

ORDINANCE NO. 1711

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COMBINED REVENUE BONDS, 1982 SERIES, OF THE CITY OF LEXINGTON, NEBRASKA, OF THE PRINCIPAL AMOUNT OF \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) FOR THE PURPOSE OF PAYING FOR IMPROVEMENTS TO THE COMBINED UTILITIES OF THE CITY, TAKING UP AND PAYING OFF OUTSTANDING COMBINED UTILITY BOND ANTICIPATION NOTES IN THE PRINCIPAL AMOUNT OF ONE MILLION FIFTY-FIVE THOUSAND DOLLARS (\$1,055,000) AND PROVIDING FOR A BOND RESERVE; PRESCRIBING THE FORM OF SAID BONDS; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE SEWER, WATER AND ELECTRIC SYSTEMS OWNED BY THE CITY FOR THE PAYMENT OF SAID BONDS; ENTERING INTO A CONTRACT ON BEHALF OF THE CITY WITH THE HOLDERS OF SAID BONDS; SELLING THE BONDS AND AUTHORIZING THE DELIVERY OF THE BONDS TO THE PURCHASER; PROVIDING FOR THE DISPOSITION OF THE BOND PROCEEDS AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

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

Section 1. The Mayor and Council of the City of Lexington, Nebraska, hereby find and determine: a) that the City presently owns and operates a sewage disposal plant and system, waterworks plant and system and electrical light and power plant and distribution system, all of which are hereby determined to be revenue producing facilities under the provisions of Sections 18-1803 to 18-1805 Reissue Revised Statutes of Nebraska, 1943, as amended; b) that the City has heretofore issued its Combined Utility Bond Anticipation Notes in the principal amount of \$1,055,000 to finance certain improvements, all of which Notes are presently outstanding and unpaid and are secured by a pledge of the revenue and earnings of the sewage disposal plant and system, waterworks plant and system and electrical light and power plant and distribution system, in that the City has agreed to establish and collect rates and charges sufficient to enable the City to issue and sell bonds in an amount sufficient to pay the principal and interest on said Notes, and that it will issue such bonds in an amount sufficient to pay the Notes, both principal and interest; that all of the above notes are about to mature or are presently subject to redemption in accordance with their terms; c) that it is necessary to provide for certain additional improvements to the City's sewage disposal plant and system, waterworks plant and system and electric light and power plant and distribution system and the estimated cost of such improvements is not less than \$ 665,000; d) that it is necessary and advisable for the City to provide for a deposit to the Combined Utilities Bond Reserve Account, hereinafter described, in the amount of \$280,000; and e) that the Mayor and Council do hereby determine that it is necessary that Combined Revenue Bonds of the City in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) be issued to pay for the refunding of said outstanding Notes and said additional improvements and reserve as described above; that there are presently outstanding and unpaid \$565,000 Combined Revenue Bonds, 1977 Series, of the City of Lexington, Nebraska, dated April 1, 1977,

numbered 38 to 150 inclusive, which are a lien upon and secured by a pledge of the revenue and earnings of the City's said combined utilities, which bonds were authorized by Ordinance No. 1492 of the City of Lexington, Nebraska; that there are also presently outstanding and unpaid \$1,365,000 Combined Revenue Bonds, 1978 Series, of the City of Lexington, Nebraska, dated June 15, 1978, numbered 28 to 300 inclusive, which are also a lien upon and secured by a pledge of the revenue and earnings of the City's said combined utilities, which bonds were authorized by Ordinance Nos. 1596 and 1604 of the City of Lexington, Nebraska; that there are no other liens upon the revenues and earnings of the combined utilities of the City; that as authorized by Section 14 of Ordinance No. 1492 of the City adopted March 22, 1977 and Section 14 of Ordinance No. 1596 of the City adopted May 2, 1978, the City may issue Additional Bonds payable from the revenues of said combined utilities on a parity with the lien of said outstanding bonds provided that the revenues of said combined utilities for the fiscal year next preceding the date of the authorization of said Additional Bonds, after deducting therefrom all costs of operation and maintenance of said combined utilities for such fiscal year and before deduction of depreciation or interest as based on a certified public accountant's report, shall have been equal to 1.25 times the average annual bond requirements of said outstanding bonds and the Additional Bonds to be issued; that the combined average annual bond requirements of the 1982 Bonds herein authorized and the outstanding 1977 Bonds and 1978 Bonds determined by adding all of the principal and interest which will become due when computed to the absolute maturity of the 1982 Bonds of this issue and the outstanding 1977 Bonds and 1978 Bonds and dividing such total by the number of years remaining that the longest bond of any issue of bonds has to run to maturity, is \$ 452,487.83 ; that the revenues of the combined utilities for the fiscal year ending July 31, 1982, after deducting therefrom all costs of operation and maintenance of said utilities for such fiscal year and before deduction of depreciation or interest, as based on a certified public accountant's preliminary report is not less than 1.25 times said amount and said accountants shall file with the City Clerk a definitive report confirming such earnings prior to the issuance of the 1982 Bonds herein authorized; that all conditions, acts and things required by law to exist or to be done precedent to the issuance of the Combined Revenue Bonds, 1982 Series, contemplated herein do exist and have been done and performed in regular and due form as provided in Sections 18-1803 to 18-1805, Reissue Revised Statutes of Nebraska, 1943, as amended, which bonds will be payable from the revenues of the combined utilities and be on a parity with the lien of the Combined Revenue Bonds, 1977 Series, authorized by Ordinance No. 1492 of the City and the Combined Revenue Bonds, 1978 Series, authorized by Ordinance Nos. 1596 and 1604 of the City and are equally and ratably secured therewith and entitled to the security and benefits of said ordinances.

Section 2. Unless the context shall clearly indicate otherwise, the following terms shall have the following meanings when used in this ordinance: (a) "the combined utilities" shall mean the sewage disposal plant and system, the waterworks plant and system and the electrical light and power plant and distribution system of the City of Lexington, Nebraska, as now existing and all additions, extensions and improvements hereafter made; (b) "revenues" shall mean all the rates, rentals, fees, charges, earnings and other moneys from any source whatever derived by the City of Lexington through its ownership and operation of its combined utilities; (c) "1982 Bonds" shall mean the \$ 2,000,000 principal amount "Combined Revenue Bonds, 1982 Series" authorized to be issued pursuant to Section 3 of this ordinance at any time outstanding; (d) "1977 Bonds" shall mean the \$565,000 principal amount "Combined Revenue Bonds, 1977 Series" authorized to be issued pursuant to Ordinance No. 1492 at any time outstanding; (e) "1978 Bonds" shall mean the \$1,365,000 principal amount "Combined Revenue Bonds, 1978 Series" authorized to be issued by Ordinance Nos. 1596 and 1604 at any time outstanding; (f) "Additional Bonds" shall mean any bond, including refunding bonds, authorized and issued pursuant to the provisions of Section 14 of this ordinance at any time outstanding, which are payable on a parity with the 1982 Bonds, the 1978 Bonds and the 1977 Bonds and equally and ratably secured therewith.

Section 3. For the purpose of taking up and paying off outstanding Combined Utility Bond Anticipation Notes in the principal amount of \$1,055,000, which Notes were issued to pay a portion of the cost of certain improvements to the combined utilities, for the purpose of paying the costs of certain additional improvements to the combined utilities and for the purpose of providing for a deposit to the Combined Utilities Bond Reserve Account, there shall be and there are hereby ordered issued negotiable coupon bonds of the City of Lexington, Nebraska, to be known as "Combined Revenue Bonds, 1982 Series" in the aggregate principal amount of Two Million

Dollars (\$ 2,000,000), consisting of 400 bonds of \$5,000 each in principal amount, numbered from 1 to , inclusive, dated October 1, 1982, payable to bearer, which bonds shall become due and payable on October 1 of the years and bear interest at the rates shown in the following schedule, to wit:

<u>Numbers</u>	<u>Maturing on October 1 of Year</u>	<u>Amount of Principal Maturing</u>	<u>Basic Interest Rate to Maturity or Earlier Redemption</u>
1-18	1984	\$ 90,000	7.25%
19-37	1985	95,000	7.75
38- 57	1986	100,000	8.00
58- 78	1987	105,000	8.25
79-101	1988	115,000	8.50
102-126	1989	125,000	8.75
127-153	1990	135,000	9.00
154-182	1991	145,000	9.25
183-215	1992	165,000	9.50
216-251	1993	180,000	9.80
252-289	1994	190,000	10.10
290-318	1995	145,000	10.25
319-348	1996	150,000	10.40
349-400	1997	260,000	10.50

In addition to the foregoing basic interest, Bond Nos. 1 to 400, inclusive, shall bear supplemental interest at the rate of ~~two and seventy-five hundredths~~ percent (2.75%) per year from October 1, 1982 until October 1, 1983, said supplemental interest to be evidenced by a separate coupon bearing the letter "A", which separate coupon may be detached and sold separately.

Interest shall be payable on the first day of October and April of each year, starting October 1, 1983, and shall be evidenced by coupons for the interest due on each interest payment date. Both principal and interest shall be payable at the office of the County Treasurer of Dawson County in Lexington, Nebraska, upon presentation and surrender of the 1982 Bonds and coupons as they separately become due.

All or any of the 1982 Bonds maturing on or after October 1, 1988 are subject to redemption at the option of the City at any time on or after October 1, 1987, at the principal amount thereof, plus accrued interest to the date fixed for redemption.

Section 4. The 1982 Bonds shall be executed on behalf of the City by being signed by the facsimile signature of the Mayor and by the manual signature of the City Clerk and shall have the City seal impressed on each bond. The interest coupons shall be executed on behalf of the City by being signed by the Mayor and City Clerk, either by affixing their own proper signatures to each coupon or by causing their facsimile signatures to be affixed thereto and the Mayor and Clerk shall, by such execution of each bond, be deemed to have adopted as and for their own proper signatures their facsimile signatures affixed to the coupons. The City Clerk shall make and certify in duplicate a complete transcript of proceedings had and done precedent to the issuance of said bonds, one of which transcripts shall be filed in the office of the Auditor of Public Accounts of the State of Nebraska and the other shall be delivered to the purchaser of said bonds. After being executed by the Mayor and Clerk, said bonds shall be delivered to the City Treasurer who shall be responsible therefor under his official bond and the Treasurer shall cause said bonds to be registered in his own office as finance officer of the City and in the office of the Clerk of Dawson County and to be transmitted with a certified transcript aforesaid to the Auditor of Public Accounts of the State of Nebraska to be registered in said Auditor's office.

Section 5. Said bonds and coupons shall be in substantially the following form:

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

COMBINED REVENUE BOND  
1982 SERIES

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

\$5,000

KNOW ALL MEN BY THESE PRESENTS: That the City of Lexington in the County of Dawson in the State of Nebraska hereby acknowledges itself to owe and for value received promises to pay to bearer, out of the special fund hereinbelow designated, the sum of Five Thousand Dollars (\$5,000) in lawful money of the United States of America on the first day of October, 19\_\_\_\_, with interest thereon from the date hereof to maturity at the rate of \_\_\_\_\_ percent (\_\_\_\_%) per year, represented by one set of coupons, and, in addition thereto, interest from date of issuance until October 1, 1983 at the rate of two and seventy-five hundredths percent (2.75%) per year, represented by a separate supplemental coupon having the letter "A" affixed to its number, which may be detached and sold separately. Such interest shall be payable October 1, 1983 and semiannually thereafter on the first days of April and October in each year on presentation and surrender of the interest coupons hereto attached as they severally become due. Both the principal hereof and the interest hereon are payable at the office of the Treasurer of Dawson County in Lexington, Nebraska, in money which is legal tender under the laws of the United States of America.

The City reserves the right and option of redeeming bonds of this issue numbered from 79 to 400 inclusive on October 1, 1987, or at any time thereafter at the principal amount thereof plus accrued interest to the date fixed for redemption.

This bond is one of an issue of four hundred bonds numbered 1 to 400 inclusive, for \$5,000 each, of the total principal amount of Two Million ~~Thousand~~ Dollars (\$2,000,000) of even date and like tenor herewith except as to date of maturity and rate of interest issued by said City to take up and pay off outstanding Combined Utility Bond Anticipation Notes in the principal amount of One Million Fifty-Five Thousand Dollars (\$1,055,000), to pay the cost of additional improvements to the City's combined electric, water and sewer utilities systems and to provide for a reserve. The issuance and sale of said bonds have been lawfully authorized by proceedings duly had and by an ordinance lawfully enacted by the Mayor and City Council of said City in strict compliance with Sections 18-1803 to 18-1805, Reissue Revised Statutes of Nebraska, 1943, as amended.

The revenue and earnings derived and to be derived from the operation of the entire sewage disposal plant and system and all extensions and additions thereto and all improvements thereof hereafter made, owned and operated by the City, the revenue and earnings derived and to be derived from the waterworks plant and system and all extensions and additions thereto and all improvements thereof hereafter made, owned and operated by the City, and the revenue and earnings derived and to be derived from the operation of the entire electrical light and power plant and distribution system and all extensions and additions thereto and all improvements thereof hereafter made, owned and operated by the City, are pledged and hypothecated for the payment of all of the bonds of this series in the principal amount of \$ 2,000,000 and for the payment of \$565,000 Combined Revenue Bonds, 1977 Series, of the City dated April 1, 1977, numbered 38 to 150 inclusive, and \$1,365,000 Combined Revenue Bonds, 1978 Series, of the City dated June 15, 1978, numbered 28 to 300, inclusive, all of which bonds are presently outstanding and unpaid and are equally and ratably secured by said pledge and are of equal priority as to lien upon the revenues and earnings of said combined utilities owned and operated by the City and are not general obligations of the City. The City agrees to maintain and collect rates and charges for sewer, water and electric service which shall be reasonable and adequate to produce revenues and earnings sufficient at all times to pay the interest and principal of all of said bonds as such interest and principal become due and to maintain and operate said combined utilities efficiently. The ordinance which authorizes the issuance of the bonds of this series constitutes a contract between the City and the holders of said bonds and reserves the right to the City to issue bonds equal in lien to the bonds of this series of bonds under certain conditions and to issue junior lien bonds or notes when necessary.

The City agrees that it will establish and maintain a special fund known as the Combined Utilities Fund into which it will pay all of the gross revenues collected and received from the

operation of its said combined utilities and will use the moneys in said fund only for the operation and maintenance of said combined utilities and for the payment of the interest and principal of the bonds of this series, the bonds of the 1977 Series, the 1978 Series and additional bonds authorized in accordance with the terms of said ordinance and for such other purposes as are permitted by said ordinance and will apply the moneys in said fund to the payment of said bonds as the principal and interest become due.

This bond is a negotiable instrument and the holder hereof has all the rights of a holder in due course of a negotiable instrument.

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 City Council have caused this bond to be executed on behalf of the City by being signed by the facsimile signature of the Mayor and by the manual signature of the City Clerk and by causing the official seal of the City to be hereto affixed and have caused the interest coupons hereto attached to be executed on behalf of the City by having affixed thereto the facsimile signatures of the Mayor and Clerk.

Dated this first day of October, 1982.

CITY OF LEXINGTON, NEBRASKA

ATTEST:

\_\_\_\_\_  
(Facsimile Signature)  
Mayor

\_\_\_\_\_  
(Do not sign)  
City Clerk

(FORM OF COUPON)

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

On the first day of October (April), 19\_\_\_\_, (On Bond Nos. 79 to 400 inclusive, insert the following clause: "unless the bond to which this coupon is attached has theretofore been called for payment and payment made or provided for,") the City of Lexington, Nebraska, will pay to bearer the amount shown hereon, solely out of the Combined Utilities Fund of said City, at the office of the Treasurer of Dawson County in Lexington, Nebraska, for interest due on that date on its COMBINED REVENUE BOND, 1982 SERIES, dated October 1, 1982. Bond No. \_\_\_\_\_.

\_\_\_\_\_  
(Facsimile Signature)  
City Clerk

\_\_\_\_\_  
(Facsimile Signature)  
Mayor

Section 6. For the payment of the 1982 Bonds, the 1978 Bonds and the 1977 Bonds, both principal and interest, together with any Additional Bonds, both principal and interest, the City hereby pledges and hypothecates the entire revenue and earnings of the combined utilities subject only to the payment of reasonable operating expenses of said combined utilities.

Section 7. The City will maintain and collect rates and charges for all sewer, water and electric service furnished from its said plants and systems adequate to produce revenue and earnings sufficient at all times,

- (a) to provide for the payment of interest on and principal of the 1982 Bonds, the 1978 Bonds, the 1977 Bonds, and any Additional Bonds as such interest and principal become due;
- (b) to pay all reasonable costs of operation and maintenance of the combined utilities, including adequate insurance as provided by this ordinance and to pay for the necessary and reasonable repairs, replacements and extensions of said combined utilities;
- (c) to establish and maintain a Bond Reserve Account and Improvement and Extension Account as hereinafter set forth.

Section 8. The entire revenue and earnings derived from the operation of the combined utilities of said City shall be set aside as collected and deposited in a separate fund, which has heretofore been created in Section 8 of Ordinance No. 1492 of the City and is hereby confirmed, designated as "Combined Utilities Fund". The moneys in the Combined Utilities Fund shall be deposited in a separate bank account properly earmarked and deposit shall be made in a bank or banks designated by the Council and be secured as provided by law for public deposits. The City shall set up and maintain as long as any of the 1982 Bonds are outstanding the following accounts for the administration of said Fund:

I. OPERATION AND MAINTENANCE ACCOUNT: The City shall set aside in this account each month an amount sufficient for the operation and maintenance of its combined utilities and the expenses of maintenance and operation of said utilities shall be paid out of this account.

II. COMBINED UTILITIES REVENUE BOND ACCOUNT: Out of said fund the City shall transfer into the Combined Utilities Revenue Bond Account on or before the first day of each calendar month the following amounts in addition to the amounts required to be deposited under Ordinance Nos. 1492, 1596 and 1604:

- (a) during the period from October 1, 1982 to September 30, 1983, an amount equal to 1/12 of the annual interest payment due on the 1982 Bonds on October 1, 1983;
- (b) during the period from October 1, 1983 until the 1982 Bonds have been paid in full, an amount equal to 1/6 of the next maturing semiannual interest payment due on the 1982 Bonds; and
- (c) during the period from October 1, 1983 until the 1982 Bonds have been paid in full, an amount equal to 1/12 of the next maturing principal payment on the 1982 Bonds;

all such transfers to the Combined Utilities Revenue Bond Account shall be made in such amounts and at such times that there will be sufficient sums in such account to meet the payments required to be made to the County Treasurer by Section 9 of this ordinance.

III. COMBINED UTILITIES BOND RESERVE ACCOUNT: From the proceeds of the 1982 Bonds, \$280,000 shall be deposited to the Combined Utilities Bond Reserve Account. Such deposit shall be in addition to the \$200,000 presently on deposit and required to be maintained under Ordinance No. 1492 (requiring \$75,000) and Ordinance Nos. 1596 and 1604 (requiring \$125,000). The total deposit amount of \$480,000 reserve shall be maintained in this amount as long as the 1982 Bonds, the 1977 Bonds and the 1978 Bonds remain outstanding but shall be reduced to \$280,000 if and when both the 1977 Bonds and the 1978 Bonds are no longer outstanding. In case any deficiency in the payment into this Account occurs, such deficiency shall be made up immediately as soon as any money is available after providing for the foregoing accounts. If at any time or times the amount on hand in the Combined Utilities Revenue Bond Account created by Section 8, II of this ordinance shall be insufficient to pay either the interest on or principal of the 1977 Bonds, 1978 Bonds or the 1982 Bonds as and when the same become due, the City shall and hereby agrees to use the funds in the Combined Utilities Bond Reserve Account to pay said interest or principal and to prevent any default in the payment of said interest on or principal of said bonds. If the City shall use any of the funds in the Combined Utilities Bond Reserve Account for the purpose mentioned



herein and such use shall reduce the principal amount below \$480,000 (or \$280,000 after the 1977 Bonds and 1978 Bonds are no longer outstanding), then the City shall make no transfers to any other fund except to the Operation and Maintenance Account, Combined Utilities Revenue Bond Account, and Combined Utilities Bond Reserve Account until the amount in this Account totals \$480,000 (or \$280,000 after the 1977 Bonds and the 1978 Bonds are no longer outstanding).

IV. IMPROVEMENT AND EXTENSION ACCOUNT: After providing for the Operation and Maintenance Account and making the payments hereinabove required to be made into the Combined Utilities Revenue Bond Account and Combined Utilities Bond Reserve Account, the City shall transfer monthly into this Account, commencing with the month of October, 1985, in addition to the amounts required to be deposited into said Account by Ordinances Nos. 1492, 1596 and 1604 the sum of \$ 7,800 until there is accumulated a total of \$ 480,000. Moneys in this Account may be used for the maintenance, improvement, enlargement or extension of the combined utilities, including payments of principal and interest on general obligation bonds of the City issued to improve, extend or enlarge any part of any of the combined utilities and at any time moneys are spent from this Account so as to reduce the Account to an amount less than \$480,000 or the balance then required to be accumulated, whichever is lesser, then monthly payments of \$8,000 will commence and continue until the required account balance is attained. After the 1977 Bonds and the 1978 Bonds are no longer outstanding, the amount required to be maintained in the Improvement and Extension Account shall be reduced to \$280,000.

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

- 1) To fill any deficiency in the foregoing accounts.
- 2) In lieu of tax payments. So long as no deficiency exists in required monthly payments in the Accounts established by Section 8 of Ordinance No. 1492, of Ordinance 1596 and of this Ordinance, payment may be made to the City annually, semiannually or quarterly as an in lieu of tax payment which can be used by the City for any purpose authorized by law, a sum which shall not be in excess of one-half of the amount credited to this Surplus Account during the period since the last in lieu of tax payment to the City after deducting from the credits of this account any amount used to fill deficiencies into any of the Accounts established

by Section 8 of Ordinance No. 1492, of Ordinance No. 1596 and of this Ordinance.

- 3) Accelerating the payments of the required fund balance of the Combined Utilities Revenue Bond Account, the Combined Utilities Bond Reserve Account or the Improvement and Extension Account.
- 4) Any lawful purpose connected with the combined utilities including paying principal and interest on general obligation bonds of the City authorized to pay the the cost of constructing improvements to any one of the utilities systems covered by the combined revenue bonds.
- 5) Retiring the 1977 Bonds, the 1978 Bonds, the 1982 Bonds and Additional Bonds prior to their maturity under their option provisions or by purchase on the open market, pro rata in the proportion that each such issue of bonds bears to the total principal amount of said 1977 Bonds, 1978 Bonds, 1982 Bonds and Additional Bonds then outstanding, provided that such obligation to purchase or redeem bonds on a pro rata basis shall not apply after the 1977 Bonds and the 1978 Bonds are no longer outstanding.

Moneys on deposit in the Combined Utilities Fund, which have not as yet been credited or transferred to an Account therein in accordance with this section, and moneys credited to the Operation and Maintenance Account and the Combined Utilities Revenue Bond Account may to the extent practicable and reasonable be invested in direct general obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America, maturing in the cases of money invested from the Combined Utilities Fund by not later than the first business day of the month next following such investment and maturing in the case of moneys invested from the Operation and Maintenance Account and the Combined Utilities Revenue Bond Account at such times and in such amounts as shall be required to provide moneys to make the payments to be made from said Accounts. Moneys credited to the Combined Utilities Bond Reserve Account shall be invested in direct obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America maturing or redeemable at stated fixed prices at the option of the holder by not more than eight years from the date of such investment. Moneys credited to the Improvement and Extension Account and the Surplus Account shall be invested in such obligations as are permitted by law for cities of the class of which Lexington is one, maturing at such times not later than ten years from the date of such

investment and such amounts as shall be determined by the City in accordance with its estimation of the payments to be made from said Accounts, and if permitted by law, in 1977 Bonds, 1978 Bonds, 1982 Bonds or Additional Bonds, which 1977 Bonds, 1978 Bonds, 1982 Bonds or Additional Bonds so purchased shall be held for the credit of said Accounts and not cancelled, and in Revenue Bond Anticipation Notes and in Paving, Sewer and Water Warrants which are to be funded by the issuance of bonds of the City. All interest and income derived from moneys to the credit of the Combined Utilities Fund, the Operation and Maintenance Account, the Combined Utilities Revenue Bond Account (except income derived from moneys attributable to the 1982 Bonds or any Additional Bonds) and the Surplus Account shall, when realized and collected, be credited to the said Fund or to the respective Account from which such investments were made. All moneys and income from investments made from moneys credited to the Combined Utilities Bond Reserve Account, the Improvement and Extension Account and income derived from moneys held in the Combined Utilities Revenue Bond Account attributable to the 1982 Bonds or any Additional Bonds shall, when realized and collected, be credited to the respective Account from which such investments were made, unless there shall then be credited thereto the respective full amounts required by paragraphs II, III and IV of this section, in which event such interest and income may be credited to the Surplus Account. All investments held for the credit of any Fund or Account may be sold when required to make the payments to be made from such Fund or Account. Any moneys credited to the Combined Utilities Fund or any Account therein which are not invested shall be secured in the manner provided by law for the security of funds of cities of the class of which Lexington is one.

It is understood that the revenues of the combined utilities are to be credited to the various accounts hereinabove established in the order in which said accounts have been listed, and if within any period the revenues are insufficient to credit the required amounts in any of the said accounts, the deficiencies shall be made up the following period or periods after payment into all accounts enjoying a prior claim on the revenues have been made in full.

Section 9. At least fifteen (15) days before each payment of interest or principal becomes due on the 1977 Bonds, the 1978 Bonds or the 1982 Bonds the City will deposit with the County Treasurer of Dawson County an amount of money sufficient to pay the interest and principal of said bonds which become due on such payment date, such payments to be made out of the Combined Utilities Revenue Bond Account.

Section 10. The City of Lexington shall keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all

transactions relating to the combined utilities and the holders of any of the 1977 Bonds, 1978 Bonds, the 1982 Bonds or of any Additional Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect said systems and all properties comprising the same. Within ~~sixty~~ days following the close of each fiscal year the City shall cause an audit of such books and accounts to be made by an independent firm of certified public accountants, showing the receipts and disbursements for account of the system, and such audit will be available for inspection by the holders of any of the aforesaid bonds. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following:

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

All expenses incurred in the making of the audits required by this section shall be regarded and paid as a maintenance and operation expense. The City of Lexington shall furnish a copy of each such audit to the original purchaser of the 1977 Bonds, the 1978 Bonds, the 1982 Bonds and of any series of Additional Bonds, and to the holder of at least twenty-five percent (25%) of any issues of combined revenue bonds outstanding, upon request, after the close of each fiscal year, and said purchaser or purchasers or any such holder 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 11. The City Treasurer and the City Clerk shall be bonded, in addition to their

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

Section 12. The City will carry adequate insurance on the combined utilities in such amounts as are normally carried by private companies engaged in similar operations, including, without limiting the generality of the foregoing, fire and windstorm insurance, public liability insurance and any insurance covering such risks as shall be recommended by a consulting engineer. The cost of all such insurance shall be regarded and paid as an operation and maintenance expense.

All insurance moneys, except public liability, shall be deposited in the Improvement and Extension Account and shall be used in making good the loss or damage in respect of which they were paid either by repairing the property damaged or replacing the property destroyed, and expenditures from said moneys shall be made only upon a certificate issued by a consulting engineer and filed with the City Clerk stating that the proceeds, together with any other moneys available for such purposes, are sufficient for the repair or replacement of any such properties; and when the City shall have been furnished with a certificate of a consulting engineer stating that the property damaged or destroyed has been fully repaired or replaced and such repairs or replacements have been fully paid for, the residue, if any, of such insurance moneys shall be transferred from the Improvement and Extension Account to the Combined Utilities Revenue Bond Account to make up any deficiency in said Account, if any such deficiency exists, and if no such deficiency exists said residue shall be transferred to the Combined Utilities Fund and credited to the Accounts provided for in Section 8 in the same manner as other revenues of the combined utilities.

If the proceeds of any insurance shall be insufficient to repair or replace the property damaged or destroyed, the City may use and shall pay out for such purpose, to the extent of such deficiency, any money remaining in the Improvement and Extension Account and the Surplus Account. If in the opinion of a consulting engineer the proceeds of any insurance, together with any amount then available for that purpose in the Improvement and Extension Account and Surplus Account shall be insufficient to fully complete and pay for such repairs or replacements and if the City shall fail to supply such deficiency from other sources within a period of six months after

receipt by the City of such insurance moneys, or if in the opinion of a consulting engineer it is to the best interest of the City not to repair or replace all or any part of the damaged properties and that failure to repair or replace the damaged properties shall not affect the sufficiency of the income and revenue from the remaining properties to properly maintain and operate the same, provide funds for the Combined Utilities Revenue Bond Account, Combined Utilities Bond Reserve Account and Improvement and Extension Account, as herein provided for, then such insurance moneys to the extent not applied to repair or replace the damaged properties shall be deposited in the Combined Utilities Bond Reserve Account as created by Section 8 of this ordinance and used for the purposes for which said account has been created, so as to fill said account to its required balance, or if said account is filled to its required balance, then to the Improvement and Extension Account to fill that account to its required balance and any amount which may be in excess of the amount required in the Improvement and Extension Account shall be credited to the Surplus Account.

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

Section 13. 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 holders from time to time of the 1982 Bonds that the City will continue to own, free from all liens and encumbrances, and will adequately maintain and efficiently operate said combined utilities; provided, however, the City may dispose of property which is recommended for disposal by the manager or superintendent of the utilities, or an independent Consulting Engineer and which is determined as a matter of record by the Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 14. Nothing in this ordinance shall be construed in such a manner as to prevent the issuance by the City of Lexington of Additional Bonds payable from the revenues of the combined utilities, which Additional Bonds shall be on a parity with the lien of the bonds herein authorized and equally and ratably secured therewith and entitled to the security and benefits of this ordinance; provided, however, that before any such Additional Bonds are actually issued, the revenues of the combined utilities, for the fiscal year next preceding the date of the authorization of such Additional Bonds, after deducting therefrom all costs of operation and maintenance of said system, or systems, for such fiscal year and before deduction of depreciation or interest as based on a certified public accountant's report shall have been equal to 1.25 times the average annual bond requirements of the 1977 Bonds, the 1978 Bonds, the 1982 Bonds, any Additional Bonds

then outstanding and the Additional Bonds proposed to be issued or such revenues would have met such test by applying the provisions of the second paragraph of this Section 14. For this purpose the average bond requirement shall be determined by adding all of the principal and interest which will become due when computed to the absolute maturity of the 1977 Bonds, the 1978 Bonds, the 1982 Bonds and Additional Bonds, if any, all as then outstanding and all of the principal and interest of the Additional Bonds to be issued, and dividing such total by the number of years remaining that the longest bond of any issue of bonds (including the Additional Bonds to be issued) has to run to maturity. In the event of the issuance of any Additional Bonds payable from the Combined Utilities Revenue Bond Account, as authorized above, sufficient additional net revenues shall be deposited to the balance in the Combined Utilities Bond Reserve Account and in the Improvement and Extension Account in such a manner that within a period not exceeding five years after such issuance the amount on deposit in each of said accounts shall be equal to the average annual amount of principal and interest which will become due during the remaining term of the then outstanding bonds on such bonds and on the Additional Bonds so issued. The City may, at its option, deposit in said accounts available funds from other sources.

In the event any change in the rates, rentals and charges for the use and service of the combined utilities has been made during the preceding fiscal year or during the interval between the end of such fiscal year and the issuance of such Additional Bonds, or in the event the City shall covenant in the ordinance or resolution authorizing the issuance of such Additional Bonds to impose, effective upon the issuance of such Additional Bonds, higher rates, rentals and charges for such use and service, compliance with the provisions of this Section 14 of this ordinance may be evidenced by a certificate of an independent Consulting Engineer or firm of engineers or Certified Public Accountant or independent Certified Public Accountants to be filed with the City Clerk prior to the issuance of any such Additional Bonds. Such certificate shall state fully the facts upon which such certificate is based, and if it is a certificate of the Consulting Engineer or firm of Consulting Engineers shall have attached thereto the certified financial statement for the fiscal year next preceding the date of authorization of such Additional Bonds used by the Engineer or firm of Engineers in arriving at the conclusion stated in said certificate. The Consulting Engineer or independent Certified Public Accountant of the City shall, in determining the earnings for such fiscal year adjust the collections to reflect the result as if such changed rates, rentals and charges, or such higher rates, rentals and charges had been in existence for such entire preceding fiscal year period, and the amount of such net collections and adjusted earnings as aforesaid shall be

conclusive evidence and the only evidence required to show compliance with the provisions and requirements of this Section 14 of this ordinance.

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

- 1) to reflect changes in rates which have gone into effect since the beginning of the year for which the audit was made;
- 2) to reflect his estimate of the net increase over or net decrease from the revenues of the combined utilities for the year for which the audit was made by reason of:
  - a) changes in the amounts payable under existing utility service contracts,
  - b) additional general operating income from sales to customers under existing rate schedules for the various classes of customers, or as such schedules may be revised under a program of change which has been adopted by the Mayor and Council of the City,
  - c) projected revisions in labor, wages, salary, fuel, machinery, equipment and supply costs,
  - d) revisions in production, transmission and distribution and in administration costs associated with increases in sales of power and utility services due to the acquisition of the additional facilities or due to other causes,



- e) changes in costs of purchased power and other utility services, and
- f) such other projections of revenues and expenses as the consulting engineer deems reasonable and proper.

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

If, prior to the payment of the 1977 Bonds, the 1978 Bonds, or the 1982 Bonds, it shall be found desirable to refund the 1977 Bonds, the 1978 Bonds, the 1982 Bonds, or any Additional Bonds then outstanding under the provisions of any law then available, said bonds or any part thereof may be refunded with the consent of the holders thereof (except that as to matured bonds or bonds which are subject to call for redemption and have been properly called for redemption, such consent shall not be necessary) and the refunding obligations so issued shall enjoy complete equality of lien with the portion of the bonds which is not refunded, if any there be, and the refunding obligations shall continue to enjoy whatever priority of lien over subsequent issues may have been enjoyed by the bonds refunded, provided, however, that unless all of the outstanding bonds are being refunded, the total of the interest and principal payment obligation in any succeeding year, in which bonds which are not being refunded will remain outstanding, shall not be greater, after such refunding, than it would have been in each such succeeding year without such refunding without the consent of the holders of said bonds which are not being refunded. For such purpose, the principal and interest payment obligation shall not include principal or interest due on refunding bonds which are payable from sources other than the revenues of the combined utilities or are payable from such revenues as deposited to the Surplus Account.

Section 15. Nothing herein contained shall prevent the City from issuing bonds, revenue notes, or other forms of indebtedness, the payment of the principal and interest of which is a charge upon all or a portion of the revenues of the combined utilities, junior or inferior to the 1977 Bonds, 1978 Bonds and the 1982 Bonds, and to the payments to be made into the Operation and Maintenance Account, Combined Utilities Revenue Bond Account, and the Combined Utilities Bond Reserve Account created in Section 8 hereof, and the City shall have the right to pay interest thereon and the principal thereof, as long as no deficiency exists in the payments into such accounts, from funds available for improvements and enlargements to the combined utilities of the City or from

other funds which are available for such debt service.

Section 16. 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 17. The 1982 Bonds are and shall be deemed to be negotiable instruments and the holder or holders thereof shall be deemed to have acquired and to hold the same in due course.

Section 18. While any of the 1982 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 19. 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 of sixty percent (60%) in principal amount of the 1977 Bonds, the 1978 Bonds, the 1982 Bonds and of Additional Bonds outstanding authorized hereunder (not including any of said bonds credited to any of the Accounts created in Section 8 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 and filed with the City Clerk shall have power to assent to and authorize any modification of the rights and obligations of the City and of the holders of the 1977 Bonds, the 1978 Bonds, the 1982 Bonds and of Additional Bonds and interest coupons pertaining thereto and the provisions of this ordinance that shall be proposed by the City, and any action authorized to be taken with the assent and authority given as aforesaid of the holders of sixty percent (60%) in principal amount of said bonds shall be binding upon all holders of said 1977 Bonds, 1978 Bonds, 1982 Bonds and Additional Bonds at the time outstanding hereunder and upon the City as fully as though such action were specifically and expressly authorized by the terms of this ordinance; provided, always, that no such modification shall be made which will (a) extend

the time of payment of the principal of or interest on any of said bonds or reduce the principal amount thereof or the rate of interest thereon; or (b) give to any of said bonds secured by this ordinance any preference over any other of said bond or bonds; or (c) authorize the creation of any lien prior to the pledge of the revenues afforded by this ordinance for the 1977 Bonds, the 1978 Bonds, the 1982 Bonds and any Additional Bonds or (d) reduce the percentage in principal amount of said outstanding bonds required to assent to or authorize any such modification. Any modification of the provisions of this ordinance made as aforesaid shall be set forth in a supplemental ordinance to be adopted by the Mayor and Council of said City.

Section 20. So long as any of the 1977 Bonds, the 1978 Bonds, the 1982 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 of said bonds, and this Ordinance and every provision and covenant hereof shall constitute a contract of the City with every holder from time to time of said bonds and the coupons pertaining thereto. Any holder of a 1977 Bond, 1978 Bond, 1982 Bond or of an Additional Bond or Bonds or of any of the coupons of any of said bonds may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction enforce and compel performance of this Ordinance and every provision and covenant thereof, including without limiting the generality of the foregoing, the enforcement of the performance of all duties required by the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the making and collecting of sufficient rates, rentals, fees, or charges for the use and service of the combined utilities, the segregation of the revenues of said systems, and the application thereof to the respective Fund and Accounts referred to and described in Section 8 of this Ordinance.

Section 21. 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 1982 Bonds or Additional Bonds and said bonds shall no longer be deemed outstanding hereunder, if such bonds shall have been purchased and cancelled by the City, or as to any of said bonds not theretofore purchased and cancelled by the City, when payment of the principal of and any applicable redemption premium, if any, on such bonds plus interest thereon, to the respective dates of maturities or redemption (a) shall have been made or caused to be made in accordance with the terms thereof; or (b) shall have been provided by depositing with the Treasurer of the County of Dawson, Nebraska, or any state or national bank having trust powers,

in trust solely for such payment, (i) sufficient moneys to make such payment or (ii) direct general obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America (herein referred to as "Government Obligations") in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal at such times as will insure the availability of sufficient moneys to make such payment, and such bonds shall cease to draw interest from the date of their redemption or maturity and, except for the purposes of such payment, shall no longer be entitled to the benefits of this ordinance; provided that, with respect to bonds called or to be called for redemption, the City shall have duly given notice of redemption, or made irrevocable provision for such notice. Any such moneys so deposited with the aforesaid Treasurer or trustee bank as provided in this section may be invested and reinvested in Government Obligations at the direction of the City, and all interest and income from all such Government Obligations in the hands of the aforesaid Treasurer or trustee bank which is not required for payment of the bonds or interest for which the deposit was made shall be paid to the City as and when realized and collected.

Section 22. 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 23. 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 24. Said bonds having been sold, the City Treasurer is authorized to deliver the 1982 Bonds to said purchaser upon receipt of the purchase price plus accrued interest to date of payment. The City Treasurer shall apply the money received from the sale of the 1982 Bonds to the required deposit to the Combined Utilities Bond Reserve Account, to the payment and redemption of outstanding Bond Anticipation Notes issued in connection with the construction of said improvements and to the payment for additional improvements in such manner as the Mayor and Council shall direct.

Section 25. The City of Lexington, Nebraska, hereby covenants to the purchasers and holders of the 1982 Bonds that it will make no use of the proceeds of said bond issue which, if such use had been reasonably expected on the date of issue of said bonds, would have caused said bonds to be arbitrage bonds within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended, and further covenants to comply with said Section 103(c) and all applicable regulations thereunder throughout the term of said bond issue.

Section 26. This ordinance shall be published in pamphlet form and take effect as provided by law.

PASSED AND APPROVED this 24th day of August, 1982.

ATTEST:

*Lawrence M. ...*  
City Clerk

*Claude ...*  
Mayor

(SEAL)

