for the respective series of bonds for which such Applicable Debt Service Reserve Transfer has been established. In the event of any deficiency with respect to such Reserve Requirement, the amount of the Applicable Debt Service Reserve Transfer next required to be made in order of time shall be reduced by the amount of such deficiency for purposes of any calculation or determination under the terms the Outstanding Parity Ordinances and this Ordinance.

- (b) The term “Additional Bonds” shall mean any and all bonds hereafter issued by the City pursuant to the terms of the Outstanding Parity Ordinances and this Ordinance which are equal in lien to the Outstanding Parity Bonds including such bonds issued pursuant to Section 19 of said ordinances and refunding bonds issued pursuant to Section 20 of said ordinances, as and when such bonds become equal in lien to the Outstanding Parity Bonds and the 2013 NDEQ Bond, according to their terms and the terms of said sections.
- (c) “Average Annual Debt Service Requirements” shall mean that number computed by adding all of the principal and interest due when computed to the absolute maturity of the bonds for which such computation is required and dividing by the number of years remaining that the longest bond of any issue for which such computation is required has to run to maturity. In making such computation, the principal of any bonds for which mandatory redemptions are scheduled shall be treated as maturing in accordance with such schedule of mandatory redemptions.
- (d) The term “Deposit Securities” shall mean direct obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America, including obligations issued in book-entry form.
- (e) The term “Maximum Annual Debt Service” shall mean the maximum amount scheduled to fall due for payment of principal and interest in any fiscal year on the bonds for which such computation is required. In making such computation, the principal of any bonds for which mandatory redemptions are scheduled shall be treated as maturing in accordance with such schedule of mandatory redemptions.
- (f) The term “Net Revenues” shall mean the gross revenues derived by the City from the ownership or operation of the Combined Utilities, including investment income, but not including any income from sale or disposition of any property belonging to or forming a part of the Combined Utilities, less the ordinary expenses to the City of operating and maintaining the Combined Utilities payable from the Operation and Maintenance Account described in Section 13 of the Outstanding Parity Ordinances and this Ordinance. Operation and maintenance expenses for purposes of determining “Net Revenues” shall not include depreciation, amortization or interest on any bonds or other indebtedness. Net Revenues for all purposes of the Outstanding Parity Ordinances and this Ordinance shall be shown by an audit for the fiscal year in question as conducted by independent certified public accountants, provided, however, that in the case of issuance of Additional Bonds, for that period from the end of each fiscal year until the financial statements reported on by the City’s accountants are available, Net Revenues shall either (i) be based upon the most recent fiscal year for which there are financial statements which have been reported on by such accountants so long as the unaudited financial information for the then most recently completed fiscal year as certified by the City Treasurer would not result in a contrary determination, if such unaudited financial information were deemed the completed and reported on results or (ii) based upon a report of the City’s accountants that the completed and reported on results will not be less than such amount as such accountants shall confirm.
- (g) “Paying Agent and Registrar” shall mean the City Treasurer of the City of Lexington, Nebraska, as appointed to act as the combined paying agent and bond registrar for the 2013 Bond pursuant to Section 4 hereof.
- (h) “Reserve Requirement” shall mean the amount required to be maintained in the respective sub-accounts in the Combined Utilities Bond Reserve Account for the Outstanding Parity Bonds, the Series 2013 Bond or any issue of Additional Bonds.

Section 3. To provide for the payment of the costs of the Project, there shall be and there is hereby ordered issued the 2013 Bond, in the form of and evidenced by a single promissory note (sometimes referred to in this Ordinance, according to the context, as the “2013 NDEQ

Note” and sometimes as the “2013 Bond”) in the maximum principal amount drawable of Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000), with such 2013 NDEQ Note to be substantially in such form and to have such payment terms as are set forth in Exhibit A to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. In connection with the 2013 NDEQ Note, the City shall also enter into the 2013 NDEQ Contract in substantially the form set forth in Exhibit B to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. The terms and conditions of the 2013 NDEQ Note and the 2013 NDEQ Contract are hereby approved and the Mayor and the City Clerk are hereby authorized to execute and deliver the 2013 NDEQ Note and the 2013 NDEQ Contract for and on behalf of the City in substantially the form presented but with such changes from the forms presented and attached hereto as such officers shall deem appropriate for and on behalf of the City.

Section 4. The City hereby pledges and hypothecates all revenues and earnings, now or hereafter received, or otherwise due and owing to the City, derived from the ownership and operation of the City’s Combined Utilities and all extensions and enlargements thereof, including any additions and improvements hereafter made, for the payment of principal of and interest on the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds as the same fall due. So long as said revenues and earnings are sufficient to make all required payments of principal and interest with respect to the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds, all such required payments with respect to each such issue shall be made in full from the respective sub-accounts in the Combined Utilities Revenue Bond Payment Account for each such series. In the event that such revenues and earnings are insufficient to meet the required payments from the Combined Utilities Revenue Bond Payment Account, such revenues and earnings shall be allocated to the Outstanding Parity Bonds, the 2013 Bond and any such Additional Bonds, pro rata in accordance with the respective unpaid principal amounts then outstanding for the Outstanding Parity Bonds, the 2013 Bond and such Additional Bonds. The pledge and hypothecation provided for Outstanding Parity Bonds and the 2013 Bond, as provided for in the Outstanding Parity Ordinances and this Ordinance, is intended to be and shall provide for a first and prior pledge of, lien upon and security interest in the revenues of the Combined Utilities (subject to the right of the City to issue Additional Bonds as provided in the Outstanding Parity Ordinances and this Ordinance) for the payment of principal of and interest on the Outstanding Parity Bonds and the 2013 Bond, superior to any pledge or promise made with respect to any other indebtedness of the City as to its Combined Utilities, and is intended to be a full exercise of the powers of the City provided for in Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as amended, with respect to its Combined Utilities.

Section 5. So long as any of the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds issued pursuant to this Ordinance shall remain outstanding and unpaid, the City covenants and agrees to establish, revise, from time to time as necessary, and collect such rates, charges and rentals for the sewer, water and electric service furnished from the Combined Utilities adequate to produce revenues and earnings sufficient at all times:

(a) To provide for the payment of the interest and principal of the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds as the same fall due.

(b) To pay all proper and necessary costs of operation and maintenance of the Combined Utilities and to pay for the necessary and proper repairs, replacements, enlargements, extensions and improvements to the Combined Utilities.

(c) To provide funds sufficient to make the deposits into the accounts required by Section 13 of the Outstanding Parity Ordinances Section 6 of this Ordinance and any parallel or similar section of any ordinance authorizing the issuance of Additional Bonds.

(d) To maintain Net Revenues in each fiscal year adopted by the City for the Combined Utilities in an amount not less than 1.20 times the total amount of principal paid or payable (exclusive of any principal redeemed prior to maturity other than principal redeemed pursuant to a schedule of mandatory redemptions and taking into consideration any Applicable Debt Service Reserve Transfer made in such fiscal year) and interest falling due during such fiscal year for the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds, excluding from principal paid the amount of any Applicable Debt Service Reserve Transfer for such fiscal year, if any.

Section 6. All revenues and earnings derived from the operation of the Combined Utilities of said City shall be set aside as collected and deposited into a separate fund previously established and designated (and referred to in this Ordinance) as the "Combined Utilities Fund". Any uninvested moneys in the Combined Utilities Fund shall be deposited in a separate bank account properly earmarked and deposit shall be made in a bank or banks designated by the Council and be secured as provided by law for public deposits. The City shall set up and maintain as long as any of the Outstanding Parity Bonds, the 2013 Bond or Additional Bonds are outstanding the accounts described in this Section 6 for the administration of said fund. Within the Combined Utilities Fund there were previously established and maintained and are hereby confirmed the following accounts for allocation of the monies in said fund under the terms of the Outstanding Parity Ordinances and this Ordinance: (a) Combined Utilities Revenue Bond Payment Account; (b) Operation and Maintenance Account; (c) Combined Utilities Bond Reserve Account; and (d) Surplus Account. Within each such account further sub-accounts have been, shall now, or may hereafter, be established as provided in the Outstanding Parity Ordinances and this Ordinance. Deposits shall be made to said accounts on a monthly basis, to the accounts in the order of priority as follows:

I. COMBINED UTILITIES REVENUE BOND PAYMENT ACCOUNT; Within the Combined Utilities Revenue Bond Payment Account there is hereby ordered established the 2013 Series Bond Payment Sub-account. Out of the Combined Utilities Fund the City shall transfer into the Combined Utilities Revenue Bond Payment Account on or before the tenth (10th) day of each calendar month the amounts required to be deposited to the 2013 Series Bond Payment Sub-account in accordance with the following requirements for such sub-account:

(A) 2013 Series Bond Payment Sub-account.

(1) during the period from and including June 15, 2013, until and including that June 15 or December 15 which immediately follows the “Initiation of Operation” (as defined in the 2013 NDEQ Contract; in this Ordinance hereafter referred to as the “Initiation of Operation”) of the Project an amount such that if the same amount were credited on the fifteenth day of each calendar month from such date of credit until the next payment date upon which any amount falls due on the 2013 NDEQ Note, whether for principal or interest, the amount accumulated by such monthly credits would equal the amount falling due on such payment date on the 2013 NDEQ Note, provided, however, that such credits shall be required only as and to the extent that such payments are not provided from other sources including amounts advanced by NDEQ pursuant to the 2013 NDEQ Contract and the 2013 NDEQ Note;

(2) during the period from and including that June 15 or that December 15 whichever immediately follows the Initiation of Operation until the 2013 NDEQ Note has been paid in full an amount equal to one-sixth of the installment amount (principal and interest) due on the next installment payment date for the 2013 NDEQ Note;

(B) 2011 Series Bond Payment Sub-account. From the monies deposited to the Combined Utilities Revenue Bond Payment Account from the Combined Utilities Fund, there shall be deposited to the 2011 Series Bond Payment Sub-account such amounts deposited at such times as shall be required to comply with the requirements of the 2011 Ordinance.

(C) 2009 Series Bond Payment Sub-account. From the monies deposited to the Combined Utilities Revenue Bond Payment Account from the Combined Utilities Fund, there shall be deposited to the 2009 Series Bond Payment Sub-account such amounts deposited at such times as shall be required to comply with the requirements of the 2009 Ordinance.

(D) 2008 Series Bond Payment Sub-account. From the monies deposited to the Combined Utilities Revenue Bond Payment Account from the Combined Utilities Fund, there shall be deposited to the 2008 Series Bond Payment Sub-account such amounts deposited at such times as shall be required to comply with the requirements of the 2008 Ordinance.

All such deposits to the 2013 Bond Payment Sub-account, the 2011 Series Bond Payment Sub-account, the 2009 Series Bond Payment Sub-account and the 2008 Series Bond Payment Sub-account shall be made in such amounts and at such times that there will be sufficient sums in each such sub-account to meet the payments required to be made by the City with respect to the 2013 Bond and the Outstanding Parity Bonds as the same fall due, including any and all transfers required to be made to the Paying Agent and Registrar for the Outstanding Parity Bonds and the 2013 Bond. All such deposits are required to be made without preference or priority as between each such sub-account and any similar sub-account established for the 2013 Bond, the Outstanding Parity Bonds or any issue of Additional Bonds and if amounts available are insufficient to make all deposits as required, the available funds shall be allocated on a pro rata basis in accordance with the terms of Section 4 of this Ordinance. In the event of the issuance of any Additional Bonds, the City shall in the ordinance authorizing their issuance provide for a related sub-account in the Combined Utilities Revenue Bond Payment Account and for deposits into such sub-account sufficient to make payments upon such Additional Bonds as the same fall due. Such sub-account and the deposits required to be made thereto shall have equal rank and standing with the 2008 Series Bond Payment Sub-account, the 2009 Series Bond Payment Sub-account, the 2011 Series Bond Payment Sub-account, the 2013 Series Bond Payment Sub-account and the payments required to be made to each thereof. Each sub-account in the Combined Utilities Revenue Bond

Payment Account shall constitute a separate fund held in trust by the City for the separate special benefit of the issue or series of bonds for which it is established.

- II. OPERATION AND MAINTENANCE ACCOUNT: After making all deposits required to the Combined Utilities Revenue Bond Payment Account in each month, the City shall set aside in the Operation and Maintenance Account each month an amount sufficient for the operation and maintenance of its Combined Utilities during the next period of one month (from deposit date to the next expected monthly deposit date for such account) and the expenses of maintenance and operation of said utilities shall be paid out of the Operation and Maintenance Account. Expenses for operation and maintenance shall include all ordinary and necessary costs for operating and maintaining the Combined Utilities and shall include, without limitation, wages, salaries, supplies, professional services, materials, insurance premiums, costs for purchased power and franchise fees charged by the City, if any, and shall also include any items necessary to maintain the properties of the Combined Utilities to achieve the capacity and performance for which such properties were designed and constructed, including the costs of installing equipment, accessories or appurtenances which are necessary during the life of such properties to maintain the capacity and performance for which such properties were designed and constructed. Within the Operation and Maintenance Account, the City shall maintain the Sewer System Maintenance and Replacement Sub-account created under Ordinance No. 1994 (as and to the extent applicable and required), and shall deposit thereto and withdraw and apply therefrom such amounts as shall from time to time be required by the policies and regulations of either the United States Environmental Protection Agency or the Nebraska Department of Environmental Quality for purposes of maintaining and replacing the Sewer System's sewage treatment works. The City hereby covenants and agrees that in the event of any default in payment on Outstanding Parity Bonds, the 2013 Bond or any Additional Bonds, no franchise fees shall be payable from the Operation and Maintenance Account until all such payment defaults have been cured in full.
- III. COMBINED UTILITIES BOND RESERVE ACCOUNT: Separate sub-accounts within the Combined Utilities Bond Reserve Account have been previously established under Ordinance No. 2251 for the 2008 Series Bonds, under Ordinance No. 2262 for the 2009 Series Bonds and under Ordinance 2296 for the 2011 Bonds. Within the Combined Utilities Bond Reserve Account as established there is hereby ordered established a separate sub-account designated as the 2013 Series Bond Reserve Sub-account. From reserve monies held with respect to the Refunded Bonds, there shall be deposited to the 2013 Series Bond Reserve Sub-account the sum of \$-0- (which amount shall be the "Reserve Requirement" for such sub-account) to be held as a debt service reserve securing the payment of the 2013 Bond on a first and prior basis. In the event that at any time the monies in the 2013 Series Bond Payment Sub-account of the Combined Utilities Revenue Bond Payment Account are insufficient to pay either the interest on or the principal of the 2013 Bond as the same fall due, the City shall apply the monies in the 2013 Series Bond Reserve Sub-account to pay such principal and interest and to prevent any default in payment with respect to the 2013 Bond. If the City shall use any of the monies in the 2013 Series Bond Reserve Sub-account for such purpose and such use shall reduce the balance in said sub-account below the Reserve Requirement therefor, the City shall transfer funds next available in each month from the monies in the Combined Utilities Fund, after making all required deposits in each such month to the Combined Utilities Revenue Bond Payment Account and the Operation and Maintenance Account, until the Reserve Requirement for the 2013 Series Bond Reserve Sub-account has been restored. In any ordinance authorizing Additional Bonds, the City may make provision for the creation of an additional separate sub-account in the Combined Utilities Bond Reserve Account for each such issue of Additional Bonds provided that the required balance to be set for any such issue shall not exceed 1.25 times the Average Annual Debt Service Requirements for any such issue of Additional Bonds. The balance for any such sub-account may be established from monies of the Combined Utilities otherwise available, from periodic deposits made to such sub-account or from bond proceeds. Any such additional sub-account in the Combined Utilities Bond Reserve Account shall be of equal priority with the 2008 Bond Reserve Sub-account, the 2009 Bond Reserve Sub-account, the 2011 Bond Reserve Sub-account and the 2013 Bond Reserve Sub-account and available monies from the Combined Utilities Fund required to be deposited to each such sub-account at any time shall be allocated on a pro rata basis in accordance to the terms of Section 4 of this Ordinance. Each sub-account in the Combined Utilities Bond Reserve Account shall constitute a separate fund held in trust by the City for the separate

special benefit of the issue or series of bonds for which it is established. The City shall make each Applicable Debt Service Reserve Transfer when and as required under the terms of the definition for such term.

IV. SURPLUS ACCOUNT:

After making the payments hereinabove required to be made into the Combined Utilities Revenue Bond Account, the Operation and Maintenance Account and the Combined Utilities Bond Reserve Account, all remaining funds shall be transferred into a Surplus Account. Moneys in the Surplus Account may be used as follows:

- (a) To fill any deficiency in the foregoing accounts.
- (b) In lieu of tax payments or additional City franchise tax payments. So long as no deficiency exists in required monthly payments in the accounts established by Section 13 of Ordinance No. 2251, Section 13 of Ordinance No. 2262, Section 13 of Ordinance No. 2296 and this Ordinance, payment may be made to the City annually, semiannually or quarterly as an in lieu of tax payment or additional franchise fee which can be used by the City for any purpose authorized by law.
- (c) Any lawful purpose connected with the Combined Utilities, including improvements, extensions and enlargements of the Combined Utilities and paying principal and interest on general obligation bonds of the City or junior lien indebtedness authorized to pay the cost of constructing improvements to any one of the utilities systems included in the Combined Utilities.
- (d) Retiring the Outstanding Parity Bonds, the 2013 Bond or Additional Bonds prior to their maturity under their option provisions or by purchase on the open market.

Moneys on deposit in the Combined Utilities Fund or any account therein may to the extent practicable and reasonable be invested in direct general obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America, or in any other lawful investments for cities of the class to which the City of Lexington belongs. Investments for the Combined Utilities Revenue Bond Payment Account shall mature at such times and in such amounts as shall be required to provide moneys to make the payments to be made from said Account. Moneys credited to the Combined Utilities Bond Reserve Account shall be invested in direct obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America, in obligations of any agency of the United States of America (whether or not guaranteed by the United States) so long as the obligations of such agency are rated in one or the other of the two highest rating categories (not taking into consideration subcategories, if any) of any recognized rating agency or in certificates of deposit which are fully insured by insurance of the Federal Deposit Insurance Corporation or (as to any uninsured amounts) secured by collateral securities as required by law, any of which securities or certificates of deposit shall mature or be redeemable at stated fixed prices at the option of the holder by not more than eight years from the date of such investment. All moneys and income from investments made from moneys credited to the Combined Utilities Revenue Bond Payment Account and the Combined Utilities Bond Reserve Account shall, when realized and collected, be credited to the respective Account from which such investments were made, unless there shall then be credited thereto the respective full amounts then required by

paragraphs I and III of this Section 6, in which event such interest and income may be credited to the Surplus Account. All investments held for the credit of any Fund or Account may be sold when required to make the payments to be made from such Fund or Account. Any moneys credited to the Combined Utilities Fund or any Account or Sub-account therein which are not invested shall be secured in the manner provided by law for the security of funds of cities of the class of which Lexington is one. It is understood that the revenues of the Combined Utilities are to be credited to the various accounts hereinabove established in the order in which said accounts have been listed, and if within any period the revenues are insufficient to credit the required amounts in any of the said accounts, the deficiencies shall be made up the following period or periods after payment into all accounts enjoying a prior claim on the revenues have been made in full.

Section 7. So long as the Outstanding Parity Bonds, the 2013 Bond or any Additional Bonds issued pursuant to this Ordinance shall remain outstanding and unpaid, the City covenants and agrees to establish, revise, from time to time as necessary, and collect such rates and charges for the water and water service and sewer service furnished from the Combined Utilities adequate to produce revenues and earnings sufficient at all times:

(a) To provide funds to pay, when due, the principal of and interest on the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds issued pursuant to this Ordinance.

(b) To pay all proper and necessary costs of operation and maintenance of the Combined Utilities, to pay for the necessary and proper repairs, replacements, enlargements, extensions and improvements to the Combined Utilities and to pay and perform all contractual obligations of the City relating to the Combined Utilities, including but not limited to any and all obligations set forth or provided for in the Outstanding Parity Ordinances, this Ordinance and the 2013 NDEQ Contract.

(c) To provide funds sufficient to make the deposits into the Accounts and at the times and in the amounts required by Section 6 of this Ordinance.

Section 8. The City will not hereafter grant any franchise or right to any person, firm or corporation to own or operate a waterworks plant or water system, sewer plant or system or electric light and power distribution system in competition with those owned by the City.

Section 9. While any of the Outstanding Parity Bonds, the 2013 Bond or any Additional Bonds are outstanding, the City will render bills to all customers for water and sewer services. If bills are not paid within sixty days after due, such utilities services will be discontinued, subject to procedures and limitations upon termination of utility service provided for under state and federal law. The City agrees that it will make appropriate charge for use of all properties of the City connected to the Combined Utilities.

Section 10. To provide funds for any purpose or purposes related to the Combined Utilities, the City may issue Additional Bonds (other than Additional Bonds issued for refunding

purposes which are governed by Section 20 of Ordinance No. 2251, Section 20 of Ordinance No. 2262, Section 20 of Ordinance No. 2296 and this Ordinance) payable from the revenues of the Combined Utilities having equal priority and on a parity with the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds then outstanding only upon compliance with the following conditions:

- (a) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Combined Utilities Revenue Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the Outstanding Parity Bonds, the 2013 Bond, any Additional Bonds then outstanding and the proposed Additional Bonds.
- (b) The City shall have complied with one or the other of the two following requirements:
 - (1) The Net Revenues derived by the City from its Combined Utilities for the fiscal year next preceding the issuance of the Additional Bonds (determined in accordance with the definition of such term set forth in Section 2(f), including, if applicable, a determination made for any period when financial statements have not yet been completed and reported on) shall have been at least equal to 1.20 times the Maximum Annual Debt Service (taking into consideration and excluding from debt service any Applicable Debt Service Reserve Transfer for any series of bonds) of the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds; or
 - (2) The City shall have received a projection made by a consulting engineer or firm of consulting engineers, recognized as having experience and expertise in municipal utility systems, projecting that the Net Revenues of the Combined Utilities in each of the three full fiscal years after the issuance of such Additional Bonds will be at least equal to 1.35 times the Maximum Annual Debt Service (taking into consideration and excluding from debt service any Applicable Debt Service Reserve Transfer for any series of bonds) of the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds. In making such projection, the consulting engineer shall use as a basis the Net Revenues of the Combined Utilities during the last fiscal year for which an independent audit has been prepared and shall adjust such Net Revenues as follows: (A) to reflect changes in rates which have gone into effect since the beginning of the fiscal year for which the audit was made, (B) to reflect such engineer's estimate of the net increase over or net decrease under the Net Revenues of the Combined Utilities for the fiscal year for which the audit was made by reason of: (i) changes of amounts payable under existing contracts for services; (ii) additional general income from sales to customers under existing rate schedules for various classes of customers or as such schedules may be revised under a program of changes which has been adopted by the Mayor and Council of the City; (iii) projected revisions in costs for labor, wages, salaries, machinery, equipment, supplies and other operational items; (iv) revisions in the amount of service to be supplied and any related administrative or other costs associated with such increases due to increased supply from the acquisition of any new facility or increased demand related to new customers; (v) such other factors affecting the projections of revenues and expenses as the consulting engineer deems reasonable and proper. Annual debt service on any proposed Additional Bonds to be issued may be estimated by the consulting engineer in projecting Maximum Annual Debt Service, but no Additional Bonds shall be issued requiring any annual debt service payments in excess of the amounts so estimated by the consulting engineer.

The City hereby covenants and agrees that so long as any of the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds are outstanding, it will not issue any bonds or notes payable from the revenues of the Combined Utilities except in accordance with the provisions of this Ordinance, provided, however, the City reserves the right to issue bonds or notes which are junior in lien to the Outstanding Parity Bonds, the 2013 Bond and any such Additional Bonds with the principal and interest of such bonds or notes to be payable from monies credited to the Surplus Account as provided in Subsection 6(IV).

Section 11. The City may issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund any Outstanding Parity Bonds, 2013 Bond or Additional Bonds then outstanding, provided, that if any such Outstanding Parity Bonds, 2013 Bond or Additional Bonds are to remain outstanding after the issuance of such refunding bonds, the principal payments due in any calendar year in which those bonds which are to remain outstanding mature, or in any calendar year prior thereto, shall not be increased over the amount of such principal payments due in such calendar years immediately prior to such refunding. Refunding Bonds issued in accordance with this paragraph of this Section 20 may be issued as Additional Bonds of equal lien without compliance with the conditions set forth in Subsection 19(b) of this Ordinance. The City may also issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund any Outstanding Parity Bonds, 2013 Bond or Additional Bonds then outstanding provided, that, if any such Outstanding Parity Bonds, 2013 Bond or Additional Bonds are to remain outstanding after the application of the proceeds of the refunding bonds to the payment of the bonds which are to be refunded, such issuance must comply with the Net Revenues test set forth in Subsection 10(b)(1) of this Ordinance and, if the proceeds of such refunding bonds are not to be applied immediately to the satisfaction of the bonds which are to be refunded, then such refunding bonds must provide by their terms that they shall be junior in lien to all Outstanding Parity Bonds, 2013 Bond and any Additional Bonds outstanding at the time of issuance of such refunding bonds until the time of application of their proceeds to the satisfaction of the bonds which are to be refunded. In computing Maximum Annual Debt Service to show compliance with said Net Revenues test for such refunding bonds, all payments of principal and interest due on such refunding bonds from the time of their issuance to the time of application of the proceeds of such refunding bonds to the satisfaction of the bonds which are to be refunded shall be excluded from such computation to the extent that such principal and interest are payable from sources other than the revenues of the Combined Utilities, such as bond proceeds or investment earnings on such proceeds while held in escrow, and/or from monies of the Combined Utilities but only those in the Surplus Account and all payments of principal and interest due on the bonds which are to be refunded from and after the time of such application shall also be excluded. For purposes of this paragraph of this Section 11, the time of application

of the proceeds of the refunding bonds to the satisfaction of the bonds which are to be refunded shall be the time of deposit with the paying agent for such bonds which are to be refunded pursuant to Section 10-126 R.R.S. Neb. 2012 (or any successor statutory provision thereto) or the time when such bonds which are to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner.

Section 12. So long as any of the Outstanding Parity Bonds, 2013 Bond or any Additional Bonds shall remain outstanding, the City will carry adequate insurance on the Combined Utilities properties of said City in such amounts as are normally carried by private companies engaged in similar operations including, without limiting the generality of the foregoing, fire and windstorm insurance, public liability insurance and any additional insurance covering such risks. All insurance, except public liability (including workers' compensation), shall be used by the City in making good the loss or damage in respect of which they were paid, either by repairing the property damaged or replacing the property destroyed and when the City shall have been furnished with a certificate of the city engineer or of consulting engineers employed by the City stating that the property damaged or destroyed has been fully repaired or replaced and such repairs or replacements have been fully paid for, the residue, if any, of such insurance monies shall be paid into the Surplus Account created by Section 6 of this Ordinance. If the proceeds of any insurance shall be insufficient to repair or replace the property damaged or destroyed, and if the City shall have no other funds available to pay the amount of the deficiency, the amount of said deficiency may be paid out of the Surplus Account described in Section 6 of this Ordinance. If, in the opinion of the city engineer or the consulting engineer employed by the City, it is in the best interest of the City not to repair or replace the damaged properties and that failure to repair or replace said properties will not affect the sufficiency of the income and revenue from the remaining properties to maintain and operate the same properly and provide funds sufficient to meet the payments required under all of the provisions of this Ordinance, then said insurance monies may be deposited into the Surplus Account but may be used only for purposes related to the Combined Utilities. The proceeds of any and all policies for public liability insurance payable to the City (as and to the extent provided for under policy terms) shall be paid to and be held by the City Treasurer and used in paying the claims on account of which they were received.

Section 13. So long as the Outstanding Parity Bonds, the 2013 Bond or any Additional Bonds are outstanding and unpaid, the City agrees that it will not sell, lease or otherwise dispose of any of the property of the Combined Utilities, the revenues of which are pledged hereunder located within the corporate limits of the City or any of the property located within or without the corporate limits of the City which is necessary or useful to the supplying of services from the Combined Utilities to the inhabitants of the City, except any portion of said properties which is

determined to be no longer necessary or useful in the operation of the Combined Utilities, provided, however, said City shall have the right to sell any of the properties of the Combined Utilities now or hereafter located outside the corporate limits of the City which are not necessary or useful to the supplying of service to the City and its inhabitants. No sale of any properties shall be made except for cash and then only after a certificate has been issued by a consulting engineer setting forth the value of such properties and making a determination of the loss of revenues that will be sustained by the sale of such properties and finding that the revenues to be derived from the remaining properties of the Combined Utilities will be sufficient to comply with all the terms, covenants and provisions of this Ordinance, which certificate shall be filed in the office of the City Clerk. Any sale of properties made pursuant to the terms and conditions of this Section 13 shall be made free and clear of the lien and pledge of the revenues of said properties under the terms and conditions of this Ordinance. The net proceeds of any such sale shall be used by the City for the purpose of redeeming the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds or applied to the pro rata payment of the principal of and accrued interest on all of said revenue bonds of the City. Any such redemption shall be made in the manner, after the notice and in accordance with all the conditions specified with respect to said bonds in the related authorizing ordinance.

Section 14. The City will cause proper books and accounts adapted to the Combined Utilities to be kept and will cause the books and accounts to be audited annually by an independent firm of certified public accountants and will make generally available to the holders of the Outstanding Parity Bonds, the 2013 Bond or any Additional Bonds the balance sheet and profit and loss statement of the City as certified by such accountants. The holders of any of said bonds shall have at all reasonable times the right to inspect the Combined Utilities and the records, accounts and data of the City relating thereto.

Section 15. The City hereby covenants and agrees with the holder or holders of the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds or any of them, that it will punctually perform all duties with reference to the Combined Utilities required by the Constitution and laws of the State of Nebraska, including the making and collecting of sufficient rates for service of the Combined Utilities and segregating the revenues of the Combined Utilities and the application of the respective funds and accounts described in this Ordinance, and the City hereby covenants and agrees not to sell, lease, loan, mortgage or otherwise encumber, except as provided in this Ordinance, or in any manner dispose of said Combined Utilities, except as provided by Section 13 of this Ordinance until the Outstanding Parity Bonds, the 2013 Bond and any Additional Bonds shall have been paid in full, both principal and interest, or unless and until provision shall have been made for payment of all such bonds and interest thereon in full, and the City further covenants and agrees with the holders of said bonds to

maintain in good condition and continuously operate the Combined Utilities, and the City will not permit or allow franchises, permits, privileges, easements or other rights necessary or desirable for said purposes to lapse and will from time to time take all reasonable steps to secure renewal of all such franchises, permits, easements and rights at the expiration thereof, if the same shall expire prior to maturity of the Outstanding Parity Bonds, the 2013 Bond or any Additional Bonds.

Section 16. Except for amendments which are required for the correction of language to cure any ambiguity or defect or inconsistent provisions, omission or mistake or manifest error contained herein, no changes, additions or alterations of any kind shall be made by the City in the provisions of this Ordinance in any manner; provided, however, that from time to time the holder of the 2013 Bond by an instrument or instruments in writing signed by such holder and filed with the Clerk of the City shall have the power to assent to and authorize any modification of the rights and obligations of the City and of the holder of said bond and the provisions of this Ordinance that shall be proposed by the City, and any action authorized to be taken with the assent and authority given as aforesaid of such holder shall be binding upon any and all subsequent holders of said bond and upon the City as fully as though such action was specifically and expressly authorized by the terms of this Ordinance. Any modification of the provisions of this Ordinance made as aforesaid shall be set forth in a supplemental ordinance to be adopted by the Mayor and Council of the City. The terms of the Outstanding Parity Ordinances, this Ordinance and any ordinance authorizing Additional Bonds shall govern the amendment of such ordinances, respectively, and the rights of the holders of the Outstanding Parity Bonds, 2013 Bond and Additional Bonds with respect thereto.

Section 17. The City's obligations under this Ordinance and the liens, pledges, covenants and agreements of the City herein made or provided for with respect to the 2013 Bond shall be fully discharged and satisfied and such 2013 Bond shall no longer be deemed outstanding hereunder if such 2013 Bond shall have been purchased and cancelled by the City or when payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof or (b) shall have been provided for by depositing with a national or state bank having trust powers or trust company, in trust solely for such payment, (i) sufficient money to make such payment and/or (ii) direct general obligations of the United States government or obligations guaranteed by the United States government ("Deposit Securities") in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal, at such time or times, as will ensure the availability of sufficient money to make such payment; provided, however, that, with respect to the 2013 Bond if it is to be paid prior to maturity, the City shall have duly given notice of redemption of such 2013 Bond as provided by law or made

irrevocable provisions for the giving of such notice. Any such money so deposited with a bank or trust company may be invested and reinvested in Deposit Securities and all interest and income from such Deposit Securities in the hands of such bank or trust company, in excess of the amount required to pay principal of and interest on the 2013 Bond for which such monies were deposited shall be paid over to the City as and when collected. With respect to any deposit made for purposes of satisfying the 2013 Bond under this Section 17, there shall be furnished to NDEQ and the Nebraska Investment Finance Authority (“NIFA”) an opinion of nationally recognized bond counsel that such deposit for payment of the 2013 Bond will not adversely affect the exclusion for interest from gross income for federal tax purposes on any bonds issued by NIFA to provide funds for deposit into the Nebraska Wastewater Treatment Facilities Construction Loan Fund and the furnishing of such opinion shall be a condition required to be satisfied prior to the making of any such deposit in trust for payment and satisfaction with respect to the 2013 Bond unless the 2013 Bond is to be prepaid and redeemed within 60 days from the time of such deposit.

Section 18. Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the Mayor and the City Council hereby authorize and direct all of the officers, employees and agents of the City to carry out, or cause to be carried out, and to perform such obligations of the City and such other actions as they, or any one of them, shall consider necessary, advisable, desirable, or appropriate in connection with this Ordinance, and the issuance, sale and delivery of the 2013 Bond and the 2013 NDEQ Contract, including, without limitation and whenever appropriate, the execution and delivery thereof and of all other related documents, instruments, certifications and opinions; and delegates, authorizes and directs the Mayor the right, power and authority to exercise his own independent judgment and absolute discretion in determining and finalizing the terms, provisions, form and contents of each of the foregoing. The execution and delivery by the Mayor or by any such other officer, officers, agent or agents of the City of any such documents, instruments, certifications and opinions, or the doing by him or her of any act in connection with any of the matters which are the subject of this Ordinance, shall constitute conclusive evidence of both the City’s and his or her approval of all changes, modifications, amendments, revisions and alterations made therein, and shall conclusively establish his or her absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the City of the documents, instruments, certifications and opinions so executed and the action so taken. The Mayor, the City Clerk and the City Administrator shall each constitute an “Authorized Representative” of the City under the terms of the 2013 NDEQ Contract.

Section 19. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 20. All ordinances, resolutions or orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 21. The Mayor and Council hereby expressly declare the intent and understanding that interest on the 2013 Bond shall not be excludable from gross income under the terms of Section 103 of the Internal Revenue Code of 1986, as amended, and the City as issuer shall not file any information report with respect to the issuance of the 2013 Bond pursuant to Section 149(e) of said Code.

Section 22. This Ordinance shall be published in pamphlet form and take effect as provided by law.

Passed and approved this 26th day of March, 2013.

Mayor

ATTEST:

City Clerk