

ALLIANCE CITY COUNCIL

REGULAR MEETING, TUESDAY, FEBRUARY 21, 2017

STATE OF NEBRASKA            )  
   )  
 COUNTY OF BOX BUTTE        ) §  
   )  
 CITY OF ALLIANCE             )

The Alliance City Council met in a Regular Meeting, February 21, 2017 at 7:00 p.m. in the Board of Education Meeting Room, 1604 Sweetwater Avenue. A notice of meeting was published in the Alliance Times Herald on February 15, 2017. The notice stated the date, hour and place of the meeting, that the meeting was open to the public, and that an agenda of the meeting, kept continuously current, was available for public inspection at the office of the City Clerk in City Hall; provided the Council could modify the agenda at the meeting if it determined an emergency so required. A similar notice, together with a copy of the agenda, also had been delivered to each of the City Council Members. An agenda, kept continuously current, was available for public inspection at the office of the City Clerk during regular business hours from the publication of the notice to the time of the meeting.

Mayor Yeager opened the February 21, 2017 Regular Meeting of the Alliance, Nebraska City Council at 7:00 p.m. Present were Council members Yeager, Jones, Mischnick and Reynolds. Also present were Interim City Manager Kuckkahn, Assistant City Manager/Finance Director Waggener, City Attorney Olsen and City Clerk Jines.

- Mayor Yeager read the Open Meetings Act Announcement.
- A motion was made by Councilman Jones, which was seconded by Councilman Reynolds to excuse the absence of Councilman Korber-Gonzalez as she is ill.

Roll call with the following results:

Voting Aye: Mischnick, Reynolds, Yeager, Jones.

Voting Nay: None.

Motion carried.

- Council’s first item on the agenda was a proclamation presentation.

The following proclamation was read by Mayor Yeager to recognize March 2017 as Problem Gambling Awareness Month.

## PROCLAMATION

WHEREAS, Our community is home to individuals and families adversely affected by problem gambling; and

WHEREAS, Compulsive gambling is often hidden from family members, social services and mental health professionals; and

WHEREAS, Compulsive gambling often occurs in combination with other disorders such as chemical dependency and depression; and

WHEREAS, It is important to raise awareness of the warning signs of compulsive gamblers and connect them with professional help,

NOW, THEREFORE, I, On behalf of the Mayor and Members of the City Council of the City of Alliance, I do hereby proclaim March 2017 as:

### Problem Gambling Awareness Month

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Alliance to be affixed on this 2<sup>nd</sup> day of February in the year of the Lord Two Thousand Sixteen.

- The Consent Calendar was the next matter for Council's consideration.

A motion was made by Councilman Jones, seconded by Councilman Mischnick to approve the Consent Calendar as follows:

### CONSENT CALENDAR – FEBRUARY 21, 2017

1. Approval: Minutes of the Regular Meeting, February 7, 2017.
2. Approval: Payroll Costs for the period January 14, 2017 through January 27, 2017: \$338,214.89 and Payroll Costs for the period January 28, 2017 through February 10, 2017: \$195,601.16.
3. Approval: Claims against the following funds for the period February 2, 2017 through February 16, 2017: General, General Debt Service, Trust and Agency, Street, Electric, Refuse Collection and Disposal, Sanitary Sewer, Water, Golf Course, Downtown Improvement Districts, R.S.V.P., Keno, and Capital Improvement; \$1,056,825.72.
4. Approval: Update the roster of the Alliance Volunteer Fire Department by adding David Meggison and Troy Strang.
5. Acknowledgement: Receipt of Official Notice of Amended Electrical Resources Pooling Agreement (“ERPA”) Policies & Procedures to Incorporate Updated MEAN Distributed and Renewable Generation Policy from the Nebraska Municipal Power Pool.

Roll call vote with the following results:

Voting Aye: Mischnick, Reynolds, Yeager, Jones.

Voting Nay: None.

Motion carried.

- A Public Hearing on the Conditional Use Permit Application of Shannon Alwin to operate a twelve-child daycare center at 1511 Emerson Avenue was the next item before Council. Following the public hearing, Resolution No. 17-12 will be considered which will authorize the Conditional Use Permit. The following background information was provided to Council:

[As a result of the Alliance Times Herald not publishing our Notice of Public Hearing, this matter needs to be re-addressed by the Alliance City Council. The Applicant has been notified and apologized to for the inconvenience. The Notice of Public Hearing has been published and re-posting has been completed. Staff is not aware of any new information on this item to present to Council

The City of Alliance is in receipt of an application for a Conditional Use Permit from Shannon Alwin. The Conditional Use Permit application is to allow a twelve-child daycare at 1511 Emerson Avenue also known as Lots 8 and 9, Block 3, Johnstons Addition to the City of Alliance.

The proposed location is an existing single-family residence and is zoned R-1 Single-Family Residential and is currently used as the applicant's home. Daycare and nurseries are not a Permitted Use in R-1 zoning districts but are allowed with the approval of a Conditional Use Permit by the Alliance City Council. The property is bordered to the north, south, east, and west by R-1, Single-Family Residential zoning.

The City mailed Notification Petitions to the owners within a 300' radius of the property. As of January 6, the City had received eight of the thirty-six petitions back. Five are in favor of the Conditional Use Permit and three are disinterested.

Staff believes that the land use would not be any more intense than other similar uses by right in the same district such as schools and churches. The structure will not change as part of the issuance of the CUP maintaining the general character of the Northside Neighborhood as recommended by the Alliance Comprehensive Plan.

The City of Alliance Planning Commission met at their regular meeting January 10, 2017 and voted to recommend that the City Council approve a Conditional Use Permit for a daycare at 1511 Emerson Avenue in Alliance. Staff

recommends the issuance of the Conditional Use Permit for allowing a daycare in the existing single-family residence with the following conditions:

- The drop-off only be allowed in the driveway or along the east side of Emerson Avenue to eliminate the need to cross the street.
- A copy of the State of Nebraska's documentation and permitting for the daycare be kept on record with the City.]

Mayor Yeager stated "now is the date, time, and place to conduct a Public Hearing to hear support, opposition, criticism, suggestions, or observations of the taxpayers relating to the Conditional Use Permit Application of Shannon Alwin to operate a daycare at 1511 Emerson Avenue and opened the public hearing at 7:06 p.m.

Shannon Alwin, 1511 Emerson Avenue, was in attendance to discuss her plans for the daycare and the need for a Conditional Use Permit. Ms. Alwin welcomed questions from Council and staff.

No additional testimony was offered, the Public Hearing closed at 7:07 p.m.

Mayor Yeager made a motion to approve Resolution No. 17-12, which was seconded by Councilman Jones. The resolution follows in its entirety:

#### RESOLUTION NO. 17-12

*WHEREAS*, The City of Alliance, through its Community Development Department regulates building and zoning within the City of Alliance and the two mile jurisdiction; and

*WHEREAS*, Shannon Alwin has requested a Conditional Use Permit for Lots 8 and 9, Block 3, Johnstons Addition to the City of Alliance, Box Butte County, Nebraska (1511 Emerson Avenue) to allow for a twelve-child daycare facility; and

*WHEREAS*, The Community Development office has examined the request and finds that the request to allow for a twelve-child daycare facility in a R-1, Single Family Residential Zoning District is appropriate for the granting of a conditional use; and

*WHEREAS*, The Community Development Director has recommended the granting of the Conditional Use Permit; and

*WHEREAS*, On the 10<sup>th</sup> day of January, 2017, the Planning Commission for the City of Alliance held a public hearing on behalf of the Conditional Use Permit for Shannon Alwin; and

*WHEREAS*, The Planning Commission voted to approve the Conditional Use Permit and forward Ms. Alwin's request for the Conditional Use Permit to the City Council for their review and consideration.

*WHEREAS*, The City Council has reviewed the request and determined that it is in the best interest of the City of Alliance and consistent with the zoning rules and regulations to grant a Conditional Use Permit for Shannon Alwin.

*NOW, THEREFORE, BE IT RESOLVED* that the Conditional Use Permit of Shannon Alwin to allow for a twelve-child daycare facility on Lots 8 and 9, Block 3, Johnstons Addition to the City of Alliance, Box Butte County, Nebraska (1511 Emerson Avenue), is hereby authorized and approved with the following conditions:

- (1) The drop-off of children will only be allowed in the driveway or along the east side of Emerson Avenue to eliminate the need to cross the street.
- (2) A copy of the State of Nebraska's documentation and permitting for the daycare will be provided and kept on record with the City.
- (3) A review the operation will be required annually to ensure conditions are continuing to be met.

*BE IT FURTHER RESOLVED*, that the Conditional Use Permit shall be presumed inactive if the conditional use is not commenced within twelve months of February 2, 2017.

Roll call vote with the following results:

Voting Aye: Yeager, Mischnick, Reynolds, Jones.

Voting Nay: None.

Motion carried.

- The next matter before Council was a Public Hearing on the City of Alliance Street Improvement One and Six Year Plans. Following the public hearing, Council will consider Resolution No. 17-13 which will approve the Plans. Council was provided with the following information:

[As a result of the Alliance Times Herald not publishing our Notice of Public Hearing, this matter needs to be re-addressed by the Alliance City Council. The Notice of Public Hearing has been published and re-posting has been completed. Staff is not aware of any new information on this item to present to Council.

The City is required to prepare and submit an annual street plan to the Nebraska Board of Public Roads no later than March 1 for the previous calendar year. The Planning Commission at its January 10<sup>th</sup> meeting reviewed and approved recommending the attached proposed One and Six Year Street Program to Council. The report was prepared by M.C. Schaff & Associates of Scottsbluff, NE as our certified streets superintendent.

The following ten projects are included in the One Year Program:

| Project No | Street                  | Cross Streets                                | Material            | Miles | Est. Costs  |
|------------|-------------------------|--|---------------------|-------|-------------|
| M-108(159) | Tenth Street            | Box Butte to Flack Avenue                    | Concrete            | 1.1   | \$2,677,500 |
| M-108(163) | Box Butte Avenue        | 3 <sup>rd</sup> to 5 <sup>th</sup> Street    | Concrete            | 0.1   | \$723,000   |
| M-108(189) | U S Hwy 385 W CL        | Kansas to 3 <sup>rd</sup> Street             | Concrete<br>Asphalt | 1.1   | \$2,500,000 |
| M-108(182) | Laramie Avenue          | 4 <sup>th</sup> to 10 <sup>th</sup> Street   | Asphalt             | 0.4   | \$205,000   |
| M-108(183) | Mississippi Avenue      | 2 <sup>nd</sup> to 10 <sup>th</sup> Street   | Asphalt             | 0.4   | \$250,000   |
| M-108(181) | 4 <sup>th</sup> Street  | Emerson to Box Butte Avenue                  | Asphalt             | 0.3   | \$180,000   |
| M-108(194) | 21 <sup>st</sup> Street | Box Butte Avenue west 600 ft.                | Asphalt             | 0.1   | \$75,000    |
| M-108(196) | Buchfinck Avenue        | 14 <sup>th</sup> to 16 <sup>th</sup> Street  | Asphalt             | 0.1   | \$75,000    |
| M-108(195) | 2 <sup>nd</sup> Street  | Potash to Niobrara Avenue                    | Concrete            | 0.4   | \$205,000   |
| M-108(158) | Emerson Avenue          | 25 <sup>th</sup> to 31 <sup>st</sup> Street  | Asphalt             | 0.3   | \$200,000   |
| M-108(191) | Sweetwater Ave.         | 4 <sup>th</sup> to 8 <sup>th</sup> Street    | Asphalt             | 0.2   | \$125,000   |
| M-108(192) | Niobrara Avenue         | 3 <sup>rd</sup> to 10 <sup>th</sup> Street   | Asphalt             | 0.5   | \$210,000   |
| M-108(193) | Yellowstone Ave.        | 4 <sup>th</sup> to 8 <sup>th</sup> Street    | Concrete            | 0.3   | \$75,000    |
| M-108(178) | Intersection            | 18 <sup>th</sup> Street and Box Butte Avenue | Concrete            |       | \$150,000   |

The following four programs appear in the Six Year Program:

| Project No | Street            | Cross Streets   | Material            | Miles | Est. Costs  |
|------------|-------------------|---|---------------------|-------|-------------|
| M-108(176) | West Third Street | 150-ft E/W of Railroad Underpass                            | Asphalt             | 0.1   | \$105,000   |
| M-108(190) | Eighteenth Street | Colorado to Emerson Avenue                                  | Asphalt             | 0.1   | \$50,000    |
| M-108(168) | Sixteenth Street  | Buchfinck to Platte Avenue                                  | Concrete            | 0.3   | \$1,000,000 |
| M-108(164) | Sweetwater Avenue | 18 <sup>th</sup> to 25 <sup>th</sup> Street                 | Concrete            | 0.5   | \$1,200,000 |
| M-108(166) | Third Street      | Howard to Elkhorn Avenue (with NDOR)                        | Concrete<br>Asphalt | 1.5   | \$1,357,000 |
| M-108(115) | West Third Street | Black Hills to Howard Avenue (underpass with NDOR and BNSF) | Concrete<br>Asphalt | 0.3   | \$5,443,000 |

Mayor Yeager stated “now is the date, time, and place to conduct a Public Hearing to hear support, opposition, criticism, suggestions, or observations of the taxpayers relating to the City of Alliance One and Six Year Street Improvement Plans and opened the public hearing at 7:08 p.m.

Hearing no further testimony, the Public Hearing closed at 7:09 p.m.

Mayor Yeager made a motion to approve Resolution No. 17-13, which was seconded by Councilman Mischnick. The resolution follows in its entirety:

#### RESOLUTION NO. 17-13

*WHEREAS*, The Nebraska law requires that the City of Alliance develop and file with the Board of Public Roads Classifications and Standards, a long range six year plan of highway, road and street improvements; and

*WHEREAS*, Such plan must be extended annually on or before the anniversary date; and

*WHEREAS*, City staff has prepared a One and Six Year Plan to meet these legal requirements; and

*WHEREAS*, The City published and held a public hearing on February 2, 2017; and

*WHEREAS*, The plan was submitted to Council and examined by the City Council at a regular meeting conducted on February 2, 2017; and

*WHEREAS*, Council believes the plan is appropriate and should be approved.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that the One and Six Year City Street Improvement Plan prepared by the City of Alliance Street Department is hereby approved and the City staff is authorized to forward the Plan to the Board of Public Roads Classifications and Standards.

Roll call vote with the following results:

Voting Aye: Yeager, Mischnick, Reynolds, Jones.

Voting Nay: None.

Motion carried.

- The next item before Council was the request of Box Butte County to partner in utilizing the Pictometry Program.

Michelle Robinson, Box Butte County Assessor and Pictometry Representative Doug Tonnemacher were in attendance to discuss how the County has benefited from using the program and how some of the program features would benefit the City of Alliance. Mrs. Robinson requested the City consider participating in the funding of the program. Mr. Tonnemacher provided a demonstration of the program and potential uses for the City.

- Ordinance No. 2831 which will approve at ten-year financing of up to \$525,000 for Airport Projects was the next agenda item. Council was provided with the following background information:

[The airport has completed a number of capital projects and capital purchases over the past five years that have depleted airport sinking account reserves and left the airport operating fund with current interim financing of \$250,000. Following is a recap of the expenditures relating to the projects and purchases:

|   |           |
|---|-----------|
| ○ ARFF Fire Barn and Truck (City Portion)             | \$137,000 |
| ○ Runway Rejuvenation (City Portion)                  | 641,000   |
| ○ Taxiway and Apron Sealcoat (Estimated City Portion) | 82,000    |

|   |             |
|---|-------------|
| ○ Various Building Improvements (Roofs and Pillars) | 66,000      |
| ○ Snowplow (Used from Scottsbluff)                  | 40,000      |
| ○ Loader (Approved Purchase Pending)                | 167,000     |
| Total Expenditures                                  | \$1,133,000 |

A total of \$600,000 has been transferred from the airport sinking reserves to cover more than one-half of the expenditures. The current approved budget authorized a bond issue of \$350,000 and up to \$200,000 for a loan or lease for the purchase of the loader. Given the extra expense and monitoring required for this relatively small “issue” and the competitive environment for private placements and bank loans, staff is recommending a private placement in the amount of \$525,000.

Staff has interviewed three underwriting firms and is recommending First National Capital Markets as the underwriter with a fee of \$4,500 including all legal and placement fees. First National Capital Markets is affiliated with First National Bank (our primary depository bank) and has a great network of banks through its correspondent banking department. All local banks and other known competitive banks will be included in the search for placement of the offering.

Although the exact terms will not be known until the placement process is completed, it is anticipated that a ten-year issue will most likely require between \$55,000 to \$60,000 annually for debt service, depending on the final interest rate. The airport sinking fund has a current balance around \$100,000 with present annual funding between \$45,000 and \$50,000. A recommended increase in the funding level will be included in the next fiscal year budget proposal especially in light of more airport projects anticipated in the near future.]

A motion was made by Councilman Mischnick, seconded by Councilman Reynolds to approve the first reading of Ordinance No. 2831 which Clerk Jines read by title and follows in its entirety.

#### ORDINANCE NO. 2831

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF ALLIANCE, NEBRASKA OF ITS AIRPORT REVENUE BONDS, SERIES 2017, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$525,000; PRESCRIBING THE FORM AND DETAILS OF THE BONDS AND THE COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AUTHORIZING CERTAIN OFFICERS TO DETERMINE THE PRINCIPAL AMOUNT, THE MATURITIES, THE INTEREST RATES, THE REDEMPTION PROVISIONS, THE FINANCIAL COVENANTS AND OTHER TERMS AND PROVISIONS RELATING TO THE BONDS AND TO ENTER INTO AN AGREEMENT WITH THE PURCHASER OF SAID BONDS; PLEDGING THE REVENUES OF THE AIRPORT TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; DESIGNATING THE BONDS AS QUALIFIED TAX-EXEMPT OBLIGATIONS; ADOPTING CERTAIN POST ISSUANCE TAX

COMPLIANCE; PROVIDING FOR THE PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM; AND AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS AND PRESCRIBING OTHER MATTERS RELATING THERETO

WHEREAS, The City of Alliance, Nebraska (the "Issuer"), is a city of the first class and political subdivision duly organized and existing under the laws of the State of Nebraska (the "State"); and

WHEREAS, The Issuer owns and operates a revenue-producing airport serving the Issuer and its inhabitants and others within its service area (the "Airport," as hereinafter more fully defined); and

WHEREAS, The Issuer desires to make certain improvements to and purchase equipment for the Airport (the "Project", as hereinafter more fully defined) and is authorized under the provisions of Sections 18-1803 et seq., Reissue Revised Statutes of Nebraska, as amended (the "Act"), to issue and sell revenue bonds for the purpose of providing funds for such purpose, provided that the principal of and interest on such revenue bonds shall be payable solely from the revenues derived from the operation of the Airport; and

WHEREAS, Plans and specifications for the Project and an estimate of the cost thereof have been prepared and made by the Issuer and the same are hereby accepted and approved and are on file in the office of the Clerk, the amount of said estimated cost being not less than \$525,000; and

WHEREAS, The Issuer does not have outstanding any bonds or other obligations payable from the revenues derived from the operation of the Airport; and

WHEREAS, It is hereby found and determined that it is necessary and advisable and in the best interest of the Issuer and of its inhabitants at this time to authorize the issuance and delivery of revenue bonds to provide funds for such purposes; and

WHEREAS, All conditions, acts and things required by law to exist or to be done precedent to the issuance of bonds pursuant to the Act do exist and have been done as required by law.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA, AS FOLLOWS:

ARTICLE I

DEFINITIONS

In addition to words and terms defined elsewhere herein, the following capitalized words and terms as used in this Ordinance shall have the following meanings:

"*Act*" means Sections 18-1803 through 18-1805, Reissue Revised Statutes of Nebraska, as amended.

"*Airport*" means all the property, real, personal and mixed, airports and related facilities transferred by the Issuer to or otherwise acquired by the Issuer and placed under the management and control of the Issuer from time to time, and all lands, easements, rights in lands, rights of way, contract rights, air navigation facilities, airport passenger and freight terminal buildings and other buildings and facilities erected on such lands, including hangars, runways, taxiways, paved areas, access roads, parking lots, airport equipment and any other property, real, personal or mixed, incidental to and included in such property and parts thereof, space and facilities for public recreation, business, trade or other exhibitions, sporting or athletic events, public meetings, conventions and other kinds of assemblages and space and facilities for public and commercial purposes now or hereafter constructed, acquired or made by the Issuer.

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

*“Airports Act”* means the Revised Airports Act, Sections 3-201 to 3-238 and 18-1502, Reissue Revised Statutes of Nebraska, as amended.

*“Authorized Officer”* means the Mayor, the City Clerk, the City Treasurer or any individual authorized to act on behalf of any such officer.

*“Bond Counsel”* means Kutak Rock LLP, Omaha, Nebraska, or other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the Issuer.

*“Bondowner”* or *“Registered Owner”* when used with respect to any Bond means the Person in whose name such Bond is registered on the Bond Register.

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

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

*“Bonds”* means the Issuer’s Airport Revenue Bonds, Series 2017, in the original aggregate principal amount of not to exceed \$525,000, authorized and issued pursuant to this Ordinance.

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

*“City Council”* means the Mayor and City Council which governs the actions of the Issuer.

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

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

*“Debt Service Fund”* means the fund by that name created by Section 5.01 hereof.

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

*“Defaulted Interest”* means interest on any Bond that is payable but not paid on any Interest Payment Date.

*“Expenses”* means all reasonable and necessary expenses of operation, maintenance and repair of the Airport and keeping the Airport in good repair and working order (other than interest paid on Airport Revenue Bonds and depreciation and amortization charges during the period of determination), determined in accordance with generally accepted accounting principles, including, without limiting the generality of the foregoing, current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, costs of materials and supplies, Paying Agent fees and expenses, annual audits, periodic Consultant’s reports, properly allocated share of charges for insurance, the cost of purchased water, gas

and power, if any, obligations (other than for borrowed money or for rents payable under capital leases) incurred in the ordinary course of business, liabilities incurred by endorsement for collection or deposit of checks or drafts received in the ordinary course of business, short-term obligations incurred and payable within a particular fiscal year, other obligations or indebtedness incurred for the purpose of leasing (pursuant to a true or operating lease) equipment, fixtures, inventory or other personal property, and all other expenses incident to the operation of the Airport, but shall exclude all general administrative expenses of the Issuer not related to the operation of the Airport.

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

*“Interest Payment Date”* means such dates as determined by an Authorized Officer in accordance with Section 2.10 hereof, until maturity or earlier redemption, or any other date on which interest shall be paid.

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

*“Maximum Annual Debt Service”* means the maximum amount of Debt Service Requirements as computed for the then current or any future fiscal year.

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

*“Ordinance”* means this Ordinance as from time to time amended in accordance with the terms hereof.

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

- (a) Bonds theretofore cancelled by the Paying Agent or delivered to the Paying Agent for cancellation; and
- (b) Bonds in exchange for or in lieu of which other Bonds have been registered and delivered hereunder.

*“Parity Bonds”* means any parity bonds or other long-term obligations payable out of the Revenues of the Airport hereafter issued or incurred in accordance with the provisions of this Ordinance and standing on a parity and equality with the Bonds with respect to the payment of principal and interest out of the Revenues of the Airport, so long as any such bonds remain outstanding and unpaid or until provision is made for the payment and defeasance of such bonds.

*“Parity Ordinance”* means the ordinances under which any Parity Bonds are hereafter issued.

*“Paying Agent”* means the City Treasurer, and any successors and assigns.

*“Permitted Investments”* means any securities and obligations permitted under the laws, statutes and Constitution of the State for investment of the Issuer’s moneys held in the funds referred to in Section 5.01 hereof.

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

*“Project”* means the construction, acquisition, renovation, repair, equipping, extension or betterment of the Airport operated by the Issuer, including all real and personal property, structures, machinery, equipment and appurtenances or facilities which are part of any such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment,

passengers and freight or as a part of aviation operation, air navigation and air safety operation, air and industrial parks, or any other property, real or personal, incidental to and included in such property and parts thereof, space and facilities for public recreation, business, trade or other exhibitions, sporting or athletic events, public meetings, conventions and other kinds of assemblages and space and facilities for public and commercial purposes now or hereafter constructed, acquired or made by the Issuer.

“*Project Fund*” means the fund by that name created by Section 5.01 hereof.

“*Purchaser*” means the original purchaser of the Bonds.

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

“*Redemption Price*,” when used with respect to any Bond to be redeemed, means the price at which such Bond is to be redeemed pursuant to the terms of this Ordinance, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

“*Replacement Bonds*” means Bonds issued to the beneficial owners of the Bonds in accordance with Section 2.09(b) hereof.

“*Revenues*” means all revenues or income derived by the Issuer directly or indirectly from the ownership, use and operation of the Airport, including, but without limitation, revenues pledged, dedicated or allocated for the benefit of the Airport, rental income, all proceeds of the tax authorized and levied under the provisions of Section 18-1505, Reissue Revised Statutes of Nebraska, as amended, or any substitute, alternate or replacement thereof, rentals, landing fees, use charges, income from the sale by the Issuer of services, fuel, oil and other supplies or commodities, reserves funded initially with Revenues, income from the use for commercial, industrial or agricultural purposes of portions of the Airport not currently used for aviation purposes, fees from concessions, parking receipts, storage locker and rest room income, income from communication services, fees or profits from limousine, taxi and car rental services, bar and restaurant income, advertising revenues, interest on invested money and profits realized from the sale of investments (other than investment earnings from money deposited in the Project Fund pending satisfaction of balances required to be maintained therein), but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets, and also excluding the principal of gifts, bequests, contributions, grants and donations which are specifically restricted by the donor, testator or grantor to a particular purpose which is inconsistent with their use for the payment of debt service on Airport Revenue Bonds.

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

## ARTICLE II

### AUTHORIZATION OF BONDS

Section 2.01. Authorization of Bonds. The Issuer is authorized and directed to issue one or more series of Bonds, designated “Airport Revenue Bonds, Series 2017”, with such other designations as may be appropriate, in an aggregate principal amount not to exceed \$525,000, for the purpose of financing the costs of the Project, as provided in this Ordinance.

Section 2.02. Description of Bonds. The Bonds shall consist of fully registered bonds without coupons, numbered from R-1 upward, with such other designation as the Authorized Officers, or each individually, shall deem appropriate, in denominations of \$1,000 or whole multiples thereof. The Bonds, as originally issued or issued upon transfer, exchange or substitution, shall be substantially in the form set

forth in Exhibit A attached hereto, with such changes acceptable to the Authorized Officers, or each individually, and bond counsel.

The Bonds shall be dated, shall be due and payable on the dates and in the amounts (subject to optional and mandatory redemption as provided in Article III hereof), and shall bear interest at the rates per annum as set forth in the Award Certificate as defined in Section 2.10 hereof. Except as otherwise set forth in the Award Certificate, interest shall be computed on the basis of a 360-day year of twelve 30-day months, from the date thereof or from the most recent Interest Payment Date to which interest has been paid or duly provided for, payable each Interest Payment Date.

Section 2.03. Designation of Paying Agent. The City Treasurer is hereby designated as the Issuer's paying agent for the payment of principal of and interest on the Bonds and bond registrar with respect to the registration, transfer and exchange of Bonds (herein called the "Paying Agent").

Section 2.04. Method and Place of Payment of Bonds. The principal or Redemption Price of and interest on the Bonds shall be payable in any coin or currency of the United States of America that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. The principal of and the interest payable on this Bond due on any payment date shall be paid to the person in whose name this Bond is registered on the Bond Register by check or draft mailed by the Paying Agent to such registered owner at the address shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such registered owner. The Paying Agent shall keep a record of payment of principal and Redemption Price of and interest on all Bonds and shall at least annually forward a copy or summary of such records to the Issuer.

Section 2.05. Registration, Transfer and Exchange of Bonds. The Issuer covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the office of the Paying Agent for the registration, transfer and exchange of Bonds as herein provided. When issued the Bonds shall be registered in the name of the Owner thereof on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this Section. Upon surrender of any Bond at the office of the Paying Agent, the Paying Agent shall transfer or exchange such Bond for a new Bond or Bonds in any authorized denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange. Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the Registered Owner thereof or by the Registered Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Paying Agent shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance. The Issuer shall pay the fees and expenses of the Paying Agent for the registration, transfer and exchange of Bonds provided for by this Ordinance and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Paying Agent, are the responsibility of the Registered Owners of the Bonds. If any Registered Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Registered Owner sufficient to pay any governmental charge required to be paid as a result of such failure.

The Issuer and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on said Bond and for all other purposes. All payments so made to any such Registered Owner or upon the Registered Owner's order shall be valid and effectual to satisfy and discharge the liability upon such

Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Paying Agent shall be affected by any notice to the contrary.

Section 2.06. Execution, Authentication and Delivery of Bonds. The Mayor and the Clerk (including anyone authorized to act on his or her behalf) are hereby authorized and directed to prepare and execute the Bonds as herein specified and, when duly executed, to deliver the Bonds to the Paying Agent for authentication. Each of the Bonds, including any Bonds issued in exchange or as substitution for the Bonds initially delivered, shall be signed by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the Clerk. In case any officer whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such Persons who at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

The Bonds shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibit A attached hereto, which shall be manually executed by an authorized officer or employee of the Paying Agent, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. No Bond shall be entitled to any security or benefit under this Ordinance or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Paying Agent. Such executed certificate of authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Ordinance. Upon authentication, the Paying Agent shall deliver the Bonds to the Purchaser, upon payment of the purchase price of the Bonds plus accrued interest thereon to the date of their delivery.

Section 2.07. Mutilated, Destroyed, Lost and Stolen Bonds. If (a) any mutilated Bond is surrendered to the Paying Agent, or the Issuer and the Paying Agent receive evidence to their satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the Paying Agent such security or indemnity as may be required by the Paying Agent, then, in the absence of notice to the Paying Agent that such Bond has been acquired by a bona fide purchaser, the Issuer shall execute and, upon the Issuer request, the Paying Agent shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount. If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Issuer in its discretion may pay such Bond instead of issuing a new Bond. Every new Bond issued pursuant to this Section shall constitute a replacement of the prior obligation of the Issuer and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds.

Section 2.08. Cancellation and Destruction of Bonds Upon Payment. All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent and applicable record retention laws. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the Issuer.

Section 2.09. Sale of the Bonds. In accordance with and subject to the provisions of Section 2.10 below, the Authorized Officers, or each individually, is hereby authorized to sell the Bonds to the Purchaser, subject to receipt from the Purchaser of an Investor Letter in the form attached hereto as Exhibit C.

Section 2.10. Parameters and Authorization of Award Certificate. The Authorized Officers, or each individually, is authorized and directed, in the exercise of his or her independent judgment and absolute discretion, to hereafter, from time to time, specify, set, designate, determine, establish and appoint, as the case may be, and in each case in accordance with and subject to the provisions of this Ordinance pursuant to a certificate (the "Award Certificate"): (a) the date of original issue of the Bonds; (b) the aggregate principal amount of Bonds to be issued, not exceeding aggregate principal amount set forth in Section 2.01; (c) the dates and years in which a principal maturity of the Bonds shall occur and the principal amount of the Bonds to mature in each of such years; (d) the date of final maturity of the Bonds, which shall in no event be later than December 15, 2027; (e) the dates upon which the Bonds shall be sold; (f) the rates of interest to be carried by each maturity of the Bonds, such that the average interest rate of the Bonds shall not exceed 3.00%; (g) the method by which such rate or rates of interest shall be calculated; (h) the Interest Payment Dates for the Bonds; (i) the redemption dates and prices and all terms relating thereto, including the amount and maturity date of any Bonds issued as "term bonds" and the amount of each sinking fund installment therefor, and all terms relating thereto, if any; provided that the Bonds shall be subject to redemption no later than five years from the date of original issue; (j) the purchase price for the Bonds, which shall not be less than 98.00% of the aggregate principal amount thereof; (l) such covenants and other security as may be necessary in addition to those set forth in this Ordinance, including any modifications thereof; (m) the form, content, terms, and provisions of any closing and other documentation executed and delivered by the Issuer in connection with the authorization, issuance, sale and delivery of the Bonds; and (n) all of the other terms of the Bonds not otherwise determined or fixed by the provisions of this Ordinance.

### ARTICLE III

#### REDEMPTION OF BONDS

##### Section 3.01. Redemption Provisions.

(a) *Optional Redemption.* At the option of the Issuer, the Bonds or portions thereof may be called for redemption and payment prior to their Stated Maturity on the dates and at the Redemption Prices determined by the Authorized Officers, or each individually, in accordance with the provisions of Section 2.10 hereof; provided that the Bonds shall be subject to redemption no later than five years from the date of original issue of the Bonds.

(b) *Mandatory Redemption.* The Authorized Officers, or each individually, may designate in the Award Certificate certain Bonds as "Term Bonds", portions of which are to be redeemed on the dates (each such date being herein referred to as a "Sinking Fund Payment Date") and in the amounts (hereinafter referred to as a "Mandatory Sinking Fund Payment") set forth in such certificate. The Paying Agent shall select and call for redemption, in accordance with this subsection (b), from the Term Bonds the amounts specified by such Authorized Officer in the Award Certificate, and the Term Bonds selected by the Paying Agent shall become due and payable on such date.

At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the Issuer may: (i) deliver to the Paying Agent for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (ii) furnish the Paying Agent funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Registered Owner thereof whereupon the Paying Agent shall expend such funds for such purpose to such extent as may be practical; or (iii) receive a credit with respect to the mandatory redemption obligation of the Issuer under this Section for any Term

Bonds subject to mandatory redemption on such mandatory Redemption Date which, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this Section 301(b)) and cancelled by the Paying Agent and not theretofore applied as a credit against any redemption obligation under this Section 301(b). Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the Issuer to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity in chronological order, and the principal amount of Term Bonds of the same Stated Maturity to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the Issuer intends to exercise any option granted by the provisions of clauses (i), (ii) or (iii) above, the Issuer will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Paying Agent a written certificate indicating to what extent the provisions of said clauses (i), (ii) and (iii) are to be complied with respect to such mandatory redemption payment.

Section 3.02. Notice and Effect of Call for Redemption. Unless waived by any Registered Owner of Bonds to be redeemed, official notice of any redemption shall be given by the Paying Agent on behalf of the Issuer by mailing a copy of an official redemption notice by first-class mail at least 30 days prior to the Redemption Date (or such shorter period as may be acceptable to the then-Registered Owner), to the Purchaser of the Bonds and each Registered Owner of the Bonds to be redeemed at the address shown on the Bond Register.

All official notices of redemption shall be dated and shall contain the following information:

- (a) the Redemption Date;
- (b) the Redemption Price;
- (c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption of any Bonds, the respective principal amounts) of the Bonds to be redeemed;
- (d) a statement that on the Redemption Date, the Redemption Price will become due and payable upon each Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and
- (e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the designated corporate trust office of the Paying Agent.

The failure of any Registered Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the Issuer shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the Issuer defaults in the payment of the Redemption Price), such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there

shall be prepared for the Registered Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Bonds that have been redeemed shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

#### ARTICLE IV

##### SECURITY FOR BONDS

The Bonds are special obligations of the Issuer payable solely from, and secured as to the payment of principal and interest by a pledge of, the Revenues derived from the operation of the Airport, after providing for the costs of operation and maintenance thereof. The Issuer hereby pledges said Revenues to the payment of the principal of and interest on the Bonds. The Bonds shall not be or constitute a general obligation of the Issuer, nor shall they constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provision, limitation or restriction.

The covenants and agreements of the Issuer contained in this Ordinance and in the Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Revenues derived from the operation of the Airport and in all other respects with any Parity Bonds. The Bonds shall not have any priority with respect to the payment of principal or interest from said Revenues or otherwise over the Parity Bonds, and the Parity Bonds shall not have any priority with respect to the payment of principal or interest from said Revenues or otherwise over the Bonds.

#### ARTICLE V

##### FUNDS; DEPOSIT AND APPLICATION OF BOND PROCEEDS

Section 5.01. Establishment of Funds. There are hereby created and ordered to be established and maintained by the Treasurer of the Issuer the following separate funds to be known respectively as follows:

- (a) Project Fund (the "Project Fund");
- (b) Debt Service Fund (the "Debt Service Fund").
- (c) Revenue Fund (the "Revenue Fund").

The funds referred to above shall be maintained and administered by the Issuer solely for the purposes and in the manner as provided in this Ordinance so long as any of the Bonds remain Outstanding within the meaning of this Ordinance.

Section 5.02. Deposit of Bond Proceeds. The net proceeds received from the sale of the Bonds shall be deposited simultaneously with the delivery of the Bonds, as follows:

- (a) The accrued interest on the Bonds and premium, if any, shall be deposited in the Debt Service Fund and applied in accordance with Section 6.02(b) hereof; and

(b) The remaining balance of the proceeds of the Bonds shall be deposited in the Project Fund and applied in accordance with Section 5.03 hereof.

Section 5.03. Application of Moneys in the Project Fund. Moneys in the Project Fund shall be used solely for the purpose of paying the costs of issuing the Bonds, including fees of First National Capital Markets, Inc., as placement agent with respect to the Bonds, and Kutak Rock LLP, as bond counsel, and the cost of improving and equipping the Airport as hereinbefore provided, in accordance with the plans and specifications therefor prepared by the Issuer, heretofore approved by the City Council of the Issuer and on file in the office of the Clerk, including any alterations in or amendments to said plans and specifications deemed advisable by any Authorized Officers. The City Manager, the Airport Manager and the Airport Superintendent, or each individually, may withdraw moneys in the Project Fund to pay Project costs. Upon completion of the Project, but not later than March 1, 2020, any surplus moneys remaining in the Project Fund and not required for the payment of unpaid costs thereof shall be deposited in the Debt Service Fund.

## ARTICLE VI

### APPLICATION OF REVENUES

Section 6.01. Revenue Fund. The Issuer covenants and agrees that from and after the delivery of the Bonds, and continuing as long as any of the Bonds remain Outstanding hereunder, all of the Revenues derived and collected from the operation of the Airport shall as and when received be paid and deposited into the Revenue Fund. Said Revenues shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the Issuer and shall not be commingled with any other moneys, revenues, funds and accounts of the Issuer. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Ordinance.

Section 6.02. Application of Moneys in Funds. The Issuer covenants and agrees that from and after the delivery of the Bonds and continuing, so long as any of the Bonds shall remain Outstanding, it will month administer and allocate all of the moneys then held in the Revenue Fund as follows:

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

(b) *Debt Service Fund.* On the first day of each month, commencing with the month after the month in which the Bonds are issued, the Issuer shall transfer from the Revenue Fund to the Debt Service Fund an amount not less than one-sixth or one twelfth, as applicable, of the amount of principal and interest that will become due on the Bonds on the next succeeding Bond Payment Date (or such pro rata amount for any shorter period). The amounts required to be paid and credited to the Debt Service Fund pursuant to this Section shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to the debt service funds established for the payment of principal and interest on Parity Bonds, if any, under the provisions of the Parity Ordinances, if any. All amounts paid and credited to the Debt Service Fund shall be expended and used by the Issuer for the sole purpose of paying the interest on and principal of the Bonds as and when the same become due on each Bond Payment Date.

Any amounts deposited in the Debt Service Fund as accrued interest in accordance with Section 5.02(a) hereof shall be credited against the Issuer's payment obligations as set forth in Section 6.02(b)(i) above.

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

In any case where a Bond Payment Date is not a Business Day, then payment of principal, Redemption Price or interest need not be made on such Bond Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Bond Payment Date, and no interest shall accrue for the period after such Bond Payment Date.

Section 6.03. Nonpresentation of Bonds. If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent, all liability of the Issuer to the Registered Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Registered Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Ordinance or on, or with respect to, said Bond. If any Bond is not presented for payment within four years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay to the Issuer the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Issuer, and the Registered Owner thereof shall be entitled to look only to the Issuer for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

## ARTICLE VII

### DEPOSIT AND INVESTMENT OF MONEYS

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

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

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

## ARTICLE VIII

## GENERAL COVENANTS AND PROVISIONS

The Issuer covenants and agrees with each of the Registered Owners of the Bonds that so long as any of the Bonds remain Outstanding and unpaid, it will, acting by and through the City Council, comply with each of the following covenants:

Section 8.01. Efficient and Economical Operation. The Issuer will continuously own and will operate the Airport as a revenue-producing facility in an efficient and economical manner and will keep and maintain the same in good repair and working order. The Issuer will establish and maintain such rules and regulations for the use of the Airport as may be necessary to assure maximum utilization and most efficient operation of the Airport.

Section 8.02. Tax Levy. To the extent necessary to pay both the current expenses of operation and maintenance of the Airport and the costs of the Project financed with proceeds of the Bonds, the Issuer will annually levy a property tax pursuant to Section 18-1505, Reissue Revised Statutes of Nebraska, as amended, in an amount authorized by law and as certified by the Issuer and will utilize the funds derived therefrom for lawful purposes.

Section 8.03. Reasonable Charges for All Services. The Issuer in accordance with and subject to applicable legal requirements will fix, establish, maintain and collect such rates and charges for the use and services furnished by or through the Airport as will produce Revenues sufficient to (a) pay the costs of the operation and maintenance of the Airport and (b) pay the principal of, premium (if any) and interest on the Bonds and all other Parity Bonds as and when the same become due on each Bond Payment Date. The Issuer will require the prompt payment of accounts for service rendered by or through the Airport and will promptly take whatever action is legally permissible to enforce and collect delinquent charges. The Issuer will from time to time as often as necessary, in accordance with and subject to applicable legal requirements, revise the rates and charges aforesaid in such manner as may be necessary or proper so that the Net Revenues Available for Debt Service will be sufficient to cover the obligations under this Section and otherwise under the provisions of this Ordinance. None of the facilities or services provided by the Airport will be furnished to any user (excepting the Issuer itself) without a reasonable charge being made therefor. If the Revenues derived from the Airport are at any time insufficient to pay the reasonable Expenses of the Airport and also to pay all interest on and principal of the Bonds as and when the same become due, then the Issuer will thereafter pay into the Revenue Fund a fair and reasonable payment in accordance with effective applicable rates and charges for all services by the Airport, and such payments will continue so long as the same may be necessary in order to prevent or reduce the amount of any default in the payment of the interest on or principal of the Bonds.

Section 8.04. Restrictions on Mortgage or Sale of System. The Issuer will not mortgage, pledge or otherwise encumber the Airport or any part thereof, including the Revenues, nor will it sell, lease or otherwise dispose of the Airport or any material part thereof; provided, however, the Issuer may:

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

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

(c) lease, (i) as lessor, any real or personal property which is unused or unimproved, or which has become obsolete, nonproductive or otherwise unusable to the advantage of the Issuer, or which is being acquired as a part of a lease/purchase financing for the acquisition and/or improvement of such property; and/or (ii) as lessee, with an option of the Issuer to purchase, any real or personal property for the extension and improvement of the Airport; property being leased as lessor and/or lessee pursuant to this paragraph (c) shall not be treated as part of the Airport for purposes of this Section 8.04 and may be mortgaged, pledged or otherwise encumbered; or

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

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

(i) The transferee entity is a political subdivision organized and existing under the laws of the State of Nebraska, or instrumentality thereof, or an organization described in Section 501(c)(3) of the Code, and expressly assumes in writing the due and punctual payment of the principal of and premium, if any, and interest on all outstanding Airport Revenue Bonds according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Ordinance;

(ii) If there remains unpaid any Airport Revenue Bond which bears interest that is not includable in gross income under the Code, the Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, to the effect that under then existing law the consummation of such sale, lease or conveyance, whether or not contemplated on any date of the delivery of such Airport Revenue Bond, would not cause the interest payable on such Airport Revenue Bond to become includable in gross income under the Code;

(iii) The Issuer receives a certificate of the Consultant which demonstrates and certifies that immediately upon such sale or conveyance the transferee entity will not, as a result thereof, be in default in the performance or observance of any covenant or agreement to be performed or observed by it under this Ordinance;

(iv) Such transferee entity possesses such licenses to operate the Airport as may be required if it is to operate the Airport; and

(v) The Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, as conclusive evidence that any such sale, lease or conveyance, and any such assumption, is permitted by law and complies with the provisions of this Section.

Notwithstanding anything herein to the contrary, the Issuer may transfer control and the operations of the Airport to an airport authority established by the Issuer pursuant to the Cities Airport Authorities Act, Sections 3-501 to 3-514, Reissue Revised Statutes of Nebraska, as amended.

Section 8.05. Insurance. The Issuer will carry and maintain insurance with respect to the Airport and its operations against such casualties, contingencies and risks (including, but not limited to, property and casualty, fire and extended coverage insurance upon all of the properties forming a part of the Airport insofar as the same are of an insurable nature, public liability, worker's compensation and employee dishonesty insurance), such insurance to be of the character and coverage and in such amounts as would

normally be carried by other enterprises engaged in similar activities of comparable size and similarly situated. In the event of loss or damage, the Issuer, with reasonable dispatch, will use the proceeds of such insurance in reconstructing and replacing the property damaged or destroyed, or in paying the claims on account of which such proceeds were received, or if such reconstruction or replacement is unnecessary or impracticable, then the Issuer will pay and deposit the proceeds of such insurance into the Revenue Fund. The Issuer will annually review the insurance it maintains with respect to the Airport to determine that it is customary and adequate to protect its property and operations. The Issuer may elect to be self-insured for all or any part of the foregoing requirements if (a) the Issuer annually obtains a written evaluation with respect to such self-insurance program from an Insurance Consultant, (b) the evaluation is to the effect that the self-insurance program is actuarially sound, (c) unless the evaluation states that such reserves are not necessary, the Issuer deposits and maintains adequate reserves for the self-insurance program with a corporate trustee, who may be the Paying Agent, and (d) in the case of workers' compensation, adequate reserves created by the Issuer for such self-insurance program are deposited and maintained in such amount and manner as are acceptable to the State of Nebraska. The Issuer shall pay any fees and expenses of such Insurance Consultant in connection therewith. The cost of all insurance obtained pursuant to the requirements of this Section shall be paid as an Expense out of the Revenues of the Airport.

Section 8.06. Books, Records and Accounts. The Issuer will install and maintain proper books, records and accounts (entirely separate from all other records and accounts of the Issuer) in which complete and correct entries will be made of all dealings and transactions of or in relation to the Airport. Such accounts shall show the amount of Revenues received from the Airport, the application of such Revenues, and all financial transactions in connection therewith. Said books shall be kept by the Issuer according to standard accounting practices as applicable to the operation of facilities comparable to the Airport.

Section 8.07. Annual Budget. Prior to the commencement of each fiscal year, the Issuer will cause to be prepared and filed with the Clerk a budget setting forth the estimated receipts and expenditures of the Airport for the next succeeding fiscal year. The Clerk, promptly upon the filing of said budget in the Clerk's office, will mail a copy of said budget to the Original Purchaser of the Bonds. Said annual budget shall be prepared in accordance with the requirements of the laws of the State and shall contain all information that is required by such laws.

Section 8.08. Annual Audit. Promptly after the end of each fiscal year, the Issuer will cause an audit to be made of the Airport for the preceding fiscal year by a certified public accountant or firm of certified public accountants to be employed for that purpose and paid from the revenues of the Airport; provided, however, that such audit may be consolidated with the audit of the Issuer. Said annual audit shall cover in reasonable detail the operation of the Airport during such fiscal year.

Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the Clerk, and a duplicate copy of the audit shall be mailed to the Purchaser of the Bonds. Such audits shall at all times during the usual business hours be open to the examination and inspection by any taxpayer, any user of the services of the Airport, any Registered Owner of any of the Bonds, or by anyone acting for or on behalf of such taxpayer, user or Registered Owner.

As soon as possible after the completion of the annual audit, the City Council of the Issuer shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Ordinance, the Issuer will promptly cure such deficiency and will promptly proceed to increase the rates and charges to be charged for the use and services furnished by the Airport as may be necessary to adequately provide for such requirements.

Section 8.09. Right of Inspection. The Purchaser of the Bonds and any Registered Owner or Owners of 10% of the principal amount of the Bonds then Outstanding shall have the right at all reasonable times to inspect the Airport and all records, accounts and data relating thereto, and shall be furnished all such information concerning the Airport and the operation thereof which the Purchaser or such Registered Owner or Owners may reasonably request.

Section 8.10. Administrative Personnel. The Issuer shall use its best efforts to employ at all times administrative personnel experienced and well qualified to operate the Airport. The Issuer further agrees that such administrative personnel shall be employed in sufficient numbers to ensure that the Airport will be operated in a prudent and efficient manner, following procedures generally accepted within the public utilities industry in the United States of America.

Section 8.11. Rules and Regulations. The Issuer will establish and maintain such rules and regulations for the use of the Airport as may be necessary to assure maximum occupancy and use thereof.

Section 8.12. Performance of Duties and Covenants. The Issuer will faithfully and punctually perform all duties, covenants and obligations with respect to the operation of the Airport now or hereafter imposed upon the Issuer by the Constitution and laws of the State of Nebraska and by the provisions of this Ordinance.

Section 8.13. Tax Covenants.

(a) The Issuer covenants that (i) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from federal gross income of the interest on the Bonds, and (ii) it will not use or permit the use of any proceeds of Bonds or any other funds of the Issuer, or take or permit any other action, or fail to take any action, which would adversely affect the exclusion from federal gross income of the interest on the Bonds. The Issuer will also adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with other applicable future law, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the Issuer.

(b) The Issuer covenants that (i) it will use the proceeds of the Bonds as soon as practicable for the purposes for which the Bonds are issued, and (ii) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the Issuer in any manner, or take or omit to take any action, that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

(c) The Issuer covenants that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, (i) in a manner that would cause any Bond to be a "private activity bond" within the meaning of Section 141(a) of the Code, or (ii) to make or finance a loan to any Person.

(d) The Issuer makes the following representations in connection with the exception for small governmental units from the arbitrage rebate requirements under Section 148(f)(4)(D) of the Code:

(i) the Issuer is a governmental unit under Nebraska law with general taxing powers;

(ii) none of the Bonds is a private activity bond as defined in Section 141 of the Code;

(iii) 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer;

(iv) the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the Issuer (and all subordinate entities thereof) during the calendar year in which the Bonds are issued is not reasonably expected to exceed \$5,000,000; and

(v) the Issuer (including all subordinate entities thereof) will not issue in excess of \$5,000,000 of tax-exempt bonds (including the Bonds but excluding private activity bonds and certain refunding bonds) during the calendar year in which the Bonds are issued without first obtaining an opinion of Bond Counsel that the exclusion of the interest on the Bonds from federal gross income will not be adversely affected thereby.

(e) The Issuer hereby designates the Bonds as “qualified tax-exempt obligations” as defined in Section 265(b)(3) of the Code. In addition, the Issuer hereby represents that:

(i) the aggregate face amount of all tax-exempt obligations (other than private activity bonds which are not “qualified 501(c)(3) bonds” and certain refunding bonds) which will be issued by the Issuer (and all subordinate entities thereof) during the calendar year in which the Bonds are issued is not reasonably expected to exceed \$10,000,000; and

(ii) the Issuer (including all subordinate entities thereof) will not issue an aggregate principal amount of obligations designated by the Issuer to be “qualified tax-exempt obligations” during the calendar year in which the Bonds are issued, including the Bonds, in excess of \$10,000,000, without first obtaining an opinion of Bond Counsel that the designation of the Bonds as “qualified tax-exempt obligations” will not be adversely affected.

The Authorized Officers, or each individually, is hereby authorized to take such other action as may be necessary to make effective the designation in this paragraph (e).

(f) The Issuer hereby adopts the Post-Issuance Tax Compliance Procedures attached to this Ordinance as Exhibit B to ensure that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds that are intended to be tax-exempt are met. The Issuer designates the City Manager as the “responsible person” for implementing such procedures. The Issuer reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as it may determine. The Issuer also reserves the right to change such policies and procedures from time to time, without notice.

## ARTICLE IX

### ADDITIONAL BONDS AND OBLIGATIONS

Section 9.01. Senior Lien Bonds. The Issuer covenants and agrees that so long as any of the Bonds remain Outstanding, the Issuer will not issue any additional bonds or incur or assume any other debt obligations appearing as liabilities on the balance sheet of the Issuer for the payment of moneys

determined in accordance with generally accepted accounting principles, including capital leases as defined by generally accepted accounting principles, payable out of the Revenues of the Airport or any part thereof which are superior to the Bonds.

Section 9.02. Parity Lien Bonds. The Issuer covenants and agrees that so long as any of the Bonds remain Outstanding, it will not issue any additional Parity Bonds payable out of the Revenues of the Airport or any part thereof which stand on a parity or equality with the Bonds ("Parity Bonds") unless the following conditions are met, to the extent set forth in the Award Certificate, with such modifications as any Authorized Officer may determine to be in the best interest of the Issuer:

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

(b) The Issuer shall obtain either of the following:

(i) A certificate of the Issuer demonstrating that the annual Net Revenues Available for Debt Service derived by the Issuer from the operation of the Airport, for the two fiscal year(s) immediately preceding the issuance of additional bonds shall have been equal to at least 110% of the Maximum Annual Debt Service required to be paid out of said revenues in any succeeding fiscal year on account of both principal (at maturity or upon mandatory redemption) and interest becoming due with respect to all Airport Revenue Bonds of the Issuer, including the additional bonds proposed to be issued. In determining the Net Revenues Available for Debt Service for the purpose of this clause, the Issuer may adjust said Net Revenues Available for Debt Service by adding thereto, in the event the Issuer has made any increase in rates for the use and services of the Airport and such increase has not been in effect during all of the two fiscal year(s) immediately preceding the issuance of additional bonds, the amount, as estimated by the Issuer, of the additional Net Revenues Available for Debt Service which would have resulted from the operation of the Airport during said two preceding fiscal year(s) had such rate increase been in effect for the entire period; or

(ii) A certificate of a Consultant demonstrating that the annual Net Revenues Available for Debt Service projected to be derived by the Issuer from the operation of the Airport for the fiscal year(s) immediately following the fiscal year in which the improvements to the Airport, the cost of which is being financed by such additional bonds, are to be in commercial operation, shall be equal to at least 110% of the Maximum Annual Debt Service required to be paid out of said revenues in any succeeding fiscal year following such commercial operation on account of both principal (at maturity or upon mandatory redemption) and interest becoming due with respect to all Airport Revenue Bonds of the Issuer, including the additional bonds proposed to be issued. In determining the projected Net Revenues Available for Debt Service for the purpose of this clause, the Consultant may adjust said net revenues by adding thereto any estimated increase in Net Revenues Available for Debt Service resulting from any increase in rates for the use and services of the Airport which, in the opinion of the Consultant, are economically feasible and reasonably considered necessary based on projected operations of the Airport.

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

Section 9.03. Junior Lien Bonds and Other Obligations. Nothing in this Section contained shall prohibit or restrict the right of the Issuer to issue additional revenue bonds or other revenue obligations for any lawful purpose in connection with the operation of the facility and benefiting the Airport and to provide that the principal of and interest on said revenue bonds or obligations shall be payable out of the revenues of the Airport, provided, at the time of the issuance of such additional revenue bonds or obligations, the Issuer is not in default in the performance of any covenant or agreement contained in this Ordinance (unless such additional revenue bonds or obligations are being issued to provide funds to cure such default), and provided, further, that such additional revenue bonds or obligations shall be junior and subordinate to the Bonds so that if at any time the Issuer shall be in default in paying either interest on or principal of the Bonds, or if the Issuer is in default in making any other payments required to be made by it under this Ordinance, the Issuer shall make no payments of either principal of or interest on said junior and subordinate revenue bonds or obligations until said default or defaults be cured. In the event of the issuance of any such junior and subordinate revenue bonds or obligations, the Issuer, subject to the provisions aforesaid, may make provision for paying the principal of and interest on said revenue bonds or obligations out of moneys in the Revenue Fund.

Section 9.04. Refunding Bonds. The Issuer shall have the right, without complying with the provisions of Section 9.02 hereof, to refund any of the Bonds under the provisions of any law then available, and the refunding bonds so issued, shall enjoy complete equality of pledge with any of the Bonds which are not refunded, if any, upon the revenues of the Airport; provided, however, that if only a portion of the Bonds are refunded and if said Bonds are refunded in such manner that the refunding bonds bear a higher average rate of interest or become due on a date earlier than that of the Bonds which are refunded, then said Bonds may be refunded without complying with the provisions of Section 9.02 hereof only by and with the written consent of the Registered Owners of a majority in principal amount of the Bonds not refunded.

## ARTICLE X

### DEFAULT AND REMEDIES

Section 10.01. Acceleration of Maturity Upon Default. The Issuer covenants and agrees that if it defaults in the payment of the principal of or interest on any of the Bonds as the same becomes due on any Bond Payment Date, or if the Issuer or the City Council or any of the officers, agents or employees thereof fail or refuse to comply with any of the provisions of this Ordinance or of the Constitution or statutes of the State, and such default continues for a period of 60 days after written notice specifying such default has been given to the Issuer by the Registered Owner of any Bond then Outstanding, then, at any time thereafter and while such default continues, the Registered Owners of 25% in principal amount of the Bonds then Outstanding may, by written notice to the Issuer filed in the office of the Clerk or delivered in person to said Clerk, declare the principal of all Bonds then Outstanding to be due and payable immediately, and upon any such declaration given as aforesaid, all of said Bonds shall become and be immediately due and payable, anything in this Ordinance or in the Bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if at any time after the principal of said Outstanding Bonds has been so declared to be due and payable, all arrears of interest upon all of said Bonds, except interest accrued but not yet due on such Bonds, and all arrears of principal upon all of

said Bonds has been paid in full and all other defaults, if any, by the Issuer under the provisions of this Ordinance and under the provisions of the statutes of the State of Nebraska have been cured, then and in every such case the Registered Owners of a majority in principal amount of the Bonds then Outstanding, by written notice to the Issuer given as hereinbefore specified, may rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any rights consequent thereon.

Section 10.02. Other Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and the Registered Owner or Owners of not less than 10% in principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all Registered Owners of Bonds similarly situated:

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

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

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

Section 10.03. Remedies Cumulative. No remedy conferred herein upon the Bondowners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Registered Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies consequent thereon. No delay or omission of any Bondowner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Registered Owners of the Bonds by this Ordinance may be enforced and exercised from time to time and as often as may be deemed expedient. If any suit, action or proceeding taken by any Bondowner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or has been determined adversely to such Bondowner, then, and in every such case, the Issuer and the Registered Owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Bondowners shall continue as if no such suit, action or other proceeding had been brought or taken.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

Section 11.01. Amendments. The rights and duties of the Issuer and the Bondowners, and the terms and provisions of the Bonds or of this Ordinance, may be amended or modified at any time in any respect by Ordinance of the Issuer with the written consent of the Registered Owners of not less than a majority in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Registered Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Clerk, but no such modification or alteration shall:

- (a) extend the maturity of any payment of principal or interest due upon any Bond;
- (b) effect a reduction in the amount which the Issuer is required to pay by way of principal of or interest on any Bond;
- (c) permit the creation of a lien on the Revenues of the Airport prior or equal to the lien of the Bonds or Parity Bonds;
- (d) permit preference or priority of any Bonds over any other Bonds; or
- (e) reduce the percentage in principal amount of Bonds required for the written consent to any modification or alteration of the provisions of this Ordinance.

Any provision of the Bonds or of this Ordinance may, however, be amended or modified by Ordinance duly adopted by the City Council of the Issuer at any time in any respect with the written consent of the Registered Owners of all of the Bonds at the time Outstanding.

Without notice to or the consent of any Bondowners, the Issuer may amend or supplement this Ordinance for the purpose of curing any formal defect, omission, inconsistency or ambiguity therein or in connection with any other change therein which is not materially adverse to the interests of the Bondowners.

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

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

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

Section 11.02. Notices, Consents and Other Instruments by Bondowners. Any notice, consent, request, direction, approval, objection or other instrument required by this Ordinance to be signed and executed by the Bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the Issuer and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

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

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

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

Section 11.03. Further Authority. The officers of the Issuer, including the Mayor and Clerk, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 11.04. Severability. If any Section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

Section 11.05. Governing Law. This Ordinance shall be governed by and constructed in accordance with the applicable laws of the State of Nebraska.

Section 11.06. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the City Council and approval by the Mayor.

Motion by Councilman Mischnick, seconded by Councilman Jones to suspend the statutory rule requiring three separate readings on different days of Ordinance No. 2831.

Roll call vote to waive the statutory reading with the following results:

Voting Aye: Mischnick, Yeager, Jones, Reynolds.

Voting Nay: None.

Motion carried.

A motion was made by Councilman Jones, seconded by Councilman Reynolds to approve Ordinance No. 2831 on final reading.

Roll call vote the following results:

Voting Aye: Mischnick, Yeager, Jones, Reynolds.

Voting Nay: None.

Motion carried.

Mayor Yeager stated, “the passage and adoption of Ordinance No. 2831 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- A Public Hearing on the Catering Application of Sandhillers Bar was the next matter before Council. Following the Public Hearing, Resolution No. 17-18 recommending approval will be considered. Council was provided with the following information:

[The City has received an application from MRC, Inc. dba Sandhillers Bar, 207 Box Butte Avenue, Alliance for a catering license endorsement to their Class C Liquor License. MRC, Inc. currently holds a Class C Liquor License which provides for both on and off premise sales of beer and alcoholic spirits on their licensed premises. The Catering endorsement would allow for them to serve beer and/or alcohol spirits off of their premises when a Special Designated License is granted. Without the license endorsement they are limited to only six Special Designated Licenses in a calendar year. The catering endorsement would remove the six event restriction.

The Alliance Police Department has reviewed our call service to Sandhillers Bar and finds their management practices comply with Nebraska liquor laws and finds no reason to deny the catering endorsement.]

Mayor Yeager stated “now is the date, time, and place to conduct a Public Hearing to hear support, opposition, criticism, suggestions, or observations of the taxpayers relating to the Catering Application of Sandhillers Bar, 207 Box Butte Avenue, Alliance, NE and opened the public hearing at 7:52 p.m.

Diana Mundt, owner of Sandhillers Bar, was in attendance to explain to Council her desire to add a catering endorsement to her current liquor license.

Hearing additional testimony was offered, the Public Hearing closed at 7:58 p.m.

Mayor Yeager made a motion to approve Resolution No. 17-18, which was seconded by Councilman Reynolds. The resolution follows in its entirety:

#### RESOLUTION NO. 17-18

*WHEREAS*, The City Clerk has received an application of MRC Inc., dba Sandhillers Bar, 207 Box Butte Avenue, Alliance for a catering endorsement to their liquor license pursuant to the Nebraska Liquor Control Act; and

*WHEREAS*, The Alliance City Council has held a public hearing as provided for by law within forty-five days after the date of receipt of the notice from the Nebraska Liquor Control Commission with the application; and