

ORDINANCE NO. 2436

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A COMBINED UTILITIES REVENUE BOND, 2021 SERIES, OF THE CITY OF LEXINGTON, NEBRASKA, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED TEN MILLION THREE HUNDRED FIVE THOUSAND DOLLARS (\$10,305,000) IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; APPROVING THE FORM OF SAID BOND (ISSUED AS A SINGLE PROMISSORY NOTE) AND RELATED LOAN AGREEMENT; DIRECTING THE APPLICATION OF THE PROCEEDS OF SAID BOND; PRESCRIBING THE FORM AND CERTAIN TERMS AND DETAILS OF SAID BOND AND AUTHORIZING THE OFFICERS OF THE CITY TO SET CERTAIN TERMS AND DETAILS OF SAID BONDS; PLEDGING AND HYPOTHECATING THE REVENUE AND EARNINGS OF THE SEWER, WATER AND ELECTRIC SYSTEMS OWNED BY THE CITY FOR THE PAYMENT OF SAID BONDS AND INTEREST THEREON; ESTABLISHING THE TERMS UPON WHICH ADDITIONAL BONDS OF EQUAL LIEN UPON REVENUES MAY BE ISSUED; PROVIDING FOR THE ISSUANCE AND SALE OF SAID BOND; AUTHORIZING THE DELIVERY OF SAID BOND TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; DETERMINING THAT INTEREST ON SAID BOND SHALL NOT BE EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SAID BOND AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

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

Section 1. The Mayor and Council of the City of Lexington, in the State of Nebraska (the "City") hereby find and determine:

(a) The City owns and operates its own sewage disposal plant and sanitary sewer system (as now existing or hereafter extended and improved, the "Sewer System"), waterworks plant and water system (as now existing or hereafter extended and improved, the "Water System") and electric light and power distribution system (as now existing or hereafter extended and improved, the "Electric System") (the Sewer System, the Water System and the Electric System, together with any additions, extensions and improvements thereto hereafter constructed or acquired, are herein referred to as the "Combined Utilities"), all of which are hereby determined to be revenue producing facilities under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, 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:

Promissory Note issued to the Nebraska Department of Environmental Quality on April 29, 2013, issued pursuant to Ordinance No. 2327 (the "2013 Ordinance") in the principal amount of up to Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000), of which approximately \$3,097,220.55 remains outstanding and unpaid (the "2013 Note");

Combined Utilities Revenue Refunding Bonds, 2014 Series, date of original issue – July 1, 2014, issued pursuant to Ordinance No. 2348 (the "2014 Ordinance") in the original principal amount of Three Million Four Hundred Twenty Thousand Dollars (\$3,420,000), of which \$460,000 remains outstanding and unpaid (the "2014 Series Bonds").

Combined Utilities Revenue Refunding Bonds, 2016 Series, date of original issue – June 1, 2016, issued pursuant to Ordinance No. 2373 (the “2016 Ordinance”) in the original principal amount of One Million Sixty Thousand Dollars (\$1,060,000), of which \$445,000 remains outstanding and unpaid (the “2016 Series Bonds”).

Combined Utilities Revenue Refunding Bonds, 2018 Series, date of original issue – September 28, 2018, issued pursuant to Ordinance No. 2410 (the “2018 Ordinance”) in the original principal amount of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000), of which \$1,400,000 remains outstanding and unpaid (the “2018 Series Bonds”).

Combined Utilities Revenue Bonds, 2020 Series, date of original issue – February 5, 2020, issued pursuant to Ordinance No. 2424 (the “2020 Ordinance”) in the original principal amount of One Million Three Hundred Seventy Thousand Dollars (\$1,370,000), of which \$1,285,000 remains outstanding and unpaid (the “2020 Series Bonds”).

The 2013 Note, the 2014 Series Bonds, the 2016 Series Bonds, the 2018 Series Bonds and the 2020 Series Bonds represent the only presently-outstanding indebtedness of the City for which the revenues and earnings of the Combined Utilities have been pledged. The 2013 Note, the 2014 Series Bonds, the 2016 Series Bonds the 2018 Series Bonds and the 2020 Series Bonds are to remain outstanding after the issuance of the 2021 Series Note and are sometimes referred to herein as the “Outstanding Bonds.” The 2013 Ordinance, the 2014 Ordinance, the 2016 Ordinance, the 2018 Ordinance and the 2020 Ordinance are sometimes referred to herein as the “Outstanding Bond Ordinances.”

(c) Section 19 of the Outstanding Bond Ordinances permit the issuance of “Additional Bonds” secured on an equal basis with the Outstanding Bonds upon compliance with the following conditions:

- 1) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Combined Utilities Revenue Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the Outstanding Bonds, any Additional Bonds then outstanding and the proposed Additional Bonds.
- 2) The City shall have complied with the following requirement (as one permitted alternative):

The Net Revenues derived by the City from its Combined Utilities for the fiscal year next preceding the issuance of the Additional Bonds (determined in accordance with the definition of such term set forth in the Outstanding Bond Ordinances including, if applicable, a determination made for any period when financial statements have not yet been completed and reported on) shall have been at least equal to 1.20 times the Maximum Annual Debt Service (taking into consideration and excluding from debt service any Applicable Debt Service Reserve Transfer for any series of bonds) of the Outstanding Bonds and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds.

- (d) With respect to said conditions, the following determinations are hereby made:

- 1) The “Net Revenues” of the Combined Utilities as defined in the Outstanding Bond Ordinances, as shown in the City’s audit report as conducted by independent certified public accountants for the fiscal year ended September 30, 2020, were not less than \$2,484,257;
- 2) The Maximum Annual Debt Service on the Outstanding Bonds and the 2021 Series Note shall not be more than \$1,900,000;
- 3) Said “Net Revenues” exceed 1.20 times said “Maximum Annual Debt Service” of the Outstanding Bonds, and of the proposed 2021 Series Note.
- 4) All conditions required by the Outstanding Bond Ordinances precedent to the issuance of the 2021 Series Note as “Additional Bonds” of equal priority and on a parity with the Outstanding Bonds do exist and have happened.

(e) The Nebraska Department of Environment and Energy (“NDEE”) has approved a project of the City for its Sewer System including replacement of the headworks building and replacement of the primary clarifiers, other plant improvements as more fully described in the NDEE Agreement, together with related appurtenant water system facilities and improvements, which has been designated as Project No. C318042 (the “Project”), which Project is more fully described in the NDEE Agreement and has agreed to lend from monies in NDEE’s Construction Loan Fund or from other sources in the total principal amount of not to exceed \$10,305,000, and in connection with such loan has agreed to accept one or more bonds payable from the revenues of the Combined Utilities, and the Mayor and Council do hereby confirm, ratify and approve all prior actions of the City relative to approval and execution of the NDEE Agreement described herein;

(f) For the purposes of financing the Project and pursuant to Sections 18-1803 to 18-1805 R.R.S. Neb., as amended, it is necessary and advisable for the City to issue its combined utilities revenue bonds in the form of and evidenced by a single promissory note (the “2021 Series Note”) in the principal amount of not to exceed \$10,305,000. All conditions, acts and things required by law to exist or to be done precedent to the issuance of the 2021 Series Note as provided for in this Ordinance do exist and have been done and performed in regular and due time and form as required by law.

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

- (a) The term “Applicable Debt Service Reserve Transfer” shall mean the amount of any required transfer from the respective sub-accounts in the Combined Utilities Bond Reserve Account for the Outstanding Bonds and the 2021 Series Note or any issue of Additional Bonds. The amount of any Applicable Debt Service Reserve Transfer shall apply under the terms of the Outstanding Bond Ordinances and this Ordinance so long as the Reserve Requirement is being maintained in the sub-account of the Combined Utilities Bond Reserve Account for the respective series of bonds for which such Applicable Debt Service Reserve Transfer has been established. In the event of any deficiency with respect to such Reserve Requirement, the amount of the Applicable Debt Service Reserve Transfer next required to be made in order of time shall be reduced by the amount of such deficiency for purposes of any calculation or determination under the terms of the Outstanding Bond Ordinances and this Ordinance.

- (b) The term “Additional Bonds” shall mean any and all bonds hereafter issued by the City pursuant to the terms of the Outstanding Bond Ordinances and this Ordinance which are equal in lien to the Outstanding Bonds and the 2021 Series Note including such bonds issued pursuant to Section 19 of said ordinances and refunding bonds issued pursuant to Section 20 of said ordinances, as and when such bonds become equal in lien to the Outstanding Bonds and the 2021 Series Note, according to their terms and the terms of said Sections.
- (c) The term “Deposit Securities” shall mean direct obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America, including obligations issued in book-entry form.
- (d) The term “Maximum Annual Debt Service” shall mean the maximum amount scheduled to fall due for payment of principal and interest in any fiscal year on the bonds for which such computation is required. In making such computation, the principal of any bonds for which mandatory redemptions are scheduled shall be treated as maturing in accordance with such schedule of mandatory redemptions.
- (e) The term “Net Revenues” shall mean the gross revenues derived by the City from the ownership or operation of the Combined Utilities, including investment income, but not including any income from sale or disposition of any property belonging to or forming a part of the Combined Utilities, less the ordinary expenses to the City of operating and maintaining the Combined Utilities payable from the Operation and Maintenance Account described in the Outstanding Bond Ordinances and in Section 6 of this Ordinance. Operation and maintenance expenses for purposes of determining “Net Revenues” shall not include depreciation, amortization or interest on any bonds or other indebtedness. Net Revenues for all purposes of the Outstanding Bond Ordinances and this Ordinance shall be shown by an audit for the fiscal year in question as conducted by independent certified public accountants, provided, however, that in the case of issuance of Additional Bonds, for that period from the end of each fiscal year until the financial statements reported on by the City’s accountants are available, Net Revenues shall either (i) be based upon the most recent fiscal year for which there are financial statements which have been reported on by such accountants so long as the unaudited financial information for the then most recently completed fiscal year as certified by the City Treasurer would not result in a contrary determination, if such unaudited financial information were deemed the completed and reported on results or (ii) based upon a report of the City’s accountants that the completed and reported on results will not be less than such amount as such accountants shall confirm.
- (f) “Reserve Requirement” shall mean the amount (if any) required to be maintained in the respective sub-accounts in the Combined Utilities Bond Reserve Account for the 2013 Note, the 2014 Series Bonds, the 2016 Series Bonds, the 2018 Series Bonds, the 2020 Series Bonds, the 2021 Series Note or any issue of Additional Bonds. The Reserve Requirement for the 2021 Series Note is hereby set at \$0.00.

Section 3. To provide for the payment of the costs of the Project, there shall be and there is hereby ordered issued the 2021 Series Note, in the form of and evidenced by a single promissory note (the “2021 Series Bond” or the “2021 Series Note”) in the principal amount of not to exceed Ten Million Three Hundred Five Thousand Dollars (\$10,305,000), with such 2021 Series Note to be substantially in such form and content as form presented herewith, with such changes determined necessary or appropriate by the Mayor, City Manager, City Finance Director or City Clerk (each, an “Authorized Officer”), and to have

such payment terms as determined appropriate by an Authorized Officer. In connection with the issuance of the 2021 Series Note, the City shall also enter into an agreement with NDEE previously described herein and entitled Loan Agreement Between Nebraska Department of Environment and Energy and the City of Lexington, Nebraska, NDEE Project No. C318042 (the "NDEE Agreement") in substantially the form presented herewith, with such changes as determined necessary or appropriate by an Authorized Officer. The terms and conditions of the 2021 Series Note and Project are hereby approved and the Authorized Officers are hereby authorized to execute and deliver the 2021 Series Note and the NDEE Agreement for and on behalf of the City.

Section 4. The City hereby pledges and hypothecates all revenues and earnings, now or hereafter received, or otherwise due and owing to the City, derived from the ownership and operation of the City's Combined Utilities and all extensions and enlargements thereof, including any additions and improvements hereafter made, for the payment of principal of and interest on the Outstanding Bonds, the 2021 Series Note and any Additional Bonds as the same fall due. So long as said revenues and earnings are sufficient to make all required payments of principal and interest with respect to the Outstanding Bonds, the 2021 Series Note and any Additional Bonds, all such required payments with respect to each such issue shall be made in full from the respective sub-accounts in the Combined Utilities Revenue Bond Payment Account for each such series. In the event that such revenues and earnings are insufficient to meet the required payments from the Combined Utilities Revenue Bond Payment Account, such revenues and earnings shall be allocated to the Outstanding Bonds, the 2021 Series Note and any such Additional Bonds, pro rata in accordance with the respective unpaid principal amounts then outstanding for the Outstanding Bonds, the 2021 Series Note and such Additional Bonds. The pledge and hypothecation provided for the Outstanding Bonds and the 2021 Series Note, as provided for in the Outstanding Bond Ordinances and this Ordinance, is intended to be and shall provide for a first and prior pledge of, lien upon and security interest in the revenues of the Combined Utilities (subject to the right of the City to issue Additional Bonds as provided in the Outstanding Bond Ordinances and this Ordinance) for the payment of principal of and interest on the Outstanding Bonds and the 2021 Series Note, superior to any pledge or promise made with respect to any other indebtedness of the City as to its Combined Utilities, and is intended to be a full exercise of the powers of the City provided for in Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as amended, with respect to its Combined Utilities.

Section 5. So long as any of the Outstanding Bonds, the 2021 Series Note and any Additional Bonds issued pursuant to this Ordinance shall remain outstanding and unpaid, the City covenants and agrees to establish, revise, from time to time as necessary, and collect such rates, charges and rentals for the sewer, water and electric service furnished from the Combined Utilities adequate to produce revenues and earnings sufficient at all times:

(a) To provide for the payment of the interest and principal of the Outstanding Bonds, the 2021 Series Note and any Additional Bonds as the same fall due.

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

(c) To provide funds sufficient to make the deposits into the accounts required by the Outstanding Bond Ordinances and Section 6 of this Ordinance and any parallel or similar section of any ordinance authorizing the issuance of Additional Bonds.

(d) To maintain Net Revenues in each fiscal year adopted by the City for the Combined Utilities in an amount not less than 1.20 times the total amount of principal paid or payable (exclusive of any principal redeemed prior to maturity other than principal redeemed pursuant to a

schedule of mandatory redemptions and taking into consideration any Applicable Debt Service Reserve Transfer made in such fiscal year) and interest falling due during such fiscal year for the Outstanding Bonds, the 2021 Series Note and any Additional Bonds, excluding from principal paid the amount of any Applicable Debt Service Reserve Transfer for such fiscal year, if any.

Section 6. All revenues and earnings derived from the operation of the Combined Utilities of said City shall be set aside as collected and deposited into a separate fund previously established and designated (and referred to in this Ordinance) as the "Combined Utilities Fund". Any uninvested moneys in the Combined Utilities Fund shall be deposited in a separate bank account properly earmarked and deposit shall be made in a bank or banks designated by the Council and be secured as provided by law for public deposits. The City shall set up and maintain as long as any of the Outstanding Bonds, the 2021 Series Note or Additional Bonds are outstanding the accounts described in this Section 6 for the administration of said fund. Within the Combined Utilities Fund there were previously established and maintained and are hereby confirmed the following accounts for allocation of the monies in said fund under the terms of the Outstanding Bond Ordinances and this Ordinance: (a) Combined Utilities Revenue Bond Payment Account; (b) Operation and Maintenance Account; (c) Combined Utilities Bond Reserve Account; and (d) Surplus Account. Within each such account further sub-accounts have been, shall now, or may hereafter, be established as provided in the Outstanding Bond Ordinances and this Ordinance. Deposits shall be made to said accounts on a monthly basis, to the accounts in the order of priority as follows:

- I. COMBINED UTILITIES REVENUE BOND PAYMENT ACCOUNT; Within the Combined Utilities Revenue Bond Payment Account there is hereby ordered established the 2021 Series Bond Payment Sub-account. Out of the Combined Utilities Fund the City shall transfer into the Combined Utilities Revenue Bond Payment Account on or before the tenth day of each calendar month the amounts required to be deposited to the 2021 Series Bond Payment Sub-account in accordance with the following requirements for such sub-account:

2021 Series Bond Payment Sub-account. From the monies deposited to the Combined Utilities Revenue Bond Payment Account from the Combined Utilities Fund, there shall be deposited monthly to the 2021 Series Bond Payment Sub-account the following amounts for the periods indicated:

Beginning with the fifteenth day of the month (or such other day of the month as determined by the Mayor in the NDEE Agreement) which immediately follows the "Initiation of Operation" (as defined in the NDEE Agreement; and as established in this 2021 Ordinance (hereafter referred to as the "Initiation of Operation") of the Project, and continuing until and including that June 15 or December 15 (or such other day of the month as determined by the Mayor in the NDEE Agreement), as the case may be with respect to the earliest occurring of such dates, an amount such that if the same amount were credited on the fifteenth day of each calendar month (or such other date as described above) from such date of credit until the next payment date upon which any amount falls due on the 2021 NDEE Note, provided, however, that such credits shall be required only as and to the extent that such payments are not provided from other sources including amounts advanced by NDEE pursuant to the NDEE Agreement and the 2021 NDEE Note and during the period from and including that June 15 or December 15 (or such other dates as described above), as the case may be with respect to the earliest occurring of such dates, which immediately follows the Initiation of Operation until the 2021 NDEE Note has been paid in full an amount equal to one-sixth of the installment amount (principal and interest) due on the next installment payment date for the 2021 NDEE Note.

Bond Payment Sub-account for Outstanding Bonds. From the monies deposited to the Combined Utilities Revenue Bond Payment Account from the Combined Utilities Fund, there shall be deposited to the Bond Payment Sub-accounts established for the Outstanding Bonds, such amounts deposited at such times as shall be required to comply with the requirements of the Outstanding Bond Ordinances.

All such deposits to the Bond Payment Sub-accounts for the Outstanding Bonds shall be made in such amounts and at such times that there will be sufficient sums in each such sub-account to meet the payments required to be made by the City with respect to the Outstanding Bonds and the 2021 Series Note as the same fall due, including any and all transfers required to be made to the NDEE for the Series 2021 Bond or the paying agent and registrar for the Outstanding Bonds. All such deposits are required to be made without preference or priority as between each such sub-account and any similar sub-account established for the Outstanding Bonds, the 2021 Series Note or any issue of Additional Bonds and if amounts available are insufficient to make all deposits as required, the available funds shall be allocated on a pro rata basis in accordance with the terms of Section 4 of this Ordinance. In the event of the issuance of any Additional Bonds, the City shall in the ordinance authorizing their issuance provide for a related sub-account in the Combined Utilities Revenue Bond Payment Account and for deposits into such sub-account sufficient to make payments upon such Additional Bonds as the same fall due. Such sub-account and the deposits required to be made thereto shall have equal rank and standing with the Bond Payment Sub-accounts established for the Outstanding Bonds, the 2021 Series Bond Payment Sub-account and the payments required to be made to each thereof. Each sub-account in the Combined Utilities Revenue Bond Payment Account shall constitute a separate fund held in trust by the City for the separate special benefit of the issue or series of bonds for which it is established.

- II. OPERATION AND MAINTENANCE ACCOUNT: After making all deposits required to the Combined Utilities Revenue Bond Payment Account in each month, the City shall set aside in the Operation and Maintenance Account each month an amount sufficient for the operation and maintenance of its Combined Utilities during the next period of one month (from deposit date to the next expected monthly deposit date for such account) and the expenses of maintenance and operation of said utilities shall be paid out of the Operation and Maintenance Account. Expenses for operation and maintenance shall include all ordinary and necessary costs for operating and maintaining the Combined Utilities and shall include, without limitation, wages, salaries, supplies, professional services, materials, insurance premiums, costs for purchased power and franchise fees charged by the City, if any, and shall also include any items necessary to maintain the properties of the Combined Utilities to achieve the capacity and performance for which such properties were designed and constructed, including the costs of installing equipment, accessories or appurtenances which are necessary during the life of such properties to maintain the capacity and performance for which such properties were designed and constructed. Within the Operation and Maintenance Account, the City shall maintain the Sewer System Maintenance and Replacement Sub-account created under Ordinance No. 1994 (as and to the extent applicable and required) and any similar Sub-account created under the ordinance authorizing the 2013 Note (as and to the extent applicable and required), and shall deposit thereto and withdraw and apply therefrom such amounts as shall from time to time be required by the policies and regulations of either the United States Environmental Protection Agency or the Nebraska Department of Environmental Quality for purposes of maintaining and replacing the Sewer System's sewage treatment works. The City hereby covenants and agrees that in the event of any default in payment on the Outstanding Bonds, the 2021 Series Note or any Additional Bonds, no franchise fees shall be payable from the Operation and Maintenance Account until all such payment defaults have been cured in full.

III. COMBINED UTILITIES BOND RESERVE ACCOUNT: The sub-account within the Combined Utilities Bond Reserve Account for the Outstanding Bonds shall continue to be held and funded pursuant to the Outstanding Ordinances. Within the Combined Utilities Bond Reserve Account as established there is hereby ordered established a separate sub-account designated as the Series 2021 Bond Reserve Sub-account, which shall not be funded. In any ordinance authorizing Additional Bonds, the City may (but is not required to) make provision for the creation of an additional separate sub-account in the Combined Utilities Bond Reserve Account for each such issue of Additional Bonds provided that the required balance to be set for any such issue shall not be required to exceed at any time the maximum amount permitted to be invested without yield restriction under Section 103(b) and 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations of the United States Treasury Department. The balance for any such sub-account may be established from monies of the Combined Utilities otherwise available, from periodic deposits made to such sub-account or from bond proceeds. Any such additional sub-account in the Combined Utilities Bond Reserve Account shall be of equal priority with those reserve accounts created for the Outstanding Bonds and the Series 2021 Bond and available monies from the Combined Utilities Fund required to be deposited to each such sub-account at any time shall be allocated on a pro rata basis in accordance to the terms of Section 4 of this Ordinance. Each sub-account in the Combined Utilities Bond Reserve Account shall constitute a separate fund held in trust by the City for the separate special benefit of the issue or series of bonds for which it is established. The City shall make each Applicable Debt Service Reserve Transfer when and as required under the terms of the definition for such term.

IV. SURPLUS ACCOUNT:

After making the payments hereinabove required to be made into the Combined Utilities Revenue Bond Account, the Operation and Maintenance Account and the Combined Utilities Bond Reserve Account, all remaining funds shall be transferred into a Surplus Account. Moneys in the Surplus Account may be used as follows:

- (a) To fill any deficiency in the foregoing accounts.
- (b) In lieu of tax payments or additional City franchise tax payments. So long as no deficiency exists in required monthly payments in the accounts established by Section 13 of the Outstanding Bond Ordinances and Section 6 of this Ordinance, payment may be made to the City annually, semiannually or quarterly as an in lieu of tax payment or additional franchise fee which can be used by the City for any purpose authorized by law.
- (c) Any lawful purpose connected with the Combined Utilities, including improvements, extensions and enlargements of the Combined Utilities and paying principal and interest on general obligation bonds of the City or junior lien indebtedness authorized to pay the cost of constructing improvements to any one of the utilities systems included in the Combined Utilities.
- (d) Retiring the Outstanding Bonds, the 2021 Series Note or Additional Bonds prior to their maturity under their option provisions or by purchase on the open market.

Moneys on deposit in the Combined Utilities Fund or any account therein may to the extent practicable and reasonable be invested in Deposit Securities or in any other lawful investments for cities of the class to which the City belongs. Investments for the Combined Utilities Revenue Bond Payment Account shall mature at such times and in such amounts as shall be required to provide moneys to make the payments to be made from said Account. Moneys credited to the Combined Utilities Bond Reserve Account shall be

invested in Deposit Securities, in obligations of any agency of the United States of America (whether or not guaranteed by the United States) so long as the obligations of such agency are rated in one or the other of the two highest rating categories (not taking into consideration subcategories, if any) of any recognized rating agency or in certificates of deposit which are fully insured by insurance of the Federal Deposit Insurance Corporation or (as to any uninsured amounts) secured by collateral securities as required by law, any of which securities or certificates of deposit shall mature or be redeemable at stated fixed prices at the option of the holder by not more than eight years from the date of such investment. All moneys and income from investments made from moneys credited to the Combined Utilities Revenue Bond Payment Account and the Combined Utilities Bond Reserve Account shall, when realized and collected, be credited to the respective Account from which such investments were made, unless there shall then be credited thereto the respective full amounts then required by paragraphs I and III of this Section 6, in which event such interest and income may be credited to the Surplus Account. All investments held for the credit of any Fund or Account may be sold when required to make the payments to be made from such Fund or Account. Any moneys credited to the Combined Utilities Fund or any Account or Sub-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 the City 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 7. The City will make deposits on or prior to the date each payment of interest or principal becomes due on the 2021 Series Note on the 2021 Series Note. All such payments shall be made out of the Combined Utilities Revenue Bond Payment Account or from other funds of the Combined Utilities available for such purpose, in accordance with the terms of this Ordinance.

Section 8. The City shall keep proper books of records and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Combined Utilities and the registered owners of any of the Outstanding Bonds, 2021 Series Note or of any Additional Bonds or any duly authorized agent or agents of such registered owners shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect said systems and all properties comprising the same. Within one hundred twenty (120) 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 Combined Utilities, and such audit will be available for inspection by the registered owners of any of the 2021 Series Note. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following:

- (a) A statement in detail of the income and expenditures of each component of the Combined Utilities for such fiscal year;
- (b) A balance sheet as of the end of such fiscal year; and
- (c) The accountant's comments (if any) regarding the manner in which the City has carried out the requirements of this Ordinance, and the accountant's recommendation for any changes or improvements in the operation of the Combined Utilities or the components thereof.

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 shall furnish a copy of each such audit to the original purchaser of the 2021 Series Note and of any series of Additional Bonds, and to the holder or registered owner of at least twenty-five percent (25%) of any issues of combined utilities revenue bonds outstanding, upon request, after the close of each fiscal year, and said purchaser or purchasers or any such holder or registered owner shall have the right to discuss with the accountant making the audit the contents of the audit and to ask for such additional information as each may require.

Section 9. The City Treasurer shall be bonded, in addition to such Treasurer's official bond, by an insurance company licensed to do business in Nebraska, in amounts sufficient to cover at all times all the revenues and earnings of the Combined Utilities placed in such official's hands as determined appropriate from time to time by the Mayor and Council, based upon the advice of such experts or consultants as they shall deem appropriate. Any other person employed by the City in the collection or handling of moneys derived from the operation of said properties shall also be bonded in an amount sufficient to cover all moneys which may at any time be placed in such person's hands. The amount of such bonds shall be fixed by the Council, and the cost thereof shall be paid from the earnings of said Combined Utilities and they shall secure the faithful accounting of all moneys.

Section 10. The City will carry adequate insurance on the Combined Utilities in such amounts as are normally carried by private or public utilities engaged in similar operations, including, without limiting the generality of the foregoing, fire and windstorm insurance and public liability insurance. The cost of all such insurance shall be regarded and paid as an operation and maintenance expense.

All insurance moneys, except public liability, shall be deposited in a separate special fund held by the City Treasurer as part of the Combined Utilities Fund and subject to the pledge of this Ordinance and shall be used in making good the loss or damage in respect of which they were paid either by repairing the property damaged or replacing the property destroyed, and expenditures from said moneys shall be made only upon a certificate issued by a consulting engineer and filed with the City Clerk stating that the proceeds, together with any other moneys available for such purposes, are sufficient for the repair or replacement of any such properties; and when the City shall have been furnished with a certificate of a consulting engineer stating that the property damaged or destroyed has been fully repaired or replaced and such repairs or replacements have been fully paid for, the residue, if any, of such insurance moneys shall be held in a separate special fund and be applied upon order of the Mayor and Council to paying the costs of further improvements to the Combined Utilities.

If the proceeds of any insurance shall be insufficient to repair or replace the property damaged or destroyed, the City may use and shall pay out for such purpose, to the extent of such deficiency, any money then held in the Surplus Account. If in the opinion of a consulting engineer the proceeds of any insurance, together with any amount then available for such purpose in the Surplus Account shall be insufficient to fully complete and pay for such repairs or replacements and if the City shall fail to supply such deficiency from other sources within a period of six months after receipt by the City of such insurance moneys, or if in the opinion of a consulting engineer it is to the best interest of the City not to repair or replace all or any part of the damaged properties and that failure to repair or replace the damaged properties shall not affect the sufficiency of the income and revenue from the remaining properties to properly maintain and operate the same, provide funds for the Combined Utilities Revenue Bond Payment Account and Combined Utilities Bond Reserve Account, as herein provided for, then such insurance moneys to the extent not applied to repair or replace the damaged properties shall remain in such separate special fund and be applied upon order of the Mayor and Council to paying the costs of further improvements to the Combined Utilities.

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

Section 11. The City will maintain the Combined Utilities in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the registered owners from time to time of the 2021 Series Note and any Additional Bonds that the City will continue to own, free from all liens and encumbrances, and will adequately maintain and efficiently operate said Combined Utilities; provided, however, the City may dispose of property which is recommended for disposal by the manager or superintendent of the utilities, or an independent consulting engineer and which is determined as a matter of record by the Mayor and Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 12. To provide funds for any purpose or purposes related to the Combined Utilities, the City may issue Additional Bonds (other than Additional Bonds issued for refunding purposes which are governed by Section 20 of the Outstanding Bond Ordinances and Section 13 of this Ordinance) payable from the revenues of the Combined Utilities having equal priority and on a parity with the Outstanding Bonds, the 2021 Series Note and any Additional Bonds then outstanding only upon compliance with the following conditions:

- (a) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Combined Utilities Revenue Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the Outstanding Bonds, the 2021 Series Note, any Additional Bonds then outstanding and the proposed Additional Bonds.
- (b) The City shall have complied with one or the other of the two following requirements:
 - (1) The Net Revenues derived by the City from its Combined Utilities for the fiscal year next preceding the issuance of the Additional Bonds (determined in accordance with the definition of such term set forth in Section 2, including, if applicable, a determination made for any period when financial statements have not yet been completed and reported on) shall have been at least equal to 1.20 times the Maximum Annual Debt Service (taking into consideration and excluding from debt service any Applicable Debt Service Reserve Transfer for any series of bonds) of the Outstanding Bonds, the 2021 Series Note and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds; or
 - (2) The City shall have received a projection made by a consulting engineer or firm of consulting engineers, recognized as having experience and expertise in municipal utility systems, projecting that the Net Revenues of the Combined Utilities in each of the three full fiscal years after the issuance of such Additional Bonds will be at least equal to 1.35 times the Maximum Annual Debt Service (taking into consideration and excluding from debt service any Applicable Debt Service Reserve Transfer for any series of bonds) of the Outstanding Bonds, the 2021 Series Note and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds. In making such projection, the consulting engineer shall use as a basis the Net Revenues of the Combined Utilities during the last fiscal year for which an independent audit has been prepared and shall adjust such Net Revenues as follows: (A) to reflect changes in rates which have gone into effect since the beginning of the fiscal year for which the audit was made, (B) to reflect such engineer's estimate of the net increase over or net decrease under the Net Revenues of the Combined Utilities for the fiscal year for which the audit was made by reason of: (i) changes of amounts payable under existing contracts for services; (ii) additional general income from sales to customers under existing rate schedules

for various classes of customers or as such schedules may be revised under a program of changes which has been adopted by the Mayor and Council of the City; (iii) projected revisions in costs for labor, wages, salaries, machinery, equipment, supplies and other operational items; (iv) revisions in the amount of service to be supplied and any related administrative or other costs associated with such increases due to increased supply from the acquisition of any new facility or increased demand related to new customers; (v) such other factors affecting the projections of revenues and expenses as the consulting engineer deems reasonable and proper. Annual debt service on any proposed Additional Bonds to be issued may be estimated by the consulting engineer in projecting Maximum Annual Debt Service, but no Additional Bonds shall be issued requiring any annual debt service payments in excess of the amounts so estimated by the consulting engineer.

The City hereby covenants and agrees that so long as any of the Outstanding Bonds, the 2021 Series Note and any Additional Bonds are outstanding, it will not issue any bonds or notes payable from the revenues of the Combined Utilities except in accordance with the provisions of this Ordinance, provided, however, the City reserves the right to issue bonds or notes which are junior in lien to the Outstanding Bonds, the 2021 Series Note and any such Additional Bonds with the principal and interest of such bonds or notes to be payable from monies credited to the Surplus Account as provided in Subsection 6(IV).

Section 13. The City may issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund any of the Outstanding Bonds, 2021 Series Note or Additional Bonds then outstanding, provided, that if any such Outstanding Bonds, 2021 Series Note or Additional Bonds are to remain outstanding after the issuance of such refunding bonds, the principal payments due in any calendar year in which those bonds which are to remain outstanding mature shall not be increased over the amount of such principal payments which would have been due in such calendar years immediately prior to such refunding. Refunding Bonds issued in accordance with this paragraph of this Section 13 may be issued as Additional Bonds of equal lien without compliance with the conditions set forth in Subsection 19(b) of this Ordinance.

The City may also issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund any of the Outstanding Bonds, 2021 Series Note or Additional Bonds then outstanding provided, that, if any such Outstanding Bonds, 2021 Series Note or Additional Bonds are to remain outstanding after the application of the proceeds of the refunding bonds to the payment of the bonds which are to be refunded, such issuance must comply with the Net Revenues test set forth in Subsection 19(b)(1) of this Ordinance and, if the proceeds of such refunding bonds are not to be applied immediately to the satisfaction of the bonds which are to be refunded, then such refunding bonds must provide by their terms that they shall be junior in lien to all Outstanding Bonds, 2021 Series Note and any Additional Bonds outstanding at the time of issuance of such refunding bonds until the time of application of their proceeds to the satisfaction of the bonds which are to be refunded. In computing Maximum Annual Debt Service to show compliance with said Net Revenues test for such refunding bonds, all payments of principal and interest due on such refunding bonds from the time of their issuance to the time of application of the proceeds of such refunding bonds to the satisfaction of the bonds which are to be refunded shall be excluded from such computation to the extent that such principal and interest are payable from sources other than the revenues of the Combined Utilities, such as bond proceeds or investment earnings on such proceeds while held in escrow, and/or from monies of the Combined Utilities but only those in the Surplus Account and all payments of principal and interest due on the bonds which are to be refunded from and after the time of such application shall also be excluded. For purposes of this paragraph of this Section 13, the time of application of the proceeds of the refunding bonds to the satisfaction of the bonds which are to be refunded shall be the time of deposit with the paying agent for such bonds which are to be refunded pursuant to Section 10-126 R.R.S. Neb. 2012 (or any successor statutory provision thereto) or the time when such bonds which are to be refunded under the

terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner.

Section 14. 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 15. While any of the Outstanding Bonds, 2021 Series Note or Additional Bonds are outstanding, the City will render bills to all customers for sewer, water and electrical services. If bills are not paid within sixty days after due, such utility service will be discontinued. The City agrees that it will order water service shut off on all properties served by water or sewer where there are delinquent water or sewer use charges and will order electric service shut off on all property served by electricity where there are delinquent electric charges, and will make appropriate charge for use of all properties of the City connected to the sewer, water and electrical systems. The City's obligations under this Section shall be subject, however, to any state or federal law governing the City's right to discontinue utility service.

Section 16. Except for amendments which are required for the correction of language to cure any ambiguity or defective or inconsistent provisions, omission or mistake or manifest error contained herein, no changes, additions or alterations of any kind shall be made by the City in the provisions of this Ordinance in any manner; provided, however, that from time to time the holders or owners of two-thirds (2/3rds) in principal amount of the Outstanding Bonds, the 2021 Series Note and of Additional Bonds outstanding authorized hereunder, as to each such series or issue (not including any of said bonds credited to any of the Accounts described in Section 13 of this Ordinance or any other of said bonds owned or controlled directly or indirectly by the City), by an instrument or instruments in writing signed by such holders or owners and filed with the City Clerk shall have power to assent to and authorize any modification of the rights and obligations of the City and of the registered owners of the Outstanding Bonds, the 2021 Series Note and of Additional Bonds and interest pertaining thereto and the provisions of this Ordinance that shall be proposed by the City, and any action authorized to be taken with the assent and authority given as aforesaid of the holders or owners of two-thirds (2/3rds) in principal amount of said bonds (as to each such issue at the time of consent or approval) shall be binding upon all holders or owners of said Outstanding Bonds, 2021 Series Note 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 the Outstanding Bond Ordinances and this Ordinance for the Outstanding Bonds, 2021 Series Note and any Additional Bonds or (d) reduce the percentage in principal amount of said outstanding bonds required to assent to or authorize any such modification. Any modification of the provisions of this Ordinance made as aforesaid shall be set forth in a supplemental ordinance to be adopted by the Mayor and Council of said City. Anything in this Section 16 notwithstanding, the City may in any ordinance authorizing Additional Bonds add additional agreements or covenants providing for the further securing of the Outstanding Bonds, the 2021 Series Note and any Additional Bonds and may also provide for appropriate sub-accounts in the Combined Utilities Revenue Bond Payment Account and Combined Utilities Bond Reserve Account, the funds in which shall be held on a priority basis for each such issue of Additional Bonds under the terms and limitations provided for in this Ordinance.

Section 17. So long as any of the Outstanding Bonds, 2021 Series Note or any Additional Bonds of equal lien are outstanding, each of the obligations, duties, limitations and restraints imposed upon the City by this Ordinance shall be deemed to be a covenant between the City and every holder or owner of said bonds, and this Ordinance and every provision and covenant hereof shall constitute a contract of the

City with every registered owner from time to time of said bonds. Any registered owner of an Outstanding Bond, 2021 Series Note or of an Additional Bond or Bonds may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction enforce and compel performance of this Ordinance and every provision and covenant thereof, including without limiting the generality of the foregoing, requesting the appointment of a receiver for the Combined Utilities and the enforcement of the performance of all duties required by the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the making and collecting of sufficient rates, rentals, fees or charges for the use and service of the Combined Utilities, the segregation of the revenues of said systems and the application thereof to the respective Fund and Accounts and sub-accounts referred to and described in Section 13 of the Outstanding Bond Ordinances and Section 13 of this Ordinance.

Section 18. 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 2021 Series Note and any such bonds shall no longer be deemed outstanding hereunder if such bonds shall have been purchased and canceled by the City, or when payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof; or (b) shall have been provided for by depositing with a national or state bank having trust powers, or trust company, in trust solely for such payment (1) sufficient money to make such payment and/or (2) Deposit Securities in such amount and bearing interest at such rates and payable at such time or times and maturing or redeemable at stated fixed prices at the option of the holder as to principal at such time or times as will ensure the availability of sufficient money to make such payment; provided, however, that with respect to any such bond to be paid prior to maturity, the City shall have duly given notice of redemption of such bond as required by this Ordinance or given irrevocable instructions for the giving of such notice. Any such money so deposited with a bank or trust company may be invested and reinvested in Deposit Securities at the direction of the City, and all interest and income from such Deposit Securities in the hands of such bank or trust company in excess of the amount required to pay principal of and interest on the bonds for which such monies were deposited, shall be paid over to the City as and when collected. For purposes of this Section 18, any Deposit Securities shall be non-callable or callable only at the option of the holder.

Section 19. The Authorized Officers and all other officers 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 2021 Series Note as contemplated by this Ordinance.

Section 20. The Mayor and Council hereby expressly declare the intent and understanding that interest on the 2021 Series Note shall not be excludable from gross income under the terms of Section 103 of the Internal Revenue Code of 1986, as amended, and the City as issuer shall not file any information report with respect to the issuance of the 2021 Series Note pursuant to Section 149(e) of said Code.

Section 21. 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 22. 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 23. All documents, agreements, certificates, and instruments related to the 2021 Bonds shall be valid, binding, and enforceable against the City when executed and delivered by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by electronic signatures laws, including any relevant provisions of the Uniform Commercial Code, in each case to the extent applicable. Each faxed, scanned, or photocopied

manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each document, agreement, certificate, and instrument related to the 2021 Bond may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same document, agreement, certificate, or instrument, as applicable.

Section 24. This Ordinance shall be in force and take effect from and after its passage and approval according to law. This Ordinance shall be published in pamphlet form.

PASSED AND APPROVED this 27th day of July, 2021.

James B. Foyt

Mayor

ATTEST:

Janula Baruth

City Clerk

(SEAL)

