

ORDINANCE NO. 1790

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COMBINED REVENUE REFUNDING BONDS, 1985 SERIES, OF THE CITY OF LEXINGTON, NEBRASKA, IN THE PRINCIPAL AMOUNT OF ONE MILLION EIGHT HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$1,875,000) FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT AND REDEMPTION OF \$1,815,000 OF THE CITY'S OUTSTANDING COMBINED REVENUE BONDS, 1982 SERIES; PRESCRIBING THE FORM OF SAID BONDS; PROVIDING FOR THE TEMPORARY INVESTMENT OF THE PROCEEDS THEREOF AND FOR THE APPLICATION OF SAID PROCEEDS AND EARNINGS THEREON TO PAY INTEREST ON AND THE PRINCIPAL OF SAID OUTSTANDING BONDS; PROVIDING FOR THE APPOINTMENT OF AN ESCROW AGENT; PLEDGING AND HYPOTHECATING THE REVENUE AND EARNINGS OF THE SEWER, WATER AND ELECTRIC SYSTEMS OWNED BY THE CITY FOR THE PAYMENT OF SAID BONDS AND INTEREST THEREON; ENTERING INTO A CONTRACT ON BEHALF OF THE CITY WITH THE OWNERS OF SAID BONDS; SELLING THE BONDS AND AUTHORIZING THE DELIVERY OF THE BONDS TO THE PURCHASER; AND ORDERING THIS ORDINANCE PUBLISHED IN PAMPHLET FORM.

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

Section 1. The Mayor and Council of the City of Lexington hereby find and determine:

(a) The City owns and operates its own sewage disposal plant and system, waterworks plant and system and electrical light and power plant and distribution system, (which together with any additions, extensions and improvements thereto hereafter constructed 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. 1943;

(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:

(1) Combined Revenue Bonds, 1977 Series, dated April 1, 1977, issued pursuant to Ordinance No. 1492 of the City, in the original principal amount of \$750,000 of which Bond Nos. 67 to 150, inclusive, remain outstanding and unpaid in the principal amount of \$420,000 (the "1977 Bonds");

(2) Combined Revenue Bonds, 1978 Series, dated June 15, 1978, issued pursuant to Ordinance No. 1596 and Ordinance

No. 1604, in the original principal amount of \$1,500,000 of which Bond Nos. 54 to 300, inclusive, remain outstanding and unpaid in the principal amount of \$1,235,000 (the "1978 Bonds");

(3) Combined Revenue Bonds, 1982 Series, dated October 1, 1982, issued pursuant to Ordinance No. 1711 of the City, in the original principal amount of \$2,000,000 of which Bond Nos. 19 to 400, inclusive, remain outstanding and unpaid in the principal amount of \$1,910,000 (the "1982 Bonds").

(c) The 1982 Bonds are callable for redemption on October 1, 1987, at par plus accrued interest and Bond Nos. 79 to 400, inclusive, have been called for redemption on such date; that since the issuance of the 1982 Bonds, the interest rates available in the bond markets have declined so that by refunding and redeeming the 1982 Bonds on October 1, 1987, the City can achieve a substantial savings in interest costs; that Ordinance No. 1711 in its Section 21 provides that if the payment of the 1982 Bonds shall have been provided for by a deposit with a state or national bank of "Government Obligations," as therein defined, which will provide sufficient moneys to make the payments of principal and interest on the 1982 Bonds to such date of redemption, the 1982 Bonds shall no longer be deemed outstanding; that the terms of this Ordinance, specifically its Section 10 provide for such payment and for the giving of notice of redemption, and that concurrently with the issuance of the bonds herein authorized (the "1985 Bonds") the 1982 Bonds will no longer be outstanding; that to provide for such deposit it is necessary that the City issue its 1985 Bonds in the principal amount of \$1,875,000.

(d) Ordinance No. 1492 adopted March 22, 1977 and Ordinance No. 1596 adopted May 2, 1978 permit the issuance of Additional Bonds, payable from the revenues of said Combined Utilities, of equal lien with the 1977 and 1978 Bonds provided that the revenues of said Combined Utilities for the fiscal year next preceding the date of the authorization of said Additional Bonds, after deducting therefrom all costs of operation and maintenance of said Combined Utilities for such fiscal year and before deduction of depreciation or interest as based on a certified public accountant's report, shall have been equal to 1.25 times the average annual bond requirements of said outstanding bonds and the Additional Bonds to be issued; that the combined average annual bond requirements of the 1985 Bonds herein authorized and the outstanding 1977 Bonds and 1978 Bonds determined by adding all of the principal and interest which will become due when computed to the absolute maturity of the 1985 Bonds of this issue and the outstanding 1977 Bonds and 1978 Bonds and dividing such total by the number of years remaining that the longest bond of any issue of bonds has to run to

maturity, is \$450,643; that the revenues of the Combined Utilities for the fiscal year ending July 31, 1984, after deducting therefrom all costs of operation and maintenance of said utilities for such fiscal year and before deduction of depreciation or interest, as based on a certified public accountant's report is not less than 1.25 times said amount.

(e) That all conditions, acts and things required by law to exist or to be done precedent to the issuance of the 1985 Bonds in the principal amount of \$1,875,000 contemplated herein do exist and have been done and performed in regular and due time and form as provided in Sections 18-1803 to 18-1805, R.R.S. Neb. 1943, which bonds will be payable from the revenues of the Combined Utilities, and be on a parity with the lien of the 1977 Bonds authorized by Ordinance No. 1492 of the City and the 1978 Bonds authorized by Ordinance Nos. 1596 and 1604 of the City and are equally and ratably secured therewith and entitled to the security and benefits of said ordinances.

Section 2. In addition to the definitions provided in parenthesis in Section 1 hereof and elsewhere, the following definitions of terms shall apply, unless the context shall clearly indicate otherwise:

(a) The term "revenues" shall mean all the rates, rentals, fees, charges, earnings and other moneys from any source whatever derived by the City of Lexington through its ownership and operation of its Combined Utilities;

(b) The term "Additional Bonds" shall mean any bond, including refunding bonds, authorized and issued pursuant to the provisions of Section 19 of this ordinance at any time outstanding, which are payable on a parity with the 1985 Bonds, the 1978 Bonds and the 1977 Bonds and equally and ratably secured therewith.

Section 3. To provide for the payment and refunding of the 1982 Bonds as described in Section 1 hereof, there shall be and there are hereby ordered issued the Combined Revenue Refunding Bonds, 1985 Series, of the City of Lexington, Nebraska, in the principal amount

of One Million Eight Hundred Seventy-Five Thousand Dollars (\$1,875,000), with such 1985 Bonds bearing interest at the rates per annum and to become due on October 1 of the years as indicated below:

<u>Maturing on October 1, of Year</u>	<u>Amount of Principal Maturing</u>	<u>Interest Rate to Maturity or Earlier Redemption</u>
1986	\$ 95,000	6.00%
1987	110,000	6.50
1988	120,000	6.85
1989	125,000	7.20
1990	130,000	7.45
1991	140,000	7.70
1992	155,000	8.00
1993	170,000	8.20
1994	185,000	8.35
1995	195,000	8.50
1996	215,000	8.60
1997	235,000	8.70

The 1985 Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue for the 1985 Bonds shall be August 15, 1985. Interest on the 1985 Bonds, at the respective rates for each maturity, shall be payable on April 1, 1986, and semiannually thereafter on October 1, and April 1 of each year (each of said dates an "Interest Payment Date") and the 1985 Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date, whichever is later. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the close of business on the fifteenth day of the month immediately preceding the month in which each Interest Payment Date occurs (the "Record Date"), subject to the provisions of Section 5 hereof. The 1985 Bonds shall be numbered from 1 upwards in the

order of their issuance. No 1985 Bond shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the 1985 Bonds issued shall be designated by the City's Treasurer as directed by the initial purchaser thereof. Payments of interest due on the 1985 Bonds shall be made by the Paying Agent and Registrar, as designated pursuant to Section 4 hereof, by mailing a check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each 1985 Bond, as of the Record Date for such Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 4 hereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity shall be made by said Paying Agent and Registrar to the registered owner upon presentation and surrender of the 1985 Bond to said Paying Agent and Registrar. The City and said Paying Agent and Registrar may treat the registered owner of any 1985 Bond as the absolute owner of such bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary, whether such bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any 1985 Bond in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and said Paying Agent and Registrar, in respect of the liability upon the 1985 Bonds or claims for interest to the extent of the sum or sums so paid.

Section 4. Omaha National Bank is hereby designated the Paying Agent and Registrar for the 1985 Bonds. Said Paying Agent and Registrar shall serve in such capacities under the terms of an agreement entitled "Paying Agent and Registrar's Agreement" between the City and said Paying Agent and Registrar, the form of which is hereby approved. The Mayor and City Clerk are hereby authorized to execute said agreement in substantially the form presented but with such changes as they shall deem appropriate or necessary. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the 1985 Bonds at its principal office. The names and registered addresses of the initial registered owner or owners of the 1985 Bonds shall be recorded in such books prior to the issuance thereof. Any 1985 Bond may be transferred pursuant to its provisions at the principal office of said Paying Agent and Registrar by surrender of such bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by his duly authorized agent, and thereupon the Paying Agent and Registrar on behalf of the City will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of such transferee owner or owners, a new 1985 Bond or Bonds of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the 1985 Bonds by this Ordinance, one such bond may be

transferred for several such bonds of the same interest rate and maturity, and for a like aggregate principal amount, and several such bonds may be transferred for one or several such bonds, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a 1985 Bond, the surrendered 1985 Bond shall be cancelled and destroyed. All 1985 Bonds issued upon transfer of the 1985 Bonds so surrendered shall be valid obligations of the City evidencing the same obligation as the 1985 Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the 1985 Bonds upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any 1985 Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any 1985 Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 5. In the event that payments of interest due on the 1985 Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the 1985 Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 6. If the date for payment of the principal of or interest on these 1985 Bonds shall be a Saturday, Sunday, legal

holiday or a day on which banking institutions in the city where the corporate trust office of the Registrar and Paying Agent is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

Section 7. 1985 Bonds maturing on or after October 1, 1989 shall be subject to redemption, in whole or in part, prior to maturity at any time on or after October 1, 1988, at par plus accrued interest on the principal amount redeemed to the date fixed for redemption. The City may select the 1985 Bonds to be redeemed in its sole discretion but the 1985 Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. 1985 Bonds redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for a new 1985 Bond evidencing the unredeemed principal thereof. Notice of redemption of any 1985 Bonds called for redemption shall be given at the direction of the City by said Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such 1985 Bond at said owner's registered address. Such notice shall designate the 1985 Bond or Bonds to be redeemed by maturity or otherwise, the date of original issue and the date fixed for redemption and shall state that such bonds are to be presented for prepayment at the principal office of said Paying



Agent and Registrar. In case of any 1985 Bond partially redeemed, such notice shall specify the portion of the principal amount of such bond to be redeemed. No defect in the mailing of notice for any 1985 Bond shall affect the sufficiency of the proceedings of the City designating the 1985 Bonds called for redemption or the effectiveness of such call for 1985 Bonds for which notice by mail has been properly given and the City shall have the right to further direct notice of redemption for any such bond for which defective notice has been given.

Section 8. The 1985 Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COUNTY OF DAWSON  
CITY OF LEXINGTON

COMBINED REVENUE REFUNDING BOND, SERIES 1985

No. \_\_\_\_\_

\$ \_\_\_\_\_

Interest Rate

Maturity Date

Date of Original Issue

October 1, 19\_\_

August 15, 1985

Registered Owner:

Principal Amount:

KNOW ALL MEN BY THESE PRESENTS: That the City of Lexington, in the County of Dawson, in the State of Nebraska, hereby acknowledges itself to owe and for value received promises to pay, but only out of the special fund hereinafter designated, to the registered owner specified above, or registered assigns, the principal amount specified above in lawful money of the United States of America on the date of maturity specified above with interest thereon from the date of original issue or most recent Interest Payment Date, whichever is later, at the rate per annum specified above (said interest to be computed on the basis of a 360-day year consisting of twelve 30-day months), payable on April 1, 1986 and on October 1, and April 1 of each year thereafter (each of said dates an "Interest Payment Date"). The principal hereof is payable upon presentation and surrender of this bond at the principal office of the Omaha National Bank, the Paying Agent and Registrar, in Omaha, Nebraska. Interest on this bond will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day of the month immediately preceding the month in which the Interest Payment Date occurs, to such owner's address as shown on such books and records. Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the record date such interest was payable, and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purpose become available.

This bond is one of an issue of fully registered bonds of the total principal amount of One Million Eight Hundred Seventy-Five Thousand Dollars (\$1,875,000), of even date and like tenor except as

to date of maturity, rate of interest and denomination which were issued by the City for the purpose of paying and redeeming the City's outstanding Combined Revenue Bonds, dated October 1, 1982, Bond Nos. 38 to 400, inclusive, in the principal amount of \$1,815,000, in pursuance of Sections 18-1803 to 18-1805, R.R.S. Neb. 1943, and has been duly authorized by ordinance legally passed, approved and published and by proceedings duly had by the Mayor and Council of said City.

Any or all of the bonds of said issue maturing on or after October 1, 1989, are subject to redemption at the option of the City, in whole or in part, at any time on or after October 1, 1988, at par plus interest accrued on the principal amount redeemed to the date fixed for redemption. Notice of redemption shall be given by mail to the registered owner hereof at said registered owner's address in the manner specified in the Ordinance authorizing said issue of bonds. Individual bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

This bond is transferable by the registered owner or his attorney duly authorized in writing at the principal office of the Paying Agent and Registrar upon surrender and cancellation of this bond, and thereupon a new bond or bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Ordinance authorizing said issue of bonds, subject to the limitations therein prescribed. The City, the Paying Agent and Registrar and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all purposes and shall not be affected by any notice to the contrary, whether this bond be overdue or not.

If the date for payment of the principal or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the corporate trust office of the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

The revenue and earnings derived and to be derived from the operation of the entire sewage disposal plant and system and all extensions and additions thereto and all improvements thereof hereafter made, owned and operated by the City, the revenue and earnings derived and to be derived from the waterworks plant and system and all extensions and additions thereto and all improvements thereof hereafter made, owned and operated by the City, and the revenue and earnings derived and to be derived from the operation of the entire electrical light and power plant and distribution system

and all extensions and additions thereto and all improvements thereof hereafter made, owned and operated by the City, are pledged and hypothecated for the payment of all of the bonds of this series in the principal amount of \$1,875,000 and for the payment of \$420,000 Combined Revenue Bonds, 1977 Series, of the City dated April 1, 1977, numbered 67 to 150 inclusive, and \$1,235,000 Combined Revenue Bonds, 1978 Series, of the City dated June 15, 1978, numbered 54 to 300 inclusive, all of which bonds are presently outstanding and unpaid and are equally and ratably secured by said pledge and are of equal priority as to lien upon the revenues and earnings of said combined utilities owned and operated by the City and are not general obligations of the City. The City agrees to maintain and collect rates and charges for sewer, water and electric service which shall be reasonable and adequate to produce revenues and earnings sufficient at all times to pay the interest and principal of all of said bonds as such interest and principal become due and to maintain and operate said combined utilities efficiently. The ordinance which authorizes the issuance of the bonds of this series constitutes a contract between the City and the owners of said bonds and reserves the right to the City to issue bonds equal in lien to the bonds of this series of bonds under certain conditions and to issue junior lien bonds or notes when necessary.

The City agrees that it will establish and maintain a special fund known as the Combined Utilities Fund into which it will pay all of the gross revenues collected and received from the operation of its said combined utilities and will use the moneys in said fund only for the operation and maintenance of said combined utilities and for the payment of the interest and principal of the bonds of this series, the bonds of the 1977 Series, the 1978 Series and additional bonds authorized in accordance with the terms of said ordinance and for such other purposes as are permitted by said ordinance and will apply the moneys in said fund to the payment of said bonds as the principal and interest become due.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts, and things required by law to exist or to be done precedent to and in the issuance of this bond did exist, did happen and were done and performed in regular and due form and time as required by law.

This bond shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar.

IN WITNESS WHEREOF, the Mayor and Council of the City of Lexington, Nebraska, have caused this bond to be executed on behalf of the City with the facsimile signatures of the Mayor and the City

Clerk and by causing the official seal of the City to be imprinted hereon, all as of the date of original issue specified above.

CITY OF LEXINGTON, NEBRASKA

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

Certificate of Authentication

This bond is one of the bonds authorized by Ordinance of the Mayor and Council of the City of Lexington, in the County of Dawson, in the State of Nebraska, described in the foregoing bond.

\_\_\_\_\_  
Paying Agent and Registrar

By: \_\_\_\_\_  
Authorized Signature

(Form of Assignment)

For value received \_\_\_\_\_  
\_\_\_\_\_ hereby sells, assigns and transfers unto  
\_\_\_\_\_  
(Social Security or Taxpayer I.D. No. \_\_\_\_\_)  
the within bond and hereby irrevocably constitutes and appoints  
\_\_\_\_\_, attorney, to transfer the  
same on the books of registration in the office of the within  
mentioned Paying Agent and Registrar with full power of substitution  
in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Registered Owner

Signature Guaranteed

By \_\_\_\_\_

\_\_\_\_\_  
Authorized Officer

Note: The signature on this assignment MUST CORRESPOND with the name as written on the face of the within bond in every particular, without alteration, enlargement or any change whatsoever, and must be guaranteed by a commercial bank or a trust company or by a firm having membership on the New York, Midwest or other stock exchange.

Section 9. Each of the 1985 Bonds shall be executed on behalf of the City with the facsimile signatures of the Mayor and the City Clerk and shall have imprinted thereon the City's seal. A supply of such bonds for issuance upon subsequent transfers or in the event of partial redemption shall also be so executed and delivered to the Paying Agent and Registrar. In the event that such supply of 1985 Bonds shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement 1985 Bonds upon transfer or partial redemption, the City agrees to order printed an additional supply of 1985 Bonds and to direct their execution by facsimile signatures of its then duly qualified and acting Mayor and City Clerk and by imprinting thereon or affixing thereto the City's seal. In case any officer whose signature or facsimile thereof shall appear on any 1985 Bond shall cease to be such officer before the delivery of such bond (including such bonds delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption), such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such bond. The 1985 Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The City Treasurer shall cause the 1985 Bonds to be registered in the office of the Auditor of Public Accounts of the State of Nebraska and in the office of the City Treasurer as finance officer of the City. Thereafter the 1985 Bonds shall be delivered to the Paying Agent and Registrar for registration and

authentication. Upon execution, registration, and authentication of the 1985 Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to Shearson Lehman Brothers Inc., Chiles Heider Division, as initial purchaser thereof, upon receipt of 97.50% of the principal amount of the 1985 Bonds plus accrued interest thereon to date of payment for the 1985 Bonds. Said initial purchaser shall have the right to direct the registration of the 1985 Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. The City Clerk shall make and certify duplicate transcripts of the proceedings of the Mayor and Council with respect to the 1985 Bonds, one of which shall be filed with the Auditor of Public Accounts and the other of which shall be delivered to said purchaser.

Section 10. The proceeds of the 1985 Bonds herein authorized shall be applied to the payment of the 1982 Bonds which have been called for redemption on October 1, 1987. In order to satisfy the City's obligation on the 1982 Bonds, said proceeds shall be invested in obligations of the United States Government, which shall be set aside and held in a special trust account as described herein. In addition to said proceeds, the City shall also set aside in trust an amount from the monies currently held in the Combined Utilities Revenue Bond Account, as established and confirmed under Ordinance Nos. 1492, 1596 and 1711 and hereinafter confirmed, for payment of the 1982 Bonds sufficient to provide additional obligations of the United States Government or to be held as funds on deposit in order to satisfy all payments falling due on the 1982 Bonds from and after



the issuance of the 1985 Bonds, until the redemption of the 1982 Bonds on October 1, 1987, and said monies or investments shall also be set aside and held and applied for such purpose. For purposes of holding and applying proceeds of the 1985 Bonds and such other funds and investments, it is necessary and advisable for the City to establish a special safekeeping trust account and Omaha National Bank, Omaha, Nebraska is hereby designated to serve as the escrow agent ("Escrow Agent") to have custody and safekeeping of the funds and investments which are to be set aside for the payment of the 1982 Bonds. For purposes of governing such escrow account and the holding and application of such funds and investments, the City shall enter into a contract entitled "Escrow Agreement" with the Escrow Agent. The Mayor and Clerk are hereby authorized and directed to execute and deliver on behalf of the City said Escrow Agreement, including necessary counterparts, in substantially the form and content as presented to the meeting at which this Ordinance is adopted, but with such changes and modifications therein as to them seem necessary, desirable, or appropriate for and on behalf of the City. Said Mayor and Clerk and the City Treasurer, or any one of them, are hereby authorized to execute and deliver for and on behalf of the City all other documents and instruments necessary in connection with said Escrow Agreement, including but not limited to forms for subscription for United States Treasury Securities, State and Local Government Series, and to provide for all transfers of investment obligations and funds of the City to the Escrow Agent necessary to provide for the satisfaction of the 1982 Bonds pursuant

to the terms of said agreement. The City hereby covenants and agrees to take all steps necessary and appropriate to provide for the calling and redemption of the 1982 Bonds on October 1, 1987. The City further agrees that it will make no investment of any of the investment proceeds receivable by the City under the Escrow Agreement which would cause the total amount of such proceeds receivable to exceed an amount equal to 1% of the 1985 Bonds which are actually issued and delivered pursuant to the terms of this Ordinance.

Section 11. For the payment of the 1985 Bonds, the 1978 Bonds and the 1977 Bonds, both principal and interest, together with any Additional Bonds, both principal and interest, the City hereby pledges and hypothecates the entire revenue and earnings of the Combined Utilities subject only to the payment of reasonable operating expenses of said Combined Utilities.

Section 12. The City will maintain and collect rates and charges for all sewer, water and electric service furnished from its said plants and systems adequate to produce revenue and earnings sufficient at all times,

- (a) to provide for the payment of interest on and principal of the 1985 Bonds, the 1978 Bonds, the 1977 Bonds and any Additional Bonds as such interest and principal become due;
- (b) to pay all reasonable costs of operation and maintenance of the Combined Utilities, including adequate insurance as provided by this ordinance and to pay for the necessary and reasonable repairs, replacements and extensions of said Combined Utilities;
- (c) to establish and maintain a Bond Reserve Account and Improvement and Extension Account as hereinafter set forth.

Section 13. The entire revenue and earnings derived from the operation of the Combined Utilities of said City shall be set aside as collected and deposited in a separate fund, which has heretofore been created in Section 8 of Ordinance No. 1492 of the City and is hereby confirmed, designated as "Combined Utilities Fund". The 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 1985 Bonds are outstanding the following accounts for the administration of said Fund.

- I. OPERATION AND MAINTENANCE ACCOUNT: The City shall set aside in this account each month an amount sufficient for the operation and maintenance of its Combined Utilities and the expenses of maintenance and operation of said utilities shall be paid out of this account.
  
- II. COMBINED UTILITIES REVENUE BOND ACCOUNT: Out of said fund the City shall transfer into the Combined Utilities Revenue Bond Account on or before the first day of each calendar month the following amounts in addition to the amounts required to be deposited under Ordinance Nos. 1492, 1596 and 1604:
  - (a) during the period from August 1, 1985 to March 30, 1986, an amount equal to 1/8 of the interest payment due on the 1985 Bonds on April 1, 1986;
  - (b) during the period from April 1, 1986 until the 1985 Bonds have been paid in full, an amount equal to 1/6 of the next maturing semiannual interest payment due on the 1985 Bonds; and
  - (c) during the period from October 1, 1985 until the 1985 Bonds have been paid in full, an amount equal to 1/12 of the next maturing principal payment on the 1985 Bonds;

All such transfers to the Combined Utilities Revenue Bond Account shall be made in such amounts and at such times that there will be sufficient sums in such account to meet the payments required to be made to the County Treasurer and the Paying Agent and Registrar by Section 14 of this ordinance.

III. COMBINED UTILITIES BOND RESERVE ACCOUNT: The City shall continue to deposit into this account monthly the sum necessary to reach and maintain fund balances required by Ordinance No. 1492 (requiring \$75,000), and Ordinance Nos. 1596 and 1604 (requiring \$125,000). Monies attributable to the 1982 Bonds in the amount of \$260,000 currently held in the Combined Utilities Bond Reserve Account shall continue to be held in the Combined Utilities Bond Reserve Account as the amount attributable to the 1985 Bonds. The total deposit amount of \$460,000 reserve shall be maintained in this amount as long as the 1985 Bonds, the 1978 Bonds and the 1977 Bonds remain outstanding but shall be reduced to \$260,000 if and when both the 1977 Bonds and the 1978 Bonds are no longer outstanding. In case any deficiency in the payment into this Account occurs, such deficiency shall be made up immediately as soon as any money is available after providing for the foregoing accounts. If at any time or times the amount on hand in the Combined Utilities Revenue Bond Account described in Section 13, II of this ordinance shall be insufficient to pay either the interest on or principal of the 1977 Bonds, 1978 Bonds or the 1985 Bonds as and when the same become due, the City shall and hereby agrees to use the funds in the Combined Utilities Bond Reserve Account to pay said interest or principal and to prevent any default in the payment of said interest on or principal of said bonds. If the City shall use any of the funds in the Combined Utilities Bond Reserve Account for the purpose mentioned herein and such use shall reduce the principal amount below \$460,000 (or \$260,000 after the 1977 Bonds and 1978 Bonds are no longer outstanding), then the City shall make no transfers to any other fund except to the Operation and Maintenance Account, Combined Utilities Revenue Bond Account, and Combined Utilities Bond Reserve Account until the amount in this Account totals \$460,000 (or \$260,000 after the 1977 Bonds and the 1978 Bonds are no longer outstanding).

IV. IMPROVEMENT AND EXTENSION ACCOUNT: After providing for the Operation and Maintenance Account and making the payments hereinabove required to be made into the Combined Utilities Revenue Bond Account and Combined Utilities Bond Reserve Account, the City shall transfer monthly into this Account, commencing with the month of September, 1985, in addition to the amounts required to be deposited into said Account by Ordinances Nos. 1492, 1596 and 1604 the sum of \$7,800 until there is accumulated a total of \$480,000. Moneys in

this Account may be used for the maintenance, improvement, enlargement or extension of the Combined Utilities, including payments of principal and interest on general obligation bonds of the City issued to improve, extend or enlarge any part of any of the Combined Utilities and at any time moneys are spent from this Account so as to reduce the Account to an amount less than \$480,000 or the balance then required to be accumulated, whichever is lesser, then monthly payments of \$7,800 will commence and continue until the required account balance is attained. After the 1977 Bonds and the 1978 Bonds are no longer outstanding, the amount required to be maintained in the Improvement and Extension Account shall be reduced to \$280,000.

V. SURPLUS ACCOUNT: After providing for the Operation and Maintenance Account and after making the payments hereinabove required to be made into the Combined Utilities Revenue Bond Account, Combined Utilities Bond Reserve Account and Improvement and Extension Account, all remaining funds shall be transferred into a Surplus Account to be used as follows:

- 1) To fill any deficiency in the foregoing accounts.
- 2) In lieu of tax payments. So long as no deficiency exists in required monthly payments in the Accounts established by Section 8 of Ordinance No. 1492, Section 8 of Ordinance 1596 and Section 13 of this Ordinance, payment may be made to the City annually, semiannually or quarterly as an in lieu of tax payment which can be used by the City for any purpose authorized by law, a sum which shall not be in excess of one-half of the amount credited to this Surplus Account during the period since the last in lieu of tax payment to the City after deducting from the credits of this account any amount used to fill deficiencies into any of the Accounts established by Section 8 of Ordinance No. 1492, Section 8 of Ordinance No. 1596 and Section 13 of this Ordinance.
- 3) Accelerating the payments of the required fund balance of the Combined Utilities Revenue Bond Account, the Combined Utilities Bond Reserve Account or the Improvement and Extension Account.
- 4) Any lawful purpose connected with the Combined Utilities including paying principal and interest on general obligation bonds of the City authorized to pay the cost of constructing improvements to any one of the utilities systems covered by the combined revenue bonds.

- 5) Retiring the 1977 Bonds, the 1978 Bonds, the 1985 Bonds and Additional Bonds prior to their maturity under their option provisions or by purchase on the open market, pro rata in the proportion that each such issue of bonds bears to the total principal amount of said 1977 Bonds, 1978 Bonds, 1985 Bonds and Additional Bonds then outstanding, provided that such obligation to purchase or redeem bonds on a pro rata basis shall not apply after the 1977 Bonds and the 1978 Bonds are no longer outstanding.

Moneys on deposit in the Combined Utilities Fund, which have not as yet been credited or transferred to an Account therein in accordance with this section, and moneys credited to the Operation and Maintenance Account and the Combined Utilities Revenue Bond Account 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, maturing in the cases of money invested from the Combined Utilities Fund by not later than the first business day of the month next following such investment and maturing in the case of moneys invested from the Operation and Maintenance Account and the Combined Utilities Revenue Bond Account at such times and in such amounts as shall be required to provide moneys to make the payments to be made from said Accounts. 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 maturing or redeemable at stated fixed prices at the option of the holder by not more than eight years from the date of such investment. Moneys credited to the Improvement and Extension

Account and the Surplus Account shall be invested in such obligations as are permitted by law for cities of the class of which Lexington is one, maturing at such times not later than ten years from the date of such investment and in such amounts as shall be determined by the City in accordance with its estimation of the payments to be made from said Accounts, and if permitted by law, in 1977 Bonds, 1978 Bonds, 1985 Bonds or Additional Bonds, which 1977 Bonds, 1978 Bonds, 1985 Bonds or Additional Bonds so purchased shall be held for the credit of said Accounts and not cancelled, and in Revenue Bond Anticipation Notes and in Paving, Sewer and Water Warrants which are to be funded by the issuance of bonds of the City. All interest and income derived from moneys to the credit of the Combined Utilities Fund, the Operation and Maintenance Account, the Combined Utilities Revenue Bond Account (except income derived from moneys attributable to the 1985 Bonds or any Additional Bonds) and the Surplus Account shall, when realized and collected, be credited to the said Fund or to the respective Account from which such investments were made. All moneys and income from investments made from moneys credited to the Combined Utilities Bond Reserve Account, the Improvement and Extension Account and income derived from moneys held in the Combined Utilities Revenue Bond Account attributable to the 1985 Bonds or any Additional Bonds 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 II, III and IV of this section, 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 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 14. The City will make deposits on or prior to the date each payment of interest or principal becomes due on the 1985 Bonds, with the Paying Agent and Registrar. At least fifteen (15) days before each payment of interest or principal becomes due on the 1977 Bonds and the 1978 Bonds, the City will make deposits with the County Treasurer of Dawson County, in amounts sufficient to pay the interest and principal of said bonds which become due on such payment dates. All such payments shall be made out of the Combined Utilities Revenue Bond Account.

Section 15. The City of Lexington shall keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Combined Utilities and the holders or registered



owners of any of the 1977 Bonds, 1978 Bonds, the 1985 Bonds or of any Additional Bonds or any duly authorized agent or agents of such holders or owners shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect said systems and all properties comprising the same. Within sixty days following the close of each fiscal year the City shall cause an audit of such books and accounts to be made by an independent firm of certified public accountants, showing the receipts and disbursements for account of the system, and such audit will be available for inspection by the holders (or registered owners in the case of the 1985 Bonds) of any of the aforesaid bonds. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following:

1. A statement in detail of the income and expenditures of each component of the Combined Utilities for such fiscal year.
2. A balance sheet as of the end of such fiscal year.
3. The accountant's comment regarding the manner in which the City has carried out the requirements of this ordinance, and the accountant's recommendation for any changes or improvements in the operation of said system or the components thereof.
4. A list of the insurance policies in force at the end of the fiscal year, setting out as to each policy the amount of the policy and risks covered, the name of the insurer and the expiration date of the policy.
5. The number of properties connected with the systems at the end of the year and the number of metered sewer, water and electric customers at the end of the year.

All expenses incurred in the making of the audits required by this section shall be regarded and paid as a maintenance and operation expense. The City of Lexington shall furnish a copy of each such audit to the original purchaser of the 1977 Bonds, the 1978 Bonds, the 1985 Bonds and of any series of Additional Bonds, and to the holder or registered owner of at least twenty-five percent (25%) of any issues of combined revenue bonds outstanding, upon request, after the close of each fiscal year, and said purchaser or purchasers or any such holder or registered owner shall have the right to discuss with the accountant making the audit the contents of the audit and to ask for such additional information as each may require.

Section 16. The City Treasurer and the City Clerk shall be bonded, in addition to their official bond, by an insurance company licensed to do business in Nebraska, in amounts sufficient to cover at all times all the revenues and earnings of the Combined Utilities placed in their hands. Any other person employed by the City in the collection or handling of moneys derived from the operation of said properties shall also be bonded in an amount sufficient to cover all moneys which may at any time be placed in his hands. The amount of such bonds shall be fixed by the Council, and the cost thereof shall be paid from the earnings of said Combined Utilities and they shall secure the faithful accounting of all moneys.

Section 17. The City will carry adequate insurance on the Combined Utilities 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 insurance covering such risks as shall be recommended by a consulting engineer. The cost of all such insurance shall be regarded and paid as an operation and maintenance expense.

All insurance moneys, except public liability, shall be deposited in the Improvement and Extension Account and shall be used 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 expenditures from said moneys shall be made only upon a certificate issued by a consulting engineer and filed with the City Clerk stating that the proceeds, together with any other moneys available for such purposes, are sufficient for the repair or replacement of any such properties; and when the City shall have been furnished with a certificate of a consulting engineer 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 moneys shall be transferred from the Improvement and Extension Account to the Combined Utilities Revenue Bond Account to make up any deficiency in said Account, if any such deficiency exists, and if no such deficiency exists said residue shall be transferred to the Combined Utilities Fund and credited to the Accounts provided for in Section 13 in the same manner as other revenues of the Combined Utilities.

If the proceeds of any insurance shall be insufficient to repair or replace the property damaged or destroyed, the City may use and

shall pay out for such purpose, to the extent of such deficiency, any money remaining in the Improvement and Extension Account and the Surplus Account. If in the opinion of a consulting engineer the proceeds of any insurance, together with any amount then available for that purpose in the Improvement and Extension Account and Surplus Account shall be insufficient to fully complete and pay for such repairs or replacements and if the City shall fail to supply such deficiency from other sources within a period of six months after receipt by the City of such insurance moneys, or if in the opinion of a consulting engineer it is to the best interest of the City not to repair or replace all or any part of the damaged properties and that failure to repair or replace the damaged properties shall not affect the sufficiency of the income and revenue from the remaining properties to properly maintain and operate the same, provide funds for the Combined Utilities Revenue Bond Account, Combined Utilities Bond Reserve Account and Improvement and Extension Account, as herein provided for, then such insurance moneys to the extent not applied to repair or replace the damaged properties shall be deposited in the Combined Utilities Bond Reserve Account as created by Section 13 of this Ordinance and used for the purposes for which said account has been created, so as to fill said account to its required balance, or if said account is filled to its required balance, then to the Improvement and Extension Account to fill that account to its required balance and any amount which may be in excess of the amount required in the Improvement and Extension Account shall be credited to the Surplus Account.

The proceeds of any and all policies for public liability shall be applied in paying the claims on account of which they were received.

Section 18. The City will maintain the Combined Utilities in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the registered owners from time to time of the 1985 Bonds that the City will continue to own, free from all liens and encumbrances, and will adequately maintain and efficiently operate said Combined Utilities; provided, however, the City may dispose of property which is recommended for disposal by the manager or superintendent of the utilities, or an independent Consulting Engineer and which is determined as a matter of record by the Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 19. Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of Lexington of Additional Bonds payable from the revenues of the Combined Utilities, which Additional Bonds shall be on a parity with the lien of the bonds herein authorized and equally and ratably secured therewith and entitled to the security and benefits of this ordinance; provided, however, that before any such Additional Bonds are actually issued, the revenues of the Combined Utilities, for the fiscal year next preceding the date of the authorization of such Additional Bonds, after deducting therefrom all costs of operation and maintenance of said system, or systems, for such fiscal year and before deduction of depreciation or interest as based on a certified

public accountant's report shall have been equal to 1.25 times the average annual bond requirements of the 1977 Bonds, the 1978 Bonds, the 1985 Bonds, any Additional Bonds then outstanding and the Additional Bonds proposed to be issued or such revenues would have met such test by applying the provisions of the second paragraph of this Section 19. For this purpose the average bond requirement shall be determined by adding all of the principal and interest which will become due when computed to the absolute maturity of the 1977 Bonds, the 1978 Bonds, the 1985 Bonds and Additional Bonds, if any, all as then outstanding and all of the principal and interest of the Additional Bonds to be issued, and dividing such total by the number of years remaining that the longest bond of any issue of bonds (including the Additional Bonds to be issued) has to run to maturity. In the event of the issuance of any Additional Bonds payable from the Combined Utilities Revenue Bond Account, as authorized above, sufficient additional net revenues shall be deposited to the balance in the Combined Utilities Bond Reserve Account and in the Improvement and Extension Account in such a manner that within a period not exceeding five years after such issuance the amount on deposit in each of said accounts shall be equal to the average annual amount of principal and interest which will become due during the remaining term of the then outstanding bonds on such bonds and on the Additional Bonds so issued. The City may, at its option, deposit in said accounts available funds from other sources.

In the event any change in the rates, rentals and charges for the use and service of the Combined Utilities has been made during the preceding fiscal year or during the interval between the end of such fiscal year and the issuance of such Additional Bonds, or in the event the City shall covenant in the ordinance or resolution authorizing the issuance of such Additional Bonds to impose, effective upon the issuance of such Additional Bonds, higher rates, rentals and charges for such use and service, compliance with the provisions of this Section 19 of this ordinance may be evidenced by a certificate of an independent Consulting Engineer or firm of engineers or Certified Public Accountant or independent Certified Public Accountants to be filed with the City Clerk prior to the issuance of any such Additional Bonds. Such certificate shall state fully the facts upon which such certificate is based, and if it is a certificate of the Consulting Engineer or firm of Consulting Engineers shall have attached thereto the certified financial statement for the fiscal year next preceding the date of authorization of such Additional Bonds used by the Engineer or firm of Engineers in arriving at the conclusion stated in said certificate. The Consulting Engineer or independent Certified Public Accountant of the City shall, in determining the earnings for such fiscal year adjust the collections to reflect the result as if such changed rates, rentals and charges, or such higher rates, rentals and charges had been in existence for such entire preceding fiscal year period, and the amount of such net collections and adjusted earnings as aforesaid shall be conclusive evidence and the

only evidence required to show compliance with the provisions and requirements of this Section 19 of this ordinance.

In the event that the Mayor and Council shall determine it necessary for the City, by itself or jointly with others, to construct or otherwise acquire additional facilities for generation of electric power, Additional Bonds may be issued for such purpose without compliance with the foregoing requirement that the revenues of the Combined Utilities for the preceding fiscal year shall have been equal to 1.25 times average annual bond requirements, provided that prior to issuing such Additional Bonds, the City shall have received a projection made by a Consulting Engineer or a firm of Consulting Engineers, recognized as having experience and expertise in electric systems, projecting that the revenues of the Combined Utilities, after deducting therefrom all costs of operation and maintenance and before deduction of depreciation or interest, in each of the five full fiscal years after the issuance of such Additional Bonds, will be at least equal to 1.25 times the average annual bond requirements, calculated as hereinabove described, on all bonds then outstanding and payable from the revenues of the Combined Utilities, and such Additional Bonds proposed to be issued. In making such projection the consulting engineer shall use as a basis the revenues of the Combined Utilities during the last year for which an independent audit has been prepared and shall adjust such revenues as follows:

- 1) to reflect changes in rates which have gone into effect since the beginning of the year for which the audit was made;



- 2) to reflect his estimate of the net increase over or net decrease from the revenues of the Combined Utilities for the year for which the audit was made by reason of:
- a) changes in the amounts payable under existing utility service contracts,
  - b) additional general operating income from sales to customers under existing rate schedules for the various classes of customers, or as such schedules may be revised under a program of change which has been adopted by the Mayor and Council of the City,
  - c) projected revisions in labor, wages, salary, fuel, machinery, equipment and supply costs,
  - d) revisions in production, transmission and distribution and in administration costs associated with increases in sales of power and utility services due to the acquisition of the additional facilities or due to other causes,
  - e) changes in costs of purchased power and other utility services, and
  - f) such other projections of revenues and expenses as the consulting engineer deems reasonable and proper.

Average annual bond requirements shall be determined as described above provided that requirements relating to the proposed Additional Bonds to be issued may be estimated by the Consulting Engineer, but no such Additional Bonds shall be issued if the actual requirements for the proposed Additional Bonds are in excess of the amount so estimated by the Consulting Engineer.

If, prior to the payment of the 1977 Bonds, the 1978 Bonds, or the 1985 Bonds, it shall be found desirable to refund the 1977 Bonds, the 1978 Bonds, the 1985 Bonds, or any Additional Bonds then outstanding under the provisions of any law then available, said bonds or any part thereof may be refunded with the consent of the

holders or registered owners thereof (except that as to matured bonds or bonds which are subject to call for redemption and have been properly called for redemption, such consent shall not be necessary) and the refunding obligations so issued shall enjoy complete equality of lien with the portion of the bonds which is not refunded, if any there be, and the refunding obligations shall continue to enjoy whatever priority of lien over subsequent issues may have been enjoyed by the bonds refunded, provided, however, that unless all of the outstanding bonds are being refunded, the total of the interest and principal payment obligation in any succeeding year, in which bonds which are not being refunded will remain outstanding, shall not be greater, after such refunding, than it would have been in each such succeeding year without such refunding without the consent of the holders or registered owners of said bonds which are not being refunded. For such purpose, the principal and interest payment obligation shall not include principal or interest due on refunding bonds which are payable from sources other than the revenues of the Combined Utilities or are payable from such revenues as deposited to the Surplus Account.

Section 20. Nothing herein contained shall prevent the City from issuing bonds, revenue notes, or other forms of indebtedness, the payment of the principal and interest of which is a charge upon all or a portion of the revenues of the Combined Utilities, junior or inferior to the 1977 Bonds, 1978 Bonds and the 1985 Bonds, and to the payments to be made into the Operation and Maintenance Account, Combined Utilities Revenue Bond Account, and the Combined Utilities

Bond Reserve Account created in Section 13 hereof, and the City shall have the right to pay interest thereon and the principal thereof, as long as no deficiency exists in the payments into such accounts, from funds available for improvements and enlargements to the Combined Utilities of the City or from other funds which are available for such debt service.

Section 21. The City will not hereafter grant any franchise or right to any person, firm or corporation to own or operate a sewer, water or electrical plant or system in competition with that owned by the City.

Section 22. While any of the 1985 Bonds are outstanding, the City will render bills to all customers for sewer, water and electrical services. If bills are not paid within sixty days after due, such utility service will be discontinued. The City agrees that it will order water service shut off on all properties served by water or sewer where there are delinquent water or sewer use charges and will order electric service shut off on all property served by electricity where there are delinquent electric charges, and will make appropriate charge for use of all properties of the City connected to the sewer, water and electrical systems. The City's obligations under this Section shall be subject, however, to any state or federal law governing the City's right to discontinue utility service.

Section 23. Except for amendments which are required for the correction of language to cure any ambiguity or defective 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 holders or owners of sixty percent (60%) in principal amount of the 1977 Bonds, the 1978 Bonds, the 1985 Bonds and of Additional Bonds outstanding authorized hereunder (not including any of said bonds credited to any of the Accounts described in Section 13 of this Ordinance or any other of said bonds owned or controlled directly or indirectly by the City) by an instrument or instruments in writing signed by such holders or owners and filed with the City Clerk shall have power to assent to and authorize any modification of the rights and obligations of the City and of the holders or owners of the 1977 Bonds, the 1978 Bonds, the 1985 Bonds and of Additional Bonds and interest coupons pertaining thereto 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 the holders or owners of sixty percent (60%) in principal amount of said bonds shall be binding upon all holders or owners of said 1977 Bonds, 1978 Bonds, 1985 Bonds and Additional Bonds at the time outstanding hereunder and upon the City as fully as though such action were specifically and expressly authorized by the terms of this ordinance; provided, always, that no such modification shall be made which will (a) extend the time of payment of the principal of or interest on any of said bonds or reduce the principal amount thereof or the rate of interest thereon; or (b) give to any of said bonds secured by this ordinance any preference

over any other of said bond or bonds; or (c) authorize the creation of any lien prior to the pledge of the revenues afforded by this ordinance for the 1977 Bonds, the 1978 Bonds, the 1985 Bonds and any Additional Bonds or (d) reduce the percentage in principal amount of said outstanding bonds required to assent to or authorize any such modification. 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 said City.

Section 24. So long as any of the 1977 Bonds, the 1978 Bonds, the 1985 Bonds, or any Additional Bonds of equal lien are outstanding, each of the obligations, duties, limitations and restraints imposed upon the City by this Ordinance shall be deemed to be a covenant between the City and every holder or owner of said bonds, and this Ordinance and every provision and covenant hereof shall constitute a contract of the City with every holder or owner from time to time of said bonds and the coupons pertaining thereto. Any holder or registered owner of a 1977 Bond, 1978 Bond, 1985 Bond or of an Additional Bond or Bonds or of any of the coupons of any of said bonds may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction enforce and compel performance of this Ordinance and every provision and covenant thereof, including without limiting the generality of the foregoing, the enforcement of the performance of all duties required by the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the making and collecting of sufficient rates, rentals, fees, or charges for the use and service

of the Combined Utilities, the segregation of the revenues of said systems, and the application thereof to the respective Fund and Accounts referred to and described in Section 13 of this Ordinance.

Section 25. The City's obligations under this Ordinance and the liens, pledges, dedications, covenants and agreements of the City herein made or provided for, shall be fully discharged and satisfied as to any 1985 Bonds or Additional Bonds and said bonds shall no longer be deemed outstanding hereunder, if such bonds shall have been purchased and cancelled by the City, or as to any of said bonds not theretofore purchased and cancelled by the City, when payment of the principal of and any applicable redemption premium, if any, on such bonds plus interest thereon, to the respective dates of maturities 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 the Paying Agent and Registrar, or with a national or state bank having trust powers or trust company, in trust solely for such payment (1) sufficient money to make such payment or (2) direct general obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America (herein referred to as "U.S. Government Obligations") in such amount and bearing interest at such rates and payable at such time or times 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 any bond to be paid prior to maturity, the City shall have duly given notice

of redemption of such bonds as provided by law or made irrevocable provision for the giving of such notice. Any such money so deposited with a bank or trust company or the Paying Agent and Registrar may be invested and reinvested in U.S. Government Obligations at the direction of the City, and all interest and income from such U.S. Government Obligations in the hands of such bank or Paying Agent and Registrar in excess of the amount required to pay principal of and interest on the bonds for which such monies were deposited, shall, be paid over to the City as and when collected.

Section 26. 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 27. 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 28. The City hereby covenants with the purchasers and registered owners of the 1985 Bonds that it will make no use of the proceeds of said issue, including monies held in any sinking fund for the payment of principal and interest on said bonds, which would cause said bonds to be arbitrage bonds within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended, and further covenants to comply with said Section 103(c) and all applicable regulations thereunder throughout the term of said issue.

Section 29. This ordinance shall be published in pamphlet form and shall be in force and take effect from and after its passage and approval according to law.

PASSED AND APPROVED this 9th day of July, 1985.

*Robert L. Hawks*  
\_\_\_\_\_  
Mayor

ATTEST:

*Gene E. Malachuk*  
\_\_\_\_\_  
City Clerk

(SEAL)

