

ORDINANCE NO. 2084

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COMBINED UTILITIES REVENUE REFUNDING BONDS, 1997 SERIES B, OF THE CITY OF LEXINGTON, NEBRASKA, IN THE AGGREGATE PRINCIPAL AMOUNT OF ONE MILLION SIX HUNDRED THIRTY THOUSAND DOLLARS (\$1,630,000) FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT AND REDEMPTION OF THE CITY'S OUTSTANDING COMBINED UTILITIES REVENUE AND REFUNDING BONDS, 1991 SERIES A, IN THE PRINCIPAL AMOUNT OF \$1,825,000; DIRECTING THE APPLICATION OF THE PROCEEDS OF SAID BONDS; PRESCRIBING THE FORM, TERMS AND DETAILS OF SAID BONDS; 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; ESTABLISHING THE TERMS UPON WHICH ADDITIONAL BONDS OF EQUAL LIEN UPON REVENUES MAY BE ISSUED; 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 PROVIDING FOR PUBLICATION OF THIS ORDINANCE 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 sanitary sewer system, waterworks plant and water system and electric light and power 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, 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:

- 1) Combined Utilities Revenue and Refunding Bonds, 1991 Series A, date of original issue - November 1, 1991, issued pursuant to Ordinance No. 1941, in the original principal amount of \$3,900,000, of which \$2,220,000 in principal amount currently remain outstanding and unpaid (\$395,000 of which shall mature September 1, 1997) (the "1991 Series A Bonds"). The 1991 Series A Bonds are callable for

redemption on or after September 1, 1996 at par plus accrued interest to date of redemption, and the 1991 Series A Bonds maturing September 1, 1998 through September 1, 2001 in the principal amount of \$1,825,000, have been called for redemption on September 18, 1997;

- 2) Combined Utilities Revenue and Refunding Bonds, 1994 Series, date of original issue - March 15, 1994, issued pursuant to Ordinance No. 1994, in the original principal amount of \$4,245,000, of which \$3,460,000 in principal amount remain outstanding and unpaid (the "1994 Series Bonds").
- 3) Combined Utilities Revenue and Refunding Bonds, 1997 Series A, date of original issue - September 1, 1997, issued pursuant to Ordinance No. 2081, in the original principal amount of \$1,815,000, all of which remain outstanding and unpaid (the "1997 Series A Bonds").

(c) The 1991 Series A Bonds, the 1994 Series Bonds and the 1997 Series A Bonds represent the only indebtedness of the City for which the revenues and earnings of the Combined Utilities have been pledged. Under the terms of Section 19 and Section 20 of Ordinance No. 1994 and Section 19 and Section 20 of Ordinance No. 2081, the City is authorized to issue bonds which qualify as "Additional Bonds" of equal lien to the 1994 Series Bonds and the 1997 Series A Bonds, provided that the "Net Revenues Test" described in Section 19(b)(1) of Ordinance No. 1994 and Section 19(b)(1) of Ordinance 2081, can be satisfied. With respect to said conditions, the following determinations are hereby made::

- 1) No 1991 Series A Bonds are to remain outstanding after the issuance of the refunding bonds.
- 2) The "Net Revenues" of the Combined Utilities as defined in Ordinance Nos. 1994 and 2081 for fiscal year ended September 30, 1996, were not less than \$2,046,262. (Computed on a 12-month basis, the Net Revenues were not less than \$1,753,939.)
- 3) The "Average Annual Debt Service Requirements" of the 1994 Series Bonds, the 1997 Series A Bonds and the proposed 1997 Series B Bonds are \$801,650.

- 4) Said "Net Revenues" exceed 1.20 times said "Average Annual Debt Service Requirements" of the 1994 Series Bonds and the 1997 Series A Bonds as proposed to remain outstanding, and of the proposed 1997 Series B Bonds.
- 5) All conditions required by Section 19 and Section 20 of Ordinance No. 1994 and Section 19 and Section 20 of Ordinance No. 2081 precedent to the issuance of the 1997 Series B Bonds as "Additional Bonds" of equal priority and on a parity with the 1994 Series Bonds and the 1997 Series A Bonds do exist and have happened.

(d) To satisfy the funding requirements described in this Section 1, it is necessary for the City to issue its Combined Utilities Revenue Refunding Bonds, 1997 Series B, in the total principal amount of \$1,630,000 pursuant to Sections 18-1803 to 18-1805 R.R.S. Neb. 1943, as amended. All conditions, acts and things required by law to exist or to be done precedent to the issuance of the 1997 Series B Bonds as provided for in this ordinance (the "Ordinance") do exist and have been done and performed in regular and due time and form as required by law. Said bonds will be payable from the revenues of the Combined Utilities, and be on a parity with the lien of the 1994 Series Bonds authorized by Ordinance No. 1994 of the City and the 1997 Series A Bonds authorized by Ordinance No. 2081 of the City, and shall be equally and ratably secured therewith and entitled to the security and benefits of said ordinances and this Ordinance.

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 "Additional Bonds" shall mean any and all bonds hereafter issued by the City pursuant to the terms of this ordinance which are equal in lien to the 1994 Series Bonds, the 1997 Series A Bonds and the 1997 Series B Bonds, including such bonds issued pursuant to Section 19 and refunding bonds issued pursuant to Section 20, as and when such bonds become equal in lien to the 1994 Series Bonds, the 1997 Series A Bonds and the 1997 Series B Bonds, according to their terms and the terms of said Section 20.
- (b) "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.

- (c) 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.
- (d) 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 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 this Ordinance shall be shown by an audit for the fiscal year in question as conducted by independent certified public accountants.
- (e) "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 1997 Series B Bonds pursuant to Section 4 hereof.

Section 3. For the purposes described in Section 1 hereof and to provide for the funding of a reserve for the 1997 Series B Bonds, there shall be and there are hereby ordered issued the negotiable bonds of the City of Lexington, Nebraska, to be known as "Combined Utilities Revenue Refunding Bonds, 1997 Series B" (the "1997 Series B Bonds"), in the principal amount of One Million Six Hundred Thirty Thousand Dollars (\$1,630,000), with such 1997 Series B Bonds bearing interest at the rates per annum and maturing on September 1 of the years shown in the principal amounts as follows:

<u>Date of Maturity</u>	<u>Amount of Principal Maturing</u>	<u>Interest Rate to Maturity or Earlier Redemption</u>
September 1, 1998	\$380,000	4.20%
September 1, 1999	400,000	4.30
September 1, 2000	415,000	4.40
September 1, 2001	435,000	4.50

The 1997 Series B 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 1997 Series B Bonds shall be September 15, 1997. Interest on the 1997 Series B Bonds, at the respective rates for each maturity, shall be payable on March 1, 1998, and semiannually thereafter on September 1 and March 1 of each year (each of said dates an "Interest Payment Date") and the 1997 Series B Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date, whichever is later. Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. 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 the Interest Payment Date occurs (the "Record Date"), subject to the provisions of Section 5 hereof. The 1997 Series B Bonds shall be numbered from 1 upwards in the order of their issuance. No 1997 Series B 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 1997 Series B Bonds issued shall be designated by the City's Treasurer as directed by the initial purchaser thereof. Payments of interest due prior to maturity or earlier redemption on the 1997 Series B 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 1997 Series

B 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 and unpaid accrued interest thereon 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 owners upon presentation and surrender of the 1997 Series B Bonds to said Paying Agent and Registrar. The City and said Paying Agent and Registrar may treat the registered owner of any 1997 Series B 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 1997 Series B 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 1997 Series B Bonds or claims for interest to the extent of the sum or sums so paid.

Section 4. The City Treasurer is hereby designated to serve as Paying Agent and Registrar for the 1997 Series B Bonds. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the 1997 Series B Bonds at the City offices. The names and registered addresses of the registered owner or owners of the 1997 Series B Bonds shall at all times be recorded in such books. Any 1997 Series B Bond may be transferred pursuant to its provisions at the 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 such owner's 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 1997 Series B Bond or 1997 Series B Bonds of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the 1997 Series B 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 1997 Series B Bond, the surrendered 1997 Series B Bond or Bonds shall be canceled and destroyed. All 1997 Series B Bonds issued upon transfer of the 1997 Series B Bonds so surrendered shall be valid obligations of the City evidencing the same obligations as the 1997 Series B Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the 1997 Series B Bonds upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any 1997 Series B Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any 1997 Series B 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 1997 Series B 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 1997 Series B 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 the 1997 Series B Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of Lexington 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. 1997 Series B Bonds maturing on or after September 1, 2000 shall be subject to redemption, in whole or in part, prior to maturity at any time on or after September 15, 1999, at the principal amount thereof, together with accrued interest on the principal amount redeemed to the date fixed for redemption. Such optional redemption shall be made from time to time as shall be directed by the Mayor and Council of the City. The City may select the 1997 Series B Bonds to be redeemed for such optional redemption in its sole discretion. The 1997 Series B Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Any 1997 Series B Bond redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for a new 1997 Series B Bond evidencing the unredeemed principal thereof. Notice of redemption of any 1997 Series B Bond 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 1997 Series B Bond at said owner's registered address. Such notice shall designate the 1997 Series B 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 bond or bonds are to be presented for prepayment at the office of said Paying Agent and Registrar. In case of any 1997 Series B 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 1997 Series B Bond shall affect the sufficiency of the proceedings of the City designating the 1997 Series B Bonds called for redemption or the effectiveness of such call for 1997 Series B 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 1997 Series B Bonds shall be in substantially the following form:

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 Utilities Revenue and Refunding Bonds, 1991 Series A, date of original issue - November 1, 1991, in the principal amount of \$1,825,000, in pursuance of Sections 18-1803 to 18-1805, R.R.S. Neb. 1943, and has been duly authorized by ordinance (the "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 September 1, 2000, are subject to redemption at the option of the City, in whole or in part, at any time on or after September 15, 1999, at the principal amount thereof, together with accrued interest on the principal amount redeemed to the date fixed for redemption. Such optional redemption shall be made from time to time as shall be directed by the Mayor and Council of the City. The City may select the 1997 Series B Bonds for optional redemption in its sole discretion.

Notice of redemption shall be given by mail to the registered owner of any bond to be redeemed 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 such owner's attorney duly authorized in writing at the 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 of or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of Lexington, Nebraska, 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 revenues and earnings of the City's sewage disposal plant and sanitary sewer system, waterworks plant and water system and electric light and power distribution system (which together with any additions, extensions and improvements thereto hereafter constructed are herein referred to as the "Combined Utilities"), are pledged and hypothecated for the payment of all of the bonds of this series in the principal amount of \$1,630,000, for the payment of the City's Combined Utilities Revenue and Refunding Bonds, 1994 Series, date of original issue - March 15, 1994, presently outstanding in the principal amount of \$3,460,000 (the "1994 Series Bonds"), and for the payment of the City's Combined Utilities Revenue and Refunding Bonds, 1997 Series A,

date of original issue - September 1, 1997, presently outstanding in the principal amount of \$1,815,000 (the "1997 Series A Bonds"), equally and ratably as provided in the authorizing ordinances. 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 1994 Series Bonds, the 1997 Series A Bonds and 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 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 payment of the interest and principal of the bonds of this series, the 1994 Series Bonds and the 1997 Series A Bonds, for the operation and maintenance of said combined utilities, for payment of any 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. Said ordinance also designates the terms and conditions on which this bond shall cease to be entitled to any lien, benefit or security under such ordinance and all covenants, agreements and obligations of the City under such ordinance may be discharged and satisfied at or prior to the maturity or redemption of this bond if monies or certain specified securities shall have been deposited with the Paying Agent and Registrar or other trustee.

The bonds of this series shall not be a debt of the City of Lexington within the meaning of any constitutional, statutory or charter limitation upon the creation of general obligation indebtedness of said City, and the City of Lexington shall not be liable for the payment thereof out of any moneys of said City other than from the revenues of its Combined Utilities.

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

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.

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

(facsimile signature)
Mayor

ATTEST:

(facsimile signature)
City Clerk

(SEAL)

**CERTIFICATE OF AUTHENTICATION
AND REGISTRATION**

This bond is one of the series designated therein and has been registered to the owner named in said bond and the name of such owner has been recorded in the books of record maintained by the undersigned as Paying Agent and Registrar for said issue of bonds.

City Treasurer,
Paying Agent and Registrar
for the City of Lexington, Nebraska

(FORM OF ASSIGNMENT)

For value received _____ hereby
sells, assigns, and transfers unto _____
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.

Date: _____

Registered Owner

Signature Guaranteed

By: _____

Authorized Officer

Note: The signature(s) on this assignment MUST CORRESPOND with the name(s) 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 1997 Series B 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. The 1997 Series B Bonds shall be issued initially as "book-entry-only" bonds under the services of The Depository Trust Company (the "Depository"), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a Letter of Representations (the "Letter of Representations") in the form required by the Depository, for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the 1997 Series B Bonds. With respect to the issuance of the 1997 Series B Bonds as "book-entry-only" bonds, the following provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds 1997 Series B Bonds as securities depository (each, a "Bond Participant") or to any person who is an actual purchaser of a 1997 Series B Bond from a Bond Participant while the 1997 Series B Bonds are in book-entry form (each, a "Beneficial Owner") with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the 1997 Series B Bonds,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the 1997 Series B Bonds, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the 1997 Series B Bonds. The Paying Agent and Registrar shall make payments with respect to the 1997 Series B Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy

and discharge the obligations with respect to such 1997 Series B Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange 1997 Series B Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the 1997 Series B Bonds or (ii) to make available 1997 Series B Bonds registered in whatever name or names as the Beneficial Owners transferring or exchanging such 1997 Series B Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the 1997 Series B Bonds be delivered to the ultimate beneficial owners of the 1997 Series B Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the 1997 Series B Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the 1997 Series B Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any 1997 Series B Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such 1997 Series B Bond and all notices with respect to such 1997 Series B Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the 1997 Series B Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the 1997 Series B Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee;

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section.

If for any reason the Depository resigns and is not replaced, the City shall immediately provide a supply of printed bond certificates, duly executed by manual or facsimile signatures of the Mayor and City Clerk and sealed with the City's seal, for issuance upon the transfers from the Depository and subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of such certificates and to direct their execution by manual or 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 1997 Series B Bond shall cease to be such officer before the delivery of such bond (including such certificates 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 1997 Series B Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The City Treasurer shall cause the 1997 Series B 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 1997 Series B Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration, and authentication of the 1997 Series B Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to Ameritas Investment Corp., as initial purchaser thereof. The 1997 Series B Bonds are hereby sold to said purchaser for the sum of \$1,610,032.50, plus accrued interest, if any, thereon to date

of payment and delivery. The officers of the City (or any one of them) are hereby authorized to execute and deliver the Bond Purchase Agreement for and on behalf of the City. Said initial purchaser shall have the right to direct the registration of the 1997 Series B 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 1997 Series B Bonds, one of which shall be delivered to said purchaser.

Section 10. All accrued interest received from the sale of the 1997 Series B Bonds shall be applied to pay interest falling due on March 15, 1998 and shall be credited to the Combined Utilities Revenue Bond Payment Account (1997 Series B Bond Payment Subaccount) as described in Section 13 hereof. Expenses of issuance of the 1997 Series B Bonds may be paid from the proceeds of the 1997 Series B Bonds. All of the remaining proceeds of the 1997 Series B Bonds shall be applied without further direction to the redemption of those outstanding Combined Utilities Revenue and Refunding Bonds, 1991 Series A, of the City which are called for redemption on September 18, 1997. The City hereby agrees to take all actions necessary to call and redeem the 1991 Series A Bonds on the date fixed for redemption.

Section 11. 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 and interest on the 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds 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 1994 Series Bonds, the 1997 Series A

Bonds, the 1997 Series B Bonds and any Additional Bonds, all such required payments with respect to each such issue shall be made in full from the respective subaccounts 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 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds and any such Additional Bonds, pro rata in accordance with the respective unpaid principal amounts then outstanding for the 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds and such Additional Bonds.

Section 12. So long as any of the 1997 Series B Bonds, the 1997 Series A Bonds, the 1994 Series Bonds 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 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds 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 Ordinance No. 1994, Section 13 of Ordinance No. 2081, and Section 13 of this Ordinance.

(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

interest falling due during such fiscal year for the 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds and any Additional Bonds.

Section 13. All revenues and earnings derived from the operation of the Combined Utilities of said City shall be set aside as collected and deposited in that separate fund established by Ordinance No. 1994 (and also described and confirmed in Ordinance No. 2081) and which is designated in said Ordinances and in this Ordinance as the "Combined Utilities Fund". The 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 1994 Series Bonds, 1997 Series A Bonds, 1997 Series B Bonds or Additional Bonds are outstanding the accounts described in this Section 13 for the administration of said fund. Within the Combined Utilities Fund there have been previously ordered established and there are hereby ordered to be maintained the following accounts for allocation of the monies in said fund under the terms of this ordinance: (a) Combined Utilities Revenue Bond Payment Account; (b) Operation and Maintenance Account; (c) Combined Utilities Reserve Account; and (d) Surplus Account. Within each such account further subaccounts shall now, or may hereafter, be established as provided in Ordinance No. 1994, Ordinance No. 2081 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 has previously been established the 1994 Series Bond Payment Subaccount and the 1997 Series A Bond Payment Subaccount, and there is hereby ordered established the 1997 Series B Bond Payment Subaccount. Out of the Combined Utilities Fund the City shall transfer into the Combined Utilities Revenue Bond Payment Account on or before the tenth day of each calendar month the amounts required to be deposited to the 1994 Series Bond Payment Subaccount, on or before the twenty-fifth day of each calendar month the amounts required to be deposited to

the 1997 Series A Bond Payment Subaccount and on or before the twenty-fifth day of each calendar month the amounts required to be deposited to the 1997 Series B Bond Payment Subaccount in accordance with the following requirements for each such subaccount:

- (a) 1997 Series B Bond Payment Subaccount. From the monies deposited to the Combined Utilities Revenue Bond Payment Account from the Combined Utilities Fund, there shall be deposited monthly to the 1997 Series B Bond Payment Subaccount the following amounts for the periods indicated:
 - (1) during the period beginning September 15, 1997, until the 1997 Series B Bonds have been paid in full, an amount equal to one-sixth (1/6th) of the amount falling due for interest on the 1997 Series B Bonds on the next Interest Payment Date.
 - (2) during the period beginning September 15, 1997 until the 1997 Series B Bonds have been paid in full, an amount equal to one-twelfth (1/12th) of the amount of principal next maturing for the 1997 Series B Bonds.
- (b) 1997 Series A Bond Payment Subaccount. During the periods set forth and in the amounts required by subsection 13(I)(a) of Ordinance No. 2081 for the 1997 Series A Bonds as are then outstanding.
- (c) 1994 Bond Payment Subaccount. During the periods set forth and in the amounts required by subsection 13(I)(a) of Ordinance No. 1994 for the 1994 Series Bonds as are then outstanding.

All such deposits to the 1994 Bond Payment Subaccount, the 1997 Series A Bond Payment Subaccount and the 1997 Series B Bond Payment Subaccount shall be made in such amounts and at such times that there will be sufficient sums in each such subaccount to meet the payments required to be made by the City with respect to the 1994 Series Bonds, the 1997 Series A Bonds and the 1997 Series B Bonds, including any and all transfers required to be made to the Paying Agent and Registrar for the 1997 Series B Bonds, the paying agent and registrar for the 1997 Series A Bonds and the paying agent and registrar for the 1994 Series Bonds. All such deposits are required to be made without preference or priority as between such subaccounts 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 11 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 subaccount in the Combined Utilities Revenue Bond Payment Account and for deposits into such subaccount sufficient to make payments upon such Additional Bonds as the same fall due. Such subaccount and the deposits required to be made thereto shall have equal rank and standing with the 1994 Bond Payment Subaccount, the 1997 Series A Bond

Payment Subaccount and the 1997 Series B Bond Payment Subaccount and the payments required to be made to each thereof. Each subaccount 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 Subaccount created under Ordinance No. 1994, 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 Control 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 the 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds 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: Within the Combined Utilities Bond Reserve Account as established there is hereby ordered established a separate subaccount designated as the 1997 Series B Bond Reserve Subaccount. From reserve monies held with respect to the 1991 Series A Bonds, there shall be deposited to the 1997 Series B Bond Reserve subaccount the sum of \$163,000 to be held as a debt service reserve securing the payment of the 1997 Series B Bonds on a first and prior basis. Such amount shall also represent the required balance to be maintained in the 1997 Series B Bond Reserve Subaccount for the benefit and security of the 1997 Series B Bonds. In the event that at any time the monies in the 1997 Series B Bond Payment Subaccount of the Combined Utilities Revenue Bond Payment Account are insufficient to pay either the interest on or the principal of the 1997 Series B Bonds as the same fall due, the City shall apply the monies in the 1997 Series B Bond Reserve Subaccount to pay such principal and

interest and to prevent any default in payment with respect to the 1997 Series B Bonds. If the City shall use any of the monies in the 1997 Series B Bond Reserve Subaccount for such purpose and such use shall reduce the balance in said subaccount below the required balance, as described above, 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 required balance in the 1997 Series B Bond Reserve Subaccount has been restored. By Ordinance Nos. 1994 and 2081 the City has previously established the 1994 Bond Reserve Subaccount as a separate reserve for the 1994 Series Bonds and the 1997 Series A Bond Reserve Subaccount as a separate reserve for the 1997 Series A Bonds. In any ordinance authorizing Additional Bonds, the City may make provision for the creation of an additional separate subaccount 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 1.10 times the Average Annual Debt Service Requirements for any such issue of Additional Bonds. The balance for any such subaccount may be established from monies of the Combined Utilities otherwise available, from periodic deposits made to such subaccount or from bond proceeds. Any such additional subaccount in the Combined Utilities Bond Reserve Account shall be of equal priority with the 1994 Bond Reserve Subaccount, the 1997 Series A Bond Reserve Subaccount and the 1997 Series B Bond Reserve Subaccount and available monies from the Combined Utilities Fund required to be deposited to each such subaccount at any time shall be allocated on a pro rata basis in accordance to the terms of Section 11 of this ordinance. Each subaccount 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.

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. 1994, Section 13 of Ordinance No. 2081 and Section 13 of 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 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds 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 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 (provided, however, for purposes of investments in the 1994 Bond Reserve Subaccount, an eligible investment shall be determined to be for 8 years or less provided that it does not mature more than 8 1/2 years from the date of 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, 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 Subaccount 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 1994 Series Bonds, the 1997 Series A Bonds and the 1997 Series B Bonds with the Paying Agent and Registrar, the paying agent and registrar for the 1994 Series Bonds and the paying agent and registrar for the 1997 Series A Bonds, respectively. All such payments shall be made out of the Combined Utilities Revenue Bond Payment Account or from other funds of the Combined Utilities available for such purpose, in accordance with the ordinances authorizing issuance of each series of bonds.

Section 15. The City of Lexington shall keep proper books of records 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 registered owners of any 1994 Series Bonds, 1997 Series A Bonds, 1997 Series B Bonds or of any Additional Bonds or any duly authorized agent or agents of such registered 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 ninety 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 registered owners 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:

- (a) A statement in detail of the income and expenditures of each component of the Combined Utilities for such fiscal year.
- (b) A balance sheet as of the end of such fiscal year.
- (c) 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 the Combined Utilities or the components thereof.
- (d) 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.
- (e) The number of properties connected with the Combined Utilities 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 1994 Series Bonds, the 1997 Series A Bonds, the

1997 Series B Bonds and of any series of Additional Bonds, and to the holder or registered owner of at least twenty-five percent (25%) of any such 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 shall be bonded, in addition to such Treasurer's 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 such official's hands as determined appropriate from time to time by the Mayor and Council, based upon the advice of such experts or consultants as they shall deem appropriate. 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 such person's 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 or public utilities engaged in similar operations, including, without limiting the generality of the foregoing, fire and windstorm insurance and public liability insurance. 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 a separate special fund held by the City Treasurer as part of the Combined Utilities Fund and subject to the pledge of this

Ordinance 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 held in a separate special fund and be applied upon order of the Mayor and Council to paying the costs of further improvements to 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 then held in the Surplus Account. If in the opinion of a consulting engineer the proceeds of any insurance, together with any amount then available for such purpose in the 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 Payment Account and Combined Utilities Bond Reserve Account, as herein provided for, then such insurance moneys to the extent not

applied to repair or replace the damaged properties shall remain in such separate special fund and be applied upon order of the Mayor and Council to paying the costs of further improvements to the Combined Utilities.

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 1994 Series Bonds, the 1997 Series A Bonds and the 1997 Series B 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 Mayor and Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 19. To provide funds for any purpose 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 this ordinance) payable from the revenues of the Combined Utilities having equal priority and on a parity with the 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds 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 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds, 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 shall have been at least equal to 1.20 times the Average Annual Debt Service Requirements of the 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds 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 1.25 times the Average Annual Debt Service Requirements of the 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds 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 Average Annual Debt Service Requirements, 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 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds 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 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds 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 13(IV).

Section 20. The City may issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund any 1994 Series Bonds, 1997 Series A Bonds, 1997 Series B Bonds or Additional Bonds then outstanding, provided, that if any such 1994 Series Bonds, 1997 Series A Bonds, 1997 Series B Bonds 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 1994 Series Bonds, 1997 Series A Bonds, 1997 Series B Bonds or Additional Bonds then outstanding provided, that, if any such 1994 Series Bonds, 1997 Series A Bonds, 1997 Series B Bonds 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 19(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 1994 Series Bonds, 1997 Series A Bonds, 1997 Series B Bonds 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 Average Annual Debt Service Requirements 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 20, 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. 1943 (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 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 1994 Series Bonds, 1997 Series A Bonds, 1997 Series B Bonds or Additional 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 two-thirds (2/3rds) in principal amount of the 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds and of Additional Bonds outstanding authorized hereunder, as to each such series or issue (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 registered owners of the 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds and of Additional Bonds and interest 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 two-thirds (2/3rds) in principal amount of said bonds (as to each such issue at the time of consent or approval) shall be binding upon all holders or owners of said 1994 Series Bonds, 1997 Series A Bonds, 1997 Series B 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 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B 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. Anything in this Section 23 notwithstanding, the City may in any ordinance authorizing Additional Bonds add additional agreements or covenants providing for the further securing of the 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B Bonds and any Additional Bonds and may also provide for appropriate subaccounts in the Combined Utilities Revenue Bond Payment Account and Combined Utilities Bond Reserve Account, the funds in which shall be held on a priority basis for each such issue of Additional Bonds under the terms and limitations provided for in this ordinance.

Section 24. So long as any of the 1994 Series Bonds, the 1997 Series A Bonds, the 1997 Series B 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 registered owner from time to time of said bonds. Any registered owner of a 1994 Series Bond, 1997 Series A Bond, 1997 Series B Bond or of an Additional Bond or 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, requesting the appointment of a receiver for the Combined Utilities and 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 1994 Series Bonds, 1997 Series A Bonds, 1997 Series B Bonds or any Additional Bonds issued pursuant to this Ordinance and any such bonds shall no longer be deemed outstanding hereunder if such bonds shall have been purchased and canceled 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 (1) sufficient money to make such payment or (2) Deposit Securities 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 required by this Ordinance or given irrevocable instructions 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 at the direction of the City, 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 bonds for which such monies were deposited, shall be paid over to the City as and when collected. For purposes of this Section 25, any Deposit Securities shall be non-callable or callable only at the option of the holder.

Section 26. The Mayor and City Clerk of the City are hereby authorized to do all things and execute all such documents as may by them be deemed necessary and proper to complete the

issuance and sale of the 1997 Series B Bonds as contemplated by this Ordinance and are hereby further authorized to take any and all actions including transfers of funds necessary or appropriate to satisfy all payment requirements with respect to the 1991 Series A Bonds as called for redemption.

Section 27. The City hereby covenants to the purchasers and holders of the 1997 Series B Bonds hereby authorized that it will make no use of the proceeds of said bond issue, including monies held in any sinking fund for the 1997 Series B Bonds, which would cause the 1997 Series B Bonds to be arbitrage bonds within the meaning of Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and further covenants to comply with said Sections 103(b) and 148 and all applicable regulations thereunder throughout the term of said bond issue, including payment and reporting of rebate, if any, due to the United States pursuant to Section 148(f) of the Code. The City hereby covenants and agrees to take all actions necessary under the Code to maintain the tax exempt status (as to taxpayers generally) of interest payable on the 1997 Series B Bonds. The City hereby designates the 1997 Series B Bonds as its "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i)(III) of the Code and covenants and warrants that it does not reasonably expect to issue tax-exempt bonds or other tax-exempt obligations aggregating in principal amount more than \$10,000,000 during calendar 1997.

Section 28. In accordance with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission, the City hereby agrees that it will provide the following continuing disclosure information:

- (a) to each nationally recognized municipal securities information repository (a "NRMSIR") and to the initial purchaser of the 1997 Series B Bonds, the City shall provide annual financial and operating information generally consistent with

the information set forth under the heading "FINANCIAL STATEMENT" in the Official Statement for said bonds, information concerning the rates and number of users for the Combined Utilities and the City's audited financial statements; such information is expected to be available not later than seven months after the end of each fiscal year for the City; audited financial information shall be provided for the primary governmental, fiduciary and proprietary fund types based on generally accepted accounting principles applied to government units and in accordance with the standards set by the Governmental Accounting Standards Board;

(b) in a timely manner to each NRMSIR or to the Municipal Securities Rule Making Board ("MSRB"), notice of the occurrence of any of the following events with respect to the 1997 Series B Bonds, if in the judgment of the City, such event is material:

- (1) principal and interest payment delinquencies,
- (2) non-payment related defaults,
- (3) unscheduled draws on debt service reserves reflecting financial difficulties,
- (4) unscheduled draws on credit enhancements reflecting financial difficulties (there is no credit enhancement on the 1997 Series B Bonds);
- (5) substitution of credit or liquidity providers, or their failure to perform (not applicable to the 1997 Series B Bonds);
- (6) adverse tax opinions or events affecting the tax-exempt status of the 1997 Series B Bonds,
- (7) modifications to rights of the Bondholders,
- (8) bond calls,
- (9) defeasances,
- (10) release, substitution or sale of property securing repayment of the 1997 Series B Bonds, and
- (11) rating changes (the 1997 Series B Bonds are not rated and no rating for the 1997 Series B Bonds is expected to be requested).

The City has not undertaken to provide notice of the occurrence of any other material event, except the events listed above.

(c) in a timely manner to each NRMSIR or to the Municipal Securities Rule Making Board ("MSRB") notice of any failure on the part of the City to provide required annual financial information not later than seven months from the close of the City's fiscal year.

The City reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the City, consistent with the Rule. The City hereby agrees that such covenants are for the benefit of the registered owners of the 1997 Series B Bonds (including Beneficial Owners) and that such covenants may be enforced by any registered owner or Beneficial Owner, provided that any such right to enforcement shall be limited to specific enforcement of such undertaking and any failure shall not constitute an event of default under the Ordinance. The continuing disclosure obligations of the City under the Ordinance, as described above, shall cease when none of the 1997 Series B Bonds remain outstanding.


Section 29. 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 30. 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 31. The Preliminary Official Statement is hereby approved and the Mayor and City Clerk are hereby authorized to approve on behalf of the City a final Official Statement with any changes deemed appropriate by them.

Section 32. This Ordinance shall be in force and take effect from and after its passage and approval according to law. This Ordinance shall be published in pamphlet form.

PASSED AND APPROVED this 12th day of August, 1997.



Mayor

ATTEST:



City Clerk

(SEAL)

