



City of Grand Island

Tuesday, October 22, 2013

Council Session

Item F-1

#9456 - Consideration of Authorization to Issue 2013 Electric Department Revenue Bonds

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director

Meeting: October 22, 2013

Subject: 2013 Electric Department Revenue Bonds

Item #'s: F-1

Presenter(s): Timothy Luchsinger, Utilities Director

Background

On December 21, 2011, EPA released the Mercury and Air Toxics Standards (MATS), requiring the maximum achievable control technology for mercury and other hazardous pollutants from electric generating units, with a compliance date of March, 2015, although an additional one year for compliance may be granted by individual states.

To achieve long-term compliance for MATS, it was anticipated that the Department would need to install a fabric filter, carbon injection system, and, depending on the amount of reduction needed, either a dry sorbent injection or a dry scrubber at Platte Generating Station, along with associated by-product removal systems and disposal sites, in the next three to four years. It was estimated that these modifications would cost the utility approximately \$35 million and take 3 to 5 years for financing, design, and construction. Although this equipment will also result in additional operating costs that may affect rates, the City proceeded with refinancing of current electric bonds to reduce rate impacts due to debt service of capital expenditures. Current plans are to complete this installation during the last quarter of 2014 to coincide with a scheduled plant maintenance outage, with system startup and testing to continue into the first quarter of 2015. This will provide a margin for the implementation of the system and minimize plant downtime.

For large capital improvement projects of this type, the Utilities Department has traditionally used the Design-Build approach with multiple contracts, where proposals are solicited for a consulting engineer, who then proceeds with detailed design and developing specifications for bids to acquire equipment and contractors to complete the project. This type of approach can achieve more control of the details of the project, but can also take more time to complete and final project costs are not known until the final contract is awarded. A project approach being used more by utilities for capital projects is the Engineer-Procure-Construct (EPC) method. Specifications are developed emphasizing final system performance and operating parameters instead of technical

features, and consortiums of engineers, suppliers, and construction contractors then team together to provide bids for a total system package. The project is awarded to the lowest compliant bid, normally with provisions of penalties for not meeting guarantees or incentives for exceeding requirements. The EPC approach is recommended by the Department for the air emission control equipment project as we do not have a preference for the various air emission control technologies, and this method will allow for the market to determine the most cost effective and timely implementation. Project costs will also be known early and enable financing methods to be determined to minimize rate impacts to customers.

Utilities and other entities performing EPC projects normally retain the services of an Owner's Engineer to develop the EPC specifications and provide third party project administrative functions. On March 26, 2012, Kiewit Power Engineers was awarded the contract for providing engineering services for this project. The services for the Owner's Engineer included the following.

- A high level determination of emission reduction limits and system components.
- Preparation of specifications for bids.
- Evaluation of bids.
- Assistance in air emission permitting with EPA and NDEQ.
- Final system testing and determination of compliance with contract conditions.

In June, 2012, Kiewit completed a technical and economic evaluation of the two most recognized processes suitable for use at Platte to achieve the MATS requirements, dry sorbent injection (DSI) and a dry scrubber system. DSI processes are relatively new to the electric utility industry and can provide a low capital cost solution to applications requiring lower emission reduction rates. Dry scrubber systems are the current industry standard for power plants to meet sulfur dioxide emission standards and have been in use for over 20 years. Based on estimated capital and 20-year operating and maintenance costs, the processes were evaluated to have similar life cycle costs. With a similar life cycle cost, however, the potential for meeting future potential emission standards and the established history of dry scrubber systems resulted in a recommendation of a dry scrubber system for Platte. Department staff concurred with this recommendation and directed Kiewit to proceed with detailed specifications to be issued for bid.

In order to provide a cost-effective solution to meet the MATS requirements, the specifications were drafted on a performance basis. A performance basis specification identifies the current conditions and the required end result, but not the specific method, which allows the various emission control industry engineers, suppliers, and contractors latitude to bid their best solution for our application. Included in the specification was a spreadsheet that would be used to evaluate the low bidder that included the factors used in the calculation of project capital financing and annual operating and maintenance costs for use by the vendors in determining their best solution for the lowest overall project cost. These specifications were issued for bid in accordance with City purchasing procedures. On November 2, 2012, the following bids for the MATS Retrofit compliance were received and on January 23, 2013, Council approved the award of the MATS

Compliance Retrofit Project to AMEC for \$41,189,331. As previously proposed to Council, the capital cost of approximately \$41.2 million for this project was to be funded by bonding. In light of previously enacted federal environmental regulations, court-imposed stays or reversals are possible with the MATS rule, therefore, to allow more insight as to any litigation that could be pursued by interest groups, the recommendation by the Department was that initial costs for this contract be funded using electric system cash reserves until a level was reached that began to impact reserve minimum levels, probably by the third or fourth quarter of 2013. Until the bonding was in place, our bond underwriter, Ameritas, advised that the City should declare their intention to use bond revenue to fund the capital improvements for the project. This would allow bond proceeds to be used for costs of the project prior to the bonds being issued and the funds are received. This declaration of intent to issue bonds was authorized by Council on March 26, 2013, and included in the \$41.2 million for the capital cost of the project plus estimated bond issuance costs.

Discussion

AMEC has begun construction on the dry scrubber project and is currently performing foundation activities. The Department has been making progress payments of approximately \$1.2 million per month and recommends that revenue bonds be issued at this time. If bond proceeds are received in November, cash outlays to that time will be approximately \$8.3 million. Based on current cash reserves, financial projections were performed to analyze financing requirements in relation to projected operating costs once the dry scrubber system is operating. Instead of funding the entire capital cost with bond proceeds, the Department recommends that approximately \$5 million of cash reserves be used for the capital funding, with the remaining balance and financing costs funded by bond proceeds. This will reduce the debt service required, while maintaining an adequate reserve margin to allow a determination of actual operating costs and any revisions that may be required to the electric rates.

Although the project was originally analyzed over a twenty year life cycle, the Department also recommends that the bonds be issued for a fifteen year maturity, based on a payment schedule developed by Ameritas that provides for primarily interest payments only during the first nine years, until the 2012 bond issue payments are completed. The combination of utilizing cash reserves and the wrap around schedule will provide for a total debt service that will be slightly less than that of the original debt service prior to the refinancing last year, while limiting the financing to a moderate term.

The Department recommends approval of the ordinance authorizing the issuance of the Electric System Revenue Bonds, Series 2013, in the amount of approximately \$40,890,000.

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
- 5.

Recommendation

City Administration recommends that the Council authorize the issuance of the Electric System Revenue Bonds, Series 2013.

Sample Motion

Move to authorize the issuance of the Electric System Revenue Bonds, Series 2013.

_____, 2013

City of Grand Island, Nebraska
Grand Island, Nebraska

Ameritas Investment Corp.
Omaha, Nebraska

Re: \$ _____ City of Grand Island, Nebraska
 Electric System Revenue Bonds, Series 2013

Ladies and Gentlemen:

We have acted as bond counsel to the City of Grand Island, Nebraska (the “Issuer”), in connection with the issuance of the above-captioned bonds (the “Bonds”). In this capacity, we have examined the law and the certified proceedings, certifications and other documents that we deem necessary to render this opinion.

The Bonds are issued pursuant to Ordinance No. _____ adopted by the governing body of the Issuer (the “Ordinance”). Capitalized terms used and not otherwise defined in this opinion have the meanings assigned to those terms in the Ordinance.

Regarding questions of fact material to our opinion, we have relied on the certified proceedings and other certifications of public officials and others furnished to us without undertaking to verify them by independent investigation.

Based on and subject to the foregoing, we are of the opinion, under existing law, as follows:

1. The Issuer is validly existing as a political subdivision of the State of Nebraska (the “State”) with the power to adopt the Ordinance, perform the agreements on its part contained therein, and issue the Bonds.
2. The Bonds have been duly authorized, executed and delivered by the Issuer and are valid and legally binding special obligations of the Issuer.
3. The Bonds are payable solely from the net income and revenues derived by the Issuer from the operation of the Electric System, after providing for the costs of operation and maintenance

thereof. The Bonds do not constitute general obligations of the Issuer and do not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision, limitation or restriction. The taxing power of the Issuer is not pledged to the payment of the Bonds.

4. The Ordinance has been duly adopted by the governing body of the Issuer and constitutes a valid and legally binding obligation of the Issuer enforceable against the Issuer. The Ordinance creates a valid lien on the revenues and other funds pledged by the Ordinance for the security of the Bonds on a parity with other bonds, if any, issued or to be issued as additional bonds under the Ordinance.

5. The interest on the Bonds (a) is excludable from gross income for federal income tax purposes, (b) is exempt from income taxation by the State of Nebraska, and (c) is not an item of tax preference for purposes of computing the federal alternative minimum tax imposed on individuals and corporations, but is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. The opinions set forth in this paragraph are subject to the condition that the Issuer complies with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The Issuer has covenanted to comply with all of these requirements. Failure to comply with certain of these requirements may cause the interest on the Bonds to be included in gross income for federal and Nebraska income tax purposes retroactive to the date of issuance of the Bonds. The Bonds have not been designated as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code.

We express no opinion regarding the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds. Further, we express no opinion regarding the perfection or priority of the lien on revenues or other funds pledged under the Ordinance or tax consequences arising with respect to the Bonds other than as expressly set forth in this opinion.

The rights of the owners of the Bonds and the enforceability of the Bonds and the Ordinance may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’ rights generally and by equitable principles, whether considered at law or in equity.

This opinion is given as of its date, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may come to our attention or any changes in law that may occur after the date of this opinion.

Very truly yours,

BOND PURCHASE AGREEMENT

**[\$[PAR AMOUNT]]
THE CITY OF GRAND ISLAND, NEBRASKA
ELECTRIC SYSTEM REVENUE BONDS
SERIES 2013**

[PRICING DATE], 2013

The City of Grand Island, Nebraska
Grand Island, Nebraska

Ladies and Gentlemen:

On the basis of the representations, warranties and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, the undersigned, Ameritas Investment Corp. (the **“Underwriter”**), hereby offers to purchase \$[PAR AMOUNT] aggregate principal amount of Electric System Revenue Bonds, Series 2013 (the **“Bonds”**) to be issued by The City of Grand Island, Nebraska (the **“City”**) under and pursuant to an ordinance, duly passed by the Council and approved by the Mayor on October 22, 2013 (the **“Ordinance”**). Capitalized terms used herein shall have the meanings set forth in the Ordinance unless some other meaning is plainly indicated.

This offer is made subject to acceptance of this Bond Purchase Agreement by the City on or before 3:00 p.m., Central time, on [PRICING DATE], 2013.

Inasmuch as this purchase and sale represents a negotiated transaction, the City acknowledges and agrees that: (i) the transaction contemplated by this Agreement is an arm’s length, commercial transaction between the Issuer and the Underwriter in which the Underwriter is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the City; (ii) the Underwriter has not assumed any advisory or fiduciary responsibility to the City with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the City on other matters); (iii) the Underwriter is acting solely in its capacity as underwriter for its own account, (iv) the only obligations the Underwriter has to the City with respect to the transaction contemplated hereby expressly are set forth in this Agreement; and (v) the City has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

SECTION 1. CITY’S REPRESENTATIONS AND WARRANTIES

By acceptance hereof, the City hereby represents and warrants to the Underwriter that:

(a) The City is a city of the first class and political subdivision organized and existing under the laws of the State of Nebraska.

(b) The City has complied with all provisions of the Constitution and the laws of the State of Nebraska and has full power and authority to consummate all transactions contemplated by the Ordinance and this Bond Purchase Agreement, and all other agreements relating thereto.

(c) The City has duly authorized by all necessary action to be taken by the City (1) the adoption and performance of the Ordinance; (2) the execution, delivery and performance of this Bond

Purchase Agreement, the Federal Tax Certificate, to be dated the Closing Date (the “**Tax Certificate**”), executed and delivered by the City, the Continuing Disclosure Undertaking, to be dated the Closing Date (the “**Disclosure Undertaking**”), executed and delivered by the City, and the Paying Agent and Registrar’s Agreement, to be dated the Closing Date (the “**Paying Agent Agreement**”), between the City and Wells Fargo Bank, National Association, Minneapolis, Minnesota, as paying agent and registrar; (3) the approval of the Official Statement; (4) the execution, delivery and performance of any and all such other agreements, certificates and documents as may be required to be executed, delivered and performed by the City in order to carry out, give effect to and consummate the transactions contemplated by the Ordinance, the Tax Certificate, the Disclosure Undertaking, the Paying Agent Agreement and this Bond Purchase Agreement (collectively, the “**Bond Documents**”); and (5) the carrying out, giving effect to and consummation of the transactions contemplated by the Bond Documents. Executed counterparts of the Bond Documents and all such other agreements, certificates and documents specified herein will be delivered to the Underwriter by the City at the Closing Time (as defined below).

(d) The Bond Documents, when executed and delivered by the City, will be the legal, valid and binding obligations of the City enforceable in accordance with their terms, except to the extent that enforcement thereof may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors’ rights generally or against entities such as the City and further subject to the availability of equitable remedies.

(e) The Bonds have been duly authorized by the City, and when issued, delivered and paid for as provided for herein and in the Ordinance, will have been duly executed, authenticated, issued and delivered and will constitute valid and binding obligations of the City enforceable in accordance with their terms and entitled to the benefits and security of the Ordinance (subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors’ rights generally or against entities such as the City and further subject to the availability of equitable remedies). The Bonds will not pledge the full faith and credit of the State or any political subdivision thereof, including the City, nor shall they be secured by a lien against any of their respective properties, except as provided for in the Ordinance. The Bonds shall be limited obligations of the City payable solely out of the Net Revenues, and the Bonds shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision, limitation or restriction.

(f) The adoption of the Ordinance and the execution and delivery of the Bond Documents, the Bonds and the Official Statement and compliance with the provisions thereof, will not conflict with or constitute on the part of the City a violation or breach of, or a default under, any existing law, regulation, court or administrative decree or order, or any agreement, ordinance, resolution, mortgage, lease or other instrument to which it is subject or by which it is or may be bound.

(g) The City is not, or with the giving of notice or lapse of time or both would not be, in violation of or in default under its Charter or any indenture, mortgage, deed of trust, loan agreement, bonds or other agreement or instrument to which the City is a party or by which it is or may be bound, except for violations and defaults which individually and in the aggregate are not material to the City and will not be material to the holders of the Bonds. As of the Closing Time, no event will have occurred and be continuing which with the lapse of time or the giving of notice, or both, would constitute an Event of Default under the Ordinance or the Bonds.

(h) The information contained in the Preliminary Official Statement dated [POS DATE], 2013, as amended and supplemented by the Official Statement to be dated the date hereof, and in any amendment or supplement thereto that may be authorized for use by the City with respect to the Bonds (collectively, the “**Official Statement**”) as of its date, as of the date hereof, and as of the Closing Time, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make

the statements made therein, in light of the circumstances under which they were made, not misleading (except for the information under “TAX MATTERS” in the Official Statement).

(i) For the purpose of enabling the Underwriter to comply with the requirements of Rule 15c2-12 of the Securities and Exchange Commission, promulgated under the Securities Exchange Act of 1934, as amended (the “**1934 Act**”), the City, hereby deems the information regarding the City contained in the Preliminary Official Statement to be “final” as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1), such as offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, identity of the underwriters and other terms of the Bonds depending on such matters.

(j) The financial statements of the City for the fiscal year ended September 30, 2012, with summarized financial information as of September 30, 2012, contained in the Official Statement, present fairly and accurately the financial condition of the City as of the dates indicated and the results of its operations for the periods specified, and such financial statements are prepared in conformity with generally accepted accounting principles consistently applied in all material respects for the periods involved.

(k) The City’s electric system (the “**System**”) has not, since September 30, 2012, incurred any material liabilities and there has been no material adverse change in the condition of the System, financial or otherwise, other than as set forth in the Official Statement.

(l) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the City, threatened against or affecting the City or the System (or, to its knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or by the Ordinance or the validity of the Bonds, the Bond Documents or any agreement or instrument to which the City is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or by the Ordinance.

(m) The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the City is a bond issuer whose arbitrage certifications may not be relied upon.

Any certificate signed by any of the authorized officials of the City and delivered to the Underwriter in connection with the Closing shall be deemed a representation and warranty by the City to the Underwriter as to the statements made therein.

SECTION 2. COVENANTS AND AGREEMENTS OF CITY

The City covenants and agrees with the Underwriter for the time period specified, and if no period is specified, for so long as any of the Bonds remain outstanding, as follows:

(a) To cooperate with the Underwriter and its counsel in any reasonable endeavor to qualify the Bonds for offering and sale under the securities or “Blue Sky” laws of such jurisdictions of the United States as the Underwriter may reasonably request; provided that nothing contained herein shall require the City to file written consents to suit or written consents to service of process in any jurisdiction in which such consent may be required by law or regulation so that the Bonds may be offered or sold. The City consents to the use of drafts of the Preliminary Official Statement, the Preliminary Official Statement and drafts of the Official Statement prior to the availability of the Official Statement by the Underwriter in obtaining such qualification. The Underwriter shall pay all expenses and costs (including legal, registration and filing fees) incurred in connection therewith.

(b) If, prior to the earlier of (1) 90 days after the “end of the underwriting period” (as defined in Rule 15c2-12 under the 1934 Act) or (2) the time when the Official Statement is available to any person from the Municipal Securities Rulemaking Board, but in no case less than 25 days following the end of the underwriting period, any event shall occur relating to or affecting the City or the System, as a result of which it is necessary to amend or supplement the Official Statement in order to make the statements made therein, in the light of the circumstances existing when the Official Statement is delivered to a purchaser, not materially misleading, or the Official Statement is required to be amended or supplemented to comply with law, the City shall promptly prepare and furnish, at the expense of the City, to the Underwriter and to the dealers (whose names and addresses the Underwriter will furnish to the City) to which Bonds may have been sold by the Underwriter and to any other dealers upon request, such amendments or supplements to the Official Statement as may be necessary so that the Official Statement, as so amended or supplemented, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances existing when the Official Statement is delivered to a purchaser, not misleading, or so that the Official Statement will comply with law.

(c) Within seven business days after the date of this Bond Purchase Agreement or within sufficient time to accompany any confirmation that requests payment from any customer of the Underwriter, whichever is earlier, the City shall provide to the Underwriter sufficient copies of the Official Statement to enable the Underwriter to comply with the requirements of Rule 15c2-12(b)(4) under the 1934 Act, and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

(d) From the date hereof until the Closing Time, the City shall furnish the Underwriter with a copy of any proposed amendment or supplement to the Official Statement for review and shall not use any such proposed amendment or supplement to which the Underwriter reasonably objects.

(e) The proceeds of the Bonds will be used as provided in the Ordinance and the Official Statement, and neither such proceeds nor the System have been used or shall be used in a manner which would jeopardize the tax status of the Bonds under the provisions of the Code, as long as any of the Bonds are outstanding.

SECTION 3. PURCHASE, SALE AND DELIVERY OF THE BONDS

On the basis of the representations, warranties, covenants and agreements contained herein and in the other agreements and documents referred to herein, and subject to the terms and conditions herein set forth, at the Closing Time the Underwriter agrees to purchase from the City and the City agrees to sell to the Underwriter the Bonds at a purchase price \$[Purchase Price] (equal to the par amount of the Bonds, [plus/less] net original issue [premium/discount] in the amount of \$[OIP/OID] and less Underwriter’s discount of \$[Discount]). The Bonds shall be issued under, secured and subject to optional redemption as provided in the Ordinance, and the Bonds be subject to mandatory sinking fund redemption, shall bear such terms and shall mature and bear interest at the rates, all as set forth in **Schedule 1** attached hereto. **Schedule 1** attached hereto shall constitute the “Designation” referred to in the Ordinance.

The Underwriter initially agrees to offer the Bonds to the public at the prices set forth on **Schedule 1** attached hereto, but may subsequently change such offering price; the Underwriter agrees to notify the City of such changes, if such changes occur prior to the Closing Time, but failure so to notify shall not invalidate such changes. The Underwriter may offer and sell the Bonds to certain dealers (including dealers depositing the Bonds into investment trusts) at prices lower than the public offering prices.

Payment for the Bonds shall be made by federal wire transfer payable to the order of the City for the account of the City, at 10:00 a.m., local time, on [CLOSING DATE], 2013, or such other place, time or date as shall be mutually agreed upon by the City and the Underwriter. Upon such payment, the Bonds shall be delivered and released upon the instructions of the Underwriter to The Depository Trust Company, New York, New York. The date of such delivery and payment is herein called the “**Closing Date**”, and the hour and date of such delivery and payment is herein called the “**Closing Time**”.

The delivery of the Bonds shall be made in definitive form, as fully registered bonds (in such denominations as the Underwriter shall specify in writing at least 48 hours prior to the Closing Time) duly executed and authenticated and bearing CUSIP numbers (provided neither the printing of a wrong number on any Bond nor the failure to print a number thereon shall constitute cause to refuse delivery of any Bond); provided, however, that the Bonds may be delivered in temporary form. If delivered in definitive form, the Bonds shall be available for examination and packaging by the Underwriter at least 24 hours prior to the Closing Time.

SECTION 4. USE OF OFFICIAL STATEMENT

The City hereby ratifies and confirms the Underwriter’s use of the Preliminary Official Statement; and the City authorizes, and will make available, the Official Statement for the use by the Underwriter in connection with the sale of the Bonds.

SECTION 5. CONDITIONS TO THE UNDERWRITER’S OBLIGATIONS

The Underwriter’s obligations hereunder shall be subject to the due performance by the City of its obligations and agreements to be performed hereunder at or prior to the Closing Time and to the accuracy and completeness of the City’s representations and warranties contained herein, as of the date hereof and as of the Closing Time, and are also subject to the following conditions:

(a) The Bonds and the Ordinance shall have been duly authorized, executed and delivered in the form heretofore approved by the Underwriter with only such changes therein as shall be mutually agreed upon by the Underwriter and the City.

(b) At the Closing Time, the Underwriter(s) shall receive:

(1) The opinion in form and substance satisfactory to the Underwriter, dated as of the Closing Date, of Gilmore & Bell, P.C., Bond Counsel, relating to the valid authorization and issuance of the Bonds, the exclusion of interest on the Series 2013 Bonds from gross income for federal income tax purposes the due authorization and adoption of the Ordinance by the governing body of the City and certain other matters;

(2) Certified copies of resolutions or ordinances, as appropriate, of the City authorizing or approving, as appropriate, the execution and delivery of the Official Statement, this Bond Purchase Agreement, the Ordinance and the Bonds, together with certificates dated the Closing Date to the effect that such resolutions or ordinances have not been modified, amended or repealed.

(3) A certificate of the City, satisfactory in form and substance to the Underwriter(s), dated as of the Closing Date, to the effect that (A) since the date of the Preliminary Official Statement there has not been any material adverse change in the business, properties, financial condition or results of operations of the System, whether or not arising from transactions in the

ordinary course of business, from that set forth in the Preliminary Official Statement, and except in the ordinary course of business or as set forth in the Preliminary Official Statement, the City has not incurred any material liability with respect to the System; (B) there is no action, suit, proceeding or, to the knowledge of the City, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the knowledge of the City, threatened against or affecting the City or the System, its officers or its property or, to the best of the knowledge of the City, any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the System, the transactions contemplated hereby or by the Ordinance or the Official Statement or the validity or enforceability of the Bonds or the Bond Purchase Agreement, which are not disclosed in the Official Statement; (C) to the knowledge of the City, the information contained in the Official Statement does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading (except for the information under "TAX MATTERS" and "THE SERIES 2013 BONDS – Global Book-Entry Bonds" in the Official Statement); (D) the City has duly authorized, by all necessary action, the execution, delivery and due performance by the City of this Bond Purchase Agreement; and (E) the representations and warranties of the City set forth herein were accurate and complete as of the date hereof and are accurate and complete as of the Closing Time.

(4) A completed form 8038-G (Information Return for Tax-Exempt Governmental Bond Issuers);

(5) Evidence satisfactory to the Underwriter that the Bonds have been rated "[]" by Standard & Poor's Ratings Services and "[]" by Moody's Investors Service;

(6) Such additional certificates, legal and other documents, listed on a closing agenda to be approved by Bond Counsel and the Underwriter, as the Underwriter may reasonably request to evidence performance or compliance with the provisions hereof and the transactions contemplated hereby and by the Ordinance, or as Bond Counsel shall require in order to render its opinion, all such certificates and other documents to be satisfactory in form and substance to the Underwriter.

SECTION 6. CONDITIONS TO THE CITY'S OBLIGATIONS

The obligations of the City hereunder are subject to the Underwriter's performance of its obligations hereunder.

SECTION 7. THE UNDERWRITER'S RIGHT TO CANCEL

The Underwriter shall have the right to cancel its obligations hereunder to purchase the Bonds (which cancellation shall not constitute a default for purposes of **Section 3** hereof) by notifying the City in writing of its election to make such cancellation prior to the Closing Time, if at any time prior to the Closing Time:

(a) The Preliminary Official Statement deemed by the City to be "final" pursuant to Section 1(i) is thereafter amended or supplemented in a manner that may, in the reasonable judgment of the Underwriter, have a material adverse effect on the marketability of the Bonds.

(b) A committee of the House of Representatives or the Senate of the Congress of the United States shall have pending before it legislation which, if enacted in its form as introduced or as amended, would have the purpose or effect of imposing federal income taxation upon revenues or other income of

the general character to be derived by the City or by any similar body or upon interest received on obligations of the general character of the Bonds, or the Bonds, which, in the Underwriter's opinion, materially adversely affects the market price of the Bonds;

(c) A tentative decision with respect to legislation shall be reached by a committee of the House of Representatives or the Senate of the Congress of the United States, or legislation shall be favorably reported by such a committee or be introduced, by amendment or otherwise, in or be passed by the House of Representatives or the Senate, or be recommended to the Congress of the United States for passage by the President of the United States, or be enacted by the Congress of the United States, or a decision by a court established under Article III of the Constitution of the United States or the Tax Court of the United States shall be rendered, or a ruling, regulation or order of the Treasury Department of the United States or the Internal Revenue Service shall be made or proposed having the purpose or effect of imposing federal income taxation, or any other event shall have occurred which results in the imposition of federal income taxation, upon revenues or other income of the general character to be derived by the City or by any similar body or upon interest received on obligations of the general character of the Bonds, or the Bonds, which, in the Underwriter's opinion, materially and adversely affects the market price of the Bonds;

(d) Any legislation, ordinance, rule or regulation shall be introduced in or be enacted by the General Assembly of the State of Nebraska or by any other governmental body, department or agency of the State of Nebraska, or a decision by any court of competent jurisdiction within the State of Nebraska shall be rendered which, in the Underwriter's opinion, materially and adversely affects the market price of the Bonds, or litigation challenging the law under which the Bonds are to be issued shall be filed in any court in the State of Nebraska;

(e) A stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all underlying obligations, as contemplated hereby or by the Official Statement, is in violation or would be in violation of any provision of the Securities Act of 1933, as amended (the "**1933 Act**"), the 1934 Act or the Trust Indenture Act of 1939, as amended;

(f) Legislation shall be enacted by the Congress of the United States of America, or a decision by a court of the United States of America shall be rendered, to the effect that obligations of the general character of the Bonds, or the Bonds, including all the underlying obligations, are not exempt from registration under or from other requirements of the 1933 Act or the 1934 Act;

(g) Any event shall have occurred, or information become known, which, in the Underwriter's opinion, makes untrue in any material respect any statement or information contained in the Preliminary Official Statement as originally circulated, or has the effect that the Preliminary Official Statement as originally circulated contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(h) Additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange;

(i) The New York Stock Exchange or any other national securities exchange, or any governmental authority, shall impose, as to the Bonds or obligations of the general character of the

Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter;

(j) Any general banking moratorium shall have been established by federal, New York or Nebraska authorities;

(k) A material default has occurred with respect to the obligations of, or proceedings have been instituted under the Federal bankruptcy laws or any similar state laws by or against, any state of the United States or any city located in the United States having a population in excess of one million persons or any entity issuing obligations on behalf of such a city or state which, in the Underwriter's opinion, materially adversely affects the market price of the Bonds;

(l) Any proceeding shall be pending or threatened by the Securities and Exchange Commission against the City or; or

(m) A war involving the United States shall have been declared, or any conflict involving the armed forces of the United States shall have escalated, or any other national emergency relating to the effective operation of government or the financial community shall have occurred, which, in the Underwriter's opinion, materially adversely affects the market price of the Bonds.

SECTION 8. INDEMNIFICATION

The City agrees, to the extent legally permitted, to indemnify and hold harmless the Underwriter, any director, officer, employee or controlling person of the Underwriter within the meaning of Section 15 of the 1933 Act (collectively, the **"Indemnified Parties"**), against any and all losses, claims, damages, liabilities or expenses whatsoever caused by any untrue statements or misleading statement or allegedly misleading statement of a material fact contained in the Official Statement or caused by any omission or alleged omission from the Official Statement of any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided that the City shall have no indemnification obligation with respect to any statement or omission in the information contained in the Official Statement under the heading "Underwriting."

In case any action shall be brought against one or more of the Indemnified Parties based upon the Official Statement and in respect of which indemnity may be sought against the City, the Indemnified Parties shall promptly notify the City in writing and the City shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the City. The City shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the City or if there be a final judgment for the plaintiff in any such action against the City or any of the Indemnified Parties, with or without the consent of the City, the City agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

If a claim for indemnification under this Section is determined to be unenforceable by a final judgment of a court of competent jurisdiction, then the City shall contribute to the aggregate losses, claims, damages or liabilities to which the Underwriter or its officers, directors, agents, employees or controlling persons may be subject in such amount as is appropriate to reflect the relative benefits received by the City, on the one hand, and the Underwriter, on the other, and the relative faults of the City

and the person seeking contribution. The provisions of this Section shall survive the delivery of the Bonds hereunder.

SECTION 9. PAYMENT OF EXPENSES

Whether or not the Bonds are sold by the City to the Underwriter (unless such sale be prevented at the Closing Time by the Underwriter's default), the Underwriter shall be under no obligation to pay any expenses incident to the performance of the obligations of the City hereunder. If the Bonds are sold by the City to the Underwriter, the Underwriter agrees to pay all costs incident to the underwriting and sale of the Bonds including the cost of printing of the Official Statement, DTC charges and CUSIP charges. The City will pay fees of Bond Counsel, rating agency fees, bond registrar and paying agent costs, publication costs, the fees and costs of the City Attorney, if any, and any other costs incurred by the City.

SECTION 10. NOTICE

Any notice or other communication to be given under this Bond Purchase Agreement may be given by mailing or delivering the same in writing to the applicable person, as follows:

(a) If to the City, PO Box 1968, 100 East First Street, Grand Island, Nebraska 68802, Attention: Finance Director.

(b) If to the Underwriter, Ameritas Investment Corp., 440 Regency Parkway Dr., Ste. 222, Omaha, Nebraska, 68114, Attention: Bruce Lefler.

SECTION 11. APPLICABLE LAW: NONASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State of Nebraska. This Bond Purchase Agreement shall not be assigned.

SECTION 12. ELECTRONIC TRANSMISSION; EXECUTION OF COUNTERPARTS

This Bond Purchase Agreement may be executed by electronic transmission and in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

SECTION 13. RIGHTS HEREUNDER

This Bond Purchase Agreement is made for the benefit of the City and the Underwriter and no other person including any purchaser of the Bonds shall acquire or have any rights hereunder or by virtue hereof.

SECTION 14. EFFECTIVE DATE

This Bond Purchase Agreement shall become effective upon acceptance hereof by the City.

Upon your acceptance of the offer, the foregoing agreement will be binding upon you and the Underwriter. Please acknowledge your agreement with the foregoing by executing the enclosed copy of this Bond Purchase Agreement prior to the date and time specified on page 1 hereof and returning it to the undersigned.

Very truly yours,

AMERITAS INVESTMENT CORP.

By: _____
Title: _____

Accepted and agreed to as of
the date first above written.

THE CITY OF GRAND ISLAND, NEBRASKA

By: _____
Mayor

SCHEDULE 1

TERMS OF THE BONDS

\$[PAR AMOUNT]
The City of Grand Island, Nebraska
Electric System Revenue Bonds
Series 2013
Dated: [CLOSING DATE], 2013

[Insert Maturity Schedule from Final Numbers]

[Redemption Provisions]

[Mandatory Sinking Fund Redemption. The Bonds maturing _____, 20__ shall be subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof and accrued interest to the redemption date of _____ of the years, and in the principal amounts, as follows:

<u>Redemption Date</u> <u>of the Year</u>	<u>Principal Amount</u>
20__	\$
20__	
20__	
20__	
20__ *	
*Final Maturity	

The Bonds maturing _____, 20__ shall be subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof and accrued interest to the redemption date of _____ of the years, and in the principal amounts, as follows:

<u>Redemption Date</u> <u>of the Year</u>	<u>Principal Amount</u>
20__	\$
20__	
20__	
20__	
20__ *	
*Final Maturity]	

[Confirm Wells Fargo as PA&R]

[Confirm Interest Payment Dates]

[Confirm Record date]

ORDINANCE NO. 9456

AN ORDINANCE AUTHORIZING THE ISSUANCE OF ELECTRIC SYSTEM REVENUE BONDS, SERIES 2013, OF THE CITY OF GRAND ISLAND, NEBRASKA, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED FORTY-SEVEN MILLION DOLLARS (\$47,000,000) FOR THE PURPOSE OF PAYING THE COSTS OF IMPROVING, EXTENDING AND EQUIPPING THE CITY'S ELECTRIC LIGHT AND POWER PLANT AND ELECTRIC DISTRIBUTION SYSTEM; DIRECTING THE APPLICATION OF THE PROCEEDS OF SAID BONDS; PRESCRIBING THE FORM, CERTAIN TERMS AND DETAILS OF SAID BONDS; AUTHORIZING OFFICERS OF THE CITY TO APPROVE CERTAIN TERMS OF SAID BONDS; AUTHORIZING THE SALE OF THE BONDS TO THE UNDERWRITER; PLEDGING AND HYPOTHECATING THE REVENUE AND EARNINGS OF THE ELECTRIC LIGHT AND POWER PLANT AND ELECTRIC DISTRIBUTION 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 PLANT AND SYSTEM; 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 THE CITY COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

Section 1. **Findings and Determinations.** The Mayor and Council of the City of Grand Island hereby find and determine:

(a) The City owns and operates its own electric light and power plant and electric distribution system (the "Electric System", but hereinafter more specifically defined) which represents a revenue-producing undertaking of the City. References herein to the Electric System shall include all additions and improvements thereto hereafter constructed or acquired by the City.

(b) The City currently has outstanding the following indebtedness payable from the revenues of the Electric System:

Electric System Revenue Refunding Bonds, Series 2012, (the "Outstanding Parity Bonds") issued pursuant to Ordinance No. 9369 passed and approved on February 28, 2012, (the "2012 Ordinance") of which there remain outstanding under the terms of the 2012 Ordinance bonds in the principal amount of \$15,935,000.

(c) The City has no bonds outstanding which are secured by the Revenues of the Electric System, other than the Outstanding Parity Bonds.

(d) It is necessary and advisable for the City to issue and sell its revenue bonds in the principal amount of not to exceed \$47,000,000 to provide funds for Costs of Construction.

(e) The City will comply with the provisions of Section 14 of the 2012 Ordinance for the issuance of the 2013 Bonds as "Additional Bonds" and the security of the 2013 Bonds on a parity with the Outstanding Parity Bonds thereunder. Prior to the issuance of the 2013 Bonds, an Authorized Officer (as defined in Section 3 hereof) shall certify that the City has met such requirements.

(f) Upon the issuance of the 2013 Bonds herein authorized and after the application of funds of the City as herein directed, the Outstanding Parity Bonds and the 2013 Bonds will be the only outstanding bonds of the City for which the Revenues of the Electric System have been pledged and the 2013 Bonds herein authorized and the Outstanding Parity Bonds shall constitute a first and prior lien upon such Revenues.

Section 2. **Definitions of Terms.** 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 or may otherwise require, the words and terms defined in this Section 2 shall, for all purposes of this Ordinance and of any ordinance or resolution amendatory hereof or supplemental hereto and of any certificate, opinion, order, direction, instrument or document herein or therein mentioned, have the respective meanings specified in this section, and such definitions shall be equally applicable to both the singular and plural forms of any word or term defined and *vice versa*.

(a) “Additional Bonds” shall mean any Bonds authorized and issued pursuant to Section 14 of this Ordinance, payable from Revenues *pari passu* with the 2013 Bonds and the Outstanding Parity Bonds.

(b) “Average Interest Rate” when used with reference to any Bonds shall mean the aggregate amount of interest payable on such Bonds from their date to the date of maturity thereof, either at their stated maturity, or in accordance with any schedule of mandatory sinking fund installments provided therefor, divided by the sum of the bond years of such Bonds (the bond years with respect to each \$1,000 principal amount of Bonds being the number of years from the date thereof to the maturity thereof, either at their stated maturity or in accordance with any schedule of mandatory sinking fund installments provided therefor), expressed as a percentage, without regard to the discount or premium, if any, on the principal amount of such Bonds specified in the purchase price for said Bonds paid to the City by the initial purchasers thereof.

(c) “Bond” or “Bonds” shall mean any bond, some of the bonds or all of the bonds at any time Outstanding issued under and pursuant to the 2012 Ordinance and this Ordinance, including the 2013 Bonds, the Outstanding Parity Bonds and any Additional Bonds.

(d) “2013 Bonds” shall mean the Electric System Revenue Bonds, Series 2013, authorized pursuant to Section 3 of this Ordinance.

(e) “Bond Account” shall mean the Electric System Revenue Bond Account created by Section 12 of this Ordinance.

(f) “Bondholder” or “holder of a Bond” or “holder” or “owner” or “registered owner” shall mean any person who shall be the registered owner of any Bond or such person's duly authorized attorney in fact, representative or assigns.

(g) “Capital Improvement Account” shall mean the Capital Improvement Account created by Section 12 of this Ordinance.

(h) “Construction Engineer” when used with reference to a Facility shall mean the design or construction engineer or engineering firm or corporation at the time retained by the City pursuant to Section 16 of this Ordinance to perform the acts and carry out the duties provided for such Construction Engineer in this Ordinance.

(i) “Consulting Engineer” shall mean the engineer or engineering firm or corporation retained by the City from time to time pursuant to Section 16 hereof to perform the acts and carry out the duties provided for such Consulting Engineer in this Ordinance.

(j) “Costs of Construction” shall mean all costs paid or incurred by the City in connection with acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System, including, without limiting the generality of the foregoing, paying or reimbursing the cost of surveys, investigations, engineering and other fees and expenses properly incurred therefor; obligations incurred for labor and materials and to contractors, builders and materialmen in connection therewith; the cost of machinery and equipment; paying the cost of restoring, or relocating property either damaged or destroyed in connection

with acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System, or of removing and relocating structures and clearing lands; the cost of acquiring by purchase or condemnation such lands, property, rights, rights of way, franchises, easements or other interests as may be deemed necessary or convenient by the City for acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System; paying the interest on the series or series of Bonds issued to pay said Costs of Construction, and until and not later than six months after the Date of Commercial Operation of the Facility being acquired, constructed, reconstructed, improved, extended, equipped or furnished; paying into the Bond Account for credit to any reserve sub-account therein from the proceeds of said Bonds all or a portion of the amount or amounts required to make the amount therein equal to the reserve account requirement for such reserve sub-account; the cost of engineering services rendered in connection with acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System and the issuance of Bonds therefor; paying or reimbursing the City or any fund for expenses of the City incident and properly allocable to acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System and placing the same in operation; paying legal, financing and accounting expenses and fees, costs of printing and of preparing and issuing the Bonds therefor, and all other items of expenses incident and properly allocable to acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System and placing the same in operation, including allowances for working capital required to place in operation the Facility being acquired, constructed, reconstructed, improved, extended, equipped or furnished.

(k) “Date of Commercial Operation” and words of like import when used with reference to a Facility paid for out of the proceeds of Bonds shall mean the date upon which such Facility is first ready for normal continued operation as determined by the Construction Engineer thereof, or, if there be no Construction Engineer for such Facility, by the Consulting Engineer.

(l) “Debt Service Sub-account” shall mean the Debt Service Sub-account in the Bond Account created by Section 12 of this Ordinance.

(m) “Debt Service Requirement” shall mean with respect to the 2013 Bonds, the Outstanding Parity Bonds or any series of Additional Bonds the total as of any particular date of computation and for any particular Fiscal Year or period of the amounts required pursuant to the provisions of Section 13 hereof to be paid or set aside during such year into the Debt Service Sub-account created by Section 12 in the Bond Account to provide for the retirement of, and payment of interest on, such Bonds, less the amount of such interest for which payment is provided from the proceeds of sale of Bonds or from sources other than Revenues.

(n) “Electric System Fund” shall mean the “Electric System Fund” created by Section 12 of this Ordinance.

(o) “Electric System” shall mean all properties and assets, real and personal and tangible and intangible, of the City, now or hereafter existing, used for or pertaining to the generation, transmission and distribution and sale of electric power and energy. Without limiting the generality of the foregoing, the term “Electric System” shall include (i) all Facilities owned by the City on the date of passage of this Ordinance; (ii) all Facilities acquired or constructed by the City after the passage of this Ordinance; and (iii) all additions, extensions, enlargements and improvements hereafter made to any of the assets or properties referred to in clauses (i) and (ii) preceding in this definition; provided that, where the City is a co-owner with another person of an asset or property, only the City's ownership share of such asset or property, or of any addition, extension and improvement of the asset or property, so co-owned shall be included in the Electric System hereunder; provided further, that the Electric System hereunder shall not include any facilities for the generation, transmission and distribution of electric power and energy constructed or acquired by the City as a separate utility system with the proceeds of sale of bonds or other evidences of indebtedness (other than Bonds) which shall be payable solely from the revenues or other income derived from the ownership or operation of such separate utility system.

(p) “Facility” or “Facilities” shall mean all properties and assets of the City used for the generation, transmission and distribution and sale of electric power and energy. Without limiting the generality of the foregoing, the term “Facility” shall mean and include (i) generating facilities and related transmission, fuel and water facilities, including the City's undivided co-ownership share in any such facility owned in part by

the City and in part by another person, firm, corporation or other entity; (ii) transmission facilities used to transmit electric power and energy to the distribution facilities included in the Electric System or used to connect with generating plants and stations or used to connect with other such transmission lines; (iii) distribution facilities used to distribute electric power and energy to the ultimate consumers thereof; (iv) related fuel or water resources or transportation facilities of or pertaining to the generation and related transmission of power and energy; and (v) initial working capital or initial fuel or supply reserves or increases in such reserves; provided that the City's membership or participation under any Interlocal Agreement, and any related residual rights thereunder, shall not be included in the definition of "Facility" or "Facilities".

(q) "Fiscal Year" shall mean the fiscal year of the Electric System as established from time to time.

(r) "Government Obligations" shall mean direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.

(s) "Independent Accountant" shall mean the firm of independent certified public accountants retained by the City pursuant to Section 16 hereof.

(t) "Interlocal Agreement" shall mean any agreement entered into for the provision of power to parties under any such agreement, including for the ownership of power generating facilities, pursuant to the Nebraska Interlocal Cooperation Act, the Nebraska Joint Public Agency Act, the Nebraska Municipal Cooperative Financing Act or pursuant to any other similar statutory provision or Act under Nebraska law.

(u) "Investment Securities" shall mean any of the following which at the time are legal investments under the laws of the State of Nebraska for the moneys held hereunder then proposed to be invested therein: :

(i) Government Obligations;

(ii) bonds, notes or other obligations of any state of the United States or any political subdivision of any state, which at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized Rating Agency;

(iii) certificates of deposit or time or demand deposits constituting direct obligations of any bank, bank holding company, savings and loan association or trust company organized under the laws of the United States or any state thereof (including the Trustee or any of its affiliates), except that investments may be made only in certificates of deposit or time or demand deposits which are:

(1) insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, or any other similar United States Government deposit insurance program then in existence;

(2) continuously and fully secured by Government Obligations, which 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 or demand deposits; or

(3) issued by a bank, bank holding company, savings and loan association or trust company organized under the laws of the United States or any state thereof (including the Trustee or any of its affiliates) whose outstanding unsecured long-term debt is rated at the time of issuance in either of the two highest rating categories by a nationally recognized Rating Agency;

(iv) 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 or any state thereof (including the Trustee or any of its affiliates), that are continuously and

fully secured by Government Obligations and which have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such repurchase agreements, provided that each such repurchase agreement conforms to current industry standards as to form and time, is in commercially reasonable form, is for a commercially reasonable period, results in transfer of legal title to identified Government Obligations which are segregated in a custodial or trust account for the benefit of the Trustee, and further provided that Government Obligations acquired pursuant to such repurchase agreements shall be valued at the lower of the then current market value thereof or the repurchase price thereof set forth in the repurchase agreement;

(v) investment agreements constituting an obligation of a bank, bank holding company, savings and loan association, trust company, insurance company or other financial institution whose outstanding unsecured long-term debt is rated at the time of such agreement in either of the two highest rating categories by a nationally recognized Rating Agency;

(vi) short term discount obligations of the Federal National Mortgage Association and the Government National Mortgage Association; and

(vii) money market mutual funds (1) that invest in Government Obligations or that are registered with the U.S. Securities and Exchange Commission, meeting the requirements of Rule 2a-7 under the Investment Company Act of 1940, as amended, and (2) that are rated in either of the two highest categories by a nationally recognized Rating Agency.

(v) "Net Receipts" shall mean Operating Revenues less Operating Expenses.

(w) "Operating Expenses" shall mean the costs and expenses of operating and maintaining the Electric System, including, without limiting the generality of the foregoing, (i) all expenses includable in the operation and maintenance expense accounts according to the Uniform System of Accounts, exclusive of depreciation and amortization of property values or property losses and advance fuel payments if the same shall then be includable in the operation and maintenance expense accounts according to the Uniform System of Accounts, (ii) to the extent not included in the preceding clause, the City's share of the Operating Expenses (as heretofore defined in this subparagraph) of any electric plants and properties co-owned with others, provided that, whether or not includable in operation and maintenance expense accounts according to the Uniform System of Accounts, there shall be included in "Operating Expenses" all amounts required to be paid by the City under any contract for the purchase of power from any supplier of power (including the Omaha Public Power District and the Public Power Generation Agency) with which the City has or may have long term power purchase contracts.

(x) "Operating Revenues" shall mean Revenues less (i) insurance proceeds or condemnation awards, and (ii) any other receipt constituting Revenues hereunder which would not constitute "Utility Operating Income" as determined in accordance with the Uniform System of Accounts, provided, however that for purposes of this Ordinance, anything in the Uniform System of Accounts to the contrary notwithstanding, there shall not be excluded from Operating Revenues the items described in (ii) and (iii) of the definition of Revenues subject, however, to the proviso appearing at the end of such definition.

(y) "Operation and Maintenance Account" shall mean the "Operation and Maintenance Account" created by Section 12 of this Ordinance.

(z) "Ordinance," "this Ordinance" or "the Ordinance" shall mean this Ordinance as the same may be amended and supplemented from time to time, and unless the context shall clearly indicate otherwise, shall include all Series Ordinances and Supplemental Ordinances.

(aa) "Outstanding" when used with reference to Bonds shall mean, as of any date, Bonds theretofore or thereupon issued pursuant to this Ordinance, except:

(i) Any Bonds cancelled by the Trustee or paid at or prior to such date;

(ii) Bonds in lieu of or in substitution for which other Bonds shall have been delivered pursuant to this Ordinance; and

(iii) Bonds fully discharged and satisfied as provided in Section 26 of this Ordinance.

(bb) “Paying Agent” or “Paying Agent and Registrar” shall mean the Trustee as paying agent for each series of Bonds, and its successors, if any, as such paying agent.

(cc) “Program of Rate Changes” shall mean a schedule of rate changes set forth in, or adopted by the City in an ordinance or resolution acknowledging the intent of the City to effect the rate changes specified therein at the times specified therein; provided, that (i) such schedule need not reflect changes in rates of particular classes of customers of the Electric System (such as residential or commercial), but may simply set forth an acknowledgment or commitment to change rates so that by the times specified in such schedule percentage changes in Revenues will be accomplished; and (ii) such changes need not be imposed or become effective to the extent that the Director of Utility Operations (or other board, department or officer administering the Electric System) advises the City, based on a report of the Consulting Engineer, that such changes in the rates are not required to meet the provisions of Section 14 hereof, and, if any Additional Bonds are required to pay a portion of the Costs of Construction of any Facility for which Bonds are being or have been issued, to produce the debt service coverage which would then be required for the issuance of Additional Bonds pursuant to Section 14 hereof.

(dd) “Series 2013 Reserve Sub-Account” shall mean the Series 2013 Reserve Sub-Account in the Bond Account created by Section 12 of this Ordinance, which shall be held separate and apart from all other reserve funds or accounts and shall secure only the payments of principal and interest on the 2013 Bonds.

(ee) “Series 2013 Reserve Requirement” shall mean an amount no greater than the least of (a) 10% of the original principal amount of the 2013 Bonds, (b) the maximum annual debt service on the 2013 Bonds, and (c) 125% of the average annual debt service on the Bonds, as shall be more particularly determined in the Designation; provided, however, that if the Trustee shall receive an opinion from Recognized Bond Counsel to the effect that the Series 2013 Reserve Requirement for the Bonds must be reduced in order that the amounts on deposit in the Series 2013 Reserve Sub-Account may continue to be invested without yield restriction under the Code, the Series 2013 Reserve Requirement shall be reduced in conformity with said opinion.

(ff) “Revenues” shall mean and include all income, earnings, fees, charges, receipts, profits and other moneys derived by the City from its ownership or operation of the Electric System, 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 and electric energy, power and steam of the Electric System; (ii) the earnings on and the income from the investment of any moneys held in funds under the Ordinance; (iii) the earnings on and the income from the investment of other moneys derived from the ownership or operation of the Electric System to the extent that such earnings and income are allocated by or pursuant to law to the Electric System; (iv) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of all or an part of the Electric System, and the proceeds of insurance and condemnation awards received with respect to the Electric System; and (v) 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 Government Obligations being held irrevocably for the retirement of indebtedness of the Electric System, or (C) moneys deposited with the City by employees for employee benefit purposes.

(gg) “Series Ordinance” shall mean an Ordinance adopted hereunder providing for the issuance of a series of Bonds (other than the 2013 Bonds and the Outstanding Parity Bonds).

(hh) “Supplemental Ordinance” shall mean any Ordinance amending or supplementing this Ordinance, as originally adopted, adopted under and pursuant to Section 17 or Section 19 of this Ordinance.

(ii) “Surplus Account” shall mean the “Electric Plant Surplus Account” created by Section 12 of this Ordinance.

(jj) “Trustee” shall mean the trustee appointed pursuant to Section 4 of this Ordinance, and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to this Ordinance.

(kk) “Uniform System of Accounts” shall mean the Uniform System of Accounts prescribed by the Federal Power Commission (now the Federal Energy Regulatory Commission) for public utilities subject to the provisions of the Federal Power Act (or a uniform system of accounts prescribed by some other Federal authority having jurisdiction over public utility companies owning properties and engaged in business similar to the Electric System).

In addition, unless the context shall clearly indicate some other meaning or may otherwise require, the words and terms defined in this Section shall, for all purposes of the Ordinance and of any ordinance or resolution amendatory hereof, of any Supplemental Ordinance and Series Ordinance and of any certificate, opinion, order, direction, instrument or document herein or therein mentioned, have the meaning specified in this Section, and such definitions to be equally applicable to both the singular and plural forms of any words or terms defined and *vice versa*.

(1) The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms, refer to the Ordinance and to the Ordinance as a whole and not to an particular section or subdivision hereof.

(2) The word “person” or words importing persons shall include firms, partnerships, associations, corporations (public and private), public bodies, natural persons, executors, administrators, trustees and receivers.

In the Ordinance (not including in such term wherever used in this paragraph any Supplemental Ordinance or Series Ordinance) : (a) references to articles, sections and other subdivisions, whether by number or letter or otherwise, are to the respective or corresponding articles, sections or subdivisions of the Ordinance, as such articles, sections or subdivisions may be amended from time to time; and (b) the word “heretofore” means before the time of adoption of the Ordinance, the word “now” means at the time of adoption of the Ordinance; and the word “hereafter” means after the time of adoption of the Ordinance.

Unless the facts shall then be otherwise, all computations required for the purposes of the Ordinance shall be made on the assumption that: (a) the principal of and interest on all Bonds shall be paid as and when the same become due; (b) all sinking fund installments required by the Ordinance or any Series Ordinance to be deposited into the Debt Service Sub-Account in the Bond Account shall be made in the amounts and at the times required by the Ordinance or such Series Ordinance; and (c) all Bonds required by the Ordinance or such Series Ordinance providing for their issuance to be redeemed from sinking fund installments to be deposited into the Debt Service Sub-Account in the Bond Account

shall be redeemed on the respective sinking fund installment dates therefor in the amounts and at the times as required by the Ordinance or such Series Ordinance.

Section 3. **Authorization of 2013 Bonds.** For the purpose set forth in Section 1, there shall be and there are hereby ordered issued the negotiable revenue bonds of City of Grand Island, Nebraska, to be known as “Electric System Revenue Bonds, Series 2013” (the “2013 Bonds”), in the principal amount of not to exceed Forty-seven Million Dollars (\$47,000,000).

The Bonds shall bear interest at the rates per annum and on such dates as shall be determined in a written designation (the “Designation”) signed by the Mayor or City Clerk or the City Finance Director (the “Authorized Officers”) on behalf of the Mayor and City Council and which may be agreed to by Ameritas Investment Corp., as underwriter (the “Underwriter”), which Designation may also determine the principal amount for each maturity of the Bonds, the aggregate principal amount of the Bonds, optional and mandatory redemption provisions (if any), the pricing terms as set forth in Section 9 below and other terms as provided in this Ordinance, all within the following limitations:

- (a) the longest maturity of the Bonds may not be later than August 15, 2033;
- (b) the Bonds may be sold at such aggregate original issue discount or original issue premium as may be determined in the Designation;
- (c) the true interest cost on the Bonds shall not be more than 5.00%; and
- (d) two or more of the principal maturities may be combined and issued as “term bonds” and the Authorized Officer may determine the mandatory sinking fund payments and mandatory redemption amounts. Any Bonds issued as “term bonds” shall be redeemed at a redemption price equal to 100% of the principal amount thereof plus accrued interest thereon to the date of redemption and may be selected for redemption by any random method of selection determined appropriate by the Registrar (as hereinafter designated) or by the Depository (as hereinafter designated).

The Authorized Officers (or any one of them) are hereby authorized to make such determinations on behalf of the Mayor and City Council of the City and to evidence the same by execution and delivery of the Designation and such determinations, when made and agreed to by the Underwriter, shall constitute the action of the Mayor and City Council of the City without further action of the Mayor and City Council.

The 2013 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 2013 Bonds shall be the date of delivery thereof. Interest on the 2013 Bonds, at the respective rates for each maturity, shall be payable commencing on August 15, 2014, (or such other date as determined in the Designation) and on each February 15 and August 15 thereafter (or such other dates as may be determined in the Designation, each being an “Interest Payment Date”) and the 2013 Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date, whichever is later. Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the close of business on the fifteenth day immediately preceding the Interest

Payment Date (or such other date as determined in the Designation, the "Record Date"), subject to the provisions of Section 5 hereof. The 2013 Bonds shall be numbered from 1 upwards in the order of their issuance. No 2013 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 2013 Bonds issued shall be designated by the City's Treasurer as directed by the initial purchaser thereof. Payments of interest due prior to maturity or earlier redemption on the 2013 Bonds 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 the registered owner of each 2013 Bond, as of the Record Date for such 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 and unpaid accrued interest thereon due at maturity or at any date fixed for redemption prior to maturity shall be made by said Paying Agent and Registrar to the registered owners upon presentation and surrender of the 2013 Bonds to said Paying Agent and Registrar. The City and said Paying Agent and Registrar may treat the registered owner of any 2013 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 2013 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 2013 Bonds or claims for interest to the extent of the sum or sums so paid.

Section 4. **Trustee, Paying Agent and Registrar.** Wells Fargo Bank, National Association, of Minneapolis, Minnesota, is hereby designated as the Trustee, Paying Agent and Registrar for the 2013 Bonds and any Additional Bonds. Said Paying Agent and Registrar shall serve in such capacities under the terms of an agreement entitled "Trustee, Paying Agent and Registrar's Agreement" between the City and said Paying Agent and Registrar. The Mayor and City Clerk are hereby authorized to approve, finalize and execute such agreement. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the 2013 Bonds at its designated corporate trust office, initially located in Minneapolis, Minnesota, or such other corporate trust office as may be designated in writing from time to time (the "Designated Office"). The names and registered addresses of the registered owner or owners of the 2013 Bonds shall at all times be recorded in such books. Any 2013 Bond may be transferred pursuant to its provisions at the principal 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 2013 Bond or 2013 Bonds of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the 2013 Bonds by this Ordinance, one such bond may be transferred for several such bonds of the same interest rate and maturity, and for a like aggregate principal amount, and several such bonds may be transferred for one or several such bonds, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a 2013 Bond, the surrendered 2013 Bond or Bonds shall be cancelled and destroyed. All 2013 Bonds issued upon transfer of the 2013 Bonds so surrendered shall be valid obligations of the City evidencing the same obligations as the 2013 Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the 2013 Bonds upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any 2013 Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any 2013 Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 5. **Special Record Date.** In the event that payments of interest due on the 2013 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 2013 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. **Non-Business Days.** If the date for payment of the principal of or interest on the 2013 Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the principal 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 7. **2013 Bonds Subject to Redemption.** 2013 Bonds shall be subject to redemption at the option of the City prior to maturity at any time on or after the tenth anniversary of the date of delivery thereof (or such other

date as may be determined in the Designation), in whole or in part, at the principal amount thereof plus accrued interest to the date fixed for redemption. The City may select 2013 Bonds to be redeemed in its sole discretion, including particular maturities as it deems appropriate.

In the event term maturities and mandatory redemption amounts are determined in the Designation, the provisions of this Section 7 shall apply generally to mandatory redemptions. Any such mandatory redemptions shall be at the principal amount redeemed plus accrued interest to the date set for redemption. The Paying Agent and Registrar shall select the term bonds to be redeemed in any maturity using any random method of selection deemed appropriate, subject to the provisions of Section 9 of this Ordinance.

Notice of redemption of any 2013 Bond called for redemption shall be given, without further direction in the case of mandatory redemptions (if any), 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 2013 Bond at said owner's registered address. Such notice shall designate the 2013 Bond to be redeemed by maturity or otherwise, the date of original issue and the date fixed for redemption and shall state that such 2013 Bond or 2013 Bonds are to be presented for prepayment at the principal office of said Paying Agent and Registrar. In case of any 2013 Bond partially redeemed, such notice shall specify the portion of the principal amount of such 2013 Bond to be redeemed. No defect in the mailing of notice for any 2013 Bond shall affect the sufficiency of the proceedings of the City designating the 2013 Bonds called for redemption or the effectiveness of such call for 2013 Bonds for which notice by mail has been properly given and the City shall have the right to direct further notice for redemption for any such bond for which defective notice has been given.

Section 8. **Form of 2013 Bonds.** The 2013 Bonds shall be in substantially the following form:

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

ELECTRIC SYSTEM REVENUE BOND, SERIES 2013

No. R- _____ \$ _____

Interest Rate
%

Maturity Date
_____, ____

Date of Original Issue
_____, 2013

CUSIP No.
385640

Registered Owner: CEDE & CO.

Principal Amount:

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Grand Island, in the County of Hall, in the State of Nebraska (the "City"), 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 (said interest to be computed on the basis of a 360-day year consisting of twelve 30-day months), payable on _____ and _____ of each year, commencing _____, 2014 (each of said dates an "Interest Payment Date"). The principal hereof and unpaid accrued interest hereon due at maturity or upon earlier redemption are payable upon presentation and surrender of this bond at the principal corporate trust office of Wells Fargo Bank, National Association, the Paying Agent and Registrar, in Minneapolis, Minnesota. 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 _____ day immediately preceding the 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 which were issued by the City for the purpose of paying the costs of improving extending and equipping the City's electric light and power plant and electric distribution system, all in pursuance of Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, and has been duly authorized by ordinance (the "Ordinance") legally passed, approved and published and by proceedings duly had by the Mayor and Council of the City.

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 tenth anniversary of the date of delivery thereof], at prices equal to the principal amount redeemed, plus accrued interest to the date fixed for redemption. Notice of redemption shall be given by mail to the registered owner of any bond to be redeemed at said registered owner's address in the manner specified in the Ordinance. Individual bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

[Mandatory Sinking Fund Provisions.]

This bond is transferable by the registered owner or such owner's attorney duly authorized in writing at the principal 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 authorizing said issue of bonds, subject to the limitations therein prescribed. 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 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 principal 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 revenue and earnings of the electric light and power plant and electric distribution system (the "Electric System") owned by the City of Grand Island, Nebraska, have been pledged and hypothecated, equally and ratably for the payment of this bond and the other bonds of this issue, the Outstanding Parity Bonds (as such term is defined in the Ordinance), and any Additional Bonds (as such term is defined in the Ordinance) of equal priority issued in accordance with the Ordinance authorizing the bonds of this issue. **The State of Nebraska shall not be liable for the payment of this bond or the bonds of this issue out of any moneys of the State of Nebraska, and the City shall not be liable for the payment thereof out of any moneys of the City other than such revenues and earnings pledged in the Ordinance.**

The Ordinance authorizing the issuance of this bond and the other bonds of this issue sets forth the covenants and obligations of the City with respect to the Electric System and the application of the revenues to be derived therefrom, which revenues are by the terms of the Ordinance to be deposited into the "Electric System Fund" (as established under the Ordinance) and disbursed to pay costs of operation and maintenance, make payments of principal and interest on the bonds of this issue and make other payments as specified in the Ordinance. The Ordinance designates the terms and conditions on which additional bonds of equal lien to the bonds of this issue may be issued. The Ordinance also designates the terms and conditions on 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 such 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 the Paying Agent and Registrar or other trustee. The City also reserves the right to issue bonds junior in lien to the bonds of this issue, the principal and interest of which shall be payable from monies in the "Surplus Account" of such Electric System Fund, as described in the Ordinance.

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

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 PAYING AGENT AND 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.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE PAYING AGENT AND REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE PAYING AGENT AND 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.

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.

ORDINANCE NO. 9456 (Cont.)

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 and by causing the official seal of the City to be imprinted hereon, all as of the date of original issue specified 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 of the Mayor and Council of the City of Grand Island, in the County of Hall, in the State of Nebraska, described in the foregoing bond.

WELLS FARGO BANK, NATIONAL
ASSOCIATION
Paying Agent and Registrar

By: _____
Authorized Signature

(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. **Execution of 2013 Bonds - Book-entry Securities; Sale of 2013 Bonds.** Each of the 2013 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 (which may be a facsimile seal). The 2013 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 are authorized to execute and deliver a Letter of Representations (the "Letter of Representations") in the form required by the Depository, for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the 2013 Bonds. The Letter of Representations may be in the form of a blanket letter previously or concurrently executed and delivered. With respect to the issuance of the 2013 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 2013 Bonds as securities depository (each, a "Bond Participant") or to any person who is an actual purchaser of a 2013 Bond from a Bond Participant while the 2013 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 2013 Bonds,

(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 2013 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 2013 Bonds. The Paying Agent and Registrar shall make payments with respect to the 2013 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 2013 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 2013 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 2013 Bonds or (ii) to make available 2013 Bonds registered in whatever name or names as the Beneficial Owners transferring or exchanging such 2013 Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the 2013 Bonds be delivered to the ultimate beneficial owners of the 2013 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 2013 Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the 2013 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 2013 Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such 2013 Bond and all notices with respect to such 2013 Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the 2013 Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the 2013 Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee;

(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 Bond unless and until such partially redeemed 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 Bonds issued to the Depository or its nominee shall contain a legend to such effect.

(g) Delivery of the 2013 Bonds to the Depository is hereby authorized to be made through the Paying Agent and Registrar, with the Paying Agent and Registrar holding bond certificates for the Depository under such Depository's "FAST" procedures as in effect from time to time.

If for any reason the Depository resigns and is not replaced, the City shall immediately provide a supply of printed bond certificates, duly executed by manual or facsimile signatures of the Mayor and City Clerk and sealed with the City's seal, 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 certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of such certificates and to direct their execution by manual or facsimile signatures of its then duly qualified and acting Mayor and City Clerk and by imprinting thereon or affixing thereto the City's seal. In case any officer whose signature or facsimile thereof shall appear on any 2013 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 shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such bond. The 2013 Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The City Treasurer shall cause the

2013 Bonds to be registered in the office of the Auditor of Public Accounts of the State of Nebraska and in the office of the City Treasurer as finance officer of the City. Thereafter the 2013 Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the 2013 Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to the Underwriter, upon receipt of not less than 98.9% (or such greater amount as determined in the Designation) of the principal amount of the Bonds plus accrued interest thereon to date of payment of the Bonds (which purchase price may be modified as determined in the Designation to account for original issue premium and original issue discount on the Bonds, if any). Such sale of the 2013 Bonds shall be made to the Underwriter pursuant to the terms of a Bond Purchase Agreement in substantially the form presented and an Authorized Officer is hereby authorized to approve the final form and execute and deliver such Bond Purchase Agreement. The Underwriter and its agents, representatives and counsel and Bond Counsel for the City 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 2013 Bonds, including, without limitation, authorizing the release of the 2013 Bonds by the Depository (as defined herein) at closing.

Section 10. **Applications of Funds and Proceeds.** Any accrued interest received from the sale of the 2013 Bonds shall be applied to pay interest first falling due on the 2013 Bonds, and shall be credited to the Debt Service Sub-Account in the Bond Account as described in Section 12 hereof. Expenses of issuance of the 2013 Bonds may be paid from the proceeds of the 2013 Bonds. A portion of the net proceeds of the 2013 Bonds in an amount equal to the Series 2013 Reserve Requirement shall be deposited to the Series 2013 Reserve Sub-Account as provided in Section 13(d) below. The remaining proceeds of the 2013 Bonds shall be deposited into the Construction Fund and applied as set forth in Section 12(h). The Mayor, the City Clerk and the City Treasurer, or any one or more of them, are hereby authorized to take all actions necessary to provide for the transfers and deposits described in this Section.

Section 11. **Pledge of Revenues.** The principal of and premium, if any, and interest on the Bonds shall be payable solely from and shall be secured solely by the Revenues which are hereby pledged in this Ordinance to the payment thereof, subject to the charge on Revenues for the payment of Operating Expenses. All the Bonds shall be equally and ratably secured without priority by reason of series, number, date of Bonds, date of issuance, date of sale, date of execution or date of delivery or otherwise, by a lien and charge on Revenues, which lien shall constitute a first and prior lien on Revenues subject to the charge on Revenues for the payment of the Operating Expenses. The covenants and agreements herein set forth to be performed by the City shall be for the equal and proportionate benefit,

security and protection of all holders of the Bonds without preference, priority or distinction as to payment or security or otherwise (except that a separate Reserve Sub-Account has been or will be established for the Outstanding Parity Bonds and the 2013 Bonds and a separate reserve sub-account may be established for any series of Additional Bonds and except as to maturity and sinking fund installments which may be established for the Bonds of any series authorized hereunder) of any of the Bonds or interest payments over any of the others by reason of series, date, number, date of execution, time of issue, sale or negotiation thereof or otherwise for any cause whatsoever, except as expressly provided therein or herein, and all Bonds shall rank *pari passu* and shall be secured equally and ratably without discrimination or preference whatsoever.

The lien, pledges, charges, trusts and assignments of Revenues made herein and hereby shall be valid and binding, and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code (as and to the extent applicable) or any other statute, from the time of the passage and approval of this Ordinance and the Revenues shall thereupon be immediately subject to the lien, pledge and charge hereof and the trusts created hereby subject to the condition that receipt be made for the proceeds of the 2013 Bonds by or for the City or by the Trustee or a Paying Agent hereunder.

The Bonds shall not be a debt of the State of Nebraska or of the City within the meaning of any constitutional or statutory limitation upon the creation of general obligation indebtedness of the State of Nebraska or of the City. The State of Nebraska shall not be liable for the payment of the Bonds out of any moneys of the State of Nebraska, and the City shall not be liable for the payment thereof out of any moneys of the City other than Revenues pledged to the payment thereof as aforesaid, and all Bonds shall contain a recital to that effect.

Section 12. **Creation of Funds and Accounts.** The City does hereby agree with the holders of the 2013 Bonds, the Outstanding Parity Bonds and Additional Bonds as follows:

(a) **ELECTRIC SYSTEM FUND** - There is hereby ordered established a special fund of the City to be designated as the Electric System Fund which shall be maintained as long as any of the Bonds are outstanding. The Electric System Fund and all accounts and sub-accounts therein shall be held in trust and administered by the City in accordance with this Ordinance. The City covenants and agrees that it will pay and deposit in the Electric System Fund, as promptly as practicable after the receipt thereof, all Revenues, and that said Revenues will be segregated and kept apart from all other revenues and funds of the City.

(b) **BOND ACCOUNT** - There is hereby created within the Electric System Fund a special account to be known as the "Electric System Revenue Bond Account" (hereinafter referred to as the "Bond Account"). The Bond Account shall be used solely for the purpose of paying the principal of and premium, if any, and interest on the Bonds and of retiring the Bonds prior to maturity in the manner herein provided.

(c) **DEBT SERVICE SUB-ACCOUNT WITHIN THE BOND ACCOUNT** - There is hereby created within the Bond Account, for the purpose of paying principal of and premium, if any, and interest on the Bonds and of retiring the Bonds prior to maturity in the manner herein provided, a special account in the Bond Account to be known as the "Debt Service Sub-Account."

(d) **SERIES 2013 RESERVE SUB-ACCOUNT** - There is hereby created within the Bond Account, for the purpose of providing a reserve for the payment of the principal of and premium, if any, and interest on the 2013 Bonds and only on the 2013 Bonds, a special account in the Bond Account to be known as the "Series 2013 Reserve Sub-Account."

(e) **CAPITAL IMPROVEMENT ACCOUNT** - There is hereby created within the Electric System Fund, for the purpose of making replacements, improvements, enlargements, extensions and betterments of the Electric System, a special account to be known as the "Capital Improvement Account."

(f) **OPERATION AND MAINTENANCE ACCOUNT** - There is hereby created within the Electric System Fund, for the purpose of paying Operating Expenses, a special account to be known as the "Operation and Maintenance Account."

(g) **ELECTRIC PLANT SURPLUS ACCOUNT** - There is hereby created within the Electric System Fund a special account of the City to be known as the "Surplus Account."

(h) **CONSTRUCTION FUND** - There is hereby created a special fund of the City to be known as the "Construction Fund", which shall be held and disbursed by the City.

(i) Withdrawals of the proceeds of the 2013 Bonds on deposit in the Construction Fund shall be made only to provide for the payment of the Costs of Construction, or to reimburse the Electric System Fund or the City for payment of Costs of Construction advanced from time to time when such payments have been approved by the appropriate City official.

(ii) Amounts in the Construction Fund shall be applied to the payment when due of principal of and interest on the Bonds to the extent that other moneys are not available thereof, and such amounts are hereby pledged as additional payments to the Bond Account to the extent required to make up such deficiency.

(iii) Whenever the purposes for which the Construction Fund (or any other construction fund in which is deposited the proceeds of Additional Bonds) has been created have been satisfied, any balance then remaining therein may be transferred to any other construction fund and such Construction Fund (or fund) closed. To the extent not so transferred, such balance shall be deposited in the Series 2013 Reserve Sub-Account unless and until there shall be on deposit therein an amount equal to the Series 2013 Reserve Requirement, and any amount of such balance then remaining shall be transferred to the Capital Improvement Fund.

A separate reserve sub-account may be established for any issue of Additional Bonds in the Series Ordinance for such issue which sub-account or sub-accounts shall be of equal standing and priority with the Series 2013 Reserve Sub-Account as to priority of payment for purposes of restoring withdrawals as set forth in Section 13 hereof and in the event of insufficiency of funds for restoring any and all such withdrawals amounts shall be allocated among deficient reserve sub-accounts pro rata in accordance with the respective outstanding principal amounts of those issues of Bonds for which there are deficient reserve sub-accounts.

Section 13. **Application of Revenues.** Each month the moneys in the Electric System Fund shall be applied in the amounts and in the order of priority set forth in this Section 13. In the event that in any month the moneys in the Electric System Fund are insufficient to make in full in the order of priorities set forth in this Section the credits, reservations and payments required by the provision of this Section 13, such credits, reservations and payments shall be

made in such manner in order of priority to the fullest extent possible, an item having higher priority being satisfied in full (including the making up of any deficiencies) before an item having a lower priority. The amount of any deficiency in a credit, reservation or payment over to or for a priority item shall be added to the requirement for such item in succeeding months until such deficiency is satisfied.

FIRST: There shall be reserved in the Electric System Fund and credited to the Operation and Maintenance Account each month such amounts as shall be necessary to pay the Operating Expenses during the ensuing month, which amounts so reserved shall be used for and applied to such payments in such month or, to the extent not so applied, in succeeding months.

SECOND: There shall next be paid from the Electric System Fund for deposit in the Bond Account to be credited to the Debt Service Sub-Account and the Series 2013 Reserve Sub-Account therein, simultaneously and without preference of one over the other, with consideration given to and allowance made for moneys deposited in, credited or accrued to the Debt Service Sub-Account and the Series 2013 Reserve Sub-Account, the following:

(a) Not later than the 25th day of the month following the issuance and delivery of any series of Bonds, including the 2013 Bonds, and not later than the 25th day of each calendar month thereafter, the City shall pay to the Trustee for deposit in the Bond Account to be credited to the Debt Service Sub-Account with respect to each series of Bonds then Outstanding, an amount such that, if the same amount were so paid and credited to the Debt Service Sub-Account on the 25th day of each succeeding calendar month thereafter and prior to the next date upon which an installment of interest falls due on the Bonds of such series, the aggregate of the amounts so paid and credited to the Debt Service Sub-Account for the purpose of paying interest on such series of Bonds would on such date be equal to the installment of interest then falling due on all Bonds of such series of Bonds then Outstanding. In making credits to the Debt Service Sub-Account required by this subparagraph, consideration shall be given to and allowance made for any amounts representing accrued interest received on the sale of Bonds paid or to be paid into the Bond Account and credited to the Debt Service Sub-Account, and interest capitalized from the proceeds of Bonds.

(b) Not later than the 25th day of the 12th month prior to each date upon which an installment of principal of the Bonds of any series of Bonds falls due, and not later than the 25th day of each calendar month thereafter, the City shall pay to the Trustee for deposit in the Bond Account to the credit of the Debt Service Sub-Account with respect to an installment of principal on such series of Bonds, an amount such that, if the same amount were so paid and credited to the Debt Service Sub-Account on the 25th day of each calendar month thereafter and prior to the next day upon which an installment of principal falls due on the Bonds of such series of Bonds, the aggregate of the amounts so paid and credited to the Debt Service Sub-Account for the purpose of paying in installment of principal of such series would on such date be equal to the installment of principal of such series of Bonds then falling due, provided, however, with respect to the 2013 Bonds such deposits and credits shall commence with the 25th day of such month as determined in the Designation.

(c) Not later than the 25th day of the 12th month prior to the date upon which the first sinking fund installment for mandatory redemptions, if any, is payable with respect to the Bonds of any series of Bonds and not later than the 25th day of each calendar month thereafter, the City shall pay to the Trustee for deposit in the Bond Account for credit to the Debt Service Sub-Account with respect to a sinking fund installment on such series of Bonds, an amount such that, if the same amount were so paid and credited to the Debt Service Sub-Account on the 25th day of each calendar month thereafter and prior to the next date upon which a sinking fund installment falls due, the aggregate of the amounts so paid and credited to the Debt Service Sub-Account for the purpose of retiring the Bonds of such series would be sufficient to redeem such Bonds in the principal amounts and at the times specified in the Series ordinance or Ordinances authorizing the issuance of such Additional Bonds.

The Trustee may apply the moneys paid into the Bond Account for credit to the Debt Service Sub-Account pursuant to this subsection (c) for the purpose of retiring the Bonds of each series of Bonds to the purchase of such Bonds, in which event the principal amount of said Bonds of the

maturity purchased required to be redeemed on the next ensuing sinking fund installment mandatory redemption date shall be reduced by the principal amount of such Bonds so purchased; provided, however, that no Bonds shall be purchased during the interval between the date on which notice of redemption of said Bonds from sinking fund installments is given and the date of redemption set forth in such notice, unless the Bonds so purchased are Bonds called for redemption in such notice or are purchased from moneys other than those credited to the Debt Service Sub-Account pursuant to this subsection (c) as part of a sinking fund installment; and provided further, that no purchases of Bonds shall be made if such purchase would require the sale at a loss of securities in the Bond Account for credit to the Debt Service Sub-Account unless the difference between the actual purchase price (including accrued interest and any brokerage or other charge) paid for such Bonds and the then maximum purchase price (plus accrued interest) permitted to be paid therefor, is greater than the loss upon the sale of any such securities. Any purchase of Bonds pursuant to this subsection (c) may be made with or without tenders of Bonds and at either public or private sale, but in any event at a purchase price (including accrued interest and any brokerage or other charge) not to exceed the then applicable redemption price of such Bonds, plus accrued interest. All Bonds purchased or redeemed pursuant to this subsection (c) shall be cancelled and not reissued.

At the option of the City, the City may, in lieu of making all or any part of the cash payments into the Bond Account required by the foregoing provisions of this subsection (c), furnish the Trustee with a certificate of the Treasurer of the City, stating that the City has purchased and cancelled Bonds of a series of Bonds in the principal amount, and bearing the numbers, specified therein, and that said Bonds have not been previously included in any such certificate; and thereupon the cash payments required by the foregoing provisions of this subsection (c) with respect to the Bonds of such series of the maturity purchased may be reduced accordingly by the principal amount of such Bonds cancelled, as evidenced by such certificate.

In the event notice of redemption shall have been given as provided in the authorizing ordinance with respect to a redemption other than pursuant to the foregoing provisions of this subsection (c), the City shall pay to the Trustee for deposit in the Bond Account for credit to the Debt Service Sub-Account at least six (6) days prior to the redemption date, an amount in cash which, in addition to other moneys, if any, available therefor in the Debt Service Sub-Account, will be sufficient to redeem on the redemption date at the applicable redemption prices thereof, plus interest accrued thereon to the redemption date, all of the Bonds to be redeemed.

(d) Upon the issuance of the 2013 Bonds there shall be transferred to the Series 2013 Reserve Sub-Account from proceeds of the Series 2013 Bonds an amount equal to the Series 2013 Reserve Requirement. If at any time the moneys and the value of Investment Securities in the Bond Account for credit to the Series 2013 Reserve Sub-Account therein are an amount less than the Series 2013 Reserve Requirement as the result of a withdrawal from the Series 2013 Reserve Sub-Account, there shall be credited to the Series 2013 Reserve Sub-Account from the first moneys available therefor, such amounts as shall be necessary until there is again on credit to the Series 2013 Reserve Sub-Account an amount at least equal to the Series 2013 Reserve Requirement. As set forth in Section 12, amounts available for restoring reserve sub-accounts for separate series of Bonds shall be applied pro rata in accordance with the respective outstanding principal amounts of each such series for which restoration of withdrawals is required.

If at any time the moneys and value of Investment Securities in the Bond Account for credit to the Series 2013 Reserve Sub-Account therein are in excess of the Reserve Account Requirement, the amount of such excess shall, at the request of the City, be paid into the Debt Service Sub-Account of the Bond Account, to be used and applied as credit against the amounts next required to be deposited thereto by the City with respect to the 2013 Bonds. The moneys and value of Investment Securities in the Bond Account for credit to the Series 2013 Reserve Sub-Account therein shall, except for the transfer therefrom to the Debt Service Sub-Account of excess amounts therein as heretofore permitted in this subsection (d), be used and applied solely for the purpose of paying the principal of and premium, if any, and interest on the 2013 Bonds when due, whether at their maturity or upon the redemption or purchase thereof from moneys credited to the Debt Service Sub-Account and shall

be so used and applied whenever there are insufficient moneys in the Bond Account for credit to the Debt Service Sub-Account therein for such purposes.

The term "value of Investment Securities" and words of like import as used herein, shall mean the purchase price of such obligations paid by the City, excluding accrued interest, but shall not be more than the par value of such obligations.

Moneys in the Debt Service Sub-Account shall be transmitted by the Trustee without further authorization or direction from the City to the Paying Agents prior to the date upon which any interest is due on the Bonds and prior to the date upon which any principal is due on the Bonds pursuant to a stated maturity, a sinking fund installment or a notice of redemption, as the case may be. In the event that there shall be a deficiency in the Debt Service Sub-Account in the Bond Account, and if moneys in the Electric System Fund are not deposited with the Trustee in an amount sufficient to make up any deficiency, the Trustee shall promptly make up such deficiency from the Series 2013 Reserve Sub-Account for the 2013 Bonds by the withdrawal of cash therefrom for that purpose and by the sale or redemption of obligations held in the Series 2013 Reserve Sub-Account, if necessary, in such amounts as will provide cash in the Series 2013 Reserve Sub-Account sufficient to make up any such deficiency. With respect to any Additional Bonds in any such case withdrawals shall be made from the respective reserve account, if any, established with respect to such Additional Bonds in the respective authorizing ordinance.

Moneys set aside from time to time with the Paying Agent for the purpose of paying the principal of and premium, if any, and the interest on the Bonds shall be held in trust for the holders of the Bonds in respect of which the same shall have been so set aside. Until so set aside, all moneys in the Bond Account, except for monies held in the Reserve Sub-Account established for the Outstanding Parity Bonds, the Series 2013 Reserve Sub-Account or any reserve account established for Additional Bonds, shall be held in trust for the benefit of the holders of all Bonds at the time Outstanding, equally and ratably.

Whenever the amounts on deposit in the Bond Account shall be sufficient to provide moneys to retire all Bonds then Outstanding, including such interest thereon as thereafter may become due and payable and any premiums upon redemption thereof, no further payments need be made into the Bond Account. All moneys remaining in the Bond Account after provisions for the payment in full of the principal of and premium, if any, and interest on the Bonds shall be returned to the Electric System Fund.

THIRD: There shall be paid from the Electric System Fund for deposit in the Capital Improvement Account the amounts provided for by Section 16 of this Ordinance. Moneys in said account shall be used for the purposes specified in said Section 16.

FOURTH: Within 120 days after the end of each Fiscal Year, the City shall next have the right to withdraw from the Electric System Fund and to pay into the general fund of the City an amount equal to five per cent (5%) of Operating Revenues less Operating Expenses for such Fiscal Year, such payment being in lieu of taxes. No withdrawal from the Electric System Fund and payment to the City hereinbefore authorized shall be made at any time when the City shall be in default in the performance of any covenant or agreement contained in the Ordinance or when such withdrawal would cause the City to be in default in the performance of any such covenant or agreement. Except as aforesaid, no moneys derived by the City from the operation of the Electric System shall be diverted or applied to the general governmental or municipal functions of the City so long as any of the Bonds remain Outstanding. Anything in this Section 13, including this paragraph FOURTH, to the contrary notwithstanding, the City shall be permitted to include allocable administrative costs attributable to services furnished by the City's general operations for the benefit of the Electric System in Operating Expenses, payable from the Operation and Maintenance Account.

FIFTH: Subject to the second last sentence of paragraph FOURTH above, all moneys remaining in the Electric System Fund, after making provision for payments required to be made into the Operation and Maintenance Account, the Bond Account, and the Capital Improvement Account, and any withdrawals by the City pursuant to paragraph FOURTH above, shall be credited to the Surplus Account and may be expended for any lawful purpose of the Electric System.

Moneys in the Electric System Fund shall, to the fullest extent practicable, be invested in Investment Securities maturing at such times and in such amounts as shall be required to provide moneys to make payments required to be made from said Fund. Moneys held for credit to the Debt Service Sub-Account in the Bond Account shall, to the fullest extent practicable and reasonable, be invested by the Trustee at the direction of the City in Investment Securities which shall mature prior to the respective dates when the moneys held for the credit of such Account will be required for the purposes intended. Moneys in the Series 2013 Reserve Sub-Account in the Bond Account not required for immediate disbursement for the purposes for which said Account is created shall, to the fullest extent practicable and reasonable, be invested and reinvested by the Trustee at the direction of the City solely in, and obligations deposited in the Series 2013 Reserve Sub-Account shall be, Investment Securities maturing, or subject to redemption at the option of the holder thereof, within ten (10) years from the date of such investment (but maturing prior to the final maturity date of the 2013 Bonds). The Trustee shall not be liable for any depreciation in value of any such investment. Moneys held in the Capital Improvement Account shall be invested as provided in Section 16 and income resulted from such investments shall be applied as provided in such Section. All income resulting from the investment or reinvestment of moneys held in the Electric System Fund pursuant to this Section shall be treated as Revenues, and shall be retained in the Electric System Fund and allocated as provided herein, except for income attributable to the Series 2013 Reserve Sub-Account which is required above to be transferred to the Debt Service Sub-Account for making payments due on the 2013 Bonds.

Earnings on the investment of moneys in the construction and acquisition account established for the proceeds of the 2013 Bonds and any construction account that may be established with the proceeds of Additional Bonds shall be deposited in such account. Expenses of purchase, safekeeping, sale and redemption and all other expenses attributable to such investments shall be treated as expenses of such account.

The provisions of this Section 13 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 Electric System Fund and the several accounts and sub-accounts required by this Section 13.

Section 14. **Additional Bonds.** At any time and from time to time after the issuance of the 2013 Bonds, one or more series of Additional Bonds may be issued hereunder for the purpose of acquiring, constructing, reconstructing, improving, extending, equipping or furnishing the Electric System or for the purpose of refunding or purchasing Bonds

upon compliance with the conditions and limitations hereinafter set forth in this Section 14. Such conditions and limitations with respect to Additional Bonds other than refunding bonds (as described below) are as follows:

(a) Prior to the issuance, sale and delivery of any Additional Bonds, the City shall obtain and file with the Trustee a letter of the Independent Accountant stating that, based upon their most recent examination, nothing came to their attention that would indicate that the City is not in compliance with the covenants, agreements and conditions contained in this Ordinance;

(b) Prior to the issuance, sale and delivery of any Additional Bonds, the City shall obtain and file with the Trustee an opinion of the Consulting Engineer stating that Net Receipts, computed as hereinafter provided in this section, in each Fiscal Year following the issuance of the Additional Bonds then proposed to be issued will be at least equal to the greater of:

(i) 1.30 times the Debt Service Requirement in such year for (A) the Bonds to be Outstanding after the issuance of such Additional Bonds, and (B) any Additional Bonds which, in the opinion of the Consulting Engineer, will be required to complete payment of the Costs of Construction of a Facility for which any Bonds have theretofore been issued or are then being issued hereunder; or

(ii) the Debt Service Requirement on all Bonds referred to in (A) and (B) of subparagraph (i) above plus (A) payments, if any, scheduled (after the time of any credit to be made upon initial issuance of any issue of Additional Bonds) by the City to be made from Revenues into the Reserve Sub-Account for the Outstanding Parity Bonds, the Series 2013 Reserve Sub-Account and any reserve sub-account established or to be established for any issue of Additional Bonds fulfill the applicable Series Reserve Requirement, any reserve requirement established for any issue of Additional Bonds then Outstanding and any reserve requirement established for the issue of Additional Bonds to be issued, and (B) the amounts required to be expended pursuant to Section 16 hereof.

(c) In making the computation of Net Receipts for each succeeding Fiscal Year as hereinabove provided, the Consulting Engineer shall use as a basis the Net Receipts for any period of twelve consecutive months during the eighteen months next preceding the month in which Additional Bonds then being issued are sold to the initial purchasers thereof (hereinafter referred to as the "Base Period"). In making such computations the Consulting Engineer shall adjust the Net Receipts for the Base Period as follows:

(i) If any changes have been made in the schedule of rates and charges imposed by the City on sales of power and energy and services furnished by the Electric System, including rates contained in power sales contracts, which are in effect at the time of adoption of the Series Ordinance authorizing the issuance of the Additional Bonds then being issued and were not in effect for all or any part of the Base Period, the Consulting Engineer may, if such changes result in increases in such rates and charges, and shall, if such changes result in reductions in such rates and charges, adjust the Net Receipts for the Base Period to reflect any change in such Net Receipts which would have occurred if the schedule of rates and charges in effect at the time of the adoption of the Series Ordinance authorizing the issuance of the Additional Bonds had been in effect during that portion of the Base Period in which such schedule was not in effect.

(ii) In computing the projected Net Receipts for each of the Fiscal Years covered by this Section, the Consulting Engineer may adjust the amount of Net Receipts for the Base Period, as adjusted pursuant to the preceding paragraph, by his estimate of the net increase over, or net decrease under, such Net Receipts for the Base Period by reason of any one or more of the following factors:

ORDINANCE NO. 9456 (Cont.)

(A) changes in the amounts payable to the City pursuant to existing power sales contracts;

(B) changes in Operating Revenues to result from existing power sales contracts for future deliveries of power and energy;

(C) changes in Operating Revenues to result from increases of sales of power and energy to customers of the Electric System under existing rate schedules for the various classes of such customers, or as such rate schedules may be revised under the Program of Rate Changes;

(D) projected revisions of the cost of labor, wages and salaries;

(E) projected revisions of the cost of fuel;

(F) projected revisions of the cost of machinery, equipment and supplies;

(G) projected revisions of production, transmission, distribution and administrative costs associated with the increases in sales of power and energy and the acquisition and construction of additional facilities;

(H) the projected cost of purchasing power and energy;

(I) projected sales of surplus energy or capacity; provided, however, that no Revenues from sales of surplus energy or capacity shall be included in projected Net Receipts unless the Consulting Engineer shall state in the opinion delivered pursuant to subsection (b) of this Section that he believes there will be a market for such surplus energy or capacity at the rates used in computing the projected Revenues from this source in the Fiscal Years in which such projected Revenues are included; and

(J) such projection of additional Operating Revenues and Operating Expenses as the Consulting Engineer shall deem reasonable and proper.

(d) If the Consulting Engineer is required pursuant to this Section 14 to estimate the Debt Service Requirement on any Bonds which in his opinion will be required to be issued in the future to pay Costs of Construction of a Facility for which Bonds have been or are then being issued, he shall estimate the Debt Service Requirement for such future Additional Bonds based upon:

(i) the assumption that such future Additional Bonds will be issued in an amount not less than the amount required to complete payment of the Costs of Construction of such Facility as estimated by the Construction Engineer for such Facility, or if there be no Construction Engineer therefor, by the Consulting Engineer;

(ii) the assumption that the Debt Service Requirement on such future Additional Bonds in each Fiscal Year in which payments to the Bond Account with respect to principal on such future Additional Bonds will be made will be as nearly equal as practicable;

(iii) the assumption that the first installment of principal of such future Additional Bonds will be payable on or before the date which is thirty-six months following the estimated Date of Commercial Operation of such Facility to pay the Costs of Construction of which such future Additional Bonds will be required to be issued;

(iv) the assumption that the final maturity of such future Additional Bonds will be not later than the final maturity date of any Bonds or Additional Bonds theretofore issued or then being issued to pay the Costs of Construction of such Facility;

(v) the assumption that the interest rate to be borne by such future Additional Bonds will be at least equal to the Average Interest Rate (to the next higher multiple of 1/10 of 1%) as is to be borne by the Additional Bonds then being issued; and

(vi) such other assumptions with respect to the issuance of such Bonds as the Consulting Engineer may consider proper.

The Consulting Engineer may reduce his estimate of the amount of future Additional Bonds required to be issued to pay Costs of Construction of a Facility for which Bonds have been or are being issued by:

(i) an amount equal to the income which the Consulting Engineer estimates will be derived from the investment of the proceeds of the Additional Bonds issued or the future Additional Bonds to be issued to pay the Costs of Construction of such Facility pending their application to the payment of the Costs of Construction of such Facility at an interest rate which shall not be greater than the Average Interest Rate borne by the Additional Bonds then being issued; and

(ii) any amounts which the Consulting Engineer estimates are or will be available to the City from Revenues or any other moneys for the purpose of paying a portion of the Costs of Construction of such Facility.

(e) Any certificate of the Consulting Engineer filed with the Trustee pursuant to this Section shall be conclusive and binding upon the holders of Bonds and the Trustee and shall be the only evidence required to show compliance by the City and the Consulting Engineer with the provisions and requirements of subsections (b), (c) and (d) of this section.

(f) Unless upon the issuance, sale and delivery of any Additional Bonds there shall then already be on deposit in the Bond Account for credit to the Series 2013 Reserve Sub-Account therein an amount equal to the Series 2013 Reserve Requirement and any reserve requirements for any reserve accounts for Additional Bonds to be in effect after the issuance of such Additional Bonds, there shall either (i) be paid into the Bond Account for credit to the Series 2013 Reserve Sub-Account and all other reserve sub-accounts therein such amount, if any, of the proceeds of the sale of such Additional Bonds so that there shall be on deposit in the Bond Account for credit to the Series 2013 Reserve Sub-Account and any reserve sub-account established for any issue of Additional Bonds therein an amount equal to the Series 2013 Reserve Requirement and any reserve account requirement for Additional Bonds to be in effect immediately after the issuance of such Additional Bonds or (ii) if and to the extent there shall not be paid into the Bond Account for credit to the Series 2013 Reserve Sub-Account and/or the respective reserve sub-accounts for each issue of Additional Bonds to be outstanding, proceeds of such Additional Bonds in an amount so that there shall then be on credit to the Series 2013 Reserve Sub-Account and any such reserve sub-account established for Additional Bonds to be outstanding an amount equal to the Series 2013 Reserve Requirement and the reserve requirement, if any, for each such issue of Additional Bonds, there shall be credited to the Series 2013 Reserve Sub-Account and any such reserve sub-account for Additional Bonds to be outstanding, at such time, or from time to time, as the City may deem proper, such amount or amounts, as the City may deem proper, of the moneys available therefor after all payments and credits required by Section 13 hereof have been made, so that by any date to which interest on such Additional Bonds then being issued has been provided for by deposits in the Debt Service Sub-Account in the Bond Account from the proceeds of Bonds, there shall be on deposit in the Series 2013 Reserve Sub-Account and any such reserve account or sub-account established for Additional Bonds an amount equal to the Series 2013 Reserve Requirement and any such reserve requirement for Additional Bonds to be outstanding, all as then in effect.

At any time and from time to time after the issuance of the 2013 Bonds, the City may issue one or more series of Additional Bonds on a parity with the 2013 Bonds, the Outstanding Parity Bonds and any Additional Bonds then Outstanding for the purpose of refunding or purchasing Bonds, including amounts to pay principal, premium and interest to the redemption or purchase date and the expenses of issuing such Additional Bonds and refunding or purchasing the Bonds being refunded or purchased, provided, that the Debt Service Requirement for the Bonds to be Outstanding after the issuance of such refunding Bonds in any Fiscal Year in which any Bonds to be refunded or purchased would otherwise be Outstanding shall not be greater than the Debt Service Requirement if the Bonds to be refunded or purchased were not so refunded or purchased. Refunding bonds may be issued under the terms provided for above in this Section 14, provided that any showing of the coverage required by (b)(i) or (b)(ii) may be shown by a statement of the City's Treasurer accompanied by audited financial statements and certified calculations as to the Debt Service Requirement for all Bonds to be outstanding after the issuance of any such refunding bonds.

The City may also issue Bonds on a parity with the 2013 Bonds, the Outstanding Parity Bonds and any Additional Bonds then Outstanding for the purpose of refunding at any time within one year prior to maturity any of the Bonds for the payment of which the City does not have sufficient funds. Any Additional Bonds issued for such purpose shall mature in a year not earlier than the latest stated maturity of the Bonds not refunded to be Outstanding after the completion of such refunding.

Except for the issuance of the 2013 Bonds and except for the issuance of, and to the extent permitted in this Section 14, Additional Bonds, from and after the effective date of this Ordinance and for so long as any of the Bonds are Outstanding, the City will not create or permit the creation of any indebtedness or issue any bonds, notes, warrants, certificates or other obligations or evidences of indebtedness payable in any manner from moneys derived from Revenues or from the Electric System Fund which (a) will in any way be superior to or rank on a parity with the Bonds authorized in accordance with this Section 14 or (b) will in any way be secured by a lien and charge on Revenues or on the moneys deposited in or to be deposited in the Electric System Fund prior to or equal with the lien and charge created herein for the security of the Bonds, or (c) will be payable prior to or equal with the payments to be made from moneys derived from Revenues and the Electric System Fund into the Bond Account and the Capital Improvement Account, and from the Bond Account for the payment of the Bonds, including the payments to be made into the Series 2013 Reserve Sub-Account or any reserve sub-account established for any issue of Additional Bonds in the Bond Account.

Nothing in this Ordinance, and particularly nothing in this Section 14 shall prevent the City from authorizing and issuing bonds, notes, bond anticipation notes, warrants, certificates or other obligations or evidences of indebtedness (a) the payment of the principal of and premium, if any, and interest on which shall be made from evidences of indebtedness of the City (other than Bonds) or from moneys derived from Revenues in the Surplus Account, or from any other special fund or account to be maintained from Revenues, so long as the payments from Revenues or from such other special fund or account shall be made junior and subordinate to the payment of the principal of and interest on the Bonds to all payments for Operating Expenses or required to be made to the Bond Account by the provisions of Section 13 hereof and to the Capital Improvement Account by the provisions of Section 16 hereof; and (b) which are secured as to principal, premium, if any, and interest, or if payable from another special fund or account (as aforesaid) the payments into which other special fund or account are secured, by a lien and charge on Revenues and the moneys in the Electric System Fund junior and inferior to the lien and charge thereon of the Bonds, which lien shall also be junior and inferior to the payments to be made from Revenues and the Electric System Fund for Operating Expenses, to provide for the payment of the Bonds, including the payments to be made into the Bond Account for credit to the Series 2013 Reserve Sub-Account and any reserve sub-account established for Additional Bonds therein and the Capital Improvement Account.

Nothing in this Ordinance shall prevent the City from authorizing and issuing bonds, notes, warrants, certificates or other obligations or evidences of indebtedness, other than Bonds, to acquire or construct facilities for the generation, transmission or distribution of electric power and energy, which facilities shall be a separate electric utility system (separate and apart from the Electric System) and which bonds or other obligations or evidences of indebtedness shall not be a charge upon or payable from the Revenues but shall be payable solely from the revenues or other income derived from the ownership or operation of such separate electric system.

Section 15. **Depositories, the Trustee, the Paying Agents.** All moneys in the Electric System Fund shall be deposited in the name of the City in banks and trust companies selected by the City as depositories. All moneys deposited with any depository at any time shall be secured in the manner then prescribed by the laws of the State of Nebraska for the securing of funds of the City.

The Trustee may be removed for cause at the request of and upon the affirmative vote of the holders of more than fifty percent (50%) of the principal amount of Bonds Outstanding. In the event of the removal, resignation, disability or refusal to act of the Trustee, a successor may be appointed by the holders of more than fifty percent (50%)

of the principal amount of Bonds Outstanding, excluding any Bonds held by or for the account of the City, and such successor shall have all the powers and obligations of the Trustee under this Ordinance theretofore vested in its predecessor, or in any Bondholders' Committee created under Section 18 hereof, provided, that unless a successor Trustee shall have been appointed by the holders of Bonds as aforesaid, the City by a duly adopted ordinance shall forthwith appoint an interim Trustee to fill such vacancy until a successor Trustee shall be appointed by the holders of Bonds as authorized in this Section 15. Any interim Trustee appointed by the City shall, immediately and without further act, be superseded by the successor Trustee appointed by the holders of Bonds.

Any company into which the Trustee may be merged or with which it may be consolidated or any company resulting from any merger or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business shall, upon the consummation of such merger, consolidation, sale or transfer, become successor Trustee, provided such company otherwise qualifies for the office as provided in this Section 15.

The Trustee may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than sixty (60) days' written notice to the City and mailing notice thereof to all registered owners of the Bonds and such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed by the City or the Bondholders as above provided, in which event such resignation shall take effect immediately on the appointment of such successor.

The Trustee is hereby appointed as the sole Paying Agent for all Bonds Outstanding under this Ordinance. The appropriate accounts of the Bond Account shall be drawn upon by the Trustee for the purpose of paying the principal of and premium, if any, and interest on the Bonds or transferring moneys to the Paying Agent for that purpose.

The duties and obligation of the Trustee appointed by or pursuant to the provisions of this Ordinance prior to the occurrence of an Event of Default (hereinafter defined), and subsequent to the curing of such Event of Default, shall be determined solely by the express provisions of this Ordinance, and such Trustee shall not be liable for any action of any other trustee and shall not otherwise be liable except for the performance of its duties and obligations as specifically set forth herein and to act in good faith in the performance thereof, and no implied duties or obligation shall be incurred by such Trustee other than those specified herein, and such Trustee shall be protected when acting in good faith and upon advice of counsel, who may be counsel to the City.

In case an Event of Default has occurred which has not been cured, such Trustee shall exercise such of the rights and powers vested in it by this Ordinance and use the same degree of care and skill in the exercise thereof as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. The Trustee shall not be deemed to have knowledge of any Event of Default not known to such Trustee.

Subject to the provisions of this Section 15, the Trustee may conclusively rely, as to the correctness of the statements, conclusions and opinions expressed therein, upon any certificate, report, opinion or other document furnished to such Trustee pursuant to any provisions of this Ordinance. Except as otherwise expressly provided in this Ordinance, any request, consent, certificate, demand, notice, order, appointment, or other direction made or given by the City to such Trustee or the Paying Agent shall be deemed to have been sufficiently made or given by the proper party or parties if executed on behalf of the City by its Mayor.

None of the provisions contained in this Ordinance shall require the Trustee to spend or risk its own funds or otherwise incur individual financial responsibility in the performance of any of its duties or in the exercise of any of its right or powers, if there are reasonable grounds for believing that the repayment thereof is not reasonably assured to it under the terms of this Ordinance.

The Trustee and the Paying Agent shall be entitled to reasonable compensation for all services rendered by them in the execution, exercise and performance of any of the powers and duties to be exercised or performed by the Trustee and the Paying Agent, respectively, pursuant to the provisions of this Ordinance or any Series Ordinance, and the City will pay or reimburse the Trustee and the Paying Agent upon request for all expenses, disbursements and advances incurred or made by the Trustee or Paying Agent, as the case may be, in accordance with any of the provisions hereof (including the reasonable compensation and expenses and disbursements of counsel for the Trustee, or Paying Agent, as the case may be, and of any persons not regularly in the employ thereof). The Trustee shall be entitled to indemnity from the City against any loss, liability or expense incurred on the part of the Trustee arising out of or in connection with the acceptance or administration of the powers and duties of the trust created pursuant to the provisions of this Ordinance, including the cost and expense of defending against any claim or liability in the premises, and, to the extent permitted by law, the Trustee shall have a lien or claim for payment of such compensation, expenses and disbursements of counsel, losses, liabilities and expenses prior to that of the holders of the Bonds upon any funds held by it under this Ordinance.

The Trustee shall not be responsible in any manner whatsoever for the correctness of the recitals, statements and representations herein or in the Bonds, all of which are made by the City solely. The Trustee makes no

representation as to the value or condition of the Electric System, or any part thereof, or as to any addition or improvement to the Electric System, or as to the right, title and interest of the City in the Electric System or any addition or improvement to the Electric System, or as to the lien created by this Ordinance, or as to the validity of this Ordinance or of the Bonds issued hereunder, and the Trustee shall incur no liability or responsibility in respect of any such matters. The Trustee shall not have any responsibility as to the amount of Bonds issued or Outstanding at any time.

In case at any time it shall be necessary or desirable for the Trustee to make any investigation respecting any fact preparatory to taking or not taking any action or doing or not doing any thing, and in any case in which this Ordinance provides for permitting or taking any action, the Trustee may rely upon any certificate required or permitted to be filed with it under the provisions of the Ordinance, and any such certificate shall be evidence of such fact to protect it in any action that it may or may not take or in respect of any thing it may or may not do, by reason of the supposed existence of such fact.

The Trustee and its directors, officers, employees or agents, may in good faith buy, sell, own and hold any of the Bonds issued under the provisions of this Ordinance, and may join in any action which any Bondholder may be entitled to take with like effect as if such Trustee were not the Trustee under the Ordinance. The Trustee may in good faith hold any other form of indebtedness of the City; own, accept or negotiate any drafts, bills of exchange, acceptance or obligations thereof; make disbursements therefor and enter into any commercial or business arrangement therewith. The Trustee shall not be deemed to have any conflict of interest solely by reason of any such transaction.

Section 16. **Covenants to Secure Bonds.** The City covenants and agrees with the purchaser and registered owners of the Bonds from time to time Outstanding under this Ordinance, that so long as any of the Bonds are Outstanding hereunder:

(a) Within one hundred twenty (120) days after the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 2013, so long as any Bonds shall be Outstanding, the City will withdraw from the Electric System Fund for deposit in the Capital Improvement Account, an amount at least equal to ten percent (10%) of the average annual Operating Revenues for the preceding three Fiscal Years after deducting therefrom "fuel" expense and "purchased power expense," as such expenses are determined in accordance with the Uniform System of Accounts. Amounts deposited in the Capital Improvement Account shall be expended by the City for replacements, improvements, enlargements, extensions and betterments of the Electric System, and such amounts, at the option of the City, shall (a) be expended within two years as of the date of deposit therein for said purposes, or if not so expended within said two (2) years, shall be used for the purchase or cancellation or redemption of Bonds in advance of maturity, or (b) be used as promptly as possible to purchase and cancel or to redeem Bonds in advance of maturity.

Moneys held in the Capital Improvement Account shall, to the fullest extent practicable and reasonable, be invested by the City in Investment Securities which shall mature prior to the respective dates when the moneys held for the credit of such Account will be required for the purposes intended.

All income resulting from the investment or reinvestment of such moneys shall accrue to and become a part of the Capital Improvement Account, except that the City, at its option, may transfer such income to the other accounts and sub-accounts within the Electric System Fund in the order established in Section 13 hereof. In the event that income resulting from the investment or reinvestment of moneys held in the Capital Improvement Account is retained therein, the obligation of the City, with respect to the Fiscal Year in which such income is paid to the City to deposit moneys into the Capital Improvement Account pursuant to the first sentence of this Section, shall be reduced by an amount equal to the income resulting from such investment or reinvestment.

(b) The City will fix, establish and collect or cause to be fixed, established and collected rates, tolls, rents and other charges for electric energy, and all other commodities, services and facilities sold, furnished or supplied through the properties of the Electric System or any part thereof, adequate to provide Revenues sufficient to pay the principal of and premium, if any and interest on all Bonds Outstanding, to make the payments required by this Ordinance to the Bond Account, when due, to pay the costs of proper operation and maintenance of the properties of the Electric System, including provision for all necessary repairs, replacements and renewals thereof and working capital necessary for the operation thereof, to enable the City to make in each Fiscal Year the payments or expenditures required by Section 16(a) hereof and to pay all other charges and liens whatsoever payable from said Revenues including payments in lieu of taxes referred to in Section 13, FOURTH.

(c) The City will duly and punctually pay, or cause to be paid, but only from the Revenues, the principal of and premium, if any, and interest on each and every Bond on the dates and at the places, and in the manner provided in the Bonds according to the true intent and meaning thereof, and will faithfully do and perform and at all times fully observe and keep any and all covenants, undertakings, stipulations and provisions contained in the Bonds and in this Ordinance and any Series Ordinance.

(d) The City will not at any time create or permit to accrue or to exist any lien or other encumbrance upon the Revenues pledged hereby, or upon any Revenues at any time derived by the City through the operation by it of the properties of the Electric System or upon any other moneys pertaining to the Electric System which the City may be authorized by applicable law to apply to the payment of the Bonds or upon any funds or accounts pertaining to the Electric System at any time held by the City, or by any Paying Agent, the Trustee, or any depository for the Electric System Fund, or upon the properties of the Electric System, or any part thereof, unless adequate provision is made in the agreement, mortgage, ordinance, indenture, or other instrument creating such lien or other encumbrance or indebtedness, or otherwise, so that the Bonds shall constitute a lien upon all such Revenues, moneys, funds and other property, prior to any such subsequent lien or other encumbrance or indebtedness.

(e) The City will not sell, lease or otherwise dispose of all or any part of the properties of the Electric System (except such equipment, materials or supplies as may be acquired for the purpose of resale, and such machinery, equipment, tools or other property, real or personal, which shall be or shall have become unserviceable, inadequate, obsolete, worn out, unfit or unadapted for use in connection with the operations of any Facility, or no longer necessary or useful in such operations), for a consideration other than money, and if payment thereof be deferred the City shall retain a prior lien or charge on the income and revenues from the property sold, leased or otherwise disposed of until payment of such consideration, plus the costs and expenses of the City in servicing such deferred payment sales, is made in full. Prior to any such sale, lease or other disposition the City shall cause an appraisal of the property to be sold, leased or otherwise disposed of to be made by the Consulting Engineer and filed with the City Clerk of the City and the Trustee; provided, however, that no such appraisal shall be required for any sale of property for less than Two Hundred Fifty Thousand Dollars (\$250,000). The City further covenants and agrees that no such sale, lease or other disposition of such property shall be made until seven (7) days after the date of such filing, or at a price less than the value as shown by such appraisal, or in any event for such amounts or on such terms as will impair or destroy the ability of the City to continue to operate the portion of the properties of the Electric System remaining under the possession, control and operation of the City in an efficient manner, or to

collect and receive therefrom directly or indirectly Revenues sufficient in amount to provide for the required payments into the Bond Account and for all necessary and proper expenses to be thereafter incurred in the operation and maintenance of the properties of the Electric System remaining in the City, the proper renewal, replacement, extension and betterment of said remaining properties, the payments and expenditures required by Section 13 FIRST and SECOND hereof, the payment of the cost of all power purchased by the City and distributed through the Electric System and all other charges or liens of whatever nature payable from Revenues.

The proceeds of any sale, lease or other disposition of all or any portion of the properties of the Electric System pursuant to this subsection 16(e), shall be placed in the Electric System Fund and shall be applied promptly first to make up any deficiency then existing in the Bond Account. Any balance remaining thereafter shall be disposed of as follows:

(i) To the extent that such balance represents the proceeds of any sale, lease or other disposition of such properties other than cash sales or advance payments on account of leases or installment sales, such balance may be used for any of the purposes for which other moneys in the Electric System Fund may be used;

(ii) To the extent that such balance represents the proceeds of any cash sale or any advance payment on account of a lease or installment sale, such balance shall be used for the purpose of making extensions, betterments or capital improvements to the properties of the Electric System, and any sums not so used shall be used for the purpose of retiring Bonds by purchase or redemption.

In the event that the proceeds of any cash sale or any advance payment on amount of a lease or installment sale pursuant to this subsection 16(e), any moneys received by the City as a result of the transfer of any properties of the Electric System from the City through the operation of law as provided by the next to last paragraph of this Section, or moneys in the Capital Improvement Account or otherwise required pursuant to Section 16(a) hereof to be used to retire Bonds, are to be applied to the purchase or redemption of Bonds, and if more than one series of Bonds shall then be Outstanding hereunder, the City shall determine from which series such purchases or redemptions shall be made and may elect that all such purchases or redemptions shall be made from only one series or from more than one series. Any such purchases of Bonds may be made with or without tenders of Bonds and at either public or private sale, but in any event at a purchase price (including accrued interest and any brokerage or other charge) not to exceed the principal amount thereof, the then applicable redemption premium if the Bonds to be purchased are then subject to redemption or the applicable redemption premium payable on their next ensuing redemption date if the Bonds being purchased are not then subject to redemption, plus accrued interest. All Bonds so purchased or redeemed shall be cancelled and not reissued. Any moneys which are to be applied to the redemption of Bonds shall, prior to such redemption, be transferred to and deposited in the Bond Account to the credit of the appropriate account therein.

The term "cash sales" as used in this Ordinance shall mean the disposition of property of the Electric System and the transfer of the title thereto upon payment of the purchase price therefor in full at the time of such transfer.

The term "installment sales" as used in this Ordinance shall mean the sale of property of the Electric System and the transfer of title thereto under a contract or other agreement whereby the purchase price of the property is to be paid in installments over a period of years.

In the event that the ownership of the properties of the Electric System, or any part thereof, shall be transferred from the City through the operation of law, any moneys received by the City as a result of any such transfer shall be paid into the Electric System Fund and shall be used for the purpose of making extensions, betterments, or capital additions to the remaining part of the Electric System or shall be used to purchase or redeem Bonds.

Nothing contained in this subsection 16(e) shall prevent the City from creating a separate electric utility system as permitted under Section 14 hereof.

(f) The City will at all times maintain, preserve and keep, or cause to be maintained, preserved and kept, the properties of the Electric System and all additions and betterments to and extensions of the said properties, and every part and parcel thereof, in good repair, working order and condition, and will from time to time make or cause to be made all necessary and proper repairs, renewals, replacements, extensions and betterments thereto so that at all times the business carried on in connection therewith may be properly and advantageously conducted, and the City shall at all times operate or cause to be operated said properties of the City and the business in connection therewith in an efficient manner and at a reasonable cost.

(g) The City will from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or payments in lieu thereof, lawfully imposed upon the properties constituting the Electric System or upon Revenues or income received therefrom when the same shall become due, as well as all lawful claims for labor, material and supplies, which, if not paid, might become a lien or charge upon the said properties or any part thereof, or upon Revenues derived from the operation thereof, or which might in any way impair the security of the Bonds, except any such assessments, charges or claims which the City shall in good faith contest as to validity by appropriate legal proceedings.

(h) The City will keep, or cause to be kept, its Facilities insured and will carry such other insurance, with responsible insurers with policies payable to the City, against fire and other risks, accidents or casualties at least to the extent and of the kinds that insurance is usually carried by corporations operating like properties in the same area. The City will, with respect to each such loss, (a) promptly repair and reconstruct, to the extent necessary to the proper conduct of the operations of the Electric System, the damaged or lost Facility (unless the Facility so lost or damaged was carried in the books and accounts of the Electric System at less than Two Hundred Fifty Thousand Dollars (\$250,000) and unless, in the case of loss or damage involving Two Hundred Fifty Thousand Dollars (\$250,000) or more, such repair and reconstruction shall not be recommended by the Consulting Engineer), and shall apply the proceeds of any insurance covering such damage or loss for that purpose to the extent required therefor, and (b) if the City should not use the entire proceeds of such insurance to repair or reconstruct such damaged or lost Facility, the proceeds of such insurance, or any portion thereof not required for such repair or reconstruction, as the case may be, shall be paid into the Electric System Fund, and shall be applied promptly to make up any deficiency then existing in the Bond Account. If the proceeds of such insurance not required for such repair or reconstruction are in excess of Five Hundred Thousand Dollars (\$500,000), such excess insurance proceeds shall be used for the purpose of purchasing or redeeming Bonds in accordance with Section 7 hereof, or during a period of two (2) years following the receipt thereof, for extensions, betterments and improvements to the Electric System. Within sixty (60) days after the close of each Fiscal Year the City will file with the Trustee a certificate of the Director of Utility Operations or the Consulting Engineer describing in reasonable detail the insurance then in effect pursuant to the requirements of this subsection 16(h) and all reserves therefor and stating that such insurance and reserves thereof comply in all respects with such requirements. Such certificate shall be conclusive, and the Trustee shall have no duty or responsibility with respect thereto except to make the same available for inspection by any holder of Bonds, upon request.

(i) The City will not make any extensions, betterments or improvements to the Electric System which are not economically sound and which will not properly and advantageously contribute to the conduct of the business of the Electric System in an efficient and economical manner unless required to do so by or pursuant to law to permit the continued operation of the Electric System, and will at all times maintain for the operation and maintenance of the Electric System an adequate management and supervisory staff, the personnel of which is experienced and skilled in the operation and maintenance of electric generation, transmission and distribution properties, and business incidental thereto.

(j) The City will keep, or cause to kept, proper books of account in accordance with the Uniform System of Accounts and this Ordinance. The City will cause said books of account to be audited annually as of the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 2013, by a recognized firm of independent certified public accountants, and will annually within one hundred twenty (120) days after the close of such Fiscal Year and each Fiscal Year thereafter, file or cause to be filed with the Trustee copies of its annual report, accompanied by a certificate of such independent public accountant, relating to the Electric System and including the following statements in reasonable detail:

(i) a balance sheet of the Electric System as of the end of the preceding Fiscal Year;

(ii) a statement of income and equity of the Electric System for such Fiscal Year, including a statement of Revenues, Operating Revenues and Operating Expenses of the Electric System for such Fiscal Year;

(iii) a summary with respect to each fund, account and sub-account continued or created under this Ordinance, the receipts therein and disbursements therefrom during such Fiscal Year and the amount held therein at the end of such Fiscal Year;

(iv) a letter from the independent public accountant stating whether anything came to their attention during their examination that would indicate that the City was not in compliance with the covenants, agreements and conditions contained in Ordinance; and

(v) a statement of Net Receipts of the Electric System for such Fiscal Year.

The Trustee shall have no duty or responsibility with respect to such certificate or annual reports, except to furnish copies thereof to any registered owner of Bonds upon request, and the City shall furnish to the Trustee sufficient copies for that purpose.

(k) The City shall, until the Date of Commercial Operation of any Facility for the generation of electric power and energy for which Bonds are authorized hereunder, retain a nationally recognized independent engineer or engineering firm or corporation having a reputation for skill and experience in the design of facilities for the generation of electric power and energy and estimating the cost thereof, to design and inspect the construction of such Facility, to prepare the cost estimates and to perform the other acts and carry out the other duties provided for the Construction Engineer for such Facility by this Ordinance.

(l) The City shall, as long as any of the Bonds are Outstanding, retain a competent consulting engineer or engineering firm on a continuous basis for the purpose of providing to the City immediate and continuous engineering counsel in its operation of the properties of the Electric System. Such consulting engineer or engineering firm shall be selected with special reference to his or its knowledge and experience in the construction and operation of electric utility systems and may be the Construction Engineer employed by the City in connection with a Facility. The City may also employ the Consulting Engineer as provided in this Section, for making inventories of any of the properties of the Electric System, for preparing valuations of all or any part of the properties thereof, and for testifying before any board, commission or other tribunal in matters or proceedings involving the operations and properties of the Electric System. The expenses and fees for any services performed in connection with the Electric System are to be paid out of the Electric System Fund. As a part of such service, the Consulting Engineer shall prepare as of the end of the Fiscal Year ending September 30, 2013, and biennially thereafter a report or survey with respect to the Electric System, the management of the business thereof, and the operation and maintenance of the properties thereof, each such report or survey to be in sufficient detail so as to show whether the City has satisfactorily performed and complied with the covenants set forth in this Ordinance with respect to the efficient management of the properties of the Electric System, and its business, the rates charged for services

and the sufficiency thereof under the requirements of this Ordinance, the proper maintenance of the properties of the Electric System, and the making of necessary repairs, renewals and replacements thereto and thereof, necessity for capital improvements and recommendations in connection therewith, and if the City shall have in any way failed to perform or comply with such covenants and agreements, such report or survey shall specify the details of such failure. In the making of such report or survey, the Consulting Engineer may rely on the certified statements of the Independent Accountant and on the opinions of other engineers or engineering firms or corporations to the extent the Consulting Engineer deems such reliance proper. Each such report or survey shall also include information with respect to sufficiency of power supply and the equity or reasonableness of contracts and rates in connection therewith. Copies of each such report and survey shall be placed on file with the City and with the Trustee, and shall be open to inspection by any holder of Bonds.

In the event of any loss or damage to the properties of the City in excess of Two Hundred Fifty Thousand Dollars (\$250,000), whether or not covered by insurance, the Consulting Engineer shall ascertain the amount of damage and shall issue and deliver to the City and the Trustee a certificate setting forth such damages and recommendations as to whether or not to replace such property.

In the event that the properties of the Electric System or any part thereof shall be sold, leased, or otherwise disposed of for a consideration of Two Hundred Fifty Thousand Dollars (\$250,000) or more, the Consulting Engineer, prior to any such sale, lease, or other disposition of the properties, shall make an examination of the properties to be leased, sold, or otherwise disposed of and shall issue and deliver to the City and the Trustee a certificate setting forth the value of such properties, taking into consideration the loss of Revenues sustained by the properties remaining as a result of such sale, lease, or other disposition, and also setting forth an estimate of Revenues to be derived from operation of the remaining properties and the sufficiency thereof in terms of the requirements of this Ordinance.

The Trustee shall have no duty or responsibility with respect to any of the foregoing documents prepared by the Consulting Engineer, except to make the same available for inspection by any holder of Bonds, upon request.

(m) The City will not permit or allow franchises, permits, privileges, easements or other rights necessary or desirable in the operation of the properties of the Electric System to lapse or to be forfeited so long as the same shall be necessary or desirable for said purposes, and will from time to time take reasonable steps to secure the renewal of all such franchises, permits, privileges, easements and rights at the expiration thereof if the same shall expire prior to the maturity of all Bonds then Outstanding. The City shall file all statements, maps and other documents regarding its service area and customers as may be required by law to protect and preserve such area.

(n) The City will as permitted by law require all employees or agencies of the City collecting or handling money in connection with the operation of the properties of the Electric System to obtain fidelity bonds with a responsible surety company or companies as surety, in reasonable amounts permitted by law and usually retained by municipalities operating like systems.

(o) The City will not furnish or supply or permit the furnishing or supplying of electric energy or any other commodity, service or facility through or in connection with the operation of the properties of the Electric System free of charge to any person, firm or corporation, public or private, so long as any of the Bonds are Outstanding, unless required so to do by the terms of an existing contract or franchise with a political subdivision of the State.

(p) The City will not hereafter enter into any lease, contract, or agreement (except for cash sales as defined in subsection 16(e) hereof) in and by which the possession, operation, management, or control of any Facility, or any part thereof, are transferred to any person, firm or corporation, or any municipality or other public agency, except subject to all the terms, conditions, covenants and agreements in this Ordinance and in any Series Ordinance and in any Bonds contained (including without limiting the generality of the foregoing, the provisions of subsection 16(f) hereof), and upon

the further conditions (a) that all payments required to be made to or for the account of the City thereunder shall be a prior charge and lien upon the gross revenues to be derived from the operation of the properties covered by such lease, contract or other agreement; (b) that the Trustee or any Bondholders' Committee, created as hereinafter provided, representing the holders of Bonds may, in its name or in the name of the City, enforce the obligations of the parties to any such lease, contract or agreement to the same extent that such obligations may be enforced by the City; and (c) that neither party to such lease, contract or agreement will at any time insist upon or plead or in any manner whatsoever claim to take the benefit or advantage of any stay or extension law now or at any time hereafter in force which may affect the covenants and agreements contained in any such lease, contract or agreement, and in this Ordinance, any Series Ordinance or in the Bonds, but all benefit or advantage of any such law or laws shall be therein expressly waived by the said parties. The City further covenants that any such lease, contract or agreement shall contain reasonable provisions for the enforcement of the same in the event of a default in the performance of any of the provisions thereof, or in the event of a material violation by either party thereto of any of the covenants or agreements contained in this Ordinance, any Series Ordinance or in the Bonds.

The City further covenants and agrees that no lease or sale of any portion of any facility, including any lease or sale made pursuant to subsection 16(e) hereof but exclusive of any lease or sale of equipment, materials or supplies as may be acquired for the purposes of resale and such machinery, equipment, tools or other property, real or personal which shall be or shall become unserviceable, inadequate, obsolete, worn out, unfit or unadapted for use in connection with the operations of any Facility, or no longer necessary or useful in such operations, shall be made where the total consideration therefor is not paid at the time of transfer of the possession of such property, unless the contract of sale or lease shall contain covenants or agreements reserving to the City the following rights and privileges, to-wit:

- (i) The City shall have the right to make an inspection of any such properties so sold or leased at such times as the City shall deem necessary, the reasonable cost of such inspection to be paid from the operating funds of such properties so sold or leased;
- (ii) The City shall have the right to approve an independent public accounting firm to be used for the annual audit of the books of any such properties so sold or leased and to supervise the accounting procedure with reference thereto;
- (iii) The City, shall have the right to require that monthly progress reports showing such details as the City may request will be rendered to the City by the operators of any such properties so sold or leased, such reports to include as a minimum the following:
 - (y) A report, by type and class of service, of the, number of customers receiving service, the total kilowatt hour sales thereto, total revenues therefrom, operating and maintenance expenses in reasonable detail, new construction and progress thereof, new business added, rate changes with estimates of annual revenue changes occasioned thereby, a balance sheet, and cash income and disbursement statements; and
 - (z) Explanations, accompanying such reports, of any unusual occurrences relative to the properties and the condition thereof.

Nothing contained in this subsection 16(p) shall prevent the City from creating a separate electric utility system as permitted under Section 14 hereof.

(q) At any and all times the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver all and every such further resolution, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring,

conveying, granting, assigning and confirming all and singular the rights, Revenues and other funds, accounts and sub-accounts hereby pledged or assigned, or intended so to be, or which the City may hereafter become bound to pledge or assign.

Section 17. **Supplemental Ordinances.** The City may adopt at any time and from time to time and without the consent or concurrence of the registered owner of any Bond, an ordinance or ordinances supplemental to this Ordinance for any one or more of the following purposes, and any such supplemental ordinance or ordinances shall become effective in accordance with its terms upon the filing with the Trustee of a certified copy thereof and the opinion of counsel for the City that such supplemental ordinance has been duly adopted, the provisions thereof are valid and binding upon the City, and the provisions thereof do not adversely affect the rights of the holders of Bonds then outstanding, to wit:

- (a) To provide for the issuance of Additional Bonds pursuant to Section 14 hereof, and to prescribe the terms and conditions pursuant to which such Bonds may be issued, paid or redeemed;
- (b) To make any changes, modifications, amendments or deletions hereto which may be required to permit the Ordinance to be qualified under the Trust Indenture Act of 1939 of the United States of America or laws analogous thereto applicable to governmental bodies;
- (c) To add additional covenants and agreements of the City for the purpose of further securing the payment of the Bonds; provided, that such additional covenants and agreements are not contrary to or inconsistent with the covenants and agreements of the City contained in this Ordinance;
- (d) To prescribe further limitations and restrictions upon the issuance of Bonds and the incurring of indebtedness by the City payable from the Revenues which are not contrary to or inconsistent with the limitations and restrictions thereon theretofore in effect;
- (e) To surrender any right, power or privilege reserved to or conferred upon the City by the terms of this Ordinance;
- (f) To confirm as further assurance any pledge under, and the subjection to, any lien, claim or pledge created or to be created by the provisions of this Ordinance of Revenues or of any other moneys, securities or funds;
- (g) To modify any of the provisions of this Ordinance in any other respects; provided, that such modification shall not be effective until after the Bonds Outstanding as of the date of adoption of such ordinance shall cease to be Outstanding, and any Bonds issued after the date of adoption of such ordinance shall contain a specific reference to the modifications contained in such subsequent ordinance; or
- (h) With consent of the Trustee, to cure any ambiguity or defect or inconsistent provision in this Ordinance or to insert such provisions clarifying matters or questions arising under this Ordinance as are necessary or desirable in the event an, such modifications are not contrary to or inconsistent with this ordinance as theretofore in effect.

The provisions of this Ordinance may be modified at any time or from time to time by a Supplemental Ordinance, subject to the consent of Bondholders in accordance with and subject to the provisions of Section 19 hereof, such resolution to become effective as provided in said Section 19.

No ordinance changing, amending or modifying any of the rights or obligations of the Trustee or any other fiduciary may be adopted by the City or be consented to by the Bondholders without the written consent of such Trustee or fiduciary. The Trustee is hereby authorized to accept the delivery of certified copies of any ordinance amending the provisions of this Ordinance and shall be fully protected in relying upon a certification by the City Clerk that such ordinance has been adopted in full compliance with the terms and provisions of this Ordinance.

Section 18. **Defaults and Remedies.** The following shall constitute "Events of Default":

- (a) If the City shall default in the performance of any obligation with respect to payments into the Electric System Fund;
- (b) If default shall be made in the due and punctual payment of the principal of and premium, if any, on any of the Bonds when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise,
- (c) If default shall be made in the due and punctual payment of any installment of interest on any Bond, or any sinking fund installment for Bonds when and as such installment of interest or sinking fund installment shall become due and payable;
- (d) If the City shall default in the observance and performance of any other of the covenants, conditions and agreements on the part of the City contained in this Ordinance and such default or defaults shall have continued for a period of ninety (90) days;
- (e) If the City shall (except as herein permitted) sell, transfer, assign or convey any properties constituting the Electric System or interests therein, or any part or parts thereof, or shall make any agreement for such sale or transfer (except as expressly authorized by this Ordinance), or shall voluntarily forfeit or allow any of its licenses, franchises, permits, privileges, easements or rights of way necessary or desirable in the operation of the Electric System to lapse or terminate prior to the expiration date thereof by neglect or default;
- (f) If an order, judgment or decree shall be entered by any court of competent jurisdiction (i) appointing a receiver, trustee or liquidator for the City, or the whole or any substantial part of the Electric System, (ii) approving a petition filed against the City under the provisions of Chapter 9 of the United States Bankruptcy Code, (iii) granting relief to the City under any amendment to said Bankruptcy Code which shall give relief substantially similar to that afforded by said Chapter 9 or (iv) assuming custody or control of the City or of the whole or any substantial part of the Electric System under the provision of any other law for the relief or aid of debtors and such order, judgment or decree shall not be vacated or set aside or stayed (or, in case custody or control is assumed by said order, such custody or control shall not be otherwise terminated), within sixty (60) days from the date of the entry of such order, judgment or decree; or
- (g) If the City shall (i) admit in writing its inability to pay its debts generally as they become due, (ii) file a petition in bankruptcy or seeking a composition of indebtedness, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a receiver of the whole or any substantial part of the Electric System, (v) file a petition or an answer seeking relief under any amendment to said Bankruptcy Code which shall give relief substantially the same as that afforded by said Chapter 9, or (vi) consent to the assumption by any court of competent jurisdiction under the provisions of any other law for the relief or aid of debtors of custody or control of the City or of the whole or any substantial part of the Electric System.

The City covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and account of the City and all other records relating to the Electric System shall at all times be subject to the

inspection and use of the Trustee and any persons holding at least twenty-five percent (25%) of the principal amount of Bonds Outstanding and of their respective agents and attorneys.

The City covenants that if an Event of Default shall happen and shall not have been remedied, the City will continue to account, as a trustee of an express trust, for all Revenues and other moneys, securities and funds pledged under this Ordinance.

If an Event of Default specified in subsections (b), (c), (f) or (g) of this Section 18 shall have occurred and be continuing, then the Trustee or a Bondholders' Committee, as the case may be, may by notice in writing delivered to the City and to the Trustee, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable; provided, however, that such declaration may be annulled by the Trustee or the Bondholders' Committee, as the case may be, if such an Event of Default is no longer continuing.

The City covenants that if an Event of Default shall happen and shall not have been remedied, the City upon demand of the Trustee, shall pay over to the Trustee (a) forthwith, all moneys, securities and funds then held by the City and pledged under this Ordinance and (b) as promptly as practicable after receipt thereof, all Revenues.

During the continuance of an Event of Default, Revenues received by the Trustee, or Bondholders' Committee, as the case may be, whether pursuant to the provisions of the preceding paragraph, or as the result of taking possession of the business and properties of the Electric System, shall be applied by the Trustee or Bondholders' Committee, as the case may be, first to the payment of all necessary and proper Operating Expenses and all other proper disbursements or liabilities made or incurred by the Trustee, or Bondholders' Committee, as the case may be, and thereafter to the payment of all arrears of interest on the Bonds, so far as such Revenues will go, or to the payment pro rata of the interest due on the Bonds when there is not enough to pay in full all the interest, and, after the payment of interest as aforesaid, to the payment of the principal of the Bonds which by the terms thereof shall be due and payable, or to the payment pro rata of such principal when the moneys are not sufficient to pay all such principal in full.

If and whenever all overdue installments of interest on all Bonds, together with the reasonable and proper charges, expenses and liabilities of the Trustee and the holders of Bonds, their respective agents and attorneys, and all other sums payable by the City under the Ordinance including the principal and premium, if any, and interest on all Bonds which shall then be payable, shall either be paid in full by or for the account of the City, or provision satisfactory to the Trustee shall be made for such payment, and all defaults under this Ordinance or the Bonds shall be made good or

secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall be made therefor, the Trustee, or the Bondholders' Committee, as the case may be, shall pay over to the City all moneys, securities, funds and Revenues then remaining unexpended in the hands of the Trustee or the Bondholders' Committee, as the case may be (except moneys, securities, funds or Revenues deposited or pledged, or required by the terms of this Ordinance to be deposited or pledged, with the Trustee), control of the Electric System shall be restored to the City, and thereupon the City and the Trustee shall be restored, respectively, to their former positions and rights under this Ordinance, and all Revenues shall thereafter be applied as provided in Section 13. No such payment over to the City by the Trustee or resumption of the application of Revenues as provided in Section 13, shall extend to or affect any subsequent default under this Ordinance or impair any right consequent thereon.

If an Event of Default shall happen and shall not have been remedied, then and in every such case, the Trustee, either in its own name or as trustee of an express trust, or as attorney in fact for the registered owners of the Bonds or in any one or more of such capacities, by its agents and attorneys, shall be entitled and empowered to proceed forthwith to institute such suits, actions and proceedings at law, or in equity for the collection of all sums due in connection with the Bonds and to protect and enforce its rights and the rights of the holders of the Bonds under this Ordinance for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against the City as trustee of an express trust, or in the enforcement of any other legal or equitable right as the Trustee, being advised by counsel, shall deem most effectual to enforce any of its rights, or to perform any of its duties under the Ordinance. The Trustee shall be entitled and empowered either in its own name or as a trustee of an express trust, or as an attorney in fact for the holders of the Bonds and the coupons appurtenant thereto, or in any one or more of such capacities, to file such proof of debt, amendment of proof of debt, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and of the holders of the Bonds allowed in any equity, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization or other similar proceedings relative to the City. For this purpose the Trustee is hereby irrevocably appointed the true and lawful attorney in fact of the respective registered owners of the Bonds (and the successive registered owners of the Bonds by taking and holding the same shall be conclusively deemed to have so appointed the Trustee) with authority to make and file in the respective names of the registered owners of the Bonds any such proof of debt, amendment of proof of debt, claim, petition or other document in any such proceedings, and to receive payment of any sums becoming distributable on account thereof, and to execute any such other papers and documents and to do and perform any and all acts and things for and on behalf of

the registered owners of the Bonds as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Trustee and of the holders of the Bonds allowed in any such proceedings and to receive payment of and on account of such claims; provided, however, that nothing contained herein shall be deemed to give the Trustee any right to accept or consent to any plan of reorganization or compromise or otherwise take any action of any character in any such proceeding to waive or change in any way any right of any registered owner of Bonds.

All rights of action under this Ordinance may be enforced by the Trustee without the possession of any of the Bonds or the production thereof at trial or other proceedings.

The registered owners of not less than a majority in principal amount of the Bonds at the time Outstanding, may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, provided that the Trustee shall be provided with reasonable security and indemnity and shall have the right to decline to follow any such direction only (a) if the Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken; or (b) if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or that the action or proceeding so directed would be unjustly prejudicial to the holders of Bonds not parties to such direction.

At any time after the occurrence of an Event of Default and prior to the curing of such Event of Default, the Trustee or the Bondholders' Committee, as a matter of right against the City, without notice or demand, and without regard to the adequacy of the security for the Bonds, shall, to the extent permitted by law, be entitled to take possession and control of the business and properties of the Electric System. Upon taking such possession, the Trustee or the Bondholders' Committee shall operate and maintain the Electric System, make any necessary repairs, renewals and replacements in respect thereof, prescribe rates and charges for power and energy sold, furnished or supplied through the facilities of the Electric System and collect the Revenues. At any such time the Trustee or the Bondholders' Committee shall be entitled to the appointment of a receiver of the business and property of the Electric System, the moneys, securities and funds of the City pledged under this Ordinance, and the Revenues thereof, and the income therefrom, with power to operate and maintain the Electric System, collect, receive and apply the Revenues thereof and prescribe rates, tolls and charges in the same way as the City might do. Notwithstanding the appointment of any receiver, the Trustee shall be entitled to retain possession and control of and to collect and receive income from any moneys, securities, funds and Revenues deposited or pledged with it under this Ordinance or agreed or provided to be delivered to or deposited or pledged with it under this Ordinance.

The Trustee may without the happening of an Event of Default and, at the request of the holders of not less than a majority of the Bonds then Outstanding and upon being furnished with reasonable security and indemnity, shall take such steps and institute such suits, actions or proceedings in its own name, or as trustee, or in the name of the City, all as the Trustee may deem appropriate, for the protection and enforcement of the rights of the registered owners of Bonds, to collect any amount due and owing the City, or by injunction, mandamus, foreclosure or other appropriate proceeding in law and in equity to obtain other appropriate relief.

Except as otherwise specifically provided in this Section, no registered owner (or Beneficial Owner) shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of any provision of this Ordinance or the execution of any trust under this Ordinance or for any remedy under this Ordinance unless such registered owner or owners (or Beneficial Owner or Owners) previously shall have given to the Trustee written notice of the Event of Default, as provided in this Article on account of which such suit, action or proceeding is to be instituted, and unless, also, the registered owners of not less than twenty percent (20%) in aggregate principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee after the right to exercise such powers or right of action, as the case may be, shall have occurred, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for a period of sixty (60) days after the receipt by it of such notice, request and offer of indemnity shall have failed to proceed to exercise such powers or to institute any such action, suit or proceeding, and no direction inconsistent with such written request shall have been given to the Trustee pursuant to this Section 18; it being understood and intended that, except as otherwise above provided, no one or more registered owners (or Beneficial Owners) of the Bonds shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the pledge created by this Ordinance, or to enforce any right under this Ordinance except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided for the benefit of all of the registered owners of the Outstanding Bonds.

Without limiting the generality of this Section 18, at any time after the occurrence of an Event of Default and prior to the curing of such Event of Default, the registered owner or owners of not less than twenty percent (20%) in principal amount of the Bonds then Outstanding may call a meeting of the registered owners of Bonds for the purpose of electing a Bondholders' Committee. Such meeting shall be called and proceedings thereat shall be conducted as provided for other meetings of Bondholders pursuant to Section 19 hereof. At such meeting the registered owner or

owners of not less than a majority of the principal amount of the Bonds then Outstanding must be present in person or by proxy in order to constitute a quorum for the transaction of business, less than a quorum, however, having power to adjourn from time to time without any notice other than the announcement thereof at the meeting. A quorum being present at such meeting, the Bondholders present in person or by proxy may, by the votes cast by the registered owners of a majority in principal amount of the Bonds, so present in person or by proxy, elect one or more persons who may or may not be Bondholders to the Bondholders' Committee which shall act as trustee for all Bondholders. The Bondholders present in person or by proxy at said meeting, or at any adjourned meeting thereof, shall prescribe the manner in which the successors of the persons elected to the Bondholders' Committee at such Bondholders' meeting shall be elected or appointed, and may prescribe rules and regulations governing the exercise by the Bondholders' Committee of the power conferred upon it herein, and may provide for the termination of the existence of the Bondholders' Committee. Notwithstanding the provisions of Section 19, the Bondholders' Committee may, with the consent of the registered owners of not less than fifty percent (50%) of the principal amount of Bonds Outstanding, remove the Trustee. After the removal of the Trustee pursuant to the provisions of this Section and prior to the appointment of a successor Trustee pursuant to the provisions of Section 19 hereof, the members of the Bondholders' Committee elected by the Bondholders in the manner herein provided, and their successors, as a committee will be deemed to be trustees for the holders of all the Bonds then Outstanding, and may exercise in the name of the Bondholders' Committee as trustee, all the rights and powers conferred in this Section 18 on the Trustee or any Bondholder.

Nothing in this Ordinance or in the Bonds shall affect or impair the obligations of the City, which is absolute and unconditional, to pay, from the limited sources herein described, at the respective dates of maturity and places therein expressed the principal of and premium, if any, and interest on the Bonds to the respective holders thereof, or affect or impair the rights of action, which are also absolute and unconditional, of any holder to enforce the payment of such holder's Bond or Bonds or to reduce to judgment his claim against the City for the payment, from the limited sources herein described, of the principal of and interest on such holder's Bond or Bonds, without reference to or consent of the Trustee or any other holder of Bonds.

No remedy by the terms of the Ordinance conferred upon or reserved to the Trustee or the registered owners of the Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or existing at law or in equity or by statute on or after the date of adoption of this Ordinance.

No delay or omission of the Trustee or of any registered owner of Bonds to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or to be an acquiescence therein; and every power and remedy given by this Article to the Trustee or to the holder of Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee or by such registered owners.

The registered owners of not less than sixty-six and two-thirds per cent (66-2/3%) in principal amount of the Bonds at the time Outstanding, or their attorneys in fact duly authorized, may on behalf of the holders of all of the Bonds waive any past default under this Ordinance and its consequences, except a default in the payment of the principal of and premium, if any, and interest on any of the Bonds. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

To the fullest extent permitted by law, the City agrees that the City will not at any time insist upon or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force which may affect the covenants and agreements contained in this Ordinance or in the Bonds, but all benefit or advantage of any such law or laws is hereby expressly waived by the City.

The Trustee shall, within ninety (90) days after the occurrence of an Event of Default, give notice by mail to the registered owners of all defaults known to the Trustee, unless such defaults shall have been cured before the giving of such notice (the term "default" or "defaults" for the purpose of this Section being hereby defined to be any Event or Events of Default specified in this Section 18); provided, that, except in the case of default in the payment of principal of and premium, if any, and interest on any of the Bonds or in the payment of any sinking fund installment, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or responsible officers, of the Trustee in good faith determines that the withholding of such notice is in the interests of the Bondholders.

Section 19. **Amendments and Bondholders' Meetings.** The City, the Trustee or the registered owners of not less than twenty percent (20%) in principal amount of the Bonds then Outstanding may at any time call a meeting of the registered owners of the Bonds. Every such meeting shall be held at such place in the United States as may be specified in the notice calling such meeting. Written notice of such meeting, stating the place and time of the meeting and in general terms the business to be submitted, shall be mailed to the registered owners by the City, the Trustee or the registered owners calling such meeting not less than thirty (30) nor more than sixty (60) days before such meeting. Any

meeting of registered owners shall, however, be valid without notice if the registered owners of all Bonds then Outstanding are present in person or by proxy or if notice is waived before or within thirty (30) days after the meeting by those not so present.

Except as otherwise provided in this Ordinance, any provision in this Ordinance for the mailing of a notice or other paper to registered owners shall be fully complied with if it is mailed postage prepaid to each registered owner of any of the Bonds then Outstanding at such owner's address appearing upon the registry books maintained by the Trustee.

Attendance and voting by registered owners at such meeting may be in person or by proxy. Registered owners of Bonds may, by an instrument in writing under their hands appoint any person or persons, with full power of substitution, as their proxy to vote at any meeting for them.

Officers or nominees of the City, and officers or nominees of the Trustee may be present or represented at any such meeting and take part therein, but shall not be entitled to vote thereat, except as such officers or nominees are registered owners or proxies for registered owners (including the Trustee).

Any registered owner of a Bond shall be entitled in person or by proxy to attend and vote at such meeting as registered owner of the Bonds registered in such owner's name without producing such Bonds (unless the Bonds described in such certificate shall be registered in the name of some other person at such meeting), and such persons and their proxies shall, if required, produce such proof of personal identity as shall be satisfactory to the Secretary of the meeting. All proxies presented at such meeting shall be delivered to the Inspectors of Votes (appointed by the Chairperson as provided below) and filed with the Secretary of the meeting.

The vote at any such meeting of the registered owner of any Bond entitled to vote thereat shall be binding upon such owner and upon every subsequent registered owner of such Bond (whether or not such subsequent registered owner has notice thereof).

Any request, direction, consent or other instrument in writing required or permitted by this Ordinance to be signed or executed by registered owners may be in any number of concurrent instruments of similar tenor and may be signed or executed by such registered owners in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument shall be sufficient for any purpose of this Ordinance, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument, if made in the following manner:

The fact and date of the execution by any person of any such instrument may be proved by either (a) an acknowledgment executed by a notary public or other officer empowered to take acknowledgments of deeds to be recorded in the particular jurisdiction, or (b) an affidavit of a witness to such execution sworn to before such a notary public or other officer. Where such execution is by an officer of a

corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such acknowledgment or affidavit shall also constitute sufficient proof of such person's authority.

The foregoing shall not be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which it may deem sufficient. Any request or consent of the registered owner of any Bond shall bind every future registered owner of the same Bond in respect of anything done by the Trustee in pursuance of such request, direction or consent.

The right of a proxy for a registered owner to act may be proved (subject to the Trustee's right to require additional proof) by a written proxy executed by such registered owner as aforesaid.

Persons named by the Trustee, or elected by the registered owners of a majority in principal amount of the Bonds represented at the meeting in person or by proxy, in the event the Trustee is not represented at such meeting, shall act as temporary Chairperson and temporary Secretary of any meeting of registered owners. A permanent Chairperson and a permanent Secretary of such meeting shall be elected by the registered owners of a majority in principal amount of the Bonds represented at such meeting in person or by proxy. The permanent Chairperson of the meeting shall appoint two (2) Inspectors of Votes who shall count all votes cast at such meeting, except votes on the election of Chairperson and Secretary as aforesaid, and who shall make and file with the Secretary of the meeting and with the City and with the Trustee their verified report of all such votes cast at the meeting.

The registered owners of not less than the principal amount of the Bonds required for any action to be taken at such meeting must be present at such meeting in person or by proxy in order to constitute a quorum for the transaction of business, less than a quorum, however, having power to adjourn from time to time without any other, notice than the announcement thereof at the meeting; provided, however, that, if such meeting is adjourned by less than a quorum for more than ten (10) days, notice thereof shall be given by mail by the City or the Trustee at least five (5) days prior to the adjourned date of the meeting.

With the consent of the registered owners of not less than sixty-six and two-thirds percent (66-2/3%) of the Bonds then Outstanding, such consent to be given by a resolution duly adopted at a meeting of registered owners duly convened and held, or by written consent as hereinafter provided, the City from time to time and at any time, may adopt an ordinance amending or supplementing the provisions of this Ordinance for the purposes of adding any provisions to this Ordinance or a Supplemental Ordinance, or modifying in any manner the rights of the registered owners of the Bonds then Outstanding; provided, however, that, without the specific consent of the registered owner of each such Bond

which would be affected thereby, no such resolution amending or supplementing the provisions hereof shall: (a) permit the creation of a lien on Revenues pledged under this Ordinance superior or prior to or on a parity with the lien of the Bonds except to the extent presently provided in Section 14 of this Ordinance; (b) extend the fixed maturity date for the payment of the principal of any Bond, or reduce the principal amount of any Bond, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption or prepayment thereof, or advance the date upon which any Bond may first be called for redemption prior to its fixed maturity date; (c) reduce the aforesaid percentage of Bonds, the registered owners of which are required to consent to any such ordinance amending or supplementing the provisions hereof; or (d) give to any Bond or Bonds any preference over any other Bond or Bonds secured hereby. A modification or amendment of the provisions of Section 12 and 13 hereof with respect to the Bond Account or the Debt Service Sub-Account or Series 2013 Reserve Sub-Account or any other reserve sub-account for Additional Bonds therein shall not be deemed a change in terms of payment; provided, however, that no such modification or amendment shall, except upon the consent of the registered owners of all Bonds then Outstanding affected thereby, reduce the amount or amounts required to be deposited in the Bond Account for credit to the Debt Service Sub-Account therein. Nothing herein contained, however, shall be construed as making necessary the approval by the registered owners of the Bonds of the adoption of any supplemental ordinance authorized by Section 17 of this Ordinance without consent of registered owners.

The City may at any time adopt an ordinance amending the provisions of this Ordinance to the extent that such amendment is permitted by the provisions of this Section 19, to take effect when and as provided in this Section 19. Upon the adoption of such ordinance, a copy thereof, certified by the City Clerk, shall be filed with the Trustee. At any time thereafter such ordinance may be submitted by the City for approval to a meeting of the registered owners duly convened and held in accordance with the provisions of this Ordinance. A record in duplicate of the proceedings of each meeting of the registered owners shall be prepared by the permanent Secretary of the meeting and shall have attached thereto the original reports of the Inspectors of Votes and affidavits by a person or persons having knowledge of the facts, showing a copy of the notice of the meeting and setting forth the facts with respect to the mailing thereof under the provisions of this Ordinance. Such a record shall be signed and verified by the affidavits of the permanent Chairperson and the permanent Secretary of the meeting, and one duplicate thereof shall be delivered to the City and the other to the Trustee for preservation by the Trustee. Any record so signed and verified shall be proof of the matters therein stated. If the ordinance of the City making such amendment shall be approved by a resolution duly adopted at such meeting of

registered owners by the affirmative vote of the registered owners of the required percentages of Bonds, a notice stating that a resolution approving such amendment has been so adopted shall be mailed by the City to the registered owners (but failure so to mail copies of such notice shall not affect the validity of such resolution). Proof of such mailing by the affidavit or affidavits of a person or persons having knowledge of the facts shall be filed with the Trustee. Such ordinance of the City making such amendment shall be deemed conclusively to be binding upon the City, the Trustee, the Paying Agent, and the registered owners of all Bonds at the expiration of thirty (30) days after the mailing of the notice provided for in this Section, except in the event of a final decree of a court of competent jurisdiction setting aside such ordinance or annulling the action taken thereby in a legal action or equitable proceeding for such purpose commenced within such period; provided, that the Trustee, any Paying Agent and the City during such thirty (30) day period and any such further period during which such action or proceeding may be pending, shall be entitled in their absolute discretion to take such action, or to refrain from taking such action, with respect to such ordinance as they may deem expedient. Nothing contained in this Ordinance shall be deemed or construed to authorize or permit, by reason of any call of a meeting of registered owners or of any right conferred hereunder to make such call, any hindrance or delay in the exercise of any rights conferred upon or reserved to the Trustee, the Paying Agent, or the registered owners under any of the provisions of this Ordinance.

The City may at any time adopt an ordinance amending or supplementing the provisions of this Ordinance, or of any Bonds, to the extent that such amendment is permitted by the provisions of this Section 19 or Section 17, to take effect when and as provided in this Section 19. Upon adoption of such ordinance, a copy thereof, certified by the City Clerk, shall be delivered to and held by the Trustee for the inspection of the registered owners. A copy of such ordinance (or summary thereof in form approved by the Trustee) together with a request to registered owners for their consent thereto in form satisfactory to the Trustee, shall be mailed by the City to registered owners. Such ordinance shall not be effective unless and until there shall have been filed with the Trustee the written consents of the percentages of registered owners of Outstanding Bonds specified in Sections 17 or Section 19 hereof and a notice shall have been mailed to all registered owners as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given. A certificate or certificates of the Trustee that it has examined such proof and that such proof is sufficient shall be conclusive that the consents have been given by the registered owners of the Bonds described in such certificate or certificates. Any such consent shall be binding upon each registered owner of the Bonds giving such consent and on every subsequent registered owner of such Bonds, whether or

not such subsequent registered owner has notice thereof. A notice stating that the ordinance has been consented to by the registered owners of the required percentages of Bonds and will be effective as provided in this Section 19 shall be given to the registered owners by mailing such notice to the registered owners at their registered addresses. The City shall file with the Trustee proof of giving such notice. A record, consisting of the papers required by this Section to be filed with the Trustee, shall be proof of the matters therein stated, and the ordinance shall be deemed conclusively to be binding upon the City, the Trustee, the Paying Agent, and the registered owners of all Bonds at the expiration of thirty (30) days after the mailing of such notice, except in the event of a final decree of a court of competent jurisdiction setting aside such consent or annulling the action taken thereby in a legal action or equitable proceeding for such purpose commenced within such period; provided that the Trustee, and Paying Agent and the City during such thirty (30) day period and any such further period during which such action or proceeding may be pending, shall be entitled in their absolute discretion to take such action, or to refrain from taking such action, with respect to such ordinance as they may deem expedient.

Notwithstanding anything contained in the foregoing provisions of this Section 19, the rights and obligations of the City and of the registered owners of the Bonds and the terms and provisions of the Bonds and of this Ordinance, may be amended in any respect with the consent of the City, by the affirmative vote of the registered owners of all said Bonds then Outstanding at a meeting of registered owners called and held as hereinabove provided, or upon the adoption of an ordinance adopted by the City and the consent of the registered owners of all of the Bonds then Outstanding, such consent to be given as provided in this Section 19, except that no notice to registered owners either by mailing shall be required and the amendment shall be effective immediately upon such unanimous vote or written consent of all of the registered owners.

Bonds owned or held by or for the account of the City shall not be deemed Outstanding for the purpose of any vote or consent or other action or any calculation of Outstanding Bonds in this Ordinance provided for, and shall not be entitled to vote or consent or take any other action in this Ordinance provided for.

Bonds delivered after the effective date of any action amending this Ordinance taken as hereinabove provided may, and if the Trustee so determines, shall, bear a notation by endorsement or otherwise in form approved by the City and the Trustee as to such action, and in that case, upon demand of the registered owner of any Bond Outstanding at such effective date and presentation of such owner's Bond for the purpose at the principal office of the Trustee, suitable notation shall be made on such Bond by the Trustee as to any such action. If the City shall so determine, new Bonds so modified as in the opinion of the City and its counsel to conform to such registered owners' action shall be prepared,

delivered and upon demand of the registered owner of any Bond then Outstanding shall be exchanged without cost to such Bondholder for Bonds then Outstanding hereunder, upon surrender of such Bonds.

Section 20. **Authorization of Officers.** The Mayor, the City Clerk and the City Treasurer of the City are hereby authorized to do all things and execute all such documents as may by them be deemed necessary and proper to complete the issuance and sale of the 2013 Bonds and the application of the proceeds thereof as contemplated by this Ordinance.

Section 21. **Covenant with Respect to Arbitrage.** The City hereby covenants to the purchasers and registered owners of the 2013 Bonds hereby authorized that it will make no use of the proceeds of said bond issue, including monies held in any sinking fund for the 2013 Bonds, which would cause the 2013 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 bond issue, including but not limited to the payment and reporting of rebate as and to the extent required under Section 148 of the Code. The City hereby agrees that it will not take any action which would cause the 2013 Bonds to be or become "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 (as to taxpayers generally) of interest payable on the 2013 Bonds. The City hereby covenants and warrants that the 2013 Bonds are not "private activity bonds" within the meaning of Section 141 of the Code.

Section 22. **Approval of Preliminary Official Statement.** The City hereby ratifies and approves the publication, distribution and use of the Preliminary Official Statement in connection with the offering of the 2013 Bonds substantially in the form presented, but with such changes, if any, therein, as may be approved by the Mayor, City Clerk, City Treasurer or any other officer of the City. The City hereby deems the information contained in the Preliminary Official Statement to be "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the "Rule"), such as offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and identity of the Underwriter. The City further authorizes and directs the preparation of, and authorizes and directs the execution and delivery by the Mayor, City Clerk, City Treasurer or any other officer of the City of a final Official Statement for use in connection with the sale of the 2013 Bonds.

Section 23. **Disclosure Undertaking.** In accordance with the requirements of the Rule, the City hereby (a) authorizes and directs that an officer of the City (or any one of them) execute and deliver, on the date of issue of the 2013 Bonds, a Continuing Disclosure Undertaking in order for the Underwriter to comply with the Rule, in such form as shall be satisfactory to such officer, and (b) covenants and agrees that it will comply with and carry out all of the provisions of such Continuing Disclosure Undertaking. Notwithstanding any other provision of this Ordinance, failure of the City to comply with any 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 2013 Bond 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.

Section 24. **Severability.** 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 25. **Ordinance and Laws a Contract with Bondholders.** This Ordinance is adopted under the authority of and in full compliance with the Constitution and laws of the State of Nebraska. In consideration of the purchase and acceptance of the Bonds by those who shall own the same from time to time, the provisions of this Ordinance and of said laws shall constitute a contract with the registered owner or owners of each Bond and the obligations of the City under said laws and under this Ordinance shall be enforceable by any court of competent jurisdiction; and the covenants and agreements herein set forth to be performed on behalf of the City shall be for the equal benefit, protection and security of the holders of any and all of the registered owners of the Bonds, all of which, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any of said Bonds over any others thereof except as expressly provided herein.

Section 26. **Bonds No Longer Deemed Outstanding Hereunder.** The obligations of the City under this Ordinance and any Bond and the liens, pledges, charges, trusts, assignments, covenants and agreements of the City herein or therein made or provided for, shall be fully discharged and satisfied as to any Bond and such Bond shall no longer be deemed to be Outstanding hereunder;

(a) when such Bond which the City may have acquired in any manner whatsoever shall have been cancelled, or surrendered for cancellation or is subject to cancellation, or shall have been purchased by the Trustee from moneys in the Bond Account or by the City; or

(b) as to any Bond not theretofore cancelled, surrendered for cancellation or subject to cancellation, when payment of the principal and the applicable redemption premium, if any (or the applicable redemption price), on such Bond, plus interest on such principal to the due date thereof, whether such due date be by reason of maturity or upon redemption or prepayment or otherwise, (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided by irrevocably depositing with the Trustee, in trust and irrevocably appropriated and set aside exclusively for such payment, (A) moneys sufficient to make such payment and/or (B) Government Obligations maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee and the Paying Agent pertaining to the Bonds with respect to which said deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee and said Paying Agent.

At such time as a Bond shall be deemed to be no longer Outstanding hereunder, as aforesaid, such Bond shall cease to draw interest from the due date thereof (whether such due date be by reason of maturity or upon redemption or prepayment, or otherwise), and, except for the purposes of any such payment from such moneys or Government Obligations, such Bond shall no longer be secured by or entitled to the benefits of this Ordinance.

Notwithstanding the foregoing, in the case of Bonds which are to be prepaid prior to the stated maturities thereof, no deposit under (ii) of subparagraph (b) above shall constitute such payment, discharge and satisfaction as aforesaid until proper notice of such redemption or prepayment shall have been given as provided in Section 7 hereof, or provision satisfactory to the Trustee shall have been irrevocably made for the giving of such notice.

Any such moneys so deposited with the Trustee as provided in this Section may at the direction of the City be invested and reinvested in Government Obligations maturing in the amounts and times as hereinbefore set forth, and all income from all such Government Obligations in the hands of the Trustee which is not required for the payment of the Bonds and interest and premium (or the applicable redemption price) thereon with respect to which such moneys or Government Obligations shall have been so deposited, shall be paid to the City as and when realized and collected.

If any Bond shall not be presented for payment when the principal thereof shall become due, whether at maturity or upon redemption or prepayment or otherwise, and if moneys or Government Obligations shall have been deposited in accordance with terms hereof with the Trustee, in trust for that purpose sufficient and available to pay the principal and premium, if any (or the redemption price), of such Bond, together with all interest due on such Bond to the due date thereof or to the date fixed for the redemption or prepayment thereof, all liability of the City for such payment shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold said monies or said Government Obligations, without liability to such Bondholder for interest thereon, in trust for the benefit of the registered owner of such Bond, who thereafter shall be restricted exclusively for said moneys or said Government Obligations for any claim for such payment of whatsoever nature on his part.

Notwithstanding any other provisions of this Ordinance, which may be contrary to the provisions of this Section 26, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Section 26 for the payment of Bonds (including interest and redemption premium thereof, if any, or the redemption price thereof) and the interest thereon shall be applied to and used solely for the payment of the particular Bonds (including interest and redemption premium thereon, if any, or the redemption price thereof) with respect to which such moneys and said Government Obligations have been so set aside in trust.

Anything in Section 17 or Section 19 hereof to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Section 26 for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Section 26 shall be made without the consent of the registered owner of each Bond affected thereby.

Section 27. **Benefits of Ordinance Limited to City, Bondholders, Trustee and Paying Agent.** Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon or give to any person or corporation other than the City, the Trustee, the Paying Agent and the registered owners of the Bonds any rights, remedies or claims under or by reason of this Ordinance or any covenant, condition or stipulation thereof; and all the covenants, stipulations, promises and agreements in this Ordinance contained by or on behalf of the City shall be for the sole and exclusive benefit of the City, the Trustee, the Paying Agent and the registered owners of the Bonds.

Section 28. **Term "City" to Include Successors.** Whenever in this Ordinance the City is named or referred to, it shall be deemed to include its successors and assigns, including any successor by merger or consolidation, and all the covenants and agreements in this Ordinance contained by or on behalf of the City shall bind and inure to the benefit of its successors and assigns whether so expressed or not.

Section 29. **Notices.** Except as otherwise provided herein, all notices, requests, demands and other communications required or permitted under this Ordinance shall be deemed to have been duly given if delivered or mailed, first class, postage prepaid, as follows:

- (a) If to the City:
City of Grand Island
Grand Island, Nebraska
Attention: Mayor
- (b) If to the Trustee:
Wells Fargo Bank, National Association

625 Marquette Avenue, 11th Floor
MAC N9311-115
Minneapolis, MN 55479

Attention: Corporate Trust Services

or to such other persons or addresses as the respective party hereafter designates in writing to the other.

Section 30. **Article and Section Headings; Table of Contents.** The headings or titles of the several sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning or construction, interpretation or effect of this Ordinance.

Section 31. **Repealer.** All other ordinances and parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 32. **Effectiveness of Ordinance; Publication.** 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 22nd day of October, 2013.

Mayor

ATTEST:

City Clerk

(SEAL)