



# City of Grand Island

Tuesday, February 28, 2017

Council Session

## Item F-1

### #9626 - Consideration of Issuance of Water Revenue Bonds

Staff Contact: Tim Luchsinger, Renae Griffiths

# Council Agenda Memo

**From:** Timothy Luchsinger, Utilities Director  
Renaë Griffiths, Finance Director

**Meeting:** February 28, 2017

**Subject:** Ordinance #9626 – Consideration of Issuance of Water Revenue Bonds

**Presenter(s):** Timothy Luchsinger, Utilities Director

## Background

The Grand Island water system's usage has increased to where additional capacity is required to allow future growth in the City. An elevated storage tank is recommended by the recently completed Water System Master Plan. To fund the cost of the elevated storage tank, a bond issue is proposed.

A Cost of Service Study was completed by the Nebraska Municipal Power Pool in order to support projected revenue requirements of the bond debt service. The results of the study and possible changes to the water system rate structure were provided to the Council for discussion at the Study Session on November 1, 2016, with the rate ordinance adopting the recommended changes approved at the November 22, 2016 Council Meeting.

Locations for siting the elevated storage tank were evaluated based on hydraulic characteristics of the water system, current and future community development, and ground elevation. A site at the southwest corner of the Copper Creek housing area on Engleman Road between Potash Highway and Stolley Park Road was selected as best meeting the requirements for the tank and its purchase was approved by Council on December 27, 2016.

Two of the major components required to complete this project are the construction of the elevated storage tank and completion of the major trunk line on Engleman Road. Specifications were issued for these items and bids have been received.

## Discussion

The City's financial team of Municipal Capital Advisors, D. A. Davidson, and Gilmore & Bell have prepared an ordinance authoring the issuance of revenue bonds to fund the cost of the elevated storage tank project.

To provide for the estimated cost of \$5,000,000 for the project, they have prepared an estimate of the debt service based on issuing bonds for a term of 20 years at an average interest rate of around 3.4%. The estimated par amount of \$5,075,000 includes issuance costs with an estimated final bond cost of about \$5,100,000. The debt service schedule is based on a wraparound of the existing Water Revenue and Refunding Bonds, Series 2012 that were issued to provide for capital costs of a uranium removal system.

The current annual debt service of about \$300,000 for the 2012 bonds will increase to about \$525,000 for both bonds for the term of the 2017 bonds. The financial team recommends that the Water Utility be reviewed by a rating agency prior to issuing the bonds in order to receive the most favorable interest rate.

The estimated debt service schedule is conservative and could improve based on a higher agency rating and the possibility of including a refinancing of the 2012 bonds in the 2017 issuance. Upon receiving the agency rating and based on conditions of the bond market at that time, the bond authorization is in an amount not to exceed \$8,200,000, which would allow for the refunding of the 2012 bonds if it is determined that this would be an overall benefit to the Utility.

The recommended ordinance would authorize the Mayor to execute the bond refinancing documents upon determination of the final rates and financing costs.

### **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approve the Issuance of Water Revenue and Refunding Bonds, Series 2017, in the principal amount not to exceed \$8,200,000.

### **Sample Motion**

Move to approve the Issuance of Water Revenue and Refunding Bonds, Series 2017 in the principal not to exceed \$8,200,000.

ORDINANCE NO. 9626

AN ORDINANCE AUTHORIZING THE ISSUANCE OF ONE OR MORE SERIES OF WATER REVENUE AND REFUNDING BONDS OF THE CITY OF GRAND ISLAND, NEBRASKA, IN THE AGGREGATE STATED PRINCIPAL AMOUNT OF NOT TO EXCEED EIGHT MILLION TWO HUNDRED THOUSAND DOLLARS (\$8,200,000) FOR THE PURPOSES OF PAYING AND REDEEMING CERTAIN OUTSTANDING WATER REVENUE BONDS OF THE CITY, PAYING THE COSTS OF ADDITIONS AND IMPROVEMENTS TO THE WATERWORKS PLANT AND WATER SYSTEM OF SAID CITY AND PROVIDING FOR ANY NECESSARY RESERVE FUNDS; DIRECTING THE APPLICATION OF THE PROCEEDS OF SAID BONDS; PRESCRIBING THE FORM AND CERTAIN TERMS AND DETAILS OF SAID BONDS AND AUTHORIZING THE DETERMINATION OF CERTAIN TERMS AND DETAILS; AUTHORIZING THE CALL FOR REDEMPTION OF CERTAIN OUTSTANDING WATER REVENUE BONDS OF THE CITY; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE WATERWORKS PLANT AND WATER SYSTEM OF SAID CITY FOR THE PAYMENT OF SAID BONDS AND INTEREST THEREON; PROVIDING FOR THE COLLECTION, SEGREGATION AND APPLICATION OF THE REVENUES OF SAID WATERWORKS PLANT AND WATER SYSTEM OF SAID CITY; ENTERING INTO A CONTRACT ON BEHALF OF THE CITY WITH THE HOLDERS OF SAID BONDS; AND PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED by the Mayor and Council of the City of Grand Island, Nebraska, as follows:

Section 1. The Mayor and Council of the City of Grand Island, Nebraska, hereby find and determine:

(a) The City owns and operates a waterworks plant and system (such plant and system, together with all additions and improvements thereto hereafter acquired are herein referred to as the "Water System") which represents a revenue-producing undertaking of the City;

(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 Water System:

Water Revenue and Refunding Bonds, Series 2012, date of original issue – June 26, 2012, authorized pursuant to Ordinance No. 9385 of the City (the "Prior Ordinance"), in the original principal amount of \$3,725,000 of which bonds in the principal amount of \$2,825,000 are outstanding and unpaid (the "2012 Bonds");

(c) The 2012 Bonds constitute the only presently outstanding indebtedness of the City payable from the revenues of the Water System and, as outstanding, are sometimes herein referred to as the "Outstanding Bonds";

(d) The 2012 Bonds are subject to redemption at any time on or after June 26, 2017, at par plus accrued interest to the date fixed for redemption and are herein authorized to be irrevocably called for redemption in accordance with their call provisions on a date to be determined (such date referred to herein as the "Redemption Date"); that since the 2012 Bonds were issued, the rates of interest available in the market have declined such that by taking up and paying off the 2012 Bonds (as may be called for redemption, the "Refunded Bonds") through the

Approved as to Form	□ _____
March 10, 2017	□ City Attorney

ORDINANCE NO. 9626

issuance of refunding bonds as provided herein, a savings in the amount of yearly running interest will be made to the City;

(e) The City has constructed or will construct certain improvements to the Water System which include an elevated water storage tank, system infrastructure, and other improvements, for which the total construction cost is not less than \$5,000,000, and it is further necessary and appropriate to borrow amounts to cover issuance expense, and for all of such purposes it is necessary to borrow monies to provide for such costs as provided herein;

(g) Under the terms of the Prior Ordinance, bonds of equal lien with the Outstanding Bonds may be issued provided that (1) certain revenues have been experienced by the Water System for its most recent fiscal year 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, that certain revenues are expected in the next three fiscal years;

(g) The Authorized Officers (as defined herein) are hereby authorized to and shall certify prior to the issuance of the bonds authorized herein (1) that Net Revenues as defined in the Prior Ordinance (i) are not less than 1.25 times the average annual debt service requirements (as described in the Prior Ordinance) of the Outstanding Bonds (as may be outstanding at the time of issuance of each series of the bonds herein authorized) and the bonds herein authorized based upon financial statements as required by the Prior Ordinance or (ii) in each of the three full fiscal years after the issuance of such Additional Bonds will be at least equal to 1.25 times the Average Annual Debt Service Requirements of the Outstanding Bonds and of the bonds authorized herein, as shown in a project received by the City from and made by a consulting engineer having experience in municipal utility systems, as required by the Prior Ordinance; (2) that said Outstanding Bonds represent the only outstanding indebtedness of the City for which the revenues of the Water System have been pledged; and (3) that all conditions required under the terms of the Prior Ordinance for the issuance of the bonds herein authorized as “additional bonds” of equal lien and standing with the Outstanding Bonds do exist and have happened;

(h) To redeem the Refunded Bonds, pay the costs of the Project, provide for any necessary reserve funds and pay the costs of issuance of the bonds herein authorized, all as described in this Section 1, it is necessary for the City to issue its Water Revenue and Refunding Bonds, Series 2017, in one or more series, in the total principal amount of not to exceed \$8,200,000 pursuant to Sections 10-142 and 18-1803 to 18-1805 R.R.S. Neb. 2012, as amended; and

(i) All conditions, acts and things required by law to exist or to be done precedent to the issuance of the City’s Water Revenue and Refunding Bonds, in one or more series, in the principal amount of not to exceed \$8,200,000 do exist and have been done and performed in regular and due time and form as required by law. Said bonds will be payable from the revenues of the Water System.

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 “revenues” shall mean all of the rates, rentals, fees and charges, earnings and other monies, including investment income, from any source derived by the City of Grand Island, Nebraska, through its ownership and operation of the Water System.

ORDINANCE NO. 9626

(b) the term “Additional Bonds” shall mean any and all bonds hereafter issued by the City pursuant to the terms of this Ordinance including all such bonds issued pursuant to Section 13 and refunding bonds issued pursuant to Section 14.

(c) the term “Average Annual Debt Service Requirements” shall mean that number computed by adding all of the principal and interest due when computed to the absolute maturity of the bonds for which such computation is required and dividing by the number of years remaining that the longest bond of any issue for which such computation is required has to run to maturity. In making such computation, the principal of any bonds for which mandatory redemptions are scheduled shall be treated as maturing in accordance with such schedule of mandatory redemptions.

(d) the term “Deposit Securities” shall mean obligations of the United States of America; direct or unconditionally guaranteed, including any such obligations issued in book entry form.

(e) the term “Net Revenues” shall mean the gross revenues derived by the City from the ownership or operation of the Water System, including investment income, but not including any income from sale or disposition of any property belonging to or forming a part of the Water System, less the ordinary expenses for operating and maintaining the Water System payable from the Operation and Maintenance Account described in Section 11 of this Ordinance. Operation and Maintenance expenses for purposes of determining “Net Revenues” shall not include depreciation, amortization of financing expenses or interest on any bonds or other indebtedness. Net Revenues for all purposes of this Ordinance shall be shown by an audit for the fiscal year in question as conducted by an independent certified public accountant or firm of such accountants, provided, however, for purposes of determining compliance with requirements for issuing Additional Bonds, in the event that as of the time of authorization or issuance of Additional Bonds, the financial statements for the most recently completed fiscal year have not yet been completed and reported on by the City’s certified public accountant, compliance may be shown using the audited financial statements for the most recently completed fiscal year for which audited financial statements are available and unaudited financial statements (certified by the City Treasurer) for the most recently completed fiscal year so long as compliance is shown for both such fiscal years.

(f) the term “Paying Agent and Registrar” shall mean a bank or trust company as determined by the Authorized Officers appointed to act as paying agent and registrar for the 2017 Bonds pursuant to Section 4 hereof, or any successor thereto.

Section 3. To provide financing for the costs of the Project as described in Sections 1 and 2 hereof, including costs of issuance hereof, there shall be and there are hereby ordered issued, in one or more series, Water System Revenue and Refunding Bonds, Series 2017, of the City of Grand Island, Nebraska, in the aggregate stated principal amount of not to exceed Eight Million Two Hundred Thousand Dollars (\$8,200,000) (the “2017 Bonds”). The 2017 Bonds or any portion thereof are hereby authorized to be sold in one or more series pursuant to a negotiated sale with D.A. Davidson & Co., as initial purchaser (the “Underwriter”) or through a private placement with a bank, and are authorized to be sold in one or more series. In connection with such sale or sales, the Mayor, Finance Director or City Administrator (each, an “Authorized Officer”) are hereby authorized to specify, determine, designate, establish and appoint, as the case may be, in one or more written designations which may be included in a bond purchase agreement (each, a “Designation”), (a) whether the 2017 Bonds shall be sold pursuant to a negotiated sale with the Underwriter or pursuant to a private placement with a bank, (b) the aggregate purchase price of the 2017 Bonds and the underwriting discount which shall not exceed 0.90% of the aggregate stated principal amount thereof, (c) the form and contents of any bond purchase agreement or

ORDINANCE NO. 9626

other agreement in connection with such sale, (d) the title (including series designation), dated date (which shall not be later than December 31, 2017), aggregate principal amount (including the aggregate principal amounts of serial Bonds and term Bonds, if any), which aggregate stated principal amount shall not exceed \$8,200,000, provided, however, such overall aggregate stated principal amount may be increased if such bonds are issued with net original issue discount by such amount necessary to produce an equal amount of net proceeds if issued without net original issue discount, (e) the final maturity date of the 2017 Bonds, which shall not be later than December 31, 2037, (f) the principal amounts maturing in each year, (g) the rate or rates of interest to be borne by each principal maturity of the 2017 Bonds, provided that (1) the true interest cost of the 2017 Bonds issued to pay costs of the Project shall not exceed 4.50% and (2) net present value savings over the Refunded Bonds results from the issuance of that portion of the 2017 Bonds issued to refund the Refunded Bonds, (h) the principal payment dates and interest payment dates, (i) any original issue discount or premium allocable to any maturities of the 2017 Bonds (j) whether the 2017 Bonds will be subject to redemption prior to their stated maturity, and if subject to such optional redemption, the provisions governing such redemption, including a redemption price not to exceed 104% of the principal amount then being redeemed plus accrued interest to the date of redemption, (k) the amount and due date of each sinking fund installment for any of the 2017 Bonds issued as term Bonds, (l) the designation of the Paying Agent and Registrar and the form and content of any agreement between the City and such entity, (m) the amount (which may be \$0) from bond proceeds or other available funds which shall be deposited into the Debt Service Reserve Account for the 2017 Bonds, and (n) all other terms and provisions of the 2017 Bonds not otherwise specified or fixed by this Ordinance.

The Authorized Officers, or each individually, are hereby authorized to irrevocably call any or all of the 2012 Bonds (as called for redemption, the "Refunded Bonds") for redemption on such date he or she determines appropriate, which date shall be the Redemption Date hereunder. The Authorized Officers, or each individually, are hereby authorized to designate, approve, execute and deliver, as the case may be (i) the form, content, terms and provisions of any published and/or mailed notice of redemption with respect to the payment and redemption of the Refunded Bonds, (ii) an Escrow Agent, (iii) the form, content, terms and provisions of an Escrow Agreement with the Escrow Agent for the purpose of providing for the deposit in trust with the Escrow Agent a portion of the net proceeds of the Bonds, the investment of such net proceeds pending their application, the application of such proceeds and any investment income to the payment of all of the principal of and interest on the Refunded Bonds maturing on or before the Redemption Date and the application of the balance of such proceeds and any investment income thereof to the redemption and retirement of the Refunded Bonds on the Redemption Dates.

The 2017 Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue for the 2017 Bonds shall be Date of Delivery. Interest on the 2017 Bonds, at the respective rates for each maturity, shall be payable as determined in the Designation (each an "Interest Payment Date"), and the 2017 Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date, whichever is later. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the fifteenth day immediately preceding the Interest Payment Date (the "Record Date"), subject to the provision of Section 5 hereof. The 2017 Bonds shall be numbered from 1 upwards in the order of their issuance. No 2017 Bond shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the 2017 Bonds issued shall be as directed by the Underwriter. Payments of interest due on the 2017 Bonds prior to maturity or earlier redemption shall be made by the Paying Agent and Registrar, as designated pursuant to Section 4 hereof, by mailing a check or draft in the amount due for such interest on each Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 4 hereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity,

ORDINANCE NO. 9626

together with any unpaid interest accrued thereon, shall be made by the Paying Agent and Registrar upon presentation and surrender of the 2017 Bonds to said Paying Agent and Registrar. The City and said Paying Agent and Registrar may treat the registered owner of any 2017 Bond as the absolute owner of such bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary, whether such bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any 2017 Bond in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and said Paying Agent and Registrar, in respect of the liability upon the 2017 Bonds or claims for interest to the extent of the sum or sums so paid.

Section 4. The Paying Agent and Registrar designated in the Designation shall serve in such capacities under the terms of an agreement entitled "Paying Agent and Registrar's Agreement" between the City and said Paying Agent and Registrar, in substantially the form presented in connection with the adoption of this Ordinance, in a form approved by an Authorized Officer. The Authorized Officers, or each individually, are hereby authorized to execute said agreement on behalf of the City in the form presented or with such changes, modifications and completions as such officers shall deem appropriate on behalf of the City. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the 2017 Bonds at its designated corporate trust office. The names and registered addresses of the registered owner or owners of the 2017 Bonds shall at all times be recorded in such books. Any 2017 Bond may be transferred pursuant to its provisions at the designated corporate trust office of said Paying Agent and Registrar by surrender of such bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar on behalf of the City will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of such transferee owner or owners, a new 2017 Bond or 2017 Bonds of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the 2017 Bonds by this Ordinance, one 2017 Bond may be transferred for several such 2017 Bonds of the same interest rate and maturity, and for a like aggregate principal amount, and several such 2017 Bonds may be transferred for one or several such 2017 Bonds, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a 2017 Bond, the surrendered 2017 Bond or 2017 Bonds shall be canceled and destroyed. All 2017 Bonds issued upon transfer of the 2017 Bonds so surrendered shall be valid obligations of the City evidencing the same obligations as the 2017 Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the 2017 Bonds upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any 2017 Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any 2017 Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 5. In the event that payments of interest due on the 2017 Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the 2017 Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 6. The 2017 Bonds shall be subject to redemption, in whole or in part, prior to maturity at any time on or after the fifth anniversary of the date of original issue thereof, at the principal amount thereof together with accrued interest on the principal amount redeemed to the date fixed for redemption (or as may otherwise be determined in the Designation). Such optional redemption shall be made from



ORDINANCE NO. 9626

time to time as shall be directed by the Mayor and Council of the City. The City may select the 2017 Bonds for optional redemption in its sole discretion. The 2017 Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Any 2017 Bond redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for a new 2017 Bond evidencing the unredeemed principal thereof. Notice of redemption of any 2017 Bond called for redemption shall be given, at the direction of the City by said Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such 2017 Bond at said owner's registered address. Such notice shall designate the 2017 Bond or 2017 Bonds to be redeemed by maturity or otherwise, the date of original issue and the date fixed for redemption and shall state that such 2017 Bond or 2017 Bonds are to be presented for prepayment at the designated corporate trust office of said Paying Agent and Registrar. In case of any 2017 Bond partially redeemed, such notice shall specify the portion of the principal amount of such bond to be redeemed. No defect in the mailing of notice for any 2017 Bond shall affect the sufficiency of the proceedings of the City designating the 2017 Bonds called for redemption or the effectiveness of such call for 2017 Bonds for which notice by mail has been properly given and the City shall have the right to further direct notice of redemption for any such 2017 Bond for which defective notice has been given.

Section 7. If the date for payment of the principal of or interest on the 2017 Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the designated corporate trust office of the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

Section 8. The 2017 Bonds shall be in substantially the following form:

**UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COUNTY OF HALL  
CITY OF GRAND ISLAND**

**WATER REVENUE AND REFUNDING BOND, SERIES 2017**

No.R- \_\_\_\_\_ \$ \_\_\_\_\_

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>[CUSIP No.]</u>
	_____, 20__	_____, 2017	

Registered Owner:

Principal Amount: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ )

ORDINANCE NO. 9626

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Grand Island, in the County of Hall, in the State of Nebraska, hereby acknowledges itself to owe and for value received promises to pay, but only from the special sources hereinafter described, to the registered owner specified above, or registered assigns, the principal amount specified above in lawful money of the United States of America on the date of maturity specified above with interest thereon to maturity (or-earlier redemption) from the date of original issue or most recent Interest Payment Date, whichever is later, at the rate per annum specified above payable semiannually on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_, 20\_\_ (each, an "Interest Payment Date"). Such interest shall be computed on the basis of a 360-day year consisting of twelve 30 day months. The principal of this bond together with interest thereon unpaid and accrued at maturity (or earlier redemption) is payable upon presentation and surrender of this bond at the designated corporate trust office of \_\_\_\_\_, as Paying Agent and Registrar, in \_\_\_\_\_, \_\_\_\_\_. Interest on this bond due prior to maturity or earlier redemption will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day immediately preceding each Interest Payment Date, to such owner's address as shown on such books and records. Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the record date such interest was payable, and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purpose become available.

This bond is one of an issue of fully registered bonds of the total principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), of even date and like tenor except as to date of maturity, rate of interest and denomination, (the "2017 Bonds") which were issued by the City for the purposes of (a) paying the costs of refunding the City's outstanding Water Revenue and Refunding Bonds, Series 2012, date of original issue – June 26, 2012, in the principal amount of \$ \_\_\_\_\_, (b) paying the costs of enlarging, expanding and improving the waterworks plant and water system of the City (the "Water System"), and (c) funding a debt service reserve account for the bonds of which of this issue, and is issued pursuant to the terms of an ordinance (the "Ordinance") passed and approved by the Mayor and Council of said City in accordance with and under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as amended.

Any or all of the bonds of said issue maturing on or after \_\_\_\_\_, 20\_\_, are subject to redemption at the option of the City, in whole or in part, at any time on or after the fifth anniversary of the date of original issue thereof, or at any time thereafter at the principal amount thereof, together with accrued interest on the principal amount redeemed to the date fixed for redemption. Such optional redemption shall be made from time to time as shall be directed by the Mayor and Council of the City. The City may select the 2017 Bonds for optional redemption in its sole discretion.

Notice of redemption shall be given by mail to the registered owner of any 2017 Bond called for redemption in the manner specified in the Ordinance authorizing said issue of bonds. Individual bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

This bond is transferable by the registered owner or such owner's attorney duly authorized in writing at the designated corporate trust office of the Paying Agent and Registrar upon surrender and cancellation of this bond and thereupon a new bond or bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Ordinance, [subject to the limitations therein prescribed][only upon receipt by and approval of the City of an investor letter in substantially the form signed by the original purchaser as of the date of original issuance of the 2017 Bonds]. The City, the Paying Agent and Registrar and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment due

ORDINANCE NO. 9626

hereunder and for all purposes and shall not be affected by any notice to the contrary whether this bond be overdue or not.

If the date for payment of the principal of or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the designated corporate trust office of the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

The revenues and earnings of the Water System, including all improvements and additions thereto hereafter constructed or acquired, are pledged and hypothecated, equally and ratably for the payment of this bond and the other 2017 Bonds, for the payment of the City's outstanding Water Revenue Refunding Bonds, Series 2012, (the "Outstanding Bonds") and for the payment of any additional bonds of equal priority issued in accordance with the terms of the Ordinance. The 2017 Bonds are a lien only upon said revenue and earnings and are not general obligations of the City of Grand Island, Nebraska.

The Ordinance sets forth the covenants and obligations of the City with respect to the Water System and the applications of the revenues and earnings thereof, which revenues and earnings under the terms of the Ordinance are required be deposited to the "Grand Island Water System Fund" (as maintained in the Ordinance) and disbursed to pay costs of operation and maintenance of the Water System, make payments of principal and interest on the 2017 Bonds and any additional bonds of equal priority with the 2017 Bonds and other payments as specified in the Ordinance. The Ordinance also designates the terms and conditions under which additional bonds of equal priority with the 2017 Bonds may be issued. The Ordinance also designates the terms and conditions upon which this bond shall cease to be entitled to any lien, benefit or security under such Ordinance and all covenants, agreements and obligations of the City under the Ordinance may be discharged and satisfied at or prior to the maturity or redemption of this bond if monies or certain specified securities shall have been deposited with a trustee bank. In the Ordinance the City also reserves the right to issue bonds or notes junior in lien to 2017 Bonds and additional bonds of equal priority to the 2017 Bonds, the principal and interest of which shall be payable from monies in the "Surplus Account" of the Grand Island Water System Fund as described in the Ordinance.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this bond did exist, did happen and were done and performed in regular and due form and time as required by law.

[AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

ORDINANCE NO. 9626

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.]

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

IN WITNESS WHEREOF, the Mayor and Council of the City of Grand Island, Nebraska, have caused this bond to be executed on behalf of the City with the facsimile signatures of the Mayor and the City Clerk of the City and by causing the official seal of the City to be imprinted hereon, all as of the Date of Original Issue shown above.

CITY OF GRAND ISLAND, NEBRASKA

(facsimile signature) \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
(Facsimile signature)  
City Clerk

(SEAL)

**CERTIFICATE OF AUTHENTICATION**

This bond is one of the bonds authorized by Ordinance passed and approved by the Mayor and Council of the City of Grand Island, in the State of Nebraska, described in said bond.

\_\_\_\_\_  
\_\_\_\_\_  
Paying Agent and Registrar

By: \_\_\_\_\_  
Authorized Signature

ORDINANCE NO. 9626

(FORM OF ASSIGNMENT)

For value received \_\_\_\_\_ hereby sells, assigns, and transfers unto \_\_\_\_\_ the within bond and hereby irrevocably constitutes and appoints \_\_\_\_\_, Attorney, to transfer the same on the books of registration in the office of the within mentioned Paying Agent and Registrar with full power of substitution in the premises.

Date: \_\_\_\_\_  
\_\_\_\_\_  
Registered Owner

Signature Guaranteed

By: \_\_\_\_\_  
\_\_\_\_\_  
Authorized Officer

Note: The signature(s) on this assignment MUST CORRESPOND with the name(s) as written on the face of the within bond in every particular, without alteration, enlargement or any change whatsoever, and must be guaranteed by a commercial bank or a trust company or by a firm having membership on the New York, Midwest or other stock exchange.

Section 9. Each of the 2017 Bonds shall be executed on behalf of the City with the facsimile signatures of the Mayor and the City Clerk and shall have imprinted thereon the City’s seal. If the 2017 Bonds are issued pursuant to a private placement, the following provisions relating to the Depository shall not apply. If issued pursuant to a negotiated sale with the Underwriter, the 2017 Bonds shall be issued initially as “book-entry-only” bonds under the services of The Depository Trust Company (the “Depository”), with one typewritten bond per maturity being issued to the Depository. In such connection said officers of the City are authorized to execute and deliver a Letter of Representations (the “Letter of Representations”) in the form required by the Depository (including any blanket letter previously executed and delivered), for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the 2017 Bonds. With respect to the issuance of the 2017 Bonds as “book-entry-only” bonds, the following provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds 2017 Bonds as securities depository (each, a “Bond Participant”) or to any person who is an actual purchaser of a 2017 Bond from a Bond Participant while the 2017 Bonds are in book-entry form (each, a “Beneficial Owner”) with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the 2017 Bonds,

ORDINANCE NO. 9626

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the 2017 Bonds; including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the 2017 Bonds. The Paying Agent and Registrar shall make payments with respect to the 2017 Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such 2017 Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange 2017 Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the 2017 Bonds or (ii) to make available 2017 Bonds registered in whatever name or names as the Beneficial Owners transferring or exchanging such 2017 Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the 2017 Bonds be delivered to the ultimate beneficial owners of the 2017 Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the 2017 Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the 2017 Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any 2017 Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such 2017 Bond and all notices with respect to such 2017 Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the 2017 Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the 2017 Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee; or

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section and the terms of the Paying Agent and Registrar's Agreement.

(f) In the event of any partial redemption of a 2017 Bond unless and until such partially redeemed 2017 Bond has been replaced in accordance With the provisions of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such bond as is then outstanding and all of the 2017 Bonds issued to the Depository or its nominee shall contain a legend to such effect.

## ORDINANCE NO. 9626

If for any reason the Depository is terminated or resigns and is not replaced, or upon termination by the City of book-entry-only form, the City shall immediately provide a supply of printed bond certificates, for issuance upon the transfers from the Depository and subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement bond certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signatures of its then duly qualified and acting officers. In case any officer whose signature or facsimile thereof shall appear on any 2017 Bond shall cease to be such officer before the delivery of such bond (including such certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption), such signature or such facsimile signature (nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of the 2017 Bond. The 2017 Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The 2017 Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration, and authentication of the 2017 Bonds, they shall be delivered to the City Treasurer, acting on behalf of the City, who is authorized to deliver them to a bank, in the case of a private placement, or to the Underwriter, as initial purchaser thereof, in the case of a negotiated sale, at a price to be determined in the Designation. The Authorized Officers, or any one of them, are hereby authorized to execute and deliver a bond purchase agreement or other agreement of sale with the Underwriter or a bank, as appropriate, for and on behalf of the City. Said initial purchaser shall have the right to direct the registration of the 2017 Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. Such purchaser and its agents, representatives and bond counsel are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the 2017 Bonds, including without limitation, authorizing the release of the 2017 Bonds by the Depository at closing. The City Clerk shall make and certify a transcript of the proceedings of the Mayor and Council with respect to the 2017 Bonds, a copy of which shall be delivered to the initial purchaser.

Section 10. The net sale proceeds of the 2017 Bonds required to redeem the Refunded Bonds (the "Redemption Proceeds"), along with any necessary funds of the City on hand, shall be applied to the payment and satisfaction of all of the principal of and the interest on the Refunded Bonds falling due prior to, and as called for redemption on, the Redemption Date. The remaining net principal proceeds of the 2017 Bonds shall be applied on order of the Mayor and Council to the payment of costs of improvements to the Water System. Accrued interest received from the sale of the 2017 Bonds, if any, shall be applied to pay interest first falling due on the 2017 Bonds. Expenses of issuance of the 2017 Bonds may be paid from the proceeds of the 2017 Bonds. In order to satisfy the City's obligation on the Refunded Bonds, if determined necessary and appropriate by an Authorized Officer, such Redemption Proceeds, along with funds of the City on hand shall be set aside and held and invested in a special trust account which is hereby ordered established with such bank or trust company as determined by an Authorized Officer to act as escrow agent (the "Escrow Agent"). The Escrow Agent shall have custody and safekeeping of the funds and investments which are to be set aside for the payment of the Refunded Bonds. For purposes of governing such escrow account and the holding and application of such funds and investments, the City shall enter into a contract entitled "Escrow Agreement" with the Escrow Agent. The Authorized Officers, or each individually, are hereby authorized and directed to execute and deliver on behalf of the City said Escrow Agreement, including necessary counterparts, in substantially the form and content as presented to the meeting at which this resolution is adopted, but with such changes and modifications therein as to them seem necessary, desirable, or appropriate for and on behalf of the City. Said Authorized Officers are further authorized to approve the investments provided for in said Escrow Agreement, and to make any necessary subscriptions for United States Treasury Securities, State and Local Government Series, or to contract for the purchase of securities in the open market. Said proceeds shall be invested in obligations of the United States Government, direct or guaranteed, including United States Treasury Securities, State and Local Government Series. To the extent that such proceeds are held in a bank

ORDINANCE NO. 9626

depository account, such deposits shall be insured by insurance of the Federal Deposit Insurance Corporation or, to the extent not fully insured, fully collateralized in the same manner as is required for deposit of public funds. Any investment from the proceeds of the 2017 Bonds herein authorized shall mature not later than each Redemption Date. As provided in said Escrow Agreement, the proceeds of the 2017 Bonds herein authorized and investment earnings thereon shall be applied to the payment of the principal of and interest on the Refunded Bonds as the same become due on and prior to each respective Redemption Date, and as called for redemption on each respective Redemption Date. The City agrees that on the date of original issue of the 2017 Bonds, or as soon thereafter as practicable, it shall deposit or otherwise have on hand with the Escrow Agent, from other available sources, funds sufficient after taking into consideration available proceeds of the 2017 Bonds and investment earnings to provide funds for all payments due on the Refunded Bonds on or before each respective Redemption Date, and as called for redemption on each Redemption Date. The City further agrees and authorizes all officers of the City, including but not limited to the Authorized Officers, to do all things necessary and appropriate in connection with the issuance of the 2017 Bonds and the redemption of the Refunded Bonds.

Section 11. The revenues and earnings of the Water System (including any and all additions and improvements thereto hereafter acquired) are hereby pledged and hypothecated for the payment of the 2017 Bonds and any Additional Bonds as authorized by this Ordinance and interest on such 2017 Bonds and any such Additional Bonds and the City does hereby agree with the holders of said 2017 Bonds as follows:

(a) **GRAND ISLAND WATER SYSTEM FUND**- The entire gross revenues and income derived from the operation of the Water System shall be set aside as collected and deposited in a separate fund which has been previously established and designated as the "Grand Island Water System Fund." For purposes of allocating the monies in the Grand Island Water System Fund, the City shall maintain the following accounts: (1) Operation and Maintenance Account; (2) Bond Payment Account; (3) Debt Service Reserve Account; and (4) Surplus Account.

(b) **OPERATION AND MAINTENANCE ACCOUNT**- Out of the Grand Island Water System Fund there shall be monthly credited into the Operation and Maintenance Account such amounts as the City shall from time to time determine to be necessary to pay the reasonable and necessary expenses of operating and maintaining the Water System and the City may withdraw funds credited to the Operation and Maintenance Account as necessary from time to time to pay such expenses.

(c) **BOND PAYMENT ACCOUNT** - Out of the Grand Island Water System Fund there shall be credited monthly on or before the fifteenth day of each month to the Bond Payment Account (or such other amounts on such other dates as may be determined in the Designation) the following amounts:

(1) Beginning on the fifteenth day of the month immediately following the month in which the 2017 Bonds are issued and continuing the fifteenth day of each month thereafter so long as any of the 2017 Bonds 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 2017 Bonds on the next succeeding Interest Payment Date.

(2) Beginning on the fifteenth day of the month thirteen months preceding the month in which the first principal payment is due and continuing the fifteenth day of each month thereafter so long as any of the 2017 Bonds herein authorized remain outstanding and



ORDINANCE NO. 9626

unpaid, an amount equal to 1/12th of the next maturing principal payment for the 2017 Bonds.

(3) During the periods and in the amounts specified for the Outstanding Bonds in the Prior Ordinance.

The City Treasurer is hereby authorized and directed, without further authorization, to withdraw monies credited to the Bond Payment Account, or if the monies in such Account are insufficient, then from the sub-accounts within the Debt Service Reserve Account (but only for the series of bonds for which each respective sub-account has been established) and next from the Surplus Account, an amount sufficient to pay, when due, the principal of and interest on the 2017 Bonds or any Additional Bonds and to transfer such amounts due to the respective paying agent and registrar (or other paying agent for Additional Bonds), at least five (5) business days before each principal and interest payment date. Upon the issuance of any Additional Bonds pursuant to this Ordinance, appropriate additional credits to the Bond Payment Account shall be provided for sufficient to pay principal and interest on said Additional Bonds.

(d) **DEBT SERVICE RESERVE ACCOUNT** -The City agrees that it shall deposit an amount (which may be \$0) as determined in the Designation, from sources determined in the Designation, as the amount required to be maintained attributable to the 2017 Bonds in a separate sub-account in the Debt Service Reserve Account. The sub-account in the Debt Service Reserve Account for the Outstanding Bonds shall remain as provided for in the Prior Ordinance. Monies credited to the Debt Service Reserve Account may be withdrawn, but only from the designated sub-account for a specific issue, as needed, to provide funds to pay, when due, the principal of and interest on the 2017 Bonds, the Outstanding Bonds and any Additional Bonds issued pursuant to this Ordinance, as the case may be, if the Bond Payment Account contains insufficient funds for that purpose, and the City Treasurer is hereby authorized and directed to make such withdrawal if and when needed. In the event of a withdrawal from the Debt Service Reserve Account, there shall be credited to the Debt Service Reserve Account in the month following such withdrawal all monies in the Grand Island Water System Fund remaining after making the payments required to be made in such month to the Operation and Maintenance Account and Bond Payment Account and each month thereafter all such remaining monies shall be credited to the appropriate sub-account in the Debt Service Reserve Account until such sub-account has been restored to the required balance. Upon the issuance of any Additional Bonds, the amount required to be accumulated and maintained in the Debt Service Reserve Account, in a separate sub-account for such Additional Bonds, shall be set at an amount (which may be \$-0-) as determined appropriate by the Mayor and Council in connection with any such issue of Additional Bonds. Any such required increase shall be provided for either by credit made from bond proceeds or current funds of the Water System then available or by equal monthly credits from the Grand Island Water System Fund made in such amounts so that the required amount shall be accumulated in a period of not more than five years. Each sub-account in the Debt Service Reserve Account shall be held solely for the specific issue for which it is established. In the event of withdrawal from any such sub-account which results in the amount in such sub-account being deficient to meet the required balance, available amounts for restoring sub-account balances shall be credited to each deficient sub-account on a pro rata basis in accordance with the respective outstanding principal amounts for those issues for which the respective sub-accounts are then deficient. When the 2017 Bonds, the Outstanding Bonds or any issue of Additional Bonds for which a sub-account has been established are no longer outstanding, the particular sub-account for

ORDINANCE NO. 9626

such issue shall no longer be required to be maintained. Anything in this subsection 11(d) to the contrary notwithstanding, the amount required to be maintained in the Debt Service Reserve Account with respect to the 2017 Bonds, the Outstanding Bonds or any issue of Additional Bonds shall not at any time exceed the maximum amount permitted to be invested without yield restriction under Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations of the United States Treasury Department.

(e) **SURPLUS ACCOUNT** Monies in the Grand Island Water System Fund remaining after the credits required in the foregoing Subsections 11(b), 11(c), and 11(d) shall be credited to the Surplus Account. Monies in the Surplus Account may be used to make up any deficiencies in any of the preceding Accounts, to retire any of the 2017 Bonds, the Outstanding Bonds or any Additional Bonds prior to their maturity, to pay principal of and interest on any junior lien indebtedness incurred with respect to the Water System, to provide for replacements or improvements for the Water System or to provide for any other lawful purpose of the City including payments in lieu of taxes in an amount not to exceed 1% of the gross revenues of the Water System in any fiscal year (as and to the extent permitted by law) or interfund transfers as directed by the Mayor and City Council.

The provisions of this Section shall require the City to maintain a set of books and records in accordance with such accounting methods and procedures as are generally applicable to municipal utility enterprises, which books and records shall show credits to and expenditures from the several Accounts required by this Section. Monies credited to the Grand Island Water System Fund or any of the Accounts therein as established by this Ordinance shall be deposited or invested separate and apart from other City funds. Except as specified below for the Debt Service Reserve Account, the City shall not be required to establish separate bank or investment accounts for the Accounts described in Subsections 11(b), 11(c), 11(d), and 11(e). Monies credited to the Debt Service Reserve Account shall, if maintained in a demand or time deposit account, be kept in a separate account and not commingled with other Water System funds or accounts. If invested, monies credited to the Debt Service Reserve Account may be commingled with other Water System funds or accounts so long as the City maintains books and records clearly identifying the specific investments, or portions thereof, which belong to the Debt Service Reserve Account

Monies in any of said Accounts except the Debt Service Reserve Account may be invested in investments permissible for a city of the first class. Monies in the Debt Service Reserve Account may be invested in Deposit Securities. Monies invested from the Debt Service Reserve Account shall be invested to mature in not more than ten years. Investments held for the Debt Service Reserve Account will be valued at cost for purposes of determining compliance with the requirements of this Ordinance as to the amount required to be maintained in the Debt Service Reserve Account or any sub-account therein. Income from or profit realized from investments for any Account or any sub-account shall be credited to such Account or sub-account until such Account or sub-account contains any amount then required to be therein, and thereafter such income or profit shall be transferred to the Grand Island Water System Fund and treated as other revenues from the operation of the Water System. The ordinance authorizing any series of Additional Bonds for which a debt service reserve sub-account is to be established shall establish the terms for investment related to such sub-account.

The pledge and hypothecation provided for the 2017 Bonds, the Outstanding Bonds and any Additional Bonds as provided for in this ordinance is intended to and shall provide for a first and prior pledge on, lien upon and security interest in the revenues of the Water System superior to any pledge, lien or security interest made or given with respect to any other indebtedness of the City as to its Water System and is intended as a full exercise of the powers of the City provided for in Sections 18-1803 to 18-

ORDINANCE NO. 9626

1805, R.R.S. Neb. 2012, as now or hereafter amended, with respect to the City's Water System and the revenues and earnings thereof.

Section 12. So long as any of the 2017 Bonds, the Outstanding Bonds and any Additional Bonds issued pursuant to this Ordinance shall remain outstanding and unpaid, the City covenants and agrees to establish, revise, from time to time as necessary, and collect such rates and charges for the service furnished from the Water System adequate to produce revenues and earnings sufficient at all times:

(a) To provide funds to pay, when due, the principal of and interest on the 2017 Bonds, the Outstanding Bonds and any Additional Bonds issued pursuant to this Ordinance;

(b) To pay all proper and necessary costs of operation and maintenance of the Water System and to pay for the necessary and proper repairs, replacements, enlargements, extensions and improvements to the Water System and to pay and perform all contractual obligations of the City related to the Water System;

(c) To provide funds sufficient to make the credits into the Accounts and at the times and in the amounts required by Section 11 of this Ordinance; and

(d) To maintain Net Revenues in each fiscal year adopted by the City for the Water System in an amount not less than 1.20 times the total amount of principal paid or payable (exclusive of any principal redeemed prior to maturity other than principal redeemed pursuant to a schedule of mandatory redemptions) and interest falling due during such fiscal year on the 2017 Bonds, the Outstanding Bonds and any Additional Bonds.

Section 13. To provide funds for any purpose related to the Water System, the City may issue Additional Bonds, except for Additional Bonds issued for refunding purposes which are governed by Section 14 of this Ordinance, payable from the revenues of the Water System having equal priority and on a parity with the 2017 Bonds, the Outstanding Bonds and any Additional Bonds then outstanding, only upon compliance with the following conditions:

(a) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the 2017 Bonds, the Outstanding Bonds and any Additional Bonds then outstanding and the proposed Additional Bonds and for any monthly credits to the Debt Service Reserve Account as are required under Subsection 11(d).

(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 Water System for the fiscal year next preceding the issuance of the Additional Bonds shall have been at least equal to 1.25 times the Average Annual Debt Service Requirements of the 2017 Bonds, the Outstanding Bonds and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds; or

2) The City shall have received a projection made by a consulting engineer or firm of consulting engineers, recognized as having experience and expertise in municipal utility systems, projecting that the Net Revenues of the Water System in each of the three full fiscal years after the issuance of such Additional Bonds will be at least equal to 1.25 times the Average Annual Debt Service Requirements of the 2017 Bonds, the Outstanding Bonds and any Additional

## ORDINANCE NO. 9626

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 Water System 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 year for which the audit was made, (B) to reflect such engineers estimate of the net increase over or net decrease under the Net Revenues of the Water System for the 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; and (v) such other factors affecting the projections of revenues and expenses as the consulting engineer deems reasonable and proper. Annual debt service on any proposed Additional Bonds to be issued may be estimated by the consulting engineer in projecting Average Annual Debt Service Requirements, but no Additional Bonds shall be issued requiring any annual debt service payment in excess of the amount so estimated by the consulting engineer.

The City hereby covenants and agrees that so long as any of the 2017 Bonds, the Outstanding Bonds and any Additional Bonds are outstanding, it will not issue any bonds or notes payable from the revenues of the Water System 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 2017 Bonds, the Outstanding Bonds and any such Additional Bonds with the principal and interest of such bonds or notes to be payable from monies credited to the Surplus Account as provided in Subsection 11(e).

Section 14. The City may issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund any 2017 Bonds, the Outstanding Bonds or Additional Bonds then outstanding, provided, that if any such 2017 Bonds, Outstanding Bonds or Additional Bonds are to remain outstanding after the issuance of such refunding bonds, the principal payments due in any calendar year in which those bonds which are to remain outstanding mature, or in any calendar year prior thereto, shall not be increased over the amount of such principal payments due in such calendar years immediately prior to such refunding. Refunding bonds issued in accordance with this paragraph of this Section 14 may be issued as Additional Bonds of equal lien without compliance with the conditions set forth in Subsection 13(b) of this Ordinance.

The City may also issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund any 2017 Bonds, Outstanding Bonds or Additional Bonds then outstanding provided, that, if any such 2017 Bonds, Outstanding Bonds or Additional Bonds are to remain outstanding after the application of the proceeds of the refunding bonds to the payment of the bonds which are to be refunded, such issuance must comply with the Net Revenues test set forth in Subsection 13(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 2017 Bonds, Outstanding Bonds and any Additional Bonds outstanding at the time of issuance of such refunding bonds until the time of application of their proceeds to the satisfaction of the bonds which are to be refunded. In computing Average Annual Debt Service Requirements to show compliance with said Net Revenues test for such refunding bonds, all payments of principal and interest

ORDINANCE NO. 9626

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 Water System (such as bond proceeds held in escrow or investment earnings thereon) or from monies 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 14, 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 15. So long as any 2017 Bonds, Outstanding Bonds or Additional Bonds are outstanding, the City hereby covenants and agrees as follows:

(a) The City will maintain the Water System in good condition and will continuously operate the same in a reasonable and efficient manner, and the City will punctually perform all the duties with reference to said system required, by the Constitution and statutes of the State of Nebraska, but this covenant shall not prevent the City from discontinuing the use and operation of all or any portion of the Water System so long as the revenues derived from the City's ownership of the properties constituting the Water System shall be sufficient to fulfill this City's obligations under Sections 11 and 12 of this Ordinance.

(b) The City will not grant any franchise or right to any person, firm or corporation to own or operate a utility system or systems in competition with the Water System.

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

(d) The City will keep proper books, records, and accounts separate from all other records and accounts in which complete and correct entries will be made of all transactions relating to the Water System. The City will have its operating and financial statements relating to the Water System audited annually by a certified public accountant or firm of certified public accountants. The City will furnish to the original purchaser of the 2017 Bonds, the Outstanding Bonds and to the original purchaser or purchasers of each series of Additional Bonds issued hereunder, within six months after the end of each fiscal year of the Water System, a copy of the financial statements of the Water System and the report thereon of the certified public accountants.

## ORDINANCE NO. 9626

(e) The City shall cause each person handling any of the monies in the Grand Island Water System Fund to be bonded by an insurance company licensed to do business in Nebraska in an amount or amounts deemed sufficient by the Mayor and Council to cover the amount of money belonging to said system reasonably expected to be in the possession or control of such person. The amount of such bond or bonds shall be fixed by the Mayor and Council and the costs thereof shall be paid as an operating and maintenance expense from the Operation and Maintenance Account.

Section 16. The City's obligations under this ordinance and the liens, pledges, covenants and agreements of the City herein made or provided for, shall be fully discharged and satisfied as to the 2017 Bonds, 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 the Paying Agent and Registrar or 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 deposited in a bank account or bank accounts which are fully insured by insurance of the Federal Deposit Insurance Corporation 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 bond to be paid prior to maturity, the City shall have duly given notice of redemption of such bonds as provided by law or made irrevocable provision for the giving of such notice. Any money deposited with the Paying Agent and Registrar or with such bank or trust company may be invested or reinvested in U.S. Government Obligations at the direction of the City, and all interest and income from U.S. Government Obligations in the hands of the Paying Agent and Registrar or such bank or trust company in excess of the amount required to pay principal of and interest on the 2017 Bonds for which such monies or U.S. Government Obligations were deposited shall be paid over to the City as and when collected.

For purposes of this Section 16, any Deposit Securities shall be noncallable or callable only at the option of the holder.

Section 17. The terms and provisions of this Ordinance do and shall constitute a contract between the City and the registered owner or owners of the 2017 Bonds and no changes, variations or alterations of any kind, except for changes necessary to cure any ambiguity formal defect or omission, shall be made to this Ordinance without the written consent of the holders of two-thirds (2/3rds) in principal amount of the 2017 Bonds then outstanding, provided, however, that neither the principal and interest to be paid upon any bond or the maturity date of any 2017 Bond shall be changed without the written consent of the registered owner of all such bonds then outstanding. Any registered owner of a 2017 Bond may by mandamus or other appropriate action or proceedings at law or in equity in any court of competent jurisdiction enforce or compel performance of any and all of the acts and duties required by this Ordinance, and every provision and covenant hereof, including without limiting the generality of the foregoing, the enforcement of the performance of all duties required of the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the collecting of revenues of the Water System and the segregation and application of such revenues as described in Section 11 of this Ordinance. After any default in payment or other default in performance, the registered owners of the 2017 Bonds, the Outstanding Bonds or any Additional Bonds shall be entitled to the appointment of a receiver for the Water System. Any and all actions brought by any registered owner or owners of the 2017 Bonds, the Outstanding Bonds or Additional Bonds shall be maintained for the equal and ratable benefit of all registered owners of the 2017 Bonds, the Outstanding Bonds or Additional Bonds outstanding and no registered owners of any of the 2017 Bonds, the Outstanding Bonds or Additional Bonds shall have any

ORDINANCE NO. 9626

right in any manner whatsoever by any action or proceedings to affect, disturb or prejudice the pledge created by this Ordinance.

Section 18. The City hereby (a) authorizes and directs that an Authorized Officer execute and deliver, on the date of issue of the 2017 Bonds, a continuing disclosure undertaking in accordance with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission in such form as determined necessary and appropriate by such Authorized Officer (the "Continuing Disclosure Undertaking") and (b) covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Undertaking. Notwithstanding any other provision of this resolution, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an event of default hereunder; however, any Participating Underwriter (as such term is defined in the Continuing Disclosure Undertaking) or any Beneficial Owner or any Registered Owner of a Bond (as such terms are defined in the Continuing Disclosure Undertaking) may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this section, and under the Continuing Disclosure Undertaking. An Authorized Officer may appoint a Dissemination Agent for the 2017 Bonds in the Authorized Officer's discretion.

Section 19. The City hereby covenants and agrees that it will make no use of the proceeds of the 2017 Bonds which would cause the 2017 Bonds to be arbitrage bonds within the meaning of Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and further covenants to comply with said Sections 103(b) and 148 and all applicable regulations thereunder throughout the term of said issue, including all requirements with respect to payment and reporting of rebates. The City further agrees that it will not take any actions which would cause the 2017 Bonds to constitute "private activity bonds" within the meaning of Section 141 of the Code. The City hereby covenants and agrees to take all actions necessary under the Code to maintain the tax-exempt status of interest payable on the 2017 Bonds with respect to taxpayers generally. The City hereby designates the 2017 Bonds as its "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i)(III) of the Code and covenants and warrants that it does not reasonably expect to issue tax-exempt bonds or other tax-exempt interest bearing obligations aggregating in principal amount more than \$10,000,000 during calendar year 2017 (taking into consideration the exception for current refunding issues). The officers of the City (or any one of them) are hereby authorized to make allocations of the 2017 Bonds (as to principal maturities) and of the proceeds of the 2017 Bonds and debt service funds of the City as may be deemed appropriate under the federal tax laws and regulations. Any such allocations made and determinations set forth in a certificate by an officer of the City shall be and constitute authorized determinations made on behalf of the City with the same force and effect as if set forth in this Ordinance.

Section 20. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 21. In the case of a negotiated sale with the Underwriter, the Authorized Officers are hereby directed and authorized to approve, deem final and deliver a Preliminary Official Statement and a final Official Statement in connection with the 2017 Bonds, all in accordance with Rule 15c2-12 promulgated by the Securities and Exchange Commission. In the case of a private placement with a bank, the Authorized Officers are hereby directed and authorized to approve, deem final and deliver any form of private placement memorandum that may be required or requested by the bank purchasing the 2017 Bonds.

ORDINANCE NO. 9626

Section 22. 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 28 day of February, 2017.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

ATTEST:

\_\_\_\_\_  
RaNae Edwards, City Clerk