

Fontanelle, Iowa  
May 26, 1977

The Council of Fontanelle, Iowa, met in Special session at the City Hall, in the City, on the 26th day of May, 1977 at 7:30 p.m. The Mayor presided and the roll being called, the following named Council Members were present: Randall Bond, Deane Darrow and Keith Westphal  
Absent: Art Baudler & Ralph Means.

The Council investigated and found that a notice of intention to institute proceedings for the issuance of \$90,000 Water Revenue Bonds, Series 1977, had been duly published as provided by law and that this is the time and place at which the Council shall receive oral or written objections from any resident or property owner of the City. The Clerk announced that no written objections had been previously filed; the Mayor called for any oral or written objections from any resident or property owner of the City and there being none, the Mayor announced that the Council may take additional action for the issuance of the bonds.

The Council took up for consideration a resolution entitled: "Resolution authorizing and providing for the issuance and securing the payment of \$90,000 Water Revenue Bonds, Series 1977," which was introduced by Council Member Keith Westphal and caused to be read in full. Council Member Keith Westphal moved that the resolution be adopted, seconded by Council Member Randall Bond. The Mayor put the question on the motion and the roll being called, the following named Council Members voted: AYES: Randall Bond, Deane Darrow and Keith Westphal. NAYS: None

Whereupon, the Mayor declared the motion duly carried and the resolution duly adopted.

#### RESOLUTION NO. 77.8

#### RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SECURING THE PAYMENT OF \$90,000 WATER REVENUE BONDS, SERIES 1977.

WHEREAS, the City of Fontanelle, in Adair County, Iowa (hereinafter sometimes referred to as the "City") did heretofore, in the year 1913 establish a municipal waterworks system in and for the City (hereinafter sometimes referred to as the "Utility"); and

WHEREAS, the management and control of such Utility is now vested in the Council of the City, and no Board of Trustees exists for this purpose; and

WHEREAS, heretofore and in strict compliance with the laws of the State of Iowa, the City did order the construction of improvements and extensions to the Utility (which improvements and extensions are hereinafter sometimes referred to as the "Improvements"); and

WHEREAS, during the construction of the Improvements, temporary revenue pledge orders (hereinafter sometimes referred to as the "Pledge Orders") have been issued from time to time by the City to the contractors under the terms of their contracts on estimates approved by the Engineer for work performed and materials furnished and to other persons in payment of a part of the cost of the Improvements, and the amount of the outstanding Pledge Orders, with interest to June 1, 1977, exceeds the sum of \$90,000; and

WHEREAS, all of the outstanding Pledge Orders hereinbefore referred to are payable from and secured by the Net Revenues of the Utility and do not constitute general obligations of the City and the holders of the Pledge Orders have agreed to surrender the same in exchange for a like aggregate amount of revenue bonds of the City containing provisions which are more advantageous to the City and which will make possible the orderly payment of the cost of the Improvements evidenced by the Pledge Orders, and it is desirable and for the best interests of the City that the Pledge Orders be refunded; and

WHEREAS, under the terms of Division V of Chapter 384 of the Code of Iowa, 1975, as amended, authority exists for the City to authorize and issue its Water Revenue Bonds for the purpose of refunding the Pledge Orders outstanding, and a notice of the intention of the City to take action for the issuance of \$90,000 Water Revenue Bonds, Series 1977 (hereinafter sometimes referred to as the "1977 Bonds" or the "Bonds") has heretofore been duly published, and no oral or written objections were filed at the time and place designated in such notice, and the City may now take additional action for the issuance of the Bonds; and

WHEREAS, it now becomes advisable and necessary and for the best interests of the City and its inhabitants that the 1977 Bonds be issued and delivered;

NOW, THEREFORE, BE It Resolved by the City Council of the City of Fontanelle, Iowa, as follows:

Section 1. For the purpose referred to in the preamble hereof, there be and there are hereby ordered issued \$90,000 face value Water Revenue Bonds, Series 1977, dated June 1, 1977 (the "1977 Bonds") numbered consecutively from 1 to 42, inclusive, in the denomination of Five Thousand Dollars (\$5,000) each as to Bonds numbered 1 to 6, inclusive and 37 to 42, inclusive, and in the denomination of One Thousand Dollars (\$1,000) each as to Bonds numbered 7 to 36, inclusive, and maturing in their numerical order on June 1 of each of the following years, in the amounts and bearing interest all as follows:

<u>Bond Numbers</u>	<u>Year</u>	<u>Amount</u>	<u>Interest Rate Per Annum</u>
1	1978	\$ 5,000	5 1/2%
2	1979	\$ 5,000	5 1/2%
3	1980	\$ 5,000	5 1/2%
4	1981	\$ 5,000	5 1/2%
5	1982	\$ 5,000	5 1/2%
6	1983	\$ 5,000	5 3/4%
7 - 12	1984	\$ 6,000	5 3/4%
13 - 20	1985	\$ 8,000	5 3/4%
21 - 28	1986	\$ 8,000	5 3/4%
29 - 36	1987	\$ 8,000	5 3/4%
37 - 38	1988	\$10,000	6%
39 - 40	1989	\$10,000	6%
41 - 42	1990	\$10,000	6%

provided, however, that the City reserves the right and privilege to call for redemption and prepay bonds numbered 37 to 42, inclusive, maturing in the years 1988 to 1990, inclusive, as may be outstanding from time to time, prior to their maturity, as a whole or from time to time in part in inverse numerical order on June 1, 1987, or on any interest payment date thereafter, upon terms of par and accrued interest at the coupon rate.

Interest on the Bonds shall be payable on December 1, 1977, and semiannually thereafter on the first day of June and December in each year until the principal thereof is paid, or the Bonds are called for payment as herein provided. Both principal and interest of the Bonds shall be payable in lawful money of the United States of America at the office of the City Treasurer.

In the event any of the Bonds are called for redemption prior to maturity as aforesaid, notice of such redemption identifying the Bond or Bonds to be redeemed shall be given by registered mail addressed to the last known holders of all Bonds to be redeemed at least thirty (30) days prior to the redemption date and shall also be published at least once not less than thirty (30) days prior to the redemption date in a newspaper having a general circulation throughout the State of Iowa. Such of the Bonds as may be called for redemption and for the payment of which funds are duly provided shall cease to bear interest from and after the date as of which they are called for redemption.

All of the 1977 Bonds and the interest thereon, and any additional bonds as may hereafter be issued and outstanding from time to time ranking on a parity therewith under the conditions set forth herein (which are hereinafter sometimes referred to as the "Parity Bonds"), shall be payable solely from the Sinking Fund hereinafter referred to and shall be a valid claim of the holder thereof only against said fund and none of the Bonds shall be a general obligation of the City, nor payable in any manner by taxation, and under no circumstances shall the City be in any manner liable by reason of the failure of the Net Revenues of the Utility to be sufficient for the payment in whole or in part of the Bonds and the interest thereon, but the 1977 Bonds, together with any Parity Bonds as may be hereafter issued, shall be payable both as to principal and interest solely and only from the future Net Revenues of the Utility pledged therefor as hereinafter provided.

Each of the Bonds shall be subject to registration as to principal in the name of the holder on the books of the City Treasurer, such registration being noted upon each Bond so registered, and after such registration payment of the principal thereof shall be made only to the registered holder. Any Bond so registered, upon the request in writing of such holder personally or by attorney-in-fact, may be transferred either to a designated transferee or to bearer, and the principal of any Bond so transferred and registered to bearer shall thereupon be and become payable to bearer in like manner as if such Bond had never been registered. Registration of any Bond as to principal shall not restrain the negotiability of the coupons thereto attached by delivery merely.

Section 2. The 1977 Bonds and the coupons shall be in substantially the following form:

(Form of Bond)

UNITED STATES OF AMERICA  
STATE OF IOWA  
COUNTY OF ADAIR CITY OF FONTANELLE  
WATER REVENUE BOND, SERIES 1977

No. \_\_\_\_\_ \$ \_\_\_\_\_

The City of Fontanelle, in the County of Adair, and State of Iowa, for value received, promises to pay to bearer, or if this bond be registered as to principal, to the registered holder hereof, the sum of \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_) on the first day of June, 19\_\_\_\_, with interest on said sum from date hereof at the rate of \_\_\_\_\_ Per Cent (\_\_\_\_\_% ) per annum, payable December 1, 1977 and semiannually thereafter on the first day of June and December in each year until said principal sum is paid, except as the provisions hereinafter set forth with respect to prior redemption may be and become applicable hereto, all such interest as may accrue on and prior to the maturity of this bond to be paid upon presentation and surrender of the interest coupons hereto attached as they severally become due; both principal and interest being payable in lawful money of the United States of America at the office of the City Treasurer in and of the City of Fontanelle, Iowa.

This bond and the series of which it is a part are issued by said City pursuant to and in strict compliance with the provisions of Devision V of Chapter 384 of the Code of Iowa, 1975, and all other laws amendatory thereof and supplemental thereto, and in conformity with a resolution of the City Council of said City entitled: "Resolution Authorizing and Providing for the Issuance and Securing the Payment of \$90,000 Water Revenue Bonds, Series 1977," to which resolution reference is hereby made for a more complete statement as to the source of payment of said bonds and the rights of the holders of said bonds.

This bond is one of a series of bonds of like tenor and date (except maturity, amount, interest rate and prepayment privileges), numbered from One (1) to Forty-two (42), inclusive, issued for the purpose of refunding pledge orders issued in payment of the cost of improving and extending the Municipal Waterworks System in and for said City and is not a general obligation of said City, but this bond and the series of which it forms a part, together with any additional bonds as may be hereafter issued and outstanding from time to time ranking on a parity herewith under the conditions set forth in the resolution authorizing said series as referred to in the preceding paragraph, are payable solely and only out of the future Net Revenues of the said Municipal Waterworks System, a sufficient portion of which has been ordered set aside and pledged for that purpose. This bond is not payable in any manner by taxation, and under no circumstances shall the City of Fontanelle be in any manner liable by reason of the failure of the said Net Revenues to be sufficient for the payment of this bond and the interest hereon.

The City of Fontanelle reserves the right to call and redeem bonds of this issue numbered from Thirty-seven (37) to Forty-two (42), inclusive, prior to maturity in whole, or from time to time in part, in inverse numerical order, on any interest payment date on or after June 1, 1987. Written notice of the exercise of such right of redemption shall be given by registered mail to the last known holder of any bond so to be redeemed at least thirty (30) days prior to the redemption date and notice of such redemption shall also be published at least once not less than thirty (30) days prior to such redemption date in a newspaper having a general circulation throughout the State of Iowa. Such of said bonds as may be thus called for redemption and for the payment of which funds are duly provided and as to which notice as aforesaid shall have been given shall cease to bear interest from and after the date as of which they are called for payment.

This bond is subject to registration as to principal in the name of the holder on the books of the Treasurer of the City, such registration to be evidenced by notation of said officer on the back hereof, and after such registration, no transfer hereof, except upon such books and similarly noted hereon, shall be valid unless the last registration shall have been to bearer. Registration hereof shall not affect the negotiability of the coupons hereto attached, which shall continue negotiable by delivery merely.

And It Is Hereby Certified, Recited and Declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this bond and the series of which it is a part have existed, have happened and have been performed in due time, form, and manner, as required by law, and that the issuance of this bond does not exceed or violate any constitutional or statutory limitation or provision.

IN TESTIMONY WHEREOF, said City of Fontanelle, by its City Council has caused this bond to be executed by its Mayor and City Clerk, with

the seal of said City affixed, and the coupons hereto attached to be executed with the facsimile signature of the City Clerk, which official by the execution of this bond does adopt as and for her own proper signature her facsimile signature appearing on said coupons, this first day of June, 1977.

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_

City Clerk

(Seal)

(Form of Coupon)

No. \_\_\_\_\_ \$ \_\_\_\_\_

The Treasurer of the City of Fontanelle, Iowa, will pay to bearer out of the future revenues of the Municipal Waterworks System \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) on \_\_\_\_\_ 19\_\_\_\_, at the office of the City Treasurer, Fontanelle, Iowa, as provided in and for semiannual coupon interest then due on its Water Revenue Bond, Series 1977, dated June 1, 1977, No \_\_\_\_\_ (provided said bond has not been ~~previously~~ previously prepaid in accordance with its terms).

\_\_\_\_\_  
(facsimile signature  
City Clerk

(On the back of each bond there shall be printed the certificate of the City Treasurer in the following form:)

STATE OF IOWA

COUNTY OF ADIR SS:

CITY TREASURER'S CERTIFICATE

CITY OF FONTANELLE

The issuance of this bond has been duly and properly recorded in my office as of the first day of June, 1977.

\_\_\_\_\_  
City Treasurer

(Form for registration to be printed on the back of each bond:)

Date of	In whose name	Signature of
<u>Registration</u>	<u>Registered</u>	<u>City Treasurer</u>
_____	_____	_____

Section 3. The 1977 Bonds shall be executed by the Mayor and by the City Clerk with the seal of the City affixed and the interest coupons attached thereto shall be executed by said Clerk by her facsimile signature, and said official by the execution of the Bonds, shall adopt as and for her own proper signature her facsimile signature appearing on such coupons. When and as executed, the Bonds shall be delivered to the City Treasurer who shall record the issuance of the Bonds in her office, and said Treasurer shall sign the certificate hereinbefore set out in Section 2 and endorsed upon the back of each of the Bonds and deliver the Bonds in exchange for and upon surrender and cancellation of a like amount of outstanding Pledge Orders of the City authorized to be refunded in this resolution. All accrued interest as may be received from the exchange of the Bonds hereby authorized for the aforesaid Pledge Orders shall be converted into the Sinking Fund hereinafter provided for.

Section 4. So long as any of the 1977 Bonds are outstanding, the Utility shall continue to be operated as a revenue producing undertaking. The City shall establish, impose, adjust and provide for the collection of rates to be charged to customers of the Utility, including the City, to produce gross revenues (hereinafter sometimes referred to as the "Gross Revenues") at least sufficient to pay the expenses of operation and maintenance of the Utility, which shall include salaries, wages, cost of maintenance and operation, materials, supplies, insurance and all other items normally included under recognized accounting practices (but does not include allowances for depreciation in the valuation of physical property) (which such expenses are hereinafter sometimes referred to as the "Operating Expenses") and to leave a balance of Net Revenues (hereinafter referred to as the "Net Revenues") sufficient at all times to pay the principal and interest on all outstanding revenue bonds and pledge orders payable from such source, as the same become due.

Section 5. Upon the issuance of the 1977 Bonds and thereafter so long as any of the Bonds are outstanding, all of the Gross Revenues of the Utility shall be segregated and kept separate and apart and shall be deposited in a separate and special fund which is hereby established, to be known and hereinafter referred to as the Water Revenue Fund. The Water Revenue Fund shall be used in maintaining and operating the Utility and thereafter the remaining Net Revenues shall, to the extent hereinafter provided, be used to pay the interest on and principal of the 1977 Bonds and any Parity Bonds as may be issued and outstanding under the restrictions and conditions specified herein, and to create and maintain the several separate funds hereinafter established.

Section 6. There shall be and there is hereby created and there shall be maintained an account to be known as the Water Revenue Bond Sinking Fund (herein referred to as the "Sinking Fund"), into which there shall be set aside from the first available future Net Revenues of the Utility such portion thereof as will be sufficient to pay the interest upon and principal of the Bonds as the same become due and it is hereby determined, covenanted and agreed that the minimum amount to be so set aside into the Sinking Fund from the Net Revenues during each month of each year shall not be less than as follows:

A sum equal to one-sixth (1/6) of the interest becoming due on the next succeeding interest payment date on all of the outstanding 1977 Bonds, plus a sum equal to one-twelfth (1/12) of the principal of all 1977 Bonds maturing on the June 1 next succeeding; provided however, that no further payments need be made into the Sinking Fund when and so long as the amount therein is sufficient to retire all of the then outstanding revenue bonds payable from the Sinking Fund and to pay all interest to become due thereon prior to such retirement.

Such payments into the Sinking Fund shall be made in equal monthly installments as hereinbefore provided on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday, then such payments shall be made on the next succeeding secular day. The Sinking Fund and that portion of the Net Revenues contained therein shall be used solely and only and is hereby pledged for the purpose of paying the interest on and principal of the 1977 Bonds and any Parity Bonds, and for no other purpose. If and to whatever extent any Parity Bonds are issued under the conditions and restrictions set forth in this resolution, provisions shall be made for increasing such payments into the Sinking Fund to meet maturing installments of principal of and interest on such Parity Bonds. If at any time there be a failure to pay into the Sinking Fund the full amount above stipulated, then an amount equivalent to the deficiency shall be set apart and paid into the Sinking Fund from the Net Revenues of the Utility as soon as available, and the same shall be in addition to the amount otherwise required to be so set apart and paid into the Sinking Fund.

Section 7. There shall be and there is hereby created a special fund to be known and designated as the Bond Reserve Fund (hereinafter referred to as the "Reserve Account") into which there shall be set apart and paid from the balance of the Net Revenues remaining after first making the required payments into the Sinking Fund, the sum of \$210 on the first day of each month in each year until the sum of \$12,500 has been accumulated in the Reserve Account or until such time as all of the 1977 Bonds and any Parity Bonds have been paid in full as to both principal and interest or funds sufficient therefor have been set aside and pledged for that purpose, and whenever the sum on deposit in the Reserve Account has been reduced to less than \$12,500 by the expenditure of all or a portion of the said fund for any of the purposes specified herein, the sum of \$210 shall again be paid into the Reserve Account on the first day of each month in each year until the sum on deposit in the Reserve Account has been restored to \$12,500. All moneys credited to the Reserve Account shall be used and are hereby pledged for the payment of the principal of and interest on the 1977 Bonds whenever for any reason the funds on deposit in the Sinking Fund are insufficient to pay such principal and interest when due. If and to whatever extent Parity Bonds shall be issued under the conditions set forth in this resolution, provisions shall be made for increasing such payments into the Reserve Account to create and maintain a reasonable reserve therefor.

Section 8. There shall be and there is hereby created a special fund to be known as the Renewal, Replacement and Depreciation Fund (hereinafter referred to as the "Improvement Account") into which there shall be set apart and paid from the balance of the Net Revenues remaining, after first making the required payments into the Sinking Fund and the required payments into the Reserve Account, and after the sum of \$12,500 has been accumulated in the Reserve Account, the sum of \$210 on the first day of each month of each year until such time as there has been accumulated in the Improvement Account the sum of \$12,500. If and to whatever extent it may become necessary to use such accumulated reserve for any of the purposes hereinafter specified, payments into the Improvement Account shall be resumed until such time as the money on deposit in the Improvement Account again equals \$12,500. All Moneys credited to the Improvement Account shall be used and are hereby pledged solely and only for the following purposes and with the following priorities:

a. First, if for any reason there exists a deficiency in the required balance in the Sinking Fund and provided sufficient amounts are not available in the Water Revenue Fund to pay such deficiency, there shall be paid into the Sinking Fund an amount equal to the deficiency from the amounts on deposit in this Improvement Account.

b. Secondly, said moneys shall be transferred and credited to the Reserve Account whenever any deficiency may exist in the Reserve Account.

c. Thirdly, not exceeding one half (1/2) of the amount required to be paid into the Improvement Account each month may be pledged, set aside, used and applied to the payment of principal of and interest on subordinate revenue bonds issued to pay the cost of making necessary improvements and extensions to the Utility, provided there has first been procured and filed with the Utility the written opinion of a reputable consulting engineer employed by the Utility that the proposed improvements and extensions are required to insure the continued efficient and successful operation of the Utility.

d. Fourthly, to pay for the cost of capital improvements and extensions to the Utility provided, however, that prior to the expenditure no deficiency exists in the amounts required to be paid into the Sinking Fund and the Reserve Account, and there has first been procured and placed on file in the office of the Utility the written opinion of a reputable consulting engineer employed by the Utility that the proposed capital improvements and extensions are required to insure the continued efficient and successful operation of the Utility.

Section 9. That there shall be and there is hereby created a special fund to be known and designated as the Surplus Fund into which there shall be set apart and paid all of the Net Revenues remaining after first making the required payments into the Sinking Fund, the Reserve Account and the Improvement Account. All moneys credited to the Surplus Fund shall be transferred and credited to the Sinking Fund whenever necessary to prevent or remedy a default in the payment of the principal of or interest on the 1977 Bonds or Parity Bonds or shall be transferred and credited to the Reserve Account whenever any deficiency may exist in the Reserve Account, or shall be transferred and credited to the Improvement Account whenever any deficiency may exist in the Improvement Account. On June 1 of each year Fifty Per Cent (50%) of the amount accumulated in the Surplus Fund after making the foregoing transfers and credits shall be used as follows:

a. paid into the Reserve Account until or unless such account contains a balance of \$12,500;

b. after making disposition in accordance with (a), paid into the Improvement Account until or unless such account contains a balance of \$12,500;

c. when both the Reserve Account and the Improvement Account have the full amount of the aforementioned balances, then this portion of the annual accumulation in the Surplus Account may be used as other remaining funds of the Surplus Account. Any balance in the Surplus Account may be made available to the City as the Council, or such other duly constituted body as may then be charged with the operation of the Utility, may from time to time direct.

Section 10. All monies held in any fund created or to be maintained under the terms of this resolution shall be deposited in lawful depositories of the City and continuously held and secured as provided by the laws of the State of Iowa relating to the depositing, securing and holding of public funds, and all such deposits exceeding the maximum amount insured by the F.D.I.C. in any one bank shall be continuously secured by a valid pledge in direct obligations of the United States Government; having an equivalent market value, or invested in direct obligations of the United States Government; provided, however, that such government securities shall be sold whenever the proceeds thereof are needed for the purpose of the fund for the account of which the investment was made. All interest received by the City as a result of investments under this section shall be considered to constitute Gross Revenues of the Utility. The City hereby covenants and agrees that no such investment shall ever be made so as to cause the interest on the Bonds herein authorized to become taxable as "arbitrage bonds" pursuant to the provisions of Section 103 (c) of the Internal Revenue Code, as amended by the Tax Reform Act of 1976.

The 1977 Bonds are being entirely devoted to the purpose of being exchanged for the retirement and extinguishment of and the refunding of a prior outstanding issue of temporary Pledge Orders issued by the City, the entire proceeds of which were used for the completion of a portion of the Improvements. The Council of the City represents and certifies: (1) that all obligations for the Improvements have been entered into, and that that portion of the Improvements for which the aforementioned temporary Pledge Orders were issued to make payment therefor have been completed; (2) that the costs of the portion of the Improvements for which such Pledge Orders have been issued have been paid in full; (3) that the work on the entire Improvements has and will proceed with due diligence to completion; (4) that the Improvements have not been and are not expected to be sold or otherwise disposed of in whole or in part prior to the last maturity of the 1977 Bonds; (5) all of the principal proceeds of the 1977 Bonds are needed for the purpose stated in the form of bonds above set out, including expenses incidental to such purpose and to the issuance of the Bonds;

(6) that all of the refunding proceeds of the 1977 Bonds were expended through the aforementioned refunding, for the retirement of the aforementioned Pledge Orders; and (7) to the best of the knowledge and belief of the Council, there are no facts, estimates or circumstances that would materially change the conclusions and representations set out in this Section.

On the basis of the foregoing, it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be arbitrage bonds under Section 103 (c) of the Internal Revenue Code, as amended by the Tax Reform Act of 1976, and the regulations prescribed under that section. The City has not been notified of any listing or proposed listing of it by the Internal Revenue Service as a bond issuer whose arbitrage certifications may not be relied upon.

Section 11. The City hereby covenants and agrees with the holder or holders of said Bonds, or any of them, that from time to time may be outstanding, that it will faithfully and punctually perform all duties with reference to the Utility required and provided by the Constitution and laws of the State of Iowa, that it will segregate the Gross Revenues of the Utility and make application thereof in accordance with the provisions of this resolution and that it will not sell, lease or in any manner dispose of the Utility or any part thereof, including any and all extensions and additions that may be made thereto, until all of the Bonds herein authorized shall have been paid in full, both principal and interest, or unless and until provisions shall have been made for the payment of said Bonds and interest thereon in full; provided, however, that the City may dispose of any property which in the judgment of the Council, or the duly constituted body as may then be charged with the operation of the Utility, is no longer useful or profitable in the operation of the Utility nor essential to the continued operation thereof and when the sale thereof will not operate to reduce the revenues to be derived from the operation of the Utility.

Section 12. Upon a breach or default of a term of the Bonds and this resolution, a proceeding may be brought in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required under the terms of this resolution and Division V of Chapter 384 of the Code of Iowa, 1975, as amended, or an action may be brought to obtain the appointment of a receiver to take possession of and operate the Utility and to perform the duties required by this resolution and Division V of Chapter 384 of the Code of Iowa, 1975, as amended.

Section 13. The 1977 Bonds shall not be entitled to priority or preference one over the other in the application of the Net Revenues of the Utility regardless of the time or times of the issuance of such Bonds, it being the intention that there shall be no priority among the 1977 Bonds regardless of the fact that they may have been actually issued and delivered at different times. The City hereby covenants and agrees that so long as any of the Bonds are outstanding and unpaid, no other bonds or obligations payable from the Net Revenues of the Utility will be issued except upon the basis of such additional bonds or obligations being subject to the priority and security for payment of any 1977 Bonds then outstanding; provided, however, that the City reserves the right and privilege of issuing additional bonds from time to time payable from the Net Revenues of the Utility and ranking on a parity with the 1977 Bonds (herein referred to as the "Parity Bonds") in order to pay the cost of improvements and extensions to the Utility or for refunding any bonds or obligations payable from the Net Revenues of the Utility, but only if the officially reported Net Revenues of the Utility for the previous fiscal or calendar year prior to the issuance of such Parity Bonds (with adjustments as hereinafter provided) were equal to at least One Hundred Twenty-five Per Cent (125%) of the average amount that will become due in any one year for both the principal of and interest on the 1977 Bonds and any other bonds payable from the Net Revenues of the Utility then outstanding and the bonds then proposed to be issued, during the life of the then outstanding 1977 Bonds.

The amount of Gross Revenues of the Utility shall be adjusted for the purpose of the foregoing computations by a consulting engineer not in the regular employ of the City so as to reflect any revision in the schedule of rates and charges being imposed at the time of the issuance of any such Parity Bonds.

Bonds issued to refund any of the 1977 Bonds or Parity Bonds shall not be subject to the foregoing restrictions, provided the bonds being refunded mature within three (3) months of the date of such refunding and no other funds are available to pay such maturing bonds, but otherwise any refunding bonds ranking on a parity shall only be issued subject to the restrictions of this resolution.

Section 14. The City agrees that so long as any of the 1977 Bonds remain outstanding it will maintain insurance for the benefit of the holders of the Bonds issued hereunder of a kind and in an amount which usually would be carried by private companies engaged in a similar type of business and that it will keep proper books of record and account, separate from all other records and accounts, showing the complete and

correct entries of all transactions relating to the Utility, and that the holders of any of the Bonds shall have the right at all reasonable times to inspect the system and all records, accounts and data of the City relating thereto.

Section 15. The provisions of this resolution shall constitute a contract between the City and the holders of the Bonds herein authorized to be issued as may from time to time be outstanding and after the issuance of any of the Bonds, no change, variation or alteration of any kind of the provisions of this resolution shall be made which will adversely affect the holders of the Bonds until all of the Bonds issued hereunder and the interest thereon shall have been paid in full, except as hereinafter provided.

The holders of two-thirds (2/3) in principal amount of the 1977 Bonds and Parity Bonds at any time outstanding (not including in any case any bonds which may then be held or owned by or for the account of the City, but including such refunding bonds as may be issued for the purpose of refunding any of the 1977 Bonds if such refunding bonds shall not then be owned by the City) shall have the right from time to time to consent to and approve the adoption by the City of a resolution or resolutions modifying or amending any of the terms or provisions contained in this resolution; provided, however, that this resolution may not be so modified or amended in such manner as to:

(a) Make any change in the maturity or redemption terms of the 1977 Bonds.

(b) Make any change in the rate of interest borne by any of the 1977 Bonds.

(c) Reduce the amount of the principal payable on any 1977 Bonds.

(d) Modify the terms of payment of principal of or interest on the 1977 Bonds, or any of them, or impose any conditions with respect to such payment.

(e) Affect the rights of the holders of less than all of the 1977 Bonds then outstanding.

(f) Reduce the percentage of the principal amount of the 1977 Bonds, the consent of the holders of which shall be required to effect a further modification.

Whenever the City shall propose to amend or modify this resolution under the provisions of this Section, it shall (1) prior to publication of the notice hereinafter provided in (2), cause notice of the proposed amendment to be mailed to each of the holders of the 1977 Bonds registered as to principal at the address appearing on the registration books and also to the original purchaser or purchasers of the 1977 Bonds, and (2) cause notice of the proposed amendment to be published one time in a newspaper published in the City of Des Moines, Iowa. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory resolution is on file in the office of the City Clerk for public inspection.

Whenever at any time within one year from the date of the publication of the said notice there shall be filed with the City an instrument or instruments executed by the holders of at least two-thirds (2/3) in aggregate principal amount of the 1977 Bonds and Parity Bonds then outstanding as in this section defined, which instrument or instruments shall refer to the proposed amendatory resolution described in the said notice and shall specifically consent to and approve the adoption thereof, thereupon, but not otherwise, the City may adopt such amendatory resolution and such resolution shall become effective.

If the holders of at least two-thirds (2/3) in aggregate principal amount of the 1977 Bonds and Parity Bonds outstanding at the time of the adoption of such amendatory resolution or the predecessors in title of such holders shall have consented to and approved the adoption thereof as herein provided, no holder of any 1977 Bonds whether or not such holder shall have consented to or shall have revoked any consent as in this section provided shall have any right or interest to object to the adoption of such amendatory resolution or to object to any of the terms or provisions therein contained or to the operation thereof or to enjoin or restrain the City from taking any action pursuant to the provisions thereof.

Any consent given by the holders of a Bond pursuant to the provisions of this section shall be irrevocable for a period of six (6) months from the date of such consent and shall be conclusive and binding upon all future holders of the same Bond during such period. Such consent may be revoked at any time after six (6) months from the date of such consent by the holder who gave such consent or by a successor in title, or Secretary of the Board, but such revocation shall not be effective if the holders of two-thirds (2/3) in aggregate principal amount of the 1977 Bonds outstanding as in this Section defined shall have, prior to the attempted revocation, consented to and approved the amendatory resolution referred to in such revocation.

