

Authorizing the Execution of a Memorandum of Agreement by and between the City of Lexington, Nebraska and Cornhusker Energy Lexington, LLC in connection with the Issuance of Revenue Bonds and Related Matters.

Whereas, the City of Lexington, Nebraska (the "Issuer"), is authorized, pursuant to the provisions of Chapter 13, Article 11 of the Revised Statutes of Nebraska, as amended (the "Act"), to issue revenue bonds to defray the cost of constructing, acquiring or improving any project suitable for use by any manufacturing or industrial enterprise; and,

Whereas, Cornhusker Energy Lexington, LLC (the "Company") has requested an expression of intent from the Issuer that it will issue revenue bonds and that the proceeds of the sale of one or more issues of revenue bonds of the Issuer in an aggregate amount sufficient to finance the costs of sewage and/or solid waste disposal facilities (the "Project") at the Ethanol Plant to be owned and operated by the Company and located within the jurisdiction of the Issuer, currently estimated not to exceed \$18,000,000, will be made available to the Company subject to necessary approvals and proceedings by the Mayor and City Council and approval of the City's legal counsel; and,

Whereas, the Issuer deems it necessary and advisable that it take such actions as may be required under the Act to express its intent to issue one or more issues of its revenue bonds to finance costs of the Project, currently estimated not to exceed \$18,000,000 subject to necessary approvals and proceedings by the Mayor and City Council and approval of the City's legal counsel; and,

Whereas, a form of agreement, designated as a "Memorandum of Agreement," has been prepared under which the Issuer has stated its intent to issue one or more issues of its revenue bonds under the Act to finance costs of the Project, currently estimated not to exceed \$18,000,000, and the Company has stated its agreement to enter into a lease or other financing agreement with the Issuer with respect to the Project, under which the Company will be obligated to make basic installment payments sufficient to pay the principal of, and interest and redemption premium, if any, on, the bonds as and when the same shall become due and payable, such agreement to contain such other provisions as may be required by the Act and such other provisions as shall be mutually acceptable to the Issuer and the Company; and,

Whereas, it is intended that this resolution shall constitute a declaration of official intent for the reimbursement of Project costs within the meaning of §1.150-2 of the Federal Income Tax Regulations.

Therefore, Be It Resolved by the City Council of the City of Lexington, Nebraska, as follows:

**Section 1.** That in order to ensure the acquisition, improvement, construction and installation of the Project, with the resulting public benefits which will flow therefrom, the City expresses its intent, subject to necessary approvals and proceedings by the City Council and approval of the City's legal counsel, that revenue bonds be issued under the Act in an amount sufficient to finance costs of the Project, currently estimated not to exceed \$18,000,000, and that the Memorandum of Agreement hereinafter referred to be approved and executed for and on behalf of the Issuer.

**Section 2.** That the Memorandum of Agreement by and between the Company and the Issuer attached as Exhibit A hereto is hereby approved and authorized.

**Section 3.** That the Mayor is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest, the Memorandum of Agreement set forth in Exhibit A attached hereto.

**Section 4.** That all resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Adopted and approved November 26, 2002.



*John H. Fyfe*

\_\_\_\_\_  
Mayor

*Joe Pappalardo*

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

## EXHIBIT A

### Memorandum of Agreement

This Memorandum of Agreement is between the City of Lexington, Nebraska, party of the first part (the "Issuer"), and Cornhusker Energy Lexington, LLC, a Nevada limited liability corporation (the "Company"), party of the second part;

1. **Preliminary Statement.** Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

(a) The Issuer is authorized, pursuant to the provisions of Chapter 13, Article 11 of the Revised Statutes of Nebraska, as amended (the "Act"), to issue revenue bonds to defray the cost of constructing, acquiring or improving any project suitable for use by any manufacturing or industrial enterprise.

(b) The Company has requested an expression of intent from the Issuer that it will issue revenue bonds and that the proceeds of the sale of one or more issues of such revenue bonds of the Issuer in an aggregate amount sufficient to finance costs of sewage and/or solid waste disposal facilities, including without limitation the processing and disposal (through recycling or otherwise) of the solid waste known as "stillage" from the ethanol production process (the "Project"), at the Ethanol Plant to be owned and operated by the Company and located within the jurisdiction of the Issuer, currently estimated not to exceed \$18,000,000, will be made available to the Company, subject to necessary approvals and proceedings by the Mayor and City Council and approval of the City's legal counsel.

2. **Undertakings on the Part of the Issuer.** The Issuer agrees as follows:

(a) That based on representations made by Company to Issuer, Issuer intends, subject to necessary approvals and proceedings by the Mayor and City Council and approval of the City's legal counsel, to issue and sell one or more issues of its revenue bonds, pursuant to the terms of the Act, in an aggregate principal amount sufficient to pay costs of the Project, currently estimated not to exceed \$18,000,000.

(b) That subject to approval of the Mayor and City Council and approval of the City's legal counsel, it will adopt such proceedings, and authorize and direct the execution of such documents, and take such actions, as may be necessary or advisable to effect the authorization, issuance and sale of the bonds, and the financing of the Project for the Company, all as shall be authorized by the Act and mutually satisfactory to the Issuer and the Company.

(c) That the aggregate basic installment payments under the lease or other financing agreement with the Company shall be such amounts as shall be sufficient to pay the principal of and interest and redemption premium, if any, on the bonds as and when the same shall become due and payable.

(d) That it will take such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3. **Undertakings on the Part of the Company.** The Company agrees as follows:

(a) That it will use all reasonable efforts to find one or more purchasers for the bonds.

(b) That contemporaneously with the delivery of the bonds it will enter into a lease or other financing agreement with the Issuer, under the terms of which the Company will obligate itself to pay amounts sufficient in the aggregate to pay the principal of and interest and redemption premium, if any, on the bonds as and when the same shall become due and payable, any such agreement to contain such other provisions as shall be mutually acceptable to the Issuer and the Company.

(c) That it will take such further action and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

4. General Provisions.

(a) All commitments of the Issuer under paragraph 2 hereof and of the Company under paragraph 3 hereof are subject to the conditions that on or before twelve months from the date hereof (or such other date as shall be mutually satisfactory to the Issuer and the Company), the Issuer and the Company shall have agreed, subject to the absolute discretion of each party, to mutually acceptable terms for the bonds and of the sale and delivery thereof, and mutually acceptable terms and conditions of the lease or other financing agreement referred to in paragraphs 2 and 3.

(b) If the events set forth in (a) of this paragraph do not take place within the time set forth therein or any extensions thereof and the bonds are not sold within such time, the Company will reimburse the Issuer for all fees, costs and expenses, including but not limited to the City's legal fees, which the Issuer incurs arising from the execution of this Agreement and the transactions contemplated hereunder, and this Agreement shall thereupon terminate.

(c) This Agreement and all of the rights and obligations hereunder of the Company may not be assigned by the Company without the express prior written consent of the Issuer. This Agreement and all of the rights hereunder of the Issuer may be assigned by the Issuer, with the consent of the Company, to any other municipality or political subdivision or agency of the State having power (either under the Act or other legislation or under the home rule powers of such assignee) to issue bonds for the purposes expressed herein and perform the other obligations of the Issuer hereunder.

(d) Any and all revenue bonds issued pursuant to this Agreement shall be payable solely and only out of payments made by or on behalf of the Company pursuant to the lease or other financing agreement between the Issuer and the Company referred to in paragraphs 2 and 3 hereof. The revenue bonds shall never constitute or create a charge against the credit or taxing power of the Issuer, the State of Nebraska or any political subdivision or governmental unit thereof. Neither the faith and credit nor the taxing power of the Issuer, the State of Nebraska or any political subdivision or governmental unit thereof will be pledged to the payment of the principal of or premium, if any, or interest on the revenue bonds.

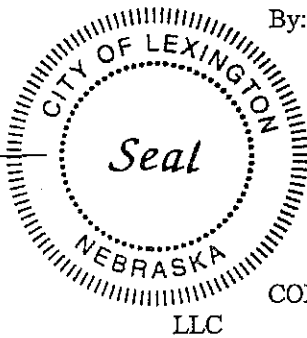
In Witness Whereof, the parties hereto have entered into this Agreement by their officers thereunto duly authorized as of November 26, 2002.

CITY OF LEXINGTON, NEBRASKA

By: [Signature]  
Mayor

Attest:

[Signature]  
City Clerk

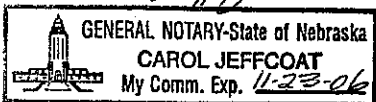


CORNHUSKER ENERGY LEXINGTON,

By: [Signature]

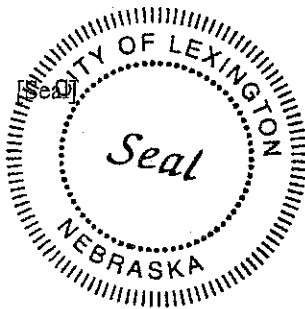
Attest:

[Signature]



I, Joe Peplitsch being first duly sworn, do hereby depose and certify that I am the duly qualified and acting City Clerk of the City of Lexington, Nebraska; that as such I have in my possession, or have access to, the complete corporate records of the City of Lexington, Nebraska and of its City Council; that I have carefully compared the transcript hereto attached with the aforesaid corporate records; and that said transcript hereto attached is a true, correct and complete copy of all of the corporate records showing the action taken by the City Council of the City of Lexington, Nebraska on November 26 2002, to authorize the execution of a Memorandum of Agreement by and between Cornhusker Energy Lexington, LLC, a Nevada limited liability corporation, and the City of Lexington, Nebraska, providing for the issuance of revenue bonds by the City of Lexington, Nebraska for Cornhusker Energy Lexington, LLC.

Witness my hand and the corporate seal of the City of Lexington, Nebraska hereto affixed, this 26th day of November, 2002.



Joe Peplitsch  
City Clerk of the City of Lexington, Nebraska