
CITY OF HASTINGS, NEBRASKA

ORDINANCE NO. 4729

PASSED AND ADOPTED FEBRUARY 13, 2023

AUTHORIZING

**NOT TO EXCEED
\$2,000,000**

COMBINED UTILITIES REVENUE BOND

CITY OF HASTINGS, NEBRASKA

ORDINANCE NO. 4729

AN ORDINANCE OF THE CITY OF HASTINGS, NEBRASKA AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$2,000,000 AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITIES REVENUE BOND OF THE CITY FOR THE PURPOSE OF PROVIDING FUNDS, TOGETHER WITH OTHER AVAILABLE FUNDS OF THE CITY, FOR IMPROVEMENTS TO THE CITY'S WATER SYSTEM PAYABLE FROM THE CITY'S GAS, SEWER AND WATER UTILITIES; PRESCRIBING THE FORM AND CERTAIN DETAILS OF THE BONDS AND PROVIDING FOR THE FIXING AND ESTABLISHING OF OTHER DETAILS OF THE BONDS; PRESCRIBING THE COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS AND PRESCRIBING OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HASTINGS, NEBRASKA, AS FOLLOWS:

FINDINGS AND DETERMINATIONS

The Mayor and City Council (the "**Council**") of the City of Hastings, Nebraska (the "**City**"), hereby find and determine as follows:

1. The City is a city of the first class and political subdivision duly organized and existing under the laws of the State of Nebraska (the "**State**"), and, pursuant to Chapter 16, Reissue Revised Statutes of Nebraska, as amended, owns and operates (a) a gas plant and distribution system (the "**Gas System**"), (b) a water works plant and water system (the "**Water System**") and (c) wastewater treatment plant and facilities and sanitary sewer system (the "**Sewer System**"), each of which is a revenue-producing facility as described in Sections 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended (the "**Act**"), serving the City and its inhabitants and others within its service area (collectively, the "**Combined Utilities**," as hereinafter more fully defined).

2. The City has undertaken to acquire, construct, improve, extend, equip, and furnish certain improvements to the Combined Utilities, including, but not limited to, the acquisition, construction, improvement, repair, rehabilitation or extension thereof (collectively, the "**Project**").

3. Pursuant to the Act and the ordinances set forth below, the City has heretofore issued and has outstanding on the date hereof the following bonds and notes (collectively, the "**Outstanding Bonds**") payable the revenues derived from the operation of the Combined Utilities, as indicated below:

(a) Combined Utilities Revenue Refunding Bond, Series 2017, in the form of and evidenced by a single promissory note (the “**NDEE Note**”) of the City to the Nebraska Department of Environment and Energy (formerly the Nebraska Department of Environmental Quality, “**NDEE**”), dated September 11, 2017, in the maximum drawable amount of \$7,000,000 under Loan Contract No. C317930, as amended by Amendment No. 01 to Loan Agreement (Governmental Borrower) Between Nebraska Department of Environment and Energy and City of Hastings, Nebraska NDEE Project No. C317930 (together, the “**Loan Contract**”), authorized by Ordinance No. 4514 adopted July 24, 2017, as amended by Ordinance No. 4671 adopted June 28, 2021 (together, the “**2017 Ordinance**”)

(b) Combined Utility Revenue Refunding Bonds, Series 2021, dated August 5, 2021, originally issued in the principal amount of \$8,320,000, currently outstanding in the principal amount of \$7,620,000, with a final maturity on October 15, 2032 (the “**2021 Bonds**”). The 2021 Bonds were issued pursuant to Ordinance No. 4670 of the City adopted June 28, 2021 (the “**2021 Ordinance**”).

4. The Nebraska Department of Environment and Energy (“**NDEE**”) approved a project designated as NDEE Project No. D311691 relating to the acquisition, construction, improvement, repair, rehabilitation or extension of the City’s Water System (the “**Project**”) for which the estimated total cost is not less than \$2,000,000 and NDEE agreed to lend the City funds in such amount (the “**NDEE Loan**”) and in such connection has agreed to accept the NDEE Note (as defined and described below) payable from the revenues of the Combined Utilities.

5. In connection with the NDEE Loan the City hereby determines it necessary and appropriate to approve, execute and deliver an agreement entitled “Loan Agreement (Governmental Borrower) between the Nebraska Department of Environment and Energy And City of Hastings, Nebraska NDEE Project No. D311691” (the “**Loan Contract**”) and it is necessary and advisable for the City to approve the execution and delivery of said Loan Contract and the “Note” described therein for the borrowed amount of up to \$2,000,000, which Note shall evidence, be and constitute the “**NDEE Note**” or “**Bonds**” described herein.

6. Other than the Outstanding Bonds identified in Paragraph 2 above, there are presently no liens or pledges upon the revenues of the Gas System, Water System or Sewer System of the City.

7. To satisfy the borrowing requirements described in this section, it is necessary for the City to issue its Combined Utilities Revenue Bond, Series 2023 (Water Project), in the total principal amount of up to \$2,000,000 (referred to herein as the “**Bonds**” or the “**NDEE Note**”).

8. All conditions, acts and things required by law to exist or to be done precedent to the issuance of the Bonds do exist and have been done and performed in regular and due time as provided by law.

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to the words and terms defined elsewhere herein, the following capitalized words and terms as used in this Ordinance shall have the following meanings:

“Act” means Sections 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended.

“Authorized Officers” mean, each individually, the Mayor, City Administrator and Finance Director of the City.

“Average Annual Debt Service” means the number determined by adding all of the principal and interest which will become due when computed to the absolute maturity of the Bonds and Parity Bonds, if any, then outstanding and all of the principal and interest of the Combined Utilities Revenue Bonds to be issued, and dividing such total by the number of years remaining that the longest bond of any such Combined Utilities Revenue Bonds (including the Combined Utilities Revenue Bonds to be issued) has to run to maturity.

“Bond Counsel” means Gilmore & Bell, P.C., Omaha, Nebraska, or other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the City.

“Bond Payment Date” means any date on which principal of or interest on any Bond is payable at the Maturity thereof or on any Interest Payment Date.

“Bond Register” means the books for the registration, transfer and exchange of Bonds kept at the office of the Paying Agent.

“Bonds” or **“NDEE Note”** means the City’s Combined Utilities Revenue Bond, Series 2023, in the form of and evidenced by a single promissory note with such NDEE Note to be substantially in such form and to have such payment terms as are set forth in Attachment F to the Loan Contract.

“Business Day” means a day other than a Saturday, Sunday or holiday on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for the conduct of its banking operations.

“City” means the City of Hastings, Nebraska, and any successors or assigns.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.

“Combined Utilities” means, collectively, the Gas System, the Water System and the Sewer System of the City.

“Combined Utilities Revenue Bonds” means collectively the Bonds, the Parity Bonds and all other revenue bonds which are payable out of, or secured by an interest in, the income and Revenues derived from the operation of the Combined Utilities.

“Consultant” means an independent engineer or engineering firm having a favorable reputation for skill and experience in the construction, financing and operation of public utilities and the preparation of management studies and financial feasibility studies in connection therewith, selected by the City for the purpose of carrying out the duties imposed on the Consultant by this Ordinance.

“Debt Service Fund” means the fund by that name created by **Section 501** hereof.

“Debt Service Requirements” means the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on all Combined Utilities Revenue Bonds for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company having full trust powers.

“Debt Service Reserve Fund” means the fund by that name created by **Section 501** hereof.

“Debt Service Reserve Requirement” shall be \$0.

“Defeasance Obligations” means any of the following obligations:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (A) not subject to redemption prior to maturity or (B) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or United States Government Obligations that may be applied only to principal or redemption price of and interest payments on such obligations;

(3) such cash and the principal of and interest on such United States Government Obligations serving as security for the obligations, plus any cash in the escrow fund, are sufficient to meet the liabilities of the obligations;

(4) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(5) such cash and United States Government Obligations serving as security for the obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(6) the obligations are rated in the highest rating category by Moody’s Investors Service, Inc. (presently “Aaa”) or Standard & Poor’s Ratings Group (presently “AAA”).

“Expenses” means all reasonable and necessary expenses of operation, maintenance and repair of the Combined Utilities and keeping the Combined Utilities in good repair and working order (other than

interest paid on Combined Utilities Revenue Bonds and depreciation and amortization charges during the period of determination), determined in accordance with generally accepted accounting principles, including, without limiting the generality of the foregoing, current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, costs of materials and supplies, Paying Agent fees and expenses, annual audits, periodic Consultant's reports, properly allocated share of charges for insurance, the cost of purchased water, gas and power, if any, obligations (other than for borrowed money or for rents payable under capital leases) incurred in the ordinary course of business, liabilities incurred by endorsement for collection or deposit of checks or drafts received in the ordinary course of business, short-term obligations incurred and payable within a particular fiscal year, other obligations or indebtedness incurred for the purpose of leasing (pursuant to a true or operating lease) equipment, fixtures, inventory or other personal property, and all other expenses incident to the operation of the Combined Utilities, but shall exclude all general administrative expenses of the City not related to the operation of the Combined Utilities.

"Gas System" means the entire gas plant and distribution system owned and operated by the City for the collection, storage and distribution of natural gas to serve the needs of the City and its inhabitants and others, including all appurtenances and facilities connected therewith or relating thereto, together with all extensions, improvements, additions and enlargements thereto hereafter made or acquired by the City.

"Insurance Consultant" means an individual or firm selected by the City qualified to survey risks and to recommend insurance coverage for entities engaged in operations similar to those of the Combined Utilities and having a favorable reputation for skill and experience in making such surveys and recommendations.

"Interest Payment Date" means the Stated Maturity of an installment of interest on any Bond.

"Maturity" when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for optional or mandatory redemption or otherwise.

"Net Revenues Available for Debt Service" means, for the period of determination, all Revenues less all Expenses as determined in accordance with generally accepted accounting principles.

"Ordinance" means this Ordinance as from time to time amended in accordance with the terms hereof.

"Outstanding" means, when used with reference to Bonds, as of any particular date, all Bonds theretofore issued and delivered hereunder, except the following Bonds:

- (a) Bonds theretofore cancelled by the Paying Agent or delivered to the Paying Agent for cancellation;
- (b) Bonds deemed to be paid in accordance with the provisions of **Section 1101** hereof; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been registered and delivered hereunder.

"Parity Bonds" means the NDEE Note and the Outstanding Bonds, together with any additional parity bonds or other long-term obligations payable out of the net income and revenues of the Combined Utilities hereafter issued or incurred in accordance with the provisions of this Ordinance and standing on

a parity and equality with the Bonds with respect to the payment of principal and interest out of the net income and Revenues of the Combined Utilities, so long as any such bonds remain outstanding and unpaid or until provision is made for the payment and defeasance of such bonds.

“Parity Ordinances” means this Ordinance, the 2017 Ordinance, the 2021 Ordinance, and any other Ordinance under which any additional Parity Bonds are hereafter issued.

“Paying Agent” means the treasurer of the City, and any successors and assigns.

“Permitted Investments” means any of the following securities and obligations, if and to the extent the same are at the time legal for investment of the City’s money held in the funds referred to in **Section 501** hereof:

- (a) United States Government Obligations;
- (b) bonds, notes or other obligations of any political subdivision of the State, that at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized rating service;
- (c) repurchase agreements with any bank, bank holding company, savings and loan association, trust company, or other financial institution organized under the laws of the United States of America or any state, that are continuously and fully secured by any one or more of the securities described in clause (a) or (b) above and have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such repurchase agreement and are held in a custodial or trust account for the benefit of the City;
- (d) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;
- (e) certificates of deposit or time deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States of America or any state, provided that such certificates of deposit or time deposits shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c) above, inclusive, which shall have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such certificates of deposit or time deposits; and
- (f) any other securities or investments that are lawful for the investment of money held in such funds or accounts under the laws of the State.

“Person” means any natural person, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

“Redemption Date” when used with respect to any Bond to be redeemed means the date fixed for such redemption pursuant to the terms of this Ordinance.

“Redemption Price” when used with respect to any Bond to be redeemed means the price at which such Bond is to be redeemed pursuant to the terms of this Ordinance, including the applicable

redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

“Revenue Fund” means the fund by that name created by **Section 501** hereof.

“Revenues” means all rates, rentals, fees and charges, earnings, income, revenues, and other monies, from any source derived by the City through its ownership and the operation of the Combined Utilities, including, without limiting the generality of the foregoing, (i) all income, fees, charges, receipts, profits and other moneys derived from the sale, furnishing or supplying of the services, facilities, commodities of the Combined Utilities; (ii) the earnings on and the income from the investment of any moneys held in funds under this Ordinance; (iii) the earnings on and the income from the investment of other moneys derived from the ownership or operation of the Combined Utilities to the extent that such earnings and income are allocated by or pursuant to law to the Combined Utilities; (iv) special assessment payments and payments in aid of construction; (v) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of all or an part of the Combined Utilities, and the proceeds of insurance and condemnation awards received with respect to the Combined Utilities; (vi) any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on Combined Utilities Revenue Bonds; and (vii) any other moneys of the City which are required by the provisions hereof to be applied to the payment of Bonds; provided, however, that Revenues shall not include (A) customers', deposits or any other deposits subject to refund, until such deposits have become the property of the City, (B) earnings on and income derived from the investment of moneys or Defeasance Obligations being held irrevocably for the retirement of indebtedness of the Combined Utilities, or (C) moneys deposited with the City by employees for employee benefit purposes.

“Sewer System” means the entire wastewater treatment plant and facilities and sanitary sewer system owned and operated by the City for the collection, treatment and disposal of sewage, to serve the needs of the City and its inhabitants and others, including all appurtenances and facilities connected therewith or relating thereto, together with all extensions, improvements, additions and enlargements thereto hereafter made or acquired by the City.

“State” means the State of Nebraska.

“Stated Maturity” when used with respect to any Bond or any installment of interest thereon means the date specified in such Bond and this Ordinance as the fixed date on which the principal of such Bond or such installment of interest is due and payable.

“Surplus Fund” means the fund by that name created by **Section 501** hereof.

“United States Government Obligations” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payments on obligations issued or guaranteed by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service, and such obligations are held in a custodial or trust account for the benefit of the City.

“Water System” means the entire waterworks plant and system owned and operated by the City for the production, storage, treatment and distribution of water, to serve the needs of the City and its

inhabitants and others, including all appurtenances and facilities connected therewith or relating thereto, together with all extensions, improvements, additions and enlargements thereto hereafter made or acquired by the City.

ARTICLE II

AUTHORIZATION OF BONDS

Section 201. Authorization of NDEE Note. (a) To provide for the payment of the costs of the Project, the City shall enter into a Loan Agreement (Governmental Borrower) between the NDEE and the City (NDEE Project No. D311691) (the “**Loan Contract**”) in substantially the form set forth in Exhibit A to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth; and

(b) There shall be and there is hereby ordered issued the City’s Combined Utilities Revenue Bond, Series 2023, in the principal amount of not to exceed \$2,000,000, in the form of and evidenced by a single promissory note (referred to herein as the “**NDEE Note**” or “**Bonds**”) with such NDEE Note to be substantially in such form and to have such payment terms as are set forth in Attachment F to the Loan Contract.

(c) The terms and conditions of the NDEE Note, the Loan Contract and the Project are hereby approved and the Mayor, City Administrator and City Clerk are hereby authorized to execute and deliver the NDEE Note and the Loan Contract for and on behalf of the City in substantially the form approved but with such changes from the forms presented and attached hereto as such officers shall deem appropriate for and on behalf of the City.

(d) The Mayor, City Administrator and Clerk and any other officers of the City are hereby further authorized to take such further actions and to execute such certificates and other documents as shall be deemed necessary or appropriate by any of them in connection with the issuance and delivery of the NDEE Note and the Loan Contract.

(e) For all purposes of this ordinance, the NDEE Note shall constitute a revenue bond of the City of Hastings as authorized by Sections 18-1803 to 18-1805, R.R.S. Neb., as amended, and shall be included within the terms “bond” and “combined revenue bond” where such inclusion is appropriate.

ARTICLE III

[RESERVED]

ARTICLE IV

SECURITY

Section 401. Security. The NDEE Note is a special obligation of the City payable solely from, and secured as to the payment of principal or Redemption Price of and interest by a pledge of, the net income and revenues derived from the operation of the Combined Utilities, after providing for the costs of operation and maintenance thereof, including operating income, investment income, gifts, bequests, contributions, grants and other money made available to the City with respect to the Combined Utilities from sources other than funds raised by taxation. The City hereby pledges such net income and revenues

to the payment of the principal or Redemption Price of and interest on the NDEE Note. The NDEE Note shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the NDEE Note, either as to principal, Redemption Price or interest.

The covenants and agreements of the City contained in this Ordinance and in the NDEE Note shall be for the equal benefit, protection and security of the registered owner of the NDEE Note. The NDEE Note shall stand on a parity and be equally and ratably secured with respect to the payment of principal or Redemption Price and interest from the net income and revenues derived from the operation of the Combined Utilities and in all other respects with any Parity Bonds. The NDEE Note shall not have any priority with respect to the payment of principal, Redemption Price or interest from such net income and revenues or otherwise over the Parity Bonds and the Parity Bonds shall not have any priority with respect to the payment of principal or interest from such net income and revenues or otherwise over the NDEE Note.

ARTICLE V

FUNDS; DEPOSIT AND APPLICATION OF BOND PROCEEDS AND OTHER MONEY

Section 501. Establishment of Funds. There are hereby created or ratified and ordered to be established and maintained in the treasury of the City the following separate funds to be known respectively as follows:

- (a) Combined Utilities Revenue Fund (the “**Revenue Fund**”).
- (b) Debt Service Fund for NDEE Note (the “**Debt Service Fund**”).
- (c) Debt Service Reserve Fund for NDEE Note (the “**Debt Service Reserve Fund**”), which shall not be funded.
- (d) Combined Utilities Surplus Fund (the “**Surplus Fund**”).

The funds referred to in **Sections 501(a) through (d)**, inclusive, hereof shall be maintained and administered by the City solely for the purposes and in the manner as provided in this Ordinance so long as any of the Bonds remain Outstanding within the meaning of this Ordinance.

Section 502. Deposit of Proceeds and Other Money. The net proceeds of the NDEE Note shall be applied to pay costs of the Project as set forth in the Loan Contract.

ARTICLE VI

APPLICATION OF REVENUES

Section 601. Revenue Fund. The City covenants and agrees that from and after the delivery of the NDEE Note, and continuing as long as any of the NDEE Note remains Outstanding hereunder, all of the revenues derived and collected from the operation of the Combined Utilities shall as and when received be paid and deposited into the Revenue Fund. Such revenues shall be segregated and kept

separate and apart from all other money, revenues, funds and accounts of the City and shall not be commingled with any other money, revenues, funds and accounts of the City. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Ordinance.

Section 602. Application of Money in Funds. The City covenants and agrees that from and after the delivery of the NDEE Note and continuing so long as any of the NDEE Note shall remain Outstanding, it will on the first day of each month administer and allocate all of the money then held in the Revenue Fund as follows:

(a) **Operation and Maintenance.** There shall first be paid and credited from month to month as a first charge against the Revenue Fund the Expenses of the Combined Utilities as the same become due and payable.

(b) **Debt Service Fund.** There shall next be paid and credited monthly to the Debt Service Fund, to the extent necessary to meet on each Bond Payment Date the payment of all interest on and principal of the NDEE Note, the following sums:

(1) Beginning on the first day of the month immediately following the month in which the NDEE Note is issued and continuing the first day of each month thereafter so long as any of the NDEE Note herein authorized remain outstanding and unpaid, an amount not less than the amount which, if the same amount were deposited each month, would be sufficient to pay the interest becoming due on the NDEE Note on the next succeeding Interest Payment Date.

(2) Beginning on the first day of the month immediately following the month in which the NDEE Note is issued and continuing the first day of each month thereafter so long as any of the NDEE Note herein authorized remain outstanding and unpaid, an amount not less than the amount which, if the same amount were deposited each month, would be sufficient to pay the principal becoming due on the NDEE Note in the next succeeding Maturity.

(3) During the periods and in the amounts specified for the Parity Bonds in the Parity Ordinances.

The amounts required to be paid and credited to the Debt Service Fund pursuant to this **Section 602(b)** shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to the debt service funds established for the payment of principal and interest on Parity Bonds under the provisions of the Parity Ordinances.

Any amounts deposited in the Debt Service Fund as accrued interest or as capitalized interest in accordance with **Section 502(a)** hereof shall be credited against the City's payment obligations as set forth in this **Section 602(b)(1)**.

All amounts paid and credited to the Debt Service Fund shall be expended and used by the City for the sole purpose of paying the interest on and principal of the NDEE Note as and when the same become due at Maturity and on each Interest Payment Date.

If at any time the money in the Revenue Fund is insufficient to make in full the payments and credits at the time required to be made to the Debt Service Fund and on any Parity Bonds, the available money in the Revenue Fund shall be divided among such debt service funds in

proportion to the respective principal amounts of such series of bonds at the time outstanding which are payable from the money in such debt service funds.

(c) ***Debt Service Reserve Fund.*** Except as hereinafter provided in this **Section 602(c)**, any amounts or instruments paid and credited to a Debt Service Reserve Fund established pursuant to **Section 212** herein, shall be expended and used by the City solely to prevent any default in the payment of interest on or principal of the NDEE Note on any Maturity date or Interest Payment Date if the money or instruments in the Debt Service Fund is insufficient to pay the interest on or principal of such NDEE Note as they become due. So long as any Debt Service Reserve Fund required to be established pursuant to Section 212 aggregates the Debt Service Reserve Requirement, no payments into such Fund shall be required, but if the City is ever required to expend and use a part of the money in such Fund for the purpose herein authorized and such expenditure reduces the amount of such Fund below the Debt Service Reserve Requirement, the City shall make monthly payments into such Fund after all payments and credits required at the time to be made under the provisions of **Sections 602(a)** and **(b)** have been made until such Fund shall again aggregate the Debt Service Reserve Requirement.

The amounts required to be paid and credited to the Debt Service Reserve Fund pursuant to this **Section 602(c)** shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to any debt service reserve funds established for the Parity Bonds under the provisions of the Parity Ordinances.

If a surety or other instrument is deposited to the Debt Service Reserve Fund, the Authorized Officers shall execute and deliver such documents and agreements determined necessary and appropriate for such surety or other instrument on behalf of the City and any such agreement executed and delivered in connection with the issuance of the NDEE Note shall have the same force and effect as if fully set forth in this Ordinance with no further action required by the Mayor and Council.

Money in any Debt Service Reserve Fund may be used to call such bonds for redemption and payment prior to their Stated Maturity, provided all of the bonds at the time Outstanding are called for payment and funds are available to pay the same according to their terms. Money in the Debt Service Reserve Fund shall be used to pay and retire the last Outstanding Bonds unless such bonds and all interest thereon are otherwise paid. Any amounts in any Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement on any valuation date shall be transferred to the Debt Service Fund.

If at any time the money in the Revenue Fund is insufficient to make in full the payments and credits at the time required to be made to the Debt Service Reserve Fund and any debt service reserve fund established for any Parity Bonds, the available money in the Revenue Fund shall be divided among such debt service reserve funds in proportion to the respective principal amounts of such series of bonds at the time outstanding which are payable from the money in such debt service reserve funds.

(d) ***Surplus Fund.*** After all payments and credits required at the time to be made under the provisions of **Sections 602(a), (b)** and **(c)** hereof have been made, all money remaining in the Revenue Fund shall be paid and credited to the Surplus Fund. Money in the Surplus Fund may be expended and used for the following purposes as determined by the governing body of the City:

- (1) Paying the cost of the operation, maintenance and repair of the Combined Utilities to the extent that may be necessary after the application of the money held in the Operation and Maintenance Fund under the provisions of **Section 602(a)** hereof;
- (2) Paying the cost of extending, enlarging or improving the Combined Utilities;
- (3) Preventing default in, anticipating payments into or increasing the amounts in the Debt Service Fund or the Debt Service Reserve Fund referred to in **Sections 602(b)** and **(c)** hereof, or any one of them, or establishing or increasing the amount of any debt service fund or debt service reserve fund created by the City for the payment of any Parity Bonds;
- (4) Calling, redeeming and paying prior to Stated Maturity, or, at the option of the City, purchasing in the open market at the best price obtainable not exceeding the redemption price (if any bonds are callable), the bonds or any Parity Bonds, including principal or redemption price and interest;
- (5) Any other lawful purpose in connection with the operation of the Combined Utilities and benefiting the Combined Utilities; or
- (6) For the general governmental and municipal functions of the City; provided, however, that no such withdrawal from such Surplus Fund and payment into the General Fund of the City for the general governmental and municipal functions of the City shall be made to the extent such payment treated as an operating expense would reduce the Net Revenues Available for Debt Service for the preceding fiscal year (determined in accordance with generally accepted accounting principles applied on a consistent basis) to less than 110% of the annual Debt Service Requirement upon the NDEE Note and all Parity Bonds in such fiscal year, or at a time when the City shall be in default in the performance of any such covenant or agreement.

(e) ***Deficiency of Payments into Funds.*** If at any time the revenues derived from the operation of the Combined Utilities are insufficient to make any payment on the date or dates hereinbefore specified, the City will make good the amount of such deficiency by making additional payments or credits out of the first available revenues thereafter received from the operation of the Combined Utilities, such payments and credits being made and applied in the order hereinbefore specified in this **Section 602**.

Section 603. Transfer of Funds to Paying Agent. The Treasurer is hereby authorized and directed to withdraw from the Debt Service Fund, and, to the extent necessary to prevent a default in the payment of the principal of or interest on the NDEE Note, from the Debt Service Reserve Fund and the Surplus Fund as provided in **Section 602** hereof, sums sufficient to pay the principal of and interest on the NDEE Note as and when the same become due on any Bond Payment Date, and to forward such sums to the Paying Agent in a manner which ensures the Paying Agent will have available funds in such amounts on or before the Business Day immediately preceding each Bond Payment Date. If, through lapse of time, or otherwise, the registered owners of the NDEE Note are no longer entitled to enforce payment of their obligations, it shall be the duty of the Paying Agent forthwith to return such funds to the City. All money deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance.

Section 604. Payments Due on Saturdays, Sundays and Holidays. In any case where a Bond Payment Date is not a Business Day, then payment of principal, Redemption Price or interest need not be

made on such Bond Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Bond Payment Date, and no interest shall accrue for the period after such Bond Payment Date.

ARTICLE VII

DEPOSIT AND INVESTMENT OF MONEY

Section 701. Deposit and Investment of Money.

(a) Money in each of the funds and accounts created by and referred to in this Ordinance shall be deposited in a bank or banks located in the State that are members of the Federal Deposit Insurance Corporation. All such deposits shall be continuously and adequately secured by the banks holding such deposits as provided by the laws of the State.

(b) Money held in any fund or account referred to in this Ordinance may be invested in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than the date when the money invested may be needed for the purpose for which such fund or account was created. All earnings on any investments held in any fund or account shall accrue to and become a part of such fund or account, provided that, during the period of construction of the extensions and improvements to the Combined Utilities, all earnings on the investment of such funds shall be credited to the Project Fund. All earnings on investments held in any Debt Service Reserve Fund shall accrue to and become a part of such Fund until the amount on deposit in such Fund shall aggregate the Debt Service Reserve Requirement; thereafter, all such earnings shall be credited to the Debt Service Fund. In determining the amount held in any fund or account under any of the provisions of this Ordinance, obligations shall be valued at the lower of the cost or the market value thereof; provided, however, that investments held in any Debt Service Reserve Fund shall be valued at market value only. If and when the amount held in any fund or account shall be in excess of the amount required by the provisions of this Ordinance, the City shall direct that such excess be paid and credited to the Debt Service Fund, provided that, during the period of acquisition and construction of the extensions and improvements to the Combined Utilities, such excess shall be paid and credited to the Project Fund.

(c) So long as any of the Parity Bonds remain outstanding and unpaid, any investments made pursuant to this **Section 701** shall be subject to any restrictions in the Parity Ordinance with respect to the funds and accounts created by and referred to in the Parity Ordinance.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

The City covenants and agrees with each of the registered owners of any of the NDEE Note that so long as the NDEE Note remains Outstanding and unpaid it will comply with each of the following covenants:

Section 801. Efficient and Economical Operation. The City will continuously own and will operate the Combined Utilities as revenue producing facilities in an efficient and economical manner and will keep and maintain the same in good repair and working order. The City will establish and maintain such rules and regulations for the use of the Combined Utilities as may be necessary to assure maximum utilization and most efficient operation of the Combined Utilities.

Section 802. Rate Covenant. The City in accordance with and subject to applicable legal requirements will fix, establish, maintain and collect such rates and charges for the use and services furnished by or through the Combined Utilities as will produce revenues sufficient to (a) pay the costs of the operation and maintenance of the Combined Utilities; (b) pay the principal of and interest on the NDEE Note as and when the same become due at the Maturity thereof or on any Interest Payment Date; and (c) enable the City to have in each fiscal year Net Revenues Available for Debt Service not less than 110% of the Debt Service Requirements for such fiscal year. The City will require the prompt payment of accounts for service rendered by or through the Combined Utilities and will promptly take whatever action is legally permissible to enforce and collect delinquent charges. The City will, from time to time as often as necessary, in accordance with and subject to applicable legal requirements, revise the rates and charges in such manner as may be necessary or proper so that the Net Revenues Available for Debt Service will be sufficient to cover the obligations under this **Section 802** and otherwise under the provisions of this Ordinance. If in any fiscal year Net Revenues Available for Debt Service are an amount less than as hereinbefore provided, the City will immediately employ a Consultant to make recommendations with respect to such rates and charges. A copy of the Consultant's report and recommendations shall be filed with the City Clerk and the NDEE and shall be furnished to any registered owner of the NDEE Note requesting a copy of the same, at the cost of such registered owner. The City shall, to the extent feasible, follow the recommendations of the Consultant.

Section 803. Reasonable Charges for all Services. None of the facilities or services provided by the Combined Utilities will be furnished to any user without a reasonable charge being made therefor.

Section 804. Restrictions on Mortgage or Sale of Combined Utilities. The City will not mortgage, pledge or otherwise encumber the Combined Utilities or any part thereof, nor will it sell, lease or otherwise dispose of the Combined Utilities or any material part thereof; provided, however, the City may:

(a) sell at fair market value any portion of the Combined Utilities which has been replaced by other similar property of at least equal value, or which ceases to be necessary for the efficient operation of the Combined Utilities, and in the event of sale, the City will apply the proceeds to either (1) redemption of Outstanding Bonds in accordance with the provisions governing repayment of the bonds in advance of Stated Maturity, or (2) replacement of the property so disposed of by other property the revenues of which shall be incorporated into the Combined Utilities as hereinbefore provided;

(b) cease to operate, abandon or otherwise dispose of any property which has become obsolete, nonproductive or otherwise unusable to the advantage of the City;

(c) lease, (1) as lessor, any real or personal property which is unused or unimproved, or which has become obsolete, nonproductive or otherwise unusable to the advantage of the City, or which is being acquired as a part of a lease/purchase financing for the acquisition and/or improvement of such property; and/or (2) as lessee, with an option of the City to purchase, any real or personal property for the extension and improvement of the Combined Utilities. Property being leased as lessor and/or lessee pursuant to this subsection (c) shall not be treated as part of the Combined Utilities for purposes of this **Section 804** and may be mortgaged, pledged or otherwise encumbered;

(d) grant a security interest in equipment to be purchased with the proceeds of any loan, lease or other obligation undertaken in accordance with **Article IX** hereof; or

(e) sell, lease or convey all or substantially all of the Combined Utilities to another entity or enter into a management contract with another entity if:

- (1) The transferee entity is a political subdivision organized and existing under the laws of the State, or instrumentality thereof, or an organization described in Section 501(c)(3) of the Code, and expressly assumes in writing the due and punctual payment of the principal or redemption price of and interest on all outstanding Combined Utilities Revenue Bonds according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Ordinance;
- (2) If there remains unpaid any Combined Utilities Revenue Bond which bears interest that is not includable in gross income under the Code, the City receives an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that under then existing law the consummation of such sale, lease or conveyance, whether or not contemplated on any date of the delivery of such Combined Utilities Revenue Bond, would not cause the interest payable on such Combined Utilities Revenue Bond to become includable in gross income under the Code;
- (3) The City receives a certificate of the Consultant which demonstrates and certifies that immediately upon such sale or conveyance the transferee entity will not, as a result thereof, be in default in the performance or observance of any covenant or agreement to be performed or observed by it under this Ordinance;
- (4) Such transferee entity possesses such licenses to operate the Combined Utilities as may be required if it is to operate the Combined Utilities; and
- (5) The City receives an opinion of Bond Counsel, in form and substance satisfactory to the City, as conclusive evidence that any such sale, lease or conveyance, and any such assumption, is permitted by law and complies with the provisions of this **Section 804.**

Section 805. Insurance. The City will carry and maintain insurance with respect to the Combined Utilities and its operations against such casualties, contingencies and risks (including but not limited to property and casualty, fire and extended coverage insurance upon all of the properties forming a part of the Combined Utilities insofar as the same are of an insurable nature, public liability, business interruption or use and occupancy insurance, worker's compensation and employee dishonesty insurance), such insurance to be of the character and coverage and in such amounts as would normally be carried by other enterprises engaged in similar activities of comparable size and similarly situated. In the event of loss or damage, the City, with reasonable dispatch, will use the proceeds of such insurance in reconstructing and replacing the property damaged or destroyed, or in paying the claims on account of which such proceeds were received, or if such reconstruction or replacement is unnecessary or impracticable, then the City will pay and deposit the proceeds of such insurance into the Revenue Fund. The City will annually review the insurance it maintains with respect to the Combined Utilities to determine that it is customary and adequate to protect its property and operations. The City may elect to be self-insured for all or any part of the foregoing requirements if (a) the City annually obtains a written evaluation with respect to such self-insurance program from an Insurance Consultant, (b) the evaluation is to the effect that the self-insurance program is actuarially sound, (c) unless the evaluation states that such reserves are not necessary, the City deposits and maintains adequate reserves for the self-insurance program with a corporate trustee, who may be the Paying Agent, and (d) in the case of workers' compensation, adequate reserves created by the City for such self-insurance program are deposited and maintained in such amount and manner as are acceptable to the State. The City shall pay any fees and

expenses of such Insurance Consultant in connection therewith. The cost of all insurance obtained pursuant to the requirements of this **Section 805** shall be paid as an Expense out of the Revenues of the Combined Utilities.

Section 806. Books, Records and Accounts. The City will install and maintain proper books, records and accounts (entirely separate from all other records and accounts of the City) in which complete and correct entries will be made of all dealings and transactions of or in relation to the Combined Utilities. Such accounts shall show the amount of Revenues received from the Combined Utilities, the application of such Revenues, and all financial transactions in connection therewith. Such books shall be kept by the City according to standard accounting practices as applicable to the operation of facilities comparable to the Combined Utilities.

Section 807. Annual Budget. Prior to the commencement of each fiscal year, the City will cause to be prepared and filed with the City Clerk a budget setting forth the estimated receipts and expenditures of the Combined Utilities for the next succeeding fiscal year. Such annual budget shall be prepared in accordance with the requirements of the laws of the State and shall contain all information that is required by such laws.

Section 808. Annual Audit. Annually, promptly after the end of the fiscal year, the City will cause an audit to be made which includes the operating results of the Combined Utilities for the preceding fiscal year by a certified public accountant or firm of certified public accountants. Such annual audit may be integrated within the City's general audit.

Section 809. Right of Inspection. Any registered owner or owners of 10% of the principal amount of the NDEE Note then Outstanding shall have the right at all reasonable times to inspect the Combined Utilities and all records, accounts and data relating thereto, and shall be furnished all such information concerning the Combined Utilities and the operation thereof which NDEE or such registered owner or owners may reasonably request.

Section 810. Administrative Personnel. The City shall use its best efforts to employ at all times administrative personnel experienced and well qualified to operate the Combined Utilities. The City further agrees that such administrative personnel shall be employed in sufficient numbers to ensure that the Combined Utilities will be operated in a prudent and efficient manner, following procedures generally accepted within the utility industry in the United States of America.

Section 811. Performance of Duties and Covenants. The City will faithfully and punctually perform all duties, covenants and obligations with respect to the operation of the Combined Utilities now or hereafter imposed upon the City by the Constitution and laws of the State and by the provisions of this Ordinance.

Section 812. Tax Covenants. The Mayor and Council hereby expressly declare the intent and understanding that interest on the NDEQ 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 NDEQ Note pursuant to Section 149(e) of said Code.

Section 813. [RESERVED]

Section 814. Utility Coverage Provision. Each of the Gas System, Sewer System and Water System shall, individually and independent of the others, maintain Net Revenues Available for Debt Service not less than 125% of the Debt Service Requirements attributable to such system for each fiscal

year. The provisions of this Section 814 are for the convenience of the City, are not for the benefit of any bondholder, and may be amended, modified, superseded, or removed at any time by action of the Mayor and City Council of the City.

ARTICLE IX

ADDITIONAL BONDS AND OBLIGATIONS

Section 901. Senior Lien Bonds. The City covenants and agrees that so long as any of the Bonds remain Outstanding, the City will not issue any additional bonds or incur or assume any other debt obligations appearing as liabilities on the balance sheet of the City for the payment of money determined in accordance with generally accepted accounting principles including capital leases as defined by generally accepted accounting principles, payable out of the net income and revenues of the Combined Utilities or any part thereof which are superior to the Bonds.

Section 902. Parity Lien Bonds. The City covenants and agrees that so long as any of the Bonds remain Outstanding, it will not issue any additional Parity Bonds payable out of the net income and revenues of the Combined Utilities or any part thereof which stand on a parity or equality with the Bonds and the Refunding Bonds ("**Parity Bonds**") unless the following conditions are met:

(a) The City shall not be in default in the payment of principal of or interest on any Bonds or any Parity Bonds at the time outstanding or in making any payment at the time required to be made into the respective funds and accounts created by and referred to in this Ordinance or any Parity Ordinance (unless such additional revenue bonds or obligations are being issued to provide funds to cure such default); and

(b) Based upon the most recent audited financial statement of the City, the Net Revenues Available for Debt Service derived by the City from the operation of the Combined Utilities, for the fiscal year immediately preceding the issuance of additional bonds shall have been equal to at least 125% of the Average Annual Debt Service with respect to all Combined Utilities Revenue Bonds of the City, including the Combined Utilities Revenue Bonds proposed to be issued. In the event that the Mayor and Council determine it necessary and advisable for the City to issue Parity Bonds and the audit for the fiscal year next preceding the date of authorization of such Parity Bonds is not yet available, the City may issue such Parity Bonds if the audit for the fiscal year immediately preceding such next preceding fiscal year shows that the Net Revenues Available for Debt Service derived by the City from the operation of the Combined Utilities for such fiscal year shall have been equal to 125% of the Average Annual Debt Service with respect to all Combined Utilities Revenue Bonds of the City, including the Combined Utilities Revenue Bonds proposed to be issued if the City Treasurer certifies that the unaudited books and records of the Combined Utilities for the fiscal year next preceding the date of authorization of such Parity Bonds do not show any variance in operating results which would be sufficient to evidence a reduction in debt service coverage below 125% of the Average Annual Debt Service of all Combined Utilities Revenue Bonds of the City, including the Combined Utilities Revenue Bonds proposed to be issued.

In the event any change in the rates, rentals and charges for the use and service of the Combined Utilities or any part thereof has been made during the preceding fiscal year or during the interval between the end of such fiscal year and the issuance of such Parity Bonds, or in the event the City shall covenant in the ordinance or resolution authorizing the issuance of such Parity Bonds to impose, effective upon the issuance of such Parity Bonds, higher rates, rentals and charges for such use and service, compliance with the provisions of this **Section 902** may be

evidenced by a certificate of a Consultant or Certified Public Accountant or firm of independent Certified Public Accountants to be filed with the City Clerk prior to the issuance of any such Parity Bonds. Such certificate shall state fully the facts upon which such certificate is based, and if it is a certificate of the Consultant shall have attached thereto the certified financial statement for the fiscal year next preceding the date of authorization of such Parity Bonds used by the Consultant in arriving at the conclusion stated in such certificate. The Consultant or independent Certified Public Accountant shall, in determining the Net Revenues Available for Debt Service for such fiscal year, adjust the collections to reflect the result as if such changed rates, rentals and charges, or such higher rates, rentals and charges had been in existence for such entire preceding fiscal year period, and the amount of such net collections and adjusted earnings as provided shall be conclusive evidence and the only evidence required to show compliance with the provisions and requirements of this **Section 902**. If the Council determines that the Net Revenues Available for Debt Service for the fiscal year next preceding the date of the authorization of such Parity Bonds, based upon a certified public accountant's report, comply without adjustment with the requirements of this **Section 902**, no certificate from a Consultant or firm of engineers or Certified Public Accountant or firm of independent Certified Public Accountants shall be required to evidence compliance with the provisions of this **Section 902**.

Additional revenue bonds of the City issued under the conditions set forth in this **Section 902** shall stand on a parity with the Bonds and shall enjoy complete equality or lien on and claim against the net revenues of the Combined Utilities with the Bonds, and the City may make equal provision for paying such bonds and the interest thereon out of the Revenue Fund and may likewise provide for the creation of reasonable debt service funds and debt service reserve funds for the payment of such additional bonds and the interest thereon out of money in the Revenue Fund.

Section 903. Junior Lien Bonds and Other Obligations. Nothing in this **Section 903** contained shall prohibit or restrict the right of the City to issue additional revenue bonds or other revenue obligations for any lawful purpose in connection with the operation of the facility and benefiting the Combined Utilities and to provide that the principal of and interest on such revenue bonds or obligations shall be payable out of the revenues of the Combined Utilities, provided at the time of the issuance of such additional revenue bonds or obligations the City is not in default in the performance of any covenant or agreement contained in this Ordinance (unless such additional revenue bonds or obligations are being issued to provide funds to cure such default), and provided further that such additional revenue bonds or obligations shall be junior and subordinate to the Bonds so that if at any time the City shall be in default in paying either interest on or principal of the Bonds, or if the City is in default in making any payments required to be made by it under the provisions of **Sections 602(a), (b) and (c)** hereof, the City shall make no payments of either principal of or interest on such junior and subordinate revenue bonds or obligations until such default or defaults be cured. In the event of the issuance of any such junior and subordinate revenue bonds or obligations, the City, subject to the provisions of this Ordinance, may make provision for paying the principal of and interest on such revenue bonds or obligations out of money in the Revenue Fund.

Section 904. Refunding Bonds. The City shall have the right, without complying with the provisions of **Section 902** hereof, to refund any of the Bonds under the provisions of any law then available, and the refunding bonds so issued shall enjoy complete equality of pledge with any of the Bonds which are not refunded, if any, upon the revenues of the Combined Utilities; provided, however, that if only a portion of the Bonds are refunded and if such Bonds are refunded in such manner that the refunding bonds bear a higher average rate of interest or become due on a date earlier than that of the Bonds which are refunded, then such Bonds may be refunded without complying with the provisions of

Section 902 hereof only by and with the written consent of the registered owners of a majority in principal amount of the Bonds not refunded.

ARTICLE X

DEFAULT AND REMEDIES

Section 1001. Remedies Upon Default. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the registered owners of the Bonds, and the registered owner or owners of not less than 10% in aggregate principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all registered owners of Bonds similarly situated:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such registered owner or owners against the City and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Ordinance or by the Constitution and laws of the State;

(b) by suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the registered owners of the Bonds.

Section 1002. Limitation on Rights of Registered Owners. No one or more registered owners secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all registered owners of such Outstanding Bonds.

Section 1003. Remedies Cumulative. No remedy conferred herein upon the registered owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the registered owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies consequent thereon. No delay or omission of any registered owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the registered owners of the Bonds by this Ordinance may be enforced and exercised from time to time and as often as may be deemed expedient. If any suit, action or proceedings taken by any registered owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or has been determined adversely to such registered owner, then, and in every such case, the City and the registered owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the registered owners shall continue as if no such suit, action or other proceedings had been brought or taken.

Section 1004. No Obligation to Levy Taxes. Nothing contained in this Ordinance shall be construed as imposing on the City any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or interest on the Bonds.

ARTICLE XI

DEFEASANCE

Section 1101. Defeasance. When any or all of the Bonds or the interest payments thereon have been paid and discharged, then the requirements contained in this Ordinance and the pledge of revenues made hereunder and all other rights granted hereby shall terminate with respect to the Bonds so paid and discharged. Bonds or the interest payments thereon shall be deemed to have been paid and discharged within the meaning of this Ordinance if there has been deposited with the Paying Agent, or other commercial bank or trust company located in the State and having full trust powers, at or prior to the Stated Maturity or Redemption Date of such Bonds, in trust for and irrevocably appropriated thereto, money and/or Defeasance Obligations which, together with the interest to be earned thereon, will be sufficient for the payment of the principal or Redemption Price of such Bonds, and/or interest to accrue on such Bonds to the Stated Maturity or Redemption Date, as the case may be, or if default in such payment shall have occurred on such date, then to the date of the tender of such payments; provided, however, that if any such Bonds shall be redeemed prior to the Stated Maturity thereof, (a) the City shall have elected to redeem such Bonds, and (b) either notice of such redemption shall have been given, or the City shall have given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Paying Agent to redeem such Bonds in compliance with **Section 302(a)** hereof. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or the interest payments thereon, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective registered owners of the Bonds, and such money shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Paying Agent or other bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 1201. Amendments. The rights and duties of the City and the registered owners, and the terms and provisions of the Bonds or of this Ordinance, may be amended or modified at any time in any respect by Ordinance of the City with the written consent of the registered owners of not less than a majority in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by such registered owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk, but no such modification or alteration shall:

- (a) extend the maturity of any payment of principal or interest due upon any Bond;
- (b) effect a reduction in the amount which the City is required to pay by way of principal of or interest on any Bond;
- (c) permit the creation of a lien on the revenues of the Combined Utilities prior or equal to the lien of the Bonds or Parity Bonds;
- (d) permit preference or priority of any Bonds over any other Bonds; or

(e) reduce the percentage in principal amount of Bonds required for the written consent to any modification or alteration of the provisions of this Ordinance.

Any provision of the Bonds or of this Ordinance may, however, be amended or modified by Ordinance duly adopted by the governing body of the City at any time in any respect with the written consent of the registered owners of all of the Bonds at the time Outstanding.

Without notice to or the consent of any registered owners, the City may amend or supplement this Ordinance for the purpose of (a) curing any formal defect, omission, inconsistency or ambiguity therein or in connection with any other change therein which is not materially adverse to the interests of the registered owners, or (b) amending or eliminating the provisions of **Section 814** herein.

Every amendment or modification of the provisions of the Bonds or of this Ordinance shall be expressed in an ordinance adopted by the governing body of the City amending or supplementing the provisions of this Ordinance and shall be deemed to be a part of this Ordinance. A certified copy of every such amendatory or supplemental Ordinance, if any, and a certified copy of this Ordinance shall always be kept on file in the office of the City Clerk, shall be made available for inspection by the registered owner of any Bond or a prospective purchaser or owner of any Bond authorized by this Ordinance, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental Ordinance or of this Ordinance will be sent by the City Clerk to any such registered owner or prospective registered owner.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the City Clerk a copy of the Ordinance of the City hereinabove provided for, duly certified, as well as proof of any required consent to such modification by the registered owners of the Bonds then Outstanding. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification.

The City shall furnish to the Paying Agent a copy of any amendment to the Bonds or this Ordinance made hereunder which affects the duties or obligations of the Paying Agent under this Ordinance.

Section 1202. Notices, Consents and Other Instruments by Registered Owners. Any notice, consent, request, direction, approval, objection or other instrument required by this Ordinance to be signed and executed by the registered owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such registered owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the City and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution; and

(b) The fact of ownership of Bonds, the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the Bond Register.

In determining whether the registered owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under

this Ordinance, Bonds owned by the City shall be disregarded and deemed not to be Outstanding under this Ordinance, except that, in determining whether the registered owners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the registered owners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as provided if the pledgee establishes to the satisfaction of the registered owners the pledgee's right so to act with respect to such Bonds and that the pledgee is not the City.

Section 1203. Electronic Transactions. The transactions described herein may be conducted and this Ordinance and related documents may be sent, received and stored by electronic means. All closing documents, certificates, and related instruments may be executed by electronic transmission. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents (or documents executed by electronic transmission) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 1204. Further Authority. The officers of the City, including the Mayor and City Clerk, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 1205. Severability. If any section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

Section 1206. Governing Law. This Ordinance shall be governed by and constructed in accordance with the applicable laws of the State.

Section 1207. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Mayor and Council and approval by the Mayor and publication in pamphlet or electronic form as provided by law.

PASSED AND ADOPTED this 13th day of February, 2023.

CITY OF HASTINGS, NEBRASKA

(SEAL)

By: _____

Mayor

ATTEST:

By: _____

City Clerk

