

ORDINANCE NO. 2070

AN ORDINANCE OF THE CITY OF LEXINGTON, NEBRASKA, AUTHORIZING THE ISSUANCE OF A JUNIOR LIEN COMBINED UTILITIES REVENUE BOND IN THE PRINCIPAL AMOUNT OF EIGHT HUNDRED TWENTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$828,500) FOR THE PURPOSE OF PAYING A PORTION OF THE COST OF IMPROVEMENTS TO THE CITY'S SEWAGE DISPOSAL PLANT AND SANITARY SEWER SYSTEM; PRESCRIBING THE FORM OF SAID BOND; PLEDGING AND HYPOTHECATING THE REVENUE AND EARNINGS OF THE SEWER, WATER AND ELECTRIC SYSTEMS OWNED BY THE CITY ON A JUNIOR LIEN BASIS FOR THE PAYMENT OF SAID BOND AND THE INTEREST THEREON; ESTABLISHING THE TERMS AND CONDITIONS ON WHICH ADDITIONAL BONDS OF EQUAL OR SUPERIOR LIEN MAY BE ISSUED; ENTERING INTO A CONTRACT ON BEHALF OF THE CITY WITH THE REGISTERED OWNER OF SAID BOND; SELLING SAID BOND AND AUTHORIZING THE DELIVERY THEREOF TO THE UNITED STATES OF AMERICA, ACTING THROUGH THE UNITED STATES DEPARTMENT OF AGRICULTURE, AND PROVIDING FOR PUBLICATION OF THIS ORDINANCE 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) 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 and undertakings 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 Revenue 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 remain outstanding and unpaid (the "1991 Series A Bonds"); and

(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 \$3,710,000 in principal amount remain outstanding and unpaid (the "1994 Series Bonds").

(c) The 1991 Series A Bonds and the 1994 Series Bonds represent the only indebtedness of the City for which the revenues and earnings of the Combined Utilities have been pledged and under the terms of Ordinances No. 1941 and 1994 the City is authorized to issue junior lien bonds for which the revenues of the Combined Utilities may be pledged and hypothecated without limitation, with the principal and interest on such junior lien bonds to be paid from monies deposited to the Surplus Account as described in Section 13 of each of said ordinances.

(d) The City currently proposes to construct certain sewer line improvements for which the estimated total cost is not less than \$828,500 and for which the City shall need to borrow not less than \$828,500.

(e) The United States of America, acting through the United States Department of Agriculture ("USDA") has set forth its willingness to provide both grant and loan assistance for such improvements in a letter of conditions, dated August 19, 1993, as amended by a letter dated May 5, 1994.

(f) The City has issued and outstanding under Ordinances Nos. 2009 and 2018 \$1,575,000 in principal amount of bond anticipation notes payable from the revenue bonds to be issued with respect to the Combined Utilities. The terms of such ordinances do not preclude the issuance of additional indebtedness of the City having a lien upon the revenues of the Combined Utilities. From the proceeds of the indebtedness herein authorized not less than \$800,000 in principal amount of such note indebtedness shall be taken up and paid off.

(g) All conditions, acts and things required by law to exist or to be done precedent to and in the issuance of the City's Junior Lien Combined Utilities Revenue Bonds in the form of a single bond in the principal amount of \$828,500 to evidence a loan from USDA (the "1994 Junior Lien Bond" or the "Bond") do exist, have happened and been done and performed in regular and due time and form as provided by law and specifically Sections 18-1803 to 18-1805, R.R.S. Neb. 1943 and the provisions of Ordinances Nos. 1941 and 1994.

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

The term "Deposit Securities" shall mean direct obligations of or obligations the principal and interest which are unconditionally guaranteed by the United States of America, including obligations issued in book-entry form.

Section 3. To pay a portion of the cost of constructing improvements to the existing sewer system of the City of Lexington, Nebraska, there shall be and there is hereby ordered issued one fully registered Bond of the City of Lexington, Nebraska, to be designated as a "Junior Lien Combined Utilities Revenue Bond, Series 1996" in the principal amount of \$828,500 to be dated on the date of the closing of the purchase thereof; the unpaid principal balance of said Bond shall bear interest at the rate of 5.125% per year from date until paid. The principal of and interest on the Bond shall be payable in equal annual installments of \$49,114 with each such installment due on October 1 of each year, commencing October 1, 1997, and continuing for a term of 39 years thereafter until the outstanding principal balance on the Bond has been paid in full, provided the entire remaining principal balance, if not sooner paid, shall fall due on the day immediately preceding the 40th anniversary date of the closing of the issuance of the Bond and shall be in such amount as will pay in full the outstanding principal balance, plus all accrued but unpaid interest thereon. Each installment payment shall be applied first to accrued interest and then to principal. The City reserves the right and option of prepaying any or all of the unpaid principal balance at any time, without penalty or redemption premium. Notice of any such redemption shall be given by mail to the registered owner not less than ten days prior to the date fixed for redemption, provided that such requirement for notice

may be waived. Such required notice shall automatically be altered to conform with any redemption notice procedure established by regulations of the USDA, so long as the initial registered owner remains the registered owner for the Bond. The City shall cause books for registration and transfer of the Bond, as provided in this ordinance, to be kept by the City Treasurer. The ownership of the Bond shall be registered as to principal and interest on such books kept by the City Treasurer, who shall make notation of such registration therein and on the Bond. The initial registered owner shall be the United States of America, acting through the United States Department of Agriculture, and on or before closing of the purchase of the Bond, said Bond shall be registered in such name. The transfer of the Bond may be registered only upon assignment duly executed by said initial registered owner or by its registered assigns or its legal representatives or attorneys in such form as shall be satisfactory to the City Treasurer, such registration to be made on such books and endorsed on the Bond by the City Treasurer. The principal and interest on the Bond shall be payable only to or upon the order of the registered owner or such owner's legal representative, and neither the City nor the City Treasurer shall be affected by any notice to the contrary, but registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid. No charge shall be made to the registered owner for the registration and transfer of the Bond. Payments of principal and interest on the Bond shall be made by the City Treasurer, as paying agent, to the registered owner of the Bond in such manner and to such address as the registered owner shall from time to time in writing direct said paying agent. Any and all payments made by the City Treasurer,

as paying agent in accordance with the terms of this ordinance, to the registered owner, shall be sufficient to satisfy the obligation of the City on the Bond.

Section 4. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COUNTY OF DAWSON

CITY OF LEXINGTON

JUNIOR LIEN COMBINED UTILITIES REVENUE BOND

SERIES 1996  
\$828,500

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Lexington, in the County of Dawson, in the State of Nebraska, for value received, promises to pay, but only from the special fund hereinafter described, to the United States of America, acting through the United States Department of Agriculture, as initial registered owner hereof, or registered assigns, the sum of Eight Hundred Twenty-eight Thousand Five Hundred Dollars (\$828,500) in lawful money of the United States of America, with interest on the unpaid principal balance thereof from the date hereof until paid at 5.125% per year. The principal hereof and interest hereon shall be payable in equal annual installments of \$49,114 due on October 1, of each year, commencing with October 1, 1997, and continuing for a term of 39 years thereafter until the outstanding principal balance thereof has been paid in full, provided that the entire remaining principal balance, together with all accrued interest thereon, if not sooner paid, shall fall due and payable on \_\_\_\_\_ (insert date which immediately precedes the fortieth anniversary of the closing of the loan evidenced by this bond). All such payments shall be applied first to accrued interest and then to principal. Interest and principal installment payments on this Bond shall be payable by the City Treasurer of the City of Lexington, Nebraska, as paying agent, for remittance by said paying agent to the registered owner of this Bond in accordance with written instructions on file with said paying agent.

The City, however, reserves the right and option of prepaying any or all of the unpaid principal balance hereof at any time without penalty or redemption premium. Refunds and extra payments as defined in the regulations of the United States Department of Agriculture according to the source of the funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of the City to pay remaining installments as scheduled herein.

This Bond in the principal amount of \$828,500 is issued by the City for the purpose of paying the cost of constructing improvements to the sanitary sewer system of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 1943. The issuance of this Bond has been authorized by an ordinance lawfully enacted and by proceedings duly had by the Mayor and Council of said City (the "Ordinance").

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"), have been pledged and hypothecated for the payment of this Bond, both principal and interest, subject to the prior lien and rights of the City's Combined Revenue 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 remain outstanding and unpaid (the "1991 Series A Bonds") and 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 \$3,710,000 in principal amount remain outstanding and unpaid (the "1994 Series Bonds") and this Bond is a lien only upon said revenues and earnings and not a general obligation of the City of Lexington.

The Ordinance authorizing the issuance of this Bond sets forth the covenants and obligations of the City with respect to its Combined Utilities and the application of the revenues to be derived therefrom which revenues are under the terms of said Ordinance to be deposited into the "Combined Utilities Fund" and disbursed to pay costs of operation and maintenance, make payments of principal and interest on the 1991 Series A Bonds, the 1994 Series Bonds and on this Bond and make other payments as specified in said Ordinance. Said Ordinance also designates the terms and conditions upon which additional bonds of lien prior or equal to that of this Bond may be issued in the future.

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 happen and were done in regular and due form and time as provided by law.

The City hereby covenants and agrees with the registered owner of this Bond to keep and perform all covenants and agreements contained in the Ordinance of said City authorizing the issuance of this Bond. This Bond shall be registered as to both principal and interest and shall be transferable only in accordance with the provisions printed on this Bond and subject to the terms and conditions set out in the Ordinance authorizing the issuance of this Bond.

To the extent provided in the Ordinance, the provisions of this Bond or of the Ordinance, including any amendment or supplement thereto, may be modified or amended by the City only with the written consent of the registered owner hereof, and it shall not be necessary to note hereon any reference to such modification or amendment.

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 by being signed by the Mayor and City Clerk and by causing the official seal of the City to be affixed hereto.

DATED this \_\_\_\_\_ day of December, 1996.

CITY OF LEXINGTON, NEBRASKA

(SEAL)

By: \_\_\_\_\_  
Mayor

ATTEST:

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



PROVISIONS FOR REGISTRATION

The ownership of this Bond shall be registered as to both principal and interest on the books and records of the City of Lexington, Nebraska, kept by the City Treasurer of said City, who shall make notation of such registration in the registration blank below, and the transfer of this Bond may thereafter be registered only upon an assignment duly executed by the registered owner or such owner's attorney or legal representative, in such form as shall be satisfactory to the City Treasurer, such registration of transfer to be made on such books and endorsed hereon by the City Treasurer. The principal and interest of this Bond shall be payable only to or upon the order of the registered owner or such owner's legal representative.

Date of Registration	Name of Registered Owner	Signature of City Treasurer
	United States of America, Acting through the United States Department of Agriculture	

Section 5. The Bond shall be executed on behalf of the City with the signatures of the Mayor and City Clerk and by having affixed thereto the City seal. The City Clerk shall cause the Bond to be registered in the office of the Auditor of Public Accounts for the State of Nebraska. Upon execution and registration of said Bond, it shall be delivered to the City Treasurer, who is hereby authorized to register and deliver it to the United States of America, acting through the United States Department of Agriculture, as purchaser thereof, upon receipt of the principal amount of said Bond, and said Treasurer is hereby authorized to date said Bond as of the date of its delivery and insert the appropriate date of final payment therein. The City Clerk, in connection with the issuance and sale of the Bond, is hereby authorized to prepare and certify such number of complete transcripts of the proceedings had and done precedent to the issuance of the Bond as shall be required by said purchaser and bond counsel.

Section 6. The principal amount received from the sale of the Bond shall be applied to the payment of interim financing indebtedness incurred by the City, and the balance shall be deposited in a separate fund, to be designated as the "City of Lexington Sewer System Construction Fund," with some bank, in an amount which is insured by the Federal Deposit Insurance Corporation, and shall be used by the City solely for the purpose of paying the costs of construction of the improvements to the City's sewer system as described in Section 1 hereof. Any amounts from the proceeds of the Bond which are attributable to and required to pay capitalized interest on the Bond shall be paid into the "Junior Lien Bond Payment Sub-Account," as hereinafter created. Monies in said Construction Fund may be applied to bond anticipation note indebtedness incurred by the City to pay the costs of the improvements to the City's sewer system being financed. Any Bond proceeds remaining in said Construction Fund after

completion of construction which are not required to pay the unpaid costs of construction shall be applied to the payment of principal of the Bond, as an extra payment, as defined by the regulations of USDA.

Section 7. The City hereby pledges and hypothecates the revenues and earnings derived and to be derived from the operation of the Combined Utilities and all extensions and enlargements thereof, including any additions and improvements hereafter made, for the payment of the Bond subject to the prior lien in favor of the 1991 Series A Bonds and the 1994 Series Bonds.

Section 8. The City agrees that it shall maintain and collect rates and charges for all service furnished by the Combined Utilities adequate to produce revenues and earnings sufficient at all times:

(a) To provide for the payment of the interest on and principal of the 1991 Series A Bonds and the 1994 Series Bonds and any additional first lien bonds and further to provide moneys in the City's Surplus Account sufficient to pay interest and principal on the Bond as the same fall due.

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

(c) To provide funds sufficient to make the deposits into the accounts required by Section 13 of Ordinance No. 1941 and Section 13 of Ordinance No. 1994 and also sufficient to provide for the additional required deposits to be made to those sub-accounts within the City's Surplus Account as are described in Section 9 of this Ordinance.

Section 9. The gross revenues and income derived from the operation of the Combined Utilities shall be set aside as collected and deposited in a separate fund which has been previously created by Ordinance No. 1941 (and also described and confirmed in Ordinance No.

1994) and which is designated in said Ordinances and in this Ordinance as the "Combined Utilities Fund". The City has previously set up and is required to maintain under the provisions of Ordinances Nos. 1941 and 1994 the following accounts:

(1) COMBINED UTILITIES REVENUE BOND PAYMENT ACCOUNT - into which the City has agreed to deposit monthly amounts sufficient to pay principal and interest on the 1991 Series A Bonds and the 1994 Series Bonds as the same become due or redeemable in accordance with the terms of Ordinances Nos. 1941 and 1994;

(2) OPERATION AND MAINTENANCE ACCOUNT - into which the City has agreed to set aside monthly amounts sufficient to pay for the proper maintenance and operation of the Combined Utilities; and

(3) COMBINED UTILITIES BOND RESERVE ACCOUNT - into which the City has agreed to maintain reserve balances and make deposits in the event of withdrawals, in accordance with the terms of Ordinances Nos. 1941 and 1994.

The City agrees that so long as the 1991 Series A Bonds and the 1994 Series Bonds or any additional first lien bonds remain outstanding that it shall continue to maintain said accounts in the manner prescribed in Ordinances Nos. 1941 and 1994 or as prescribed in any ordinance authorizing additional first lien bonds and that, without respect to whether any of the 1991 Series A Bonds and the 1994 Series Bonds or any additional first lien bonds remain outstanding, so long as the Bond remains outstanding it shall make payments to the Operation and Maintenance Account in the manner described in Ordinances 1941 and 1994.

In addition under Ordinances No. 1941 and 1994 there has been set up an account in the "Combined Utilities Fund" entitled the "Surplus Account" into which all moneys remaining after making deposits to the above-described prior accounts are to be credited. From said Surplus Account the City is specifically authorized to provide for the payment of principal and interest on any junior lien combined utilities revenue bonds or notes or for any other lawful purpose.

The City hereby makes the following covenants with respect to allocation of moneys in its Surplus Account for purposes of assuring payment of principal and interest on the Bond and for purposes of complying with other requirements of the initial registered owner in connection with the loan evidenced by the Bond. The City hereby agrees that all moneys paid and credited to the Surplus Account other than moneys required to make up any deficiencies in preceding accounts shall be applied and credited to the following sub-accounts:

(a) JUNIOR LIEN BOND PAYMENT SUB-ACCOUNT: Monthly on the fifteenth day of each month, commencing with the month of January in 1997, there shall be deposited into the Junior Lien Bond Payment Sub-Account the following amounts at the times indicated:

(i) Commencing with the month of January in 1997 and ending with the month of September, 1997 an amount equal to 1/9th of the installment of principal and interest due on the Bond on October 1, 1997.

(ii) Commencing with the month of October, 1997 an amount equal to 1/12th of the next annual installment of principal and interest falling due on the Bond.

The City Treasurer is hereby authorized and directed without further authorization to withdraw from the Junior Lien Bond Payment Sub-Account, or if moneys in such sub-account are insufficient, then from the Junior Lien Reserve Sub-Account and next from any unrestricted monies in the Surplus Account an amount sufficient to pay when due the principal of and interest on the Bond and to make payment of such monies directly to the registered owner of the Bond in the manner prescribed in this Ordinance on or before each installment of principal and interest becomes due.

(b) JUNIOR LIEN RESERVE SUB-ACCOUNT: At least monthly, after making the allocation of Surplus Account monies required by the foregoing subparagraph there shall be deposited to the Junior Lien Reserve Sub-Account, the amount of \$416.25 until such sub-account contains \$49,950. The City has provided from its own funds the amount of \$\_\_\_\_\_ which shall be deposited to this sub-account for purposes of initial funding. Monies in the Junior Lien Reserve Sub-Account may be withdrawn from time to time as needed to provide funds to pay when due, the principal and interest on the Bond if the Junior Lien Bond Payment Sub-Account contains insufficient funds for that purpose and the City Treasurer is hereby authorized and directed to make such withdrawal, if any,

when needed, provided that the consent of the initial registered owner so long as said initial registered owner remains as the registered owner of the Bond shall be obtained prior to any such withdrawal. Monies in the Junior Lien Reserve Sub-Account may also be used, but only with the written consent of the initial registered owner so long as said initial registered owner remains as the registered owner of the Bond, to pay for repairs and replacements to the Combined Utilities, to the extent not paid from the Operation and Maintenance Account, and to pay for enlargements, extensions and improvements to the Combined Utilities. Such consents shall be evidenced by a writing signed by the State Director for the State of Nebraska of Rural Development, United States Department of Agriculture, or such director's successor or equivalent under the Statutes and Regulations of the United States of America then in force. Monies may be withdrawn for said authorized purposes as needed in accordance with procedures established by the Mayor and Council. After the Junior Lien Reserve Sub-Account has received the maximum amount required to be therein, the monthly deposits need not be made to such sub-account, but in the event of withdrawal from said sub-account, the monthly deposits shall again commence until said sub-account again contains the maximum amount required.

All moneys remaining in the Surplus Account after the deposits required to be made to the foregoing sub-accounts shall constitute unrestricted moneys in the City's Surplus Account and may be used for any of the purposes permitted under Ordinances Nos. 1941 and 1994 for moneys in the Surplus Account.

The provisions of this Section shall require the City to maintain a set of books and records in accordance with such accounting methods and procedures as are generally applicable to municipal utility enterprises, which books and records shall show credits to and expenditures from the several sub-accounts required by this Section. Except as specified below for the Junior Lien Reserve SubAccount, the City shall not be required to establish separate bank or investment accounts for said sub-accounts. Monies credited to the Junior Lien Reserve Sub-Account shall, if maintained in a demand account be kept in a separate account and not commingled with other City or Combined Utilities funds. If invested, monies credited to the Junior Lien Reserve Sub-Account may be commingled with other City funds, including other Combined Utilities funds,

so long as the City maintains books and records clearly identifying the specific investments, or portions thereof, which belong to the Junior Lien Reserve Sub-Account.

Moneys in any of the above-described sub-accounts may be invested in securities eligible for investment of other City funds. Income from or profit realized from any such investment shall be credited to the respective sub-account from which such investment is made until such sub-account contains the maximum amount required to be therein and thereafter such income or profit shall be transferred to the Combined Utilities Fund and treated as other revenues from the operation of the Combined Utilities.

Section 10. The term "additional first lien bond" as used in this Ordinance refers only to such bonds of the City as are by their terms payable from the revenues of the Combined Utilities with priority of lien over the Bond and are issued in accordance with the terms of this Section 10, including refunding bonds satisfying the conditions prescribed in this Section 10. To provide funds for the purpose of extending, improving, enlarging and equipping the Combined Utilities the City may issue additional first lien bonds payable from the revenues of the Combined Utilities having equal priority to and being on a par with any of the 1991 Series A Bonds and the 1994 Series Bonds as may then be outstanding and having priority over the Bond only on compliance with the following conditions:

(a) So long as there are any 1991 Series A Bonds and the 1994 Series Bonds, or additional first lien bonds outstanding there must be compliance with the provisions of the Ordinances governing the 1991 Series A Bonds and the 1994 Series Bonds and any such additional first lien bonds governing the issuance of additional first lien bonds.

(b) The City shall have Net Revenues derived from the Combined Utilities for the fiscal year next preceding the issuance of such additional first lien bonds which shall have been at least equal to 1.25 times the average annual debt service requirements of the 1991 Series A Bonds and the 1994 Series Bonds, any

additional first lien bonds previously issued, all as then outstanding, of the Bond and of the proposed additional first lien bonds. For purposes of such determination, "Net Revenues" shall mean the gross revenues derived from the ownership and operation of the Combined Utilities, including investment income, less ordinary expenses of operating and maintaining the Combined Utilities payable from the Operation and Maintenance Account. Operation and maintenance expenses for such purpose shall not include depreciation, amortization or interest on any bonds or other indebtedness. Also for such purposes "average annual debt service" shall be determined by adding all the principal and interest which will become due when computed to the absolute maturity of the 1991 Series A Bonds and the 1994 Series Bonds, any additional first lien bonds, all as then outstanding, together with the total of principal and interest which will become due when computed to absolute maturity on the Bond and together with the total principal and interest which will become due when computed to absolute maturity on the proposed additional first lien bonds and dividing such total by the number of years remaining that the longest bond of any such issue of bonds has to run to maturity, including the proposed additional first lien bonds.

The City may issue refunding bonds to refund the 1991 Series A Bonds and the 1994 Series Bonds or any additional first lien bonds which refunding bonds shall qualify as additional first lien bonds" and have the same priority as to lien over the Bond without compliance with the Net Revenues test previously described in this Section 10 provided that at least one of the following conditions has been met:

(a) such issuance of refunding bonds does not result in average annual debt service requirements on the refunding bonds in excess of such average annual debt service requirements as would result if the principal amount of the 1991 Series A Bonds and the 1994 Series Bonds or additional first lien bonds which are being refunded by the refunding bonds were amortized by even annual payments of principal and interest over a period of ten years or the remaining term of the indebtedness being refunded, whichever is greater, with an interest rate of 9% per annum; or

(b) such issuance of refunding bonds shall have the consent of the initial registered owner as evidenced by a writing signed by the State Director for the State of Nebraska of Rural Development, United States Department of Agriculture, or his successor or equivalent under the Statutes and Regulations of the United States of America then in force.



The provisions of this ordinance shall not be construed as in any manner limiting the City's rights to issue refunding bonds payable from any special source or payable from unrestricted monies in the Surplus Account, pending the application of the proceeds thereof to the payment of bonds to be refunded with such refunding bonds to have a lien upon the revenues of the Combined Utilities junior to that of the 1991 Series A Bonds and the 1994 Series Bonds or any additional first lien bonds then outstanding and the Bond during the period preceding the application of the proceeds thereof to the payment of the bonds to be refunded. For any such refunding bonds to qualify as additional first lien bonds under this Section and thus be entitled to priority over the Bond from and after the application of the proceeds thereof to the payment of the bonds to be refunded, such refunding bonds, as of the time of their issuance must comply with one or another of the conditions shown above, but for purposes of showing compliance with the conditions of Subsection (a) of the second paragraph of this Section 10 payments of principal and interest due on the bonds to be refunded, after their proposed date of redemption, and on such refunding bonds, from time of their issuance until the time the proceeds thereof are applied to the payment of the bonds to be refunded, shall be excluded from consideration.

Anything in this Section 10 to the contrary notwithstanding, no additional first lien bonds shall be issued without the prior written consent of the USDA.

Section 11. The term "additional junior lien bonds" as used in this Ordinance shall refer only to such bonds as are issued in accordance with the provisions of this Section 11. To provide funds for the purpose of extending, improving, enlarging and equipping the Combined Utilities, the City may issue additional junior lien bonds payable from the revenues of the

Combined Utilities, having equal priority to and being on a par with the Bond only, on compliance with the following conditions:

(a) Such additional junior lien bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly allocations to be made of monies in the Surplus Account to the Junior Lien Bond Payment Sub-Account in amounts sufficient to pay when due the principal of and interest on the Bond and such additional junior lien bonds.

(b) The City shall have Net Revenues derived by it from the Combined Utilities for the fiscal year next preceding the issuance of such additional junior lien bonds which shall have been at least equal to 1.20 times the average annual debt service requirements of the 1991 Series A Bonds and the 1994 Series Bonds and any additional first lien bonds, then outstanding, of the Bond and of any additional junior lien bonds, then outstanding, and of the proposed additional junior lien bonds. For purpose of such determination "Net Revenues" shall mean the same as they are defined in the first paragraph of Section 10 and "average annual debt service" shall be determined in the manner described in the first paragraph of Section 10 but including in such computation principal and interest on any additional junior lien bonds then outstanding and on the proposed additional junior lien bonds and taking into consideration the last maturity of any additional junior lien bonds.

Anything in this Section 11 to the contrary notwithstanding, no additional junior lien bonds shall be issued without the prior written consent of the USDA.

Section 12. The City reserves the right to issue bonds or notes which are inferior in lien to the 1991 Series A Bonds and the 1994 Series Bonds, and any additional first lien bonds and to the Bond and any additional junior lien bonds, with the principal and interest of such bonds or notes to be payable from any unrestricted monies in the City's Surplus Account, as provided in Section 9 above.

Section 13. With the consent of the initial registered owner, evidenced by a writing signed by the State Director for the State of Nebraska of Rural Development, United States Department of Agriculture, or such director's successor or equivalent under the Statutes and

Regulations of the United States of America then in force the City may issue additional first lien bonds or additional junior lien bonds without compliance with the requirements of Section 10 or Section 11 of this Ordinance and any such additional first lien bonds or additional junior lien bonds issued with such consent shall have the rights and standing under the terms of this Ordinance as if such bonds had been issued after full compliance with Section 10 or Section 11 respectively.

Section 14. The City hereby finds and determines and certifies that it is unable to obtain sufficient credit, without purchase of the Bond by the initial registered owner as described herein, to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for similar purposes and periods of time. The City hereby covenants and agrees with the initial registered owner hereof that, in consideration of advantages accruing to the City from said initial registered owner's purchase of the Bond, if at any time while the Bond is held by said initial registered owner, it shall appear to said initial registered owner that the City may be able to obtain credit from other sources at reasonable rates and terms for loans for similar purposes and periods of time, the City, within the limitations of its then existing legal powers, at the request of said initial registered owner, will make an effort in good faith to pay in full all principal remaining on the Bond then held by said initial registered owner, by issuing refunding bonds or otherwise.

Section 15. The City will maintain the Combined Utilities, including extensions and improvements, in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the registered owner from time to time of the Bond that the City will continue to own, free from all liens and encumbrances (other than as permitted under the terms

of this Ordinance) and will adequately maintain and efficiently operate said Combined Utilities and the City will not operate or suffer to be created any lien or charges on or pledge of the revenues of the Combined Utilities which shall be superior to or on a parity with the lien, charge and pledge in favor of the Bond, except as provided for in Sections 10, 11 and 13 of this Ordinance.

Section 16. So long as the Bond is outstanding, the City hereby covenants and agrees as follows:

(a) The City will maintain the Combined Utilities in good condition and will continuously operate the same in a reasonable and efficient manner, and the City will punctually perform all the duties with reference to said system required by the Constitution and statutes of the State of Nebraska, but this covenant shall not prevent the City from discontinuing the use and operation of all or any portion of the Combined Utilities so long as the revenues derived from the City's ownership of the properties constituting the Combined Utilities shall be sufficient to fulfill the City's obligations under this ordinance.

(b) The City will not grant any franchise or right to any person, firm or corporation to own or operate any utilities system in competition with the Combined Utilities or any part thereof.

(c) The City will maintain insurance on the property constituting the Combined Utilities (other than such portions of the Combined Utilities as are not normally insured against loss by casualty) in the amounts and against the risks customarily carried by similar utilities, but including fire and extended coverage insurance in an amount which would enable the City to repair, restore or replace the property damaged to the extent necessary to make the Combined Utilities operable in an efficient and proper manner to carry out the City's obligations under this Ordinance. The Mayor and Council shall annually, within one month after the end of each fiscal year adopted by the City for the Combined Utilities examine the amount of insurance carried with respect to the Combined Utilities and shall evidence approval of such insurance by resolution. The proceeds of any such insurance received by the City shall be used to repair, replace or restore the property damaged or destroyed to the extent necessary to make the Combined Utilities operable in an efficient and proper manner, and any amount of insurance proceeds not so used shall be credited to the Surplus Account. In the event of any such insured casualty loss, the City may advance funds to make temporary repairs or provide for an advance on costs of the permanent repair, restoration or

replacement from the Operation and Maintenance Account and any such advances shall be repaid from insurance proceeds received.

(d) The City will keep proper books, records and accounts separate from all other records and accounts in which complete and correct entries will be made of all transactions relating to the Combined Utilities. The City will have its operating and financial statements relating to the Combined Utilities audited annually by a certified public accountant or firm of certified public accountants. The City will furnish to the registered owner of the Bond, as soon as practicable after the end of each fiscal year of the Combined Utilities, a copy of the financial statements of the Combined Utilities and the report thereon of the certified public accountants.

(e) The City shall cause each person handling any of the monies in the Combined Utilities Fund to be bonded by an insurance company licensed to do business in Nebraska in an amount or amounts sufficient to cover at all times the maximum amount of money belonging to the Combined Utilities in the possession or control of any such person. The amount of such bond or bonds shall be fixed by the Mayor and Council and the costs thereof shall be paid as an operating and maintenance expense from the Operation and Maintenance Account.

(f) So long as the City is current with all payments or credits required to be made under Section 13 of Ordinance No. 1941 and Section 13 of Ordinance No. 1994 and under Section 9 of this Ordinance and is also in compliance with the covenants of Section 12 of Ordinance No. 1941 and Section 12 of Ordinance No. 1994 and Section 8 of this Ordinance, the City may pay for service from the Combined Utilities used by it at such rate or rates as shall be determined by the Mayor and Council. In the event that the City is not in compliance with the provisions of said Sections of said Ordinances, the City shall be required to pay for such service used by it at the rate or rates applicable to such usage as fixed by the City's sewer, water and electric rate ordinances then in effect.

(g) The City hereby covenants and agrees that in the event of any default in payment on the Bond, no franchise fees shall be payable from the Operation and Maintenance Account until all such payment defaults have been cured in full.

Section 17. The City's obligations under this ordinance and the liens, pledges, covenants and agreements of the City's herein made or provided for, shall be fully discharged and satisfied as to the Bond and the Bond shall no longer be deemed outstanding hereunder if the Bond shall have been purchased and cancelled by the City, or when payment of the principal of and interest

thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by depositing with a national or state bank having trust powers or trust company, in trust solely for such payment, (i) sufficient money to make such payment and/or (ii) Deposit Securities in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal, at such time or times, as will ensure the availability of sufficient money to make such payment; provided, however, that, with respect to any bond to be paid prior to maturity, the City shall have duly given notice of redemption of such bond as provided by law or made irrevocable provisions for the giving of such notice. Any such money so deposited with a bank or trust company may be invested and reinvested in Deposit Securities and all interest and income from such Deposit Securities in the hands of such bank or trust company, in excess of the amount required to pay principal of and interest on the Bond shall be paid over to the City as and when collected. No deposit in satisfaction of the Bond shall be made without the written consent of the registered owner of the Bond so long as the United States of America, acting through the United States Department of Agriculture, remains the registered owner of the Bond.

Section 18. The terms and provisions of this ordinance do and shall constitute a contract between the City of Lexington and the registered owner of the Bond and no changes, variations or alterations of any kind (except for changes necessary to cure any ambiguity, formal defect or omission) shall be made to this ordinance without the written consent of said registered owner. The registered owner of the Bond may, either in law or in equity, by suit, action, mandamus or other proceeding, enforce or compel performance of any and all of the acts and

duties required by this Ordinance, and any court of competent jurisdiction may, on application of any such owner, appoint a receiver to take charge of the Combined Utilities and operate the same and apply the earnings thereof in accordance with the provisions hereof, subject to the prior and governing provisions of Ordinances Nos 1941 and 1994 and the prior pledge and lien in favor of the 1991 Series A Bonds, the 1994 Series Bonds and any additional first lien bonds as may be issued and outstanding from time to time.

Section 19. 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 Bond as contemplated by this Ordinance.

Section 20. 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 21. The City hereby covenants to the registered owner of the Bond that it will make no use of the proceeds of said Bond, including monies held in any sinking fund attributable to said Bond, which would cause the Bond to be an arbitrage bond within the meaning of Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended, and further covenants to comply with said Sections 103(b) and 148 and all applicable regulations thereunder throughout the term of said issue. The City hereby covenants and agrees to take all action necessary under the Internal Revenue Code of 1986, as amended, to maintain the tax-exempt status (as to taxpayers generally) of interest payable on the Bond. The City hereby designates the Bond as one of its "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i)(III) of the Internal Revenue Code of 1986, as amended, and covenants and warrants that it does not

reasonably expect to issue bonds or other obligations aggregating in principal amount more than \$10,000,000 during calendar 1996.

Section 22. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage and publication as provided by law.

PASSED AND APPROVED this 26th day of November, 1996.

*Robert L. Hawks*  
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Mayor

*Kenn E. Mahajan*  
\_\_\_\_\_  
City Clerk





ORDINANCE NO. 2069

AN ORDINANCE TO APPOINT A CITY MANAGER AND ESTABLISH COMPENSATION; TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM.

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

Section 1: That Vance Bricker is hereby appointed as Lexington City Manager, effective November 1, 1996.

Section 2: That compensation for Vance Bricker as Lexington City Manager shall be established at \$55,000.00 per year, to commencing with the pay period beginning November 1, 1996.

Section 3: That this Ordinance shall be published in pamphlet form and take effect as provided by law.

PASSED AND APPROVED this 12th day of November, 1996.

CITY OF LEXINGTON, NEBRASKA

BY: Robert L. Hawks

MAYOR

ATTEST:

Deon E. Mahesh  
city Clerk

