

EXCO#2
301192

(Published in The Osage County Chronicle on December 10, 1992.)

ORDINANCE NO. 1638

AN ORDINANCE AUTHORIZING AND DIRECTING THE ISSUANCE OF WATER UTILITY REVENUE BONDS, SERIES 1992 OF THE CITY OF BURLINGAME, OSAGE COUNTY, KANSAS, IN THE PRINCIPAL SUM OF \$540,000 FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF IMPROVING AND ENLARGING THE WATER SYSTEM AND DOING ALL THINGS NECESSARY AND INCIDENTAL THERETO; PRESCRIBING THE FORM AND DETAILS OF SAID REVENUE BONDS; AND PROVIDING FOR THE COLLECTION, SEGREGATION AND APPLICATION OF REVENUES OF THE SYSTEM FOR THE PURPOSES AUTHORIZED BY LAW INCLUDING PAYING THE COST OF OPERATION, MAINTENANCE AND IMPROVEMENT OF SAID SYSTEM, AND PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS, UNDER THE AUTHORITY OF K.S.A. ARTICLE 12 OF CHAPTER 10 AND AMENDMENTS THERETO.

WHEREAS, pursuant to K.S.A. 10-1201 et seq., as amended, (the "Act") the governing body of the City of Burlingame, Osage County, Kansas, (the "City") did on January 6, 1992, by two-thirds vote of the members thereof, pass and approve Resolution No. 215 both approving the estimates of the costs of constructing water distribution system improvements, a water supply line to the City of Osage City, Kansas, including but not limited to all necessary pumps and valves and doing all other things necessary and incidental thereto (the "Improvements") to the water system of the City (the "System") and authorizing that notice of the City's intention to make the Improvements and finance the costs thereof be given in accordance with the requirements of the Act; and

WHEREAS, pursuant to the Act, the City did cause to be published in its official newspaper, a paper of general circulation in the City, its Notice of Intention to complete the Improvements and finance the cost thereof by issuing revenue bonds of the City, in the maximum principal amount of \$665,000, to pay all or part of the cost of the Improvements incurred or to be incurred by the City in connection with the Improvements; and

WHEREAS, a sufficient protest against the making of the Improvements and the issuance of revenue bonds of the City in the maximum principal amount of \$665,000 to pay the cost thereof was received by the City Clerk within fifteen (15) days of the date of the publication of the City's Notice of Intention; and

WHEREAS, pursuant to Resolution No. 216 of the City, the City did authorize, direct and call a special election, which was held March 24, 1992, all as required by law, for the purpose of submitting to the qualified electors of said City a proposition authorizing the City to issue water system revenue bonds of the City in the aggregate principal amount of not exceeding \$665,000 for the purpose of improving and extending its water system distribution under the authority of K.S.A. 10-1201 et seq., as amended and supplemented, and Article 1 of Chapter 10 of the Kansas Statutes Annotated, and all amendments thereto (the "Proposition"); and

WHEREAS, said Proposition was passed and approved by the electors of the City with 209 yes votes and 153 no votes;

WHEREAS, it is necessary at this time that the City proceed forthwith to sell and deliver its Water Utility Revenue Bonds in

the principal sum of \$540,000 for the purpose of paying the City's share of the unpaid cost of making the Improvements.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BURLINGAME, OSAGE COUNTY, KANSAS:

Section 1. Authorization of and Security for the Bonds. That for the purpose of providing funds in the principal amount of \$540,000 to pay the City's share of the cost of making the Improvements as aforesaid, there shall be issued, and hereby are issued, Water Utility Revenue Bonds, Series 1992, of the City of Burlingame, Osage County, Kansas, in the total amount of \$540,000 (the "Bonds"). The principal of and interest on the Bonds shall be payable solely from the revenues derived by the City from the rates, fees or charges collected by the City from the operation of the System, including all improvements, extensions and enlargements thereto hereafter constructed or acquired by the City and not from any other fund or source. The Bonds shall constitute a lien upon the revenues produced from the System of the City.

Section 2. Description of the Bonds. That the Bonds shall be certificated fully registered Bonds without coupons or at the option of the owner, uncertificated bonds, in the denomination of \$5,000 or integral multiples thereof not exceeding the principal amount of Bonds maturing in each year, said Bonds being dated December 1, 1992, bearing interest and maturing serially as follows, to-wit:

<u>MATURITY</u> <u>(December 1)</u>	<u>INTEREST</u>	<u>AMOUNT</u>
1993	6.25%	\$25,000
1994	6.25	25,000
1995	6.25	25,000
1996	6.25	25,000
1997	6.25	30,000
1998	6.25	30,000
1999	6.25	35,000
2000	5.75	35,000
2001	6.00	35,000
2002	6.20	40,000
2003	6.40	40,000
2004	6.60	45,000

TERM BONDS

November 1, 2007	6.75%	\$150,000
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Interest on the Bonds shall be payable in lawful money of the United States of America semiannually on June 1 and December 1 (the "Interest Payment Dates") of each year commencing June 1, 1993, until the principal of the Bonds has been paid, by check or draft of the Paying Agent to the registered owners of the Bonds appearing on the books maintained by the Bond Registrar as of the preceding May 15 and November 15 (the "Record Dates"). The principal of the Bonds shall be payable at the office of the Treasurer of the State of Kansas in the City of Topeka, Kansas (the "Paying Agent", "Bond Registrar" and "Transfer Agent").

Section 3. Redemption of Bonds.

(a) Mandatory Redemption. The Bonds maturing on December 1, 2007, shall be subject to mandatory redemption and payment from the sinking fund hereafter described on December 1, 2005, and thereafter pursuant to the redemption schedule hereafter set out, at the principal amount thereof, plus accrued inter-

est thereon to date fixed for redemption and payment, without premium, leaving \$55,000 to mature December 1, 2007.

As and for a sinking fund (the "Sinking Fund") for the retirement of the Bonds maturing December 1, 2007, the City hereby agrees to redeem the following principal amounts of the Bonds December 1 in each year as follows:

<u>REDEMPTION DATE</u>	<u>AMOUNT</u>
2005	\$45,000
2006	50,000

(leaving \$55,000 to mature December 1, 2007)

The Bonds maturing on December 1, 2007, to be redeemed and paid pursuant to the operation of the Sinking Fund shall be selected by lot by the Paying Agent in such equitable manner as it may designate. The Paying Agent shall each year in which the Bonds are to be redeemed pursuant to the terms of said Sinking Fund make timely selection of Bonds to be so redeemed and shall give notice thereof as provided in this Ordinance.

(b) Optional Redemption. The Bonds maturing in the years 2000 through 2007, inclusive, may, at the option of the City, be called for redemption and payment prior to maturity as a whole or in part in such equitable manner as the City determines on December 1, 1999, or on any interest payment date thereafter at the redemption price equal to the principal amount of each Bond called for redemption and payment plus accrued interest to date of redemption and payment.

In the event of any such redemption, the City will give written notice of its intention to redeem and pay the Bonds, or

any of them, by United States certified mail addressed to the Paying Agent, Bond Registrar and Cooper Malone McClain, Inc., Wichita, Kansas, not less than thirty (30) days prior to the date fixed for redemption. Upon its receipt of notice of the call for any redemption, the Paying Agent shall give notice of such call by mailing a copy of the redemption notice to the registered owner of each Bond or duly authorized agent thereof to be redeemed at the address shown on the registration books maintained by the Bond Registrar and to the manager or managers of the underwriting account who successfully purchased the Bonds. Failure to give such notice by mailing to the registered owner of any Bond or duly authorized agent thereof, or any defect therein, shall not affect the validity of any proceedings for the redemption of other Bonds. Any notice mailed as provided herein shall be conclusively presumed to have been duly given, whether or not the owner of such Bonds received the notice. Interest on any Bond so called for redemption and payment will cease from and after the date for which such call is made, provided funds are available for payment thereof and on deposit with the Paying Agent therefor.

Section 4. Defeasance. Said principal, interest and redemption premium, if any, shall be deemed to have been paid and discharged within the meaning of this Ordinance when there shall have been deposited with an escrow trustee at or prior to the maturity or redemption date of said Bonds, in trust for and irrevocably appropriated thereto, moneys and/or legally permitted investments together with earnings thereon sufficient for

the payment of the principal thereof and interest accrued to the date of maturity.

Section 5. Refunding. That when the Bonds and interest thereon shall have been paid and discharged, then the requirements contained in this Ordinance and the pledge of revenues made hereunder and all other rights granted hereby shall terminate. The Bonds and interest shall be deemed to have been paid and discharged within the meaning of this Ordinance if there shall have been a refunding of the Bond in accordance with K.S.A. 10-116a and any amendments thereto.

Section 6. Method of Execution of the Bonds. That the Bonds shall be signed by the facsimile signature of the Mayor and attested by the facsimile signature of the City Clerk of the City, and shall have the seal of the City printed thereon. The Bonds shall be authenticated with the manual signature of the State Treasurer.

Section 7. Form of Bonds. That the Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF OSAGE
CITY OF BURLINGAME

WATER UTILITY REVENUE BOND
SERIES 1992

No. R-_____ \$_____

Rate of Interest:	Maturity Date:	Dated Date:	CUSIP _____ December 1, 1992
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Registered Owner:

PRINCIPAL AMOUNT _____ DOLLARS

The City of Burlingame, in the County of Osage, State of Kansas (the "City"), for value received acknowledges itself to be indebted and promises to pay, but solely from the sources hereinafter pledged, to the registered owner identified above, or registered assigns as hereinafter provided, as of the Record Dates as hereinafter provided, on the maturity date identified above, the principal amount identified above, and in like manner to pay interest on such principal amount from the date of this Bond or from the most recent interest payment date to which interest has been paid prior to the registration date set forth below at the rate of interest per annum set forth above semiannually on June 1 and December 1 of each year (the "Interest Payment Dates") commencing June 1, 1993, until said principal amount is paid.

The principal of and premium, if any, on this Bond shall be payable in lawful money of the United States of America at the principal office of the Treasurer of the State of Kansas, Topeka, Kansas (the "Paying Agent" and "Bond Registrar"), upon presentation of this Bond for payment and cancellation. The interest on this Bond shall be payable in lawful money of the United States of America by check or draft of the Paying Agent by mailing to the registered owner thereof at the address appearing on the registration books of the City maintained by the Bond Registrar or at such other address as is furnished in writing by such registered owner to the Bond Registrar at the close of business on the 15th day of May or November next preceding the applicable interest payment date (the "Record Dates").

The terms and provisions of this Bond are continued on the reverse hereof and shall for all purposes have the same effect as though fully set forth at this place.

It is hereby certified and declared that all acts, conditions, and things required to be done and to exist precedent to and in the issuance of this Bond have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and Laws of the State of Kansas, and that the total indebtedness of said City, including this series of bonds, does not exceed any constitutional or statutory limitation.

This Bond shall not be valid or become obligatory for any purpose until the Certificate of Authentication and Registration hereon shall have been lawfully executed by the Bond Registrar.

IN WITNESS WHEREOF, the said City of Burlingame, in the State of Kansas, by its governing body, has caused this Bond to be executed by its Mayor and attested by its City Clerk by their facsimile signatures and a facsimile of its corporate seal to be imprinted hereon, all as of the first day of December, 1992.

CITY OF BURLINGAME, KANSAS

(facsimile)
Mayor

ATTEST: _____
(facsimile)
City Clerk

(FACSIMILE SEAL)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the City of Burlingame, Kansas, Water Utility Revenue Bonds, Series 1992 described in the within mentioned Ordinance.

Registration Date: _____

OFFICE OF THE STATE TREASURER
Topeka, Kansas,
as Bond Registrar and Paying Agent

By _____

I.D.#: _____

FURTHER TERMS AND PROVISIONS

This Bond is one of a duly authorized Series of Bonds of the City aggregating the principal amount of \$540,000 (the "Bonds") issued for the purposes set forth in Ordinance No. 1638 of the City (the "Ordinance"). This Bond and the Series of Bonds of which it is a part are issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and Laws of the State of Kansas, including K.S.A. 10-101 to 125, inclusive, as amended, by K.S.A. 10-620 through 10-632, inclusive, and Article 12 of Chapter 10 of the Kansas Statutes Annotated, and all amendments thereof, acts supplemental thereto, the Ordinance, and all other provisions of the laws of the State of Kansas applicable thereto.

The Bonds are issued in fully registered form in the denomination of \$5,000.00 each or authorized integral multiples thereof. This Bond may be exchanged at the principal office of the Bond Registrar for a like aggregate principal amount of Bonds of the same maturity of other authorized denominations upon the terms set forth in the authorizing Ordinance.

The Bonds maturing in the years 2000 through 2007, inclusive, may, at the option of the City, be called for redemption and payment prior to maturity as a whole or in part in such equitable manner as the City determines on December 1, 1999, or on any interest payment date thereafter at the redemption price equal to the principal amount of each Bond called for redemption

and payment plus accrued interest to date of redemption and payment.

Each of the Bonds maturing on December 1, 2007, shall be subject to mandatory redemption and payment from the sinking fund described in the Ordinance on December 1 in each year 2005 through 2006 pursuant to the redemption schedule hereafter set out, at the principal amount thereof, plus accrued interest thereon to date fixed for redemption and payment, without premium, leaving \$55,000 to mature on December 1, 2007.

As and for a sinking fund for the retirement of the Bonds maturing December 1, 2007, the City hereby agrees to redeem the following principal amounts of the Bonds December 1 in each year 2005 through 2007 as follows:

<u>REDEMPTION DATE</u>	<u>AMOUNT</u>
2005	\$45,000
2006	50,000

(leaving \$55,000 to mature December 1, 2007)

The Bonds maturing on December 1, 2007, to be redeemed and paid pursuant to the operation of the Sinking Fund shall be selected by lot by the Paying Agent in such equitable manner as it may designate. The Paying Agent shall each year in which the Bonds are to be redeemed pursuant to the terms of said Sinking Fund make timely selection of Bonds to be so redeemed and shall give notice thereof as provided in the Ordinance.

In the event of any such redemption, the City will give written notice of its intention to redeem and pay the Bonds, or any of them, by United States certified mail addressed to the Paying Agent, Bond Registrar and Cooper Malone McClain, Inc., Wichita, Kansas, not less than thirty (30) days prior to the date fixed for redemption. Upon its receipt of notice of the call for any redemption, the Paying Agent shall give notice of such call by mailing a copy of the redemption notice to the registered owner of each Bond or duly authorized agent thereof to be redeemed at the address shown on the registration books maintained by the Bond Registrar and to the manager or managers of the underwriting account who successfully purchased the Bonds. Failure to give such notice by mailing to the registered owner of any Bond or duly authorized agent thereof, or any defect therein, shall not affect the validity of any proceedings for the redemption of other Bonds. Any notice mailed as provided herein shall be conclusively presumed to have been duly given, whether or not the owner of such Bonds received the notice. Interest on any Bond so called for redemption and payment will cease from and after the date for which such call is made, provided funds are available for payment thereof and on deposit with the Paying Agent therefor.

The principal and interest of this Bond is hereby made a lien upon the revenues derived from the Water System of the City and said principal and interest are to be paid solely and only from a special fund into which there shall be paid, from the revenues derived from the rates, fees or charges collected by said City from the operation of said Water System sums sufficient to make said payments when due, after deducting only reasonable operation and maintenance expenses. Said City shall not be obligated to pay said Bond with the interest thereon except from said special fund and neither this Bond nor the issue of which it forms a part is guaranteed or secured by any property of the City other than the revenues from said Water System, nor does this Bond constitute any indebtedness of said City and limit in any way the power of the City to issue bonds for any other purpose.

The City and the Bond Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof, or redemption price hereof and interest due hereon and for all other purposes.

This Bond is transferable by the registered owner hereof in person or by his attorney duly authorized in writing at the principal office of the Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Ordinance, and upon surrender and cancellation of this Bond. The City shall pay out of the proceeds of the Bonds or from other funds all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds except (a) the reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed or (b) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds. Upon such transfer a replacement Bond or Bonds of authorized denominations of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange therefor.

BOND ASSIGNMENT

FOR VALUE RECEIVED, the undersigned does (do) hereby sell, assign and transfer to

(Name and Address)

(Social Security or Taxpayer Identifying No.)

the Bond to which this assignment is affixed in the outstanding principal amount of \$_____ standing in the name of the undersigned on the books of the Treasurer of the State of Kansas (the "Bond Registrar"). The undersigned does (do) hereby irrevoc-

cably constitute and appoint _____ as attorney to transfer said Bond on the books of said Bond Registrar with full power of substitution in the premises.

Dated _____

Name

Social Security or Taxpayer
Identifying No.

Signature (Sign Here Exactly as
Name(s) Appear on Face of
Certificate)

Signature guaranty:
By _____

CERTIFICATE OF CITY CLERK

I, the undersigned, City Clerk of the City of Burlingame, Kansas, do hereby certify that this Bond has been duly registered in my office according to law as of December 1, 1992.

WITNESS my hand and official seal.

(facsimile)
City Clerk

(FACSIMILE SEAL)

CERTIFICATE OF STATE TREASURER

OFFICE OF THE TREASURER, STATE OF KANSAS

I, SALLY THOMPSON, Treasurer of the State of Kansas, do hereby certify that a full and complete transcript of the proceedings leading up to the issuance of this Bond has been filed in my office and that this Bond was registered in my office according to law this _____.

WITNESS my hand and official seal.

Treasurer of the State of Kansas

By _____
Assistant State Treasurer

(FACSIMILE SEAL)

Section 8. Execution and Delivery of the Bonds. That the Mayor and the City Clerk are hereby authorized and directed to prepare and execute the Bonds in the manner hereinbefore specified and to cause the Bonds to be registered as provided by law and when duly executed and registered to deliver the Bonds to purchaser thereof upon payment of the purchase price.

Section 9. Disposition of Bond Proceeds. That the Bonds are to be sold and the proceeds therefrom are to be applied as follows:

1. Accrued interest to the date of delivery to the Series 1992 Principal and Interest Account;
2. To pay the City's share of the cost of the Improvements hereinbefore authorized.

Section 10. Funds and Accounts. That the City hereby covenants and agrees that so long as the Bonds remain outstanding and unpaid, all of the revenues derived by the City from the operation of the System, including all revenues from all improvements, extensions and enlargements of the System hereinafter constructed or acquired by the City, shall be paid to the Treasurer of the City and deposited in the City's "Water Fund," heretofore created and established, and said Fund shall only be used to pay the costs of operation and maintenance of the System and to pay the principal of and interest on the Bonds and any prior revenue bonds or general obligation bonds outstanding and unpaid, as provided by law.

There are hereby created and ordered to be established in the treasury of the City three separate accounts to be known re-

spectively as the (a) "Principal and Interest Account for Water Utility Revenue Bonds, Series 1992," hereinafter called "Series 1992 Principal and Interest Account," (b) "Reserve Account for Water Utility Revenue Bonds, Series 1992," hereinafter called "Series 1992 Bond Reserve Account" and (c) "Rebate Account for Water Utility Revenue Bonds, Series 1992," hereinafter called "Series 1992 Rebate Account."

The accounts referred to in the preceding paragraph shall be maintained and administered by the City as herein provided as long as the Bonds remain outstanding.

Section 11. Application of Moneys in Funds and Accounts. That the City shall pay from the Water Fund the reasonable and proper expenses of operating and maintaining the System and keeping the same in good repair and working order, including without limiting the generality of the foregoing, salaries, wages, cost of materials, supplies and insurance. After paying and providing for the payment of the reasonable and proper expenses of operating and maintaining the System, the City further covenants and agrees that it will allocate, pay and credit the moneys and revenue at the time in the Water Fund as follows in such amounts so at all times the City will have sufficient money to meet and pay the requirements of the Series 1992 Principal and Interest Account, the Series 1992 Bond Reserve Account and the Series 1992 Rebate Account.

- (a) There shall first be paid and credited to the Series 1992 Principal and Interest Account, to the extent necessary to meet at the maturity thereof the interest

on and the principal of the Bonds the following amounts:

- (1) Beginning on or before January 1, 1993, and continuing on the first day of each month thereafter an amount not less than one-fifth ($1/5$) of the amount that will be required to pay the interest that will become due on the Bonds on June 1, 1993; and beginning on June 1, 1993, and continuing on the first day of each month thereafter an amount not less than one-sixth ($1/6$) of the interest that will become due on the Bonds on the next succeeding interest date.
- (2) Beginning on January 1, 1993, and continuing on the first day of each month thereafter an amount not less than one-eleventh ($1/11$) the principal of the Bonds that will become due on December 1, 1993, and continuing on the first day of each month thereafter an amount not less than one-twelfth ($1/12$) of the principal amount of the Bonds that will become due on the next succeeding Bond maturity date.

All amounts paid and credited to the Series 1992 Principal and Interest Account shall be used and expended by the City for the sole purpose of paying the interest on and principal of the Bonds as and when the same become due.

- (b) There shall next be paid and credited to the Series 1992 Bond Reserve Account the sum of \$450 per month commencing on January 1, 1993, and continuing until such time as said Series 1992 Bond Reserve Account has attained the sum of \$50,000. Moneys held in the Series 1992 Bond Reserve Account shall be used solely to prevent any default in the payment of the principal of or interest on the Bonds if at any time the moneys in the Series 1992 Principal and Interest Account are insufficient to pay the principal of and/or interest on the Bonds. No part of the Series 1992 Bond Reserve Account shall ever be used or expended by the City to call and redeem, in whole or in part, said Bonds for payment prior to their ultimate maturity. So long as the moneys and investments in the Series 1992 Bond Reserve Account shall aggregate not less than \$50,000 no further payments into said account shall be required, but if at any time the City shall be compelled to use and expend any part of said Series 1992 Bond Reserve Account for the purpose of paying the interest on or principal of the Bonds and such use shall reduce the amount in said account below the sum of \$50,000, then the City, after making all payments and credits at the time required to be made by it under the provisions of this Ordinance, will make monthly payments or credits of \$450 a month to the Series 1992 Bond Re-

serve Account until it shall have accumulated in said account the sum of \$50,000.

- (c) Monies shall be deposited in the Series 1992 Rebate Account to the extent any amounts are required to be rebated to the United States government under Section 148 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.
- (d) After making all payments and credits from the Water Fund at the time required to be made under provisions of paragraphs (a) and (b) of this Section, all remaining moneys in the Water Fund which shall not be required for the operation and maintenance of the System for the ensuing sixty (60) day period may be used by the City for any one or more of the following purposes as determined by the Governing Body of the City:
 - (1) cost of operation and maintenance of the System;
 - (2) preventing default in and anticipating or increasing payments into other accounts referred to in this Section;
 - (3) replacing, enlarging, extending or improving the System of the City;
 - (4) calling and redeeming prior to maturity, in whole or in part, said Bonds; or
 - (5) any other lawful municipal purpose.

Section 12. Investment. That moneys held in the Series 1992 Principal and Interest Account may be invested by the City as permitted by law in direct obligations of, or obliga-

tions the principal of or interest on are guaranteed by, the United States, or in other obligations in which public funds are permitted to be invested under Kansas law, becoming due not later than the next principal or interest payment date. Moneys held in the Series 1992 Bond Reserve Account may be invested by the City if permitted by law in direct obligations of, or obligations the principal of or interest on which are guaranteed by, the United States, or any other obligation in which public funds are permitted to be invested under the Kansas law. Notwithstanding such authority, no investment shall be made for a period extending longer than to the date when the moneys invested may reasonably be needed for the purposes for which each respective account was created. Cash money in each fund or account shall be deposited in a bank or banks located in the State of Kansas as permitted by Kansas law which are members of the Federal Deposit Insurance Corporation, and all such bank deposits shall be adequately secured by the banks holding such deposits. All interest on any investment 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 account the obligations shall be valued at the principal amount or the market value thereof, whichever is lower. The excess of the amount either required by the provisions of this Ordinance or permitted by regulation or law to be deposited in any account shall be paid or credited by the City to the General Fund.

Section 13. Particular Covenants of the City. That the City covenants with each of the purchasers and owners of the Bonds that so long as the Bonds remain outstanding and unpaid:

- (a) The City will faithfully perform at all times any and all covenants, agreements, undertakings and provisions contained in the Ordinance and in the Bonds.
- (b) The City will operate and maintain the System in an efficient manner and at reasonable cost and will keep the same in good repair and working order.
- (c) The City will fix, establish, maintain and collect such rates, fees or charges for service furnished by and through the System including all extensions, improvements and enlargements thereto thereafter constructed or acquired by the City, which rates, fees or charges shall be sufficient to pay the cost of operation, maintenance and improvement of the System and to pay the principal of and interest on the Bonds and all other System revenue bonds of the City hereafter issued and standing on a parity with the Bond as and when the same become due, and to create and maintain reasonable reserves as hereinbefore specified. The City further covenants and agrees that it will at all times maintain and collect rates, fees or charges for the use of or services rendered by the System which will be sufficient to enable the City to have in each fiscal year a net operating income (gross income less only operation, maintenance and repair expenses but

before depreciation charges or any other charges or payments) from the System as an amount which will be not less than 125% of the amount required to be paid by the City in the next succeeding fiscal year on account of both principal of and interest on all System revenue bonds of the City at that time outstanding. As soon as possible after the end of each fiscal year, the annual audit and report made for such year by the City's officers pursuant to provisions of this Ordinance shall be presented to and considered by the City's Governing Body and if it shall appear that an increase in existing rates, fees or charges for the services of the System is necessary in order to satisfy the obligations of the City under provisions of this Ordinance, the Governing Body shall promptly make such increase and shall cause the same to be effective within ninety (90) days thereafter. If prior to the end of this fiscal year, the monthly operating statements of the System shall indicate that an increase in the existing rates, fees or charges is necessary to satisfy the obligations of the City under provisions of this Ordinance, the Governing Body shall promptly make such increase and shall cause the same to be effective within ninety (90) days thereafter.

- (d) None of the facilities or services afforded by the System will be furnished to any user without a reasonable charge being made therefor except to the City

itself. If at any time the revenue of the System is insufficient to pay the cost of operation, maintenance and improvement of the System and pay the principal of and interest on the Bonds, the reasonable cost and value of any service furnished by the System to the City or any of its departments shall be charged against the City and payment therefor shall be made monthly from the general funds of the City to the Water Fund and such payments shall continue so long as necessary to prevent any default in the payment of principal of or interest on the Bonds or so long as said default in such payments shall exist.

- (e) The City will not mortgage, pledge or otherwise encumber the System or any part thereof, or any extension, improvement or betterment thereof nor will it sell, lease or otherwise dispose of the System or any material part thereof. The City may, however, dispose of any property which has become obsolete and non-productive or otherwise unusable to the advantage of the City. Any cash proceeds derived from the City's sale of such property shall be used by the City to improve, extend or enlarge the System.
- (f) The City will carry and maintain a reasonable amount of all risk insurance upon the properties forming part of the System insofar as they are of an insurable nature, the amount of such insurance being the amount as would normally be insured by a private corporation

engaged in a similar type of business. In the event of loss or damage, the City, with all reasonable dispatch, will use the proceeds of such insurance to reconstruct and replace the property damaged or destroyed or, if such reconstruction or replacement be unnecessary, then either to improve, extend or enlarge the System or to redeem or purchase in the open market the outstanding Bonds. The City in operating the System will carry and maintain public liability and workmen's compensation insurance in such amounts as would normally be maintained by a private corporation engaged in a similar type of business and the proceeds derived from any of such policies shall be used in paying the claims on the account of which such proceeds were received. The cost of all insurance referred to in this paragraph shall be paid as an operating cost out of the revenues of the System.

- (g) The City will install and maintain proper books, records and accounts separate from all other records and accounts of the City in which complete and correct entries will be made of all dealings and transactions of or in relation to the properties, business and affairs of the System. Such accounts shall show the amount of revenue received from the System, the application of such revenue and all financial transactions in connection therewith. Said books shall be kept by the City according to the standard accounting practic-

es as applicable to the operation of the System by municipalities.

- (h) Annually at the end of each fiscal year the City will cause an audit to be made by a competent firm of independent auditors of the operation of the System and shall cause a copy of such audit to be mailed to Cooper Malone McClain, Inc, Wichita, Kansas. Said audit shall include:

- (1) a classified statement of the gross revenues received, of expenditures for operation and maintenance, of expenditures for all other purposes, and the amount of any capital expenditures made from such revenues made during the fiscal year;
- (2) a balance sheet as of the end of each fiscal year, with an amount on hand at the end of such year in each of the accounts created or referred to in this Ordinance;
- (3) a statement showing profit or loss for such fiscal year;
- (4) a statement of the Bonds redeemed, purchased or paid during the preceding fiscal year, and a statement of all interest paid during such year on the Bonds;
- (5) a statement of the number of customers served by the System at the beginning and also at the end of such fiscal year;

- (6) a statement showing the amount and character of insurance carried by the City on the property constituting the System and showing the names of the insurers, expiration dates of the policies and the premium thereon;
 - (7) the opinion of the auditors as to whether or not the City is meeting the requirements of paragraph (c) of this Section by maintaining and collecting adequate rates, fees and charges for System services furnished by the City; and
 - (8) such remarks and recommendations regarding the City's method of operation of the System and its accounting practice as such auditors may deem appropriate. Such audit shall be completed as soon as practicable after the end of each fiscal year and a copy thereof filed with the office of the City Clerk where it shall be open to public inspection.
- (i) The City shall semiannually conduct an internal rate review for the purpose of determining the sufficiency of the water rates in view of the covenants herein and heretofore made.

Section 14. Additional Bonds. That the City hereby covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, it will not issue any additional System revenue bonds payable from the revenues of the System which are superior in lien, security or otherwise to the Bonds. The City

hereby covenants and agrees except as hereinafter provided, that so long as the Bonds remain outstanding and unpaid it will not issue any additional bonds or other obligations payable out of the revenues of the System which stand on a parity or equality with the Bonds unless each of the following conditions are met:

- (a) The City shall not be in default in making any of the payments at the time required to be made by it into the respective funds or accounts created or referred to in this Ordinance, or in the performance of any covenant contained herein.
- (b) The annual net income derived by the City from the operation of the System, such net income being defined as gross income less only reasonable expenses for operation, maintenance and repair of the System but before any other payments or charges for the fiscal year next preceding the issuance of additional bonds, shall have been equal to 125% of the average amount required to be paid out of said income in any succeeding fiscal year on account of both principal and interest becoming due with respect to the Bonds, including the additional revenue bonds proposed to be issued, provided, however, that if the City shall have made any increase in its charges for the use of the System and such increase in its charges shall not have been in effect during all of the fiscal year next preceding the issuance of additional bonds then the City may retain an independent public accountant to make a

detailed investigation and report as to the amount of annual net income as hereinbefore defined that would have been received during the preceding fiscal year from the operation of the System if said rates had been in effect during all of said fiscal year, and said amount as defined and certified by said accountant shall govern in determining right of the City to issue additional parity bonds under provisions aforesaid.

Additional System revenue bonds of the City issued under the conditions hereinbefore in this Section set forth shall stand on a parity with the Bonds and shall enjoy complete equality of lien on and claim against the revenues of the System with said Bonds, and the City may make equal provision for paying said additional bonds and the interest thereon out of the Water Fund and may likewise provide for the creation of a reasonable principal and interest account and a reasonable bond reserve account for the payment of such additional bonds and the interest thereon out of moneys in said Water Fund.

Nothing contained in this Section shall prohibit or restrict the right of the City to issue additional Water System revenue bonds or other revenue obligations for the purpose of reconstruction, altering, repairing, improving or extending and enlarging the System and to provide that the principal of and interest on said revenue bonds or obligations shall be payable out of the revenues of the System, provided that at the time of the issuance of such additional revenue bonds or obligations the

City shall not be in default of performance of any covenant or agreement contained in this Ordinance and provided further that such additional revenue bonds or obligations shall be junior and subordinate to the Bonds, so that if any time the City shall be in default in paying either interest on or principal of the Bonds or if the City shall be in default in making any payments required to be made by it under the provisions of this Ordinance, the City shall make no payments of either principal of or interest on said junior or subordinate revenue bonds or obligations until said default or defaults be cured and no default shall exist on the part of the City under the covenants, agreements and conditions contained in this Ordinance.

Section 15. Tax Covenants. That the City covenants and agrees that no part of the proceeds from the Bonds or other proceeds shall be used, at any time, directly or indirectly in a manner which if such use had been reasonably anticipated on the date of the issuance of the Bonds would have caused the Bonds to be or become "Arbitrage Bonds" or otherwise deemed obligations the interest on which would be subject to federal income taxation within the meaning of Section 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the Regulations of the Treasury Department thereunder proposed or in effect at the time of such use applicable to obligations issued on the date of issuance of the Bonds.

Section 16. Amendments. The provisions of this Ordinance may be modified or altered by the City in any respect without the consent of the bondholders for the purpose of cor-

recting any errors or mistakes or otherwise, except that no modification or alteration shall be permitted which would reduce the security of the bondholders. It shall not be necessary to note on the Bonds any reference to such amendment or modification.

Section 17. Remedies. That the provisions of this Ordinance including covenants and agreements hereinbefore contained shall constitute a contract between the City and the holders of the Bonds and the holders of the Bonds at the time outstanding shall have the right:

- (a) by mandamus or other suit, action or proceeding at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all duties and obligations required by the provisions of this Ordinance or by the Constitution and Laws of the State of Kansas;
- (b) by suit, action or other proceeding in equity or in law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and
- (c) by suit, action or proceeding in equity or in law to enjoin any act or things which may be unlawful or in violation of the rights of the holders of the Bonds.

Nothing contained in this Ordinance however shall be construed as imposing on the City any duty or obligation to levy

any taxes either to meet any obligations incurred herein or to pay the principal of or interest on the Bonds.

Section 18. Qualified Tax-exempt Obligations. That the Bonds are designated as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code.

Section 19. Final Official Statement. That the City has authorized the preparation and disbursement of an Official Statement, dated December 16, 1992, containing information relating to the Bonds, including but not limited to the interest rates specified by the underwriter and the price or yield at which the underwriter will re-offer the Bonds to the public, together with any other information required by law, and said Official Statement shall constitute the "Final Official Statement" with respect to the Bonds as that term is defined in Rule 15c2-12.


Section 20. Approval of Previous Action, Authorization and Execution. That all previous actions heretofore taken by the officers, employees and representatives of the City relating to the construction of the Improvements and the issuance of the Bonds are hereby approved in all respects. The Mayor of the City and the City Clerk and any other proper official of the City be and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Ordinance.

Section 21. Severability. That if any provision of this Ordinance or the Bonds shall, for any reason, be held, or be in fact, inoperative or unenforceable in any particular case, such circumstance shall not render the provision inoperative or unenforceable in any other case or circumstance or render any other provision herein contained inoperative or unenforceable. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections of this Ordinance, or in the Bonds shall not affect the remaining portions of this Ordinance or the Bonds, or any part thereof.

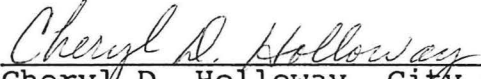
Section 22. Effective Date. That this Ordinance shall take effect and be in full force from and after its passage and publication in the official City newspaper.

PASSED by the Governing Body and approved by the Mayor of the City of Burlingame, Kansas, this 7th day of December, 1992.

CITY OF BURLINGAME, KANSAS


William R. Kraus, Mayor

ATTEST:


Cheryl D. Holloway, City Clerk

(SEAL)

The Osage County Chronicle
Burlingame, Ks. 66413

AFFIDAVIT OF PUBLICATION:

STATE OF KANSAS, OSAGE COUNTY,

K. Kurt Kessinger, and/or Kathleen M. Kessinger being first duly sworn deposes and says: That they are publishers of the OSAGE COUNTY CHRONICLE, a weekly newspaper printed in the State of Kansas, and published in and of general circulation in Osage County, Kansas with a general paid circulation on a yearly basis in Osage County, Kansas, and that said newspaper is not a trade, religious, or fraternal publication.

Said newspaper is a weekly published at least 50 times a year; has been so published continuously and uninterruptedly in said county and state for a period of more than five years prior to the first publication of said notice; and has been admitted at the post office of Burlingame, Kansas, in said county as second class matter.

That the attached copy is a true copy thereof and was published in the regular and entire issue of said newspaper for one weeks, the first publication thereof being made as aforesaid on the 10 day of December 1992 with subsequent publications being made on the following dates.

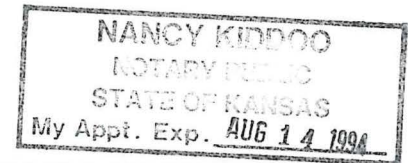
Kathleen Kessinger

Publisher

Subscribed and sworn to before me this 10 day of

December 1992

Nancy Kiddoo



My Commission Expires: AUG 14 1994

Printing Fee: \$ 638.91

Additional Copies: \$ _____

Notary Fee: \$ _____

TOTAL FEES: \$ 638.91

