

# ALLIANCE CITY COUNCIL

REGULAR MEETING, THURSDAY, SEPTEMBER 25, 2008

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

The Alliance City Council met in a Regular Meeting, September 25, 2008 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 September 18, 2008. 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 Kusek opened the September 25, 2008 Regular Meeting of the Alliance, Nebraska City Council at 7:00 p.m. Present were Mayor Kusek, Council Members Dickenson, Benzel, Rowley, and Yeager. Also present were City Manager Caskie, City Attorney Miller and City Clerk Jines.

- Mayor Kusek read the Open Meetings Act Announcement.
- The first item to come before Council was the Consent Calendar.

Motion by Councilman Dickenson, seconded by Councilwoman Rowley to approve the Consent Calendar which follows in its entirety:

**CONSENT CALENDAR – SEPTEMBER 25, 2008**

1. Approval: Minutes of the Regular Meeting, September 4, 2008.
2. Approval: Payroll and Employer Taxes for the period August 23, 2008 through September 5, 2008 inclusive: \$159,490.89 and \$11,323.41 respectively.
3. Approval: Claims against the following funds for the period September 2, 2008 through September 25, 2008: 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. The claims listing will be distributed prior to the meeting on September 25, 2008. This is the last claims approval for the fiscal year and the additional time is necessary to get all purchases in closing order.

4. Approval: The issuance of Repair & Maintenance Construction Licenses to Jack A. Hughes dba Hughes Construction and Steve Steggs dba Steve Steggs.
5. Approval: Issuance of a Cemetery Certificate to Amber Craig, Torree Bolinger, Scott Bolinger, Justin Bolinger and Celena Levasseur for the East One Half (E1/2) Lot Twenty (20), Section Three (3), Block Twenty-six (26), Fourth Addition to the Alliance Cemetery.
6. Approval: The current roster of the Alliance Volunteer Fire Department.

NOTE: City Manager Caskie has reviewed these expenditures and to the best of her knowledge confirms that they are within budgeted appropriations to this point in the fiscal year.

Mayor Kusek questioned a charge for the repair of the library air conditioning system. Public Facilities Director Eric Lenz advised Council that this is the bill for the software that controls the HVAC system. He also questioned two separate bills for mulch. City Manager Caskie will investigate the type of mulch. Councilwoman Rowley questioned an air conditioner charge. City Manager Caskie advised Council that the air conditioning unit from the MIS Department flooded the City Manager's office. The repairs will be extensive, so a portable unit was purchased for use in the MIS Department. Mayor Kusek questioned a charge for picnic tables. City Manager Caskie advised Council that the funds were encumbered through the museum. Councilman Dickenson questioned a charge for roof repair. Mr. Lenz advised Council that repairs have been made to the entire roof of the Municipal Building. Councilwoman Rowley questioned separate charges for a Keno audit. Finance Director Leah King explained that the charges are from separate funds. Councilman Yeager questioned charges from Nebraska Total Office for Maintenance Contracts some of which are dated February, 2008. Mr. Lenz advised Council that during the transfer of duties for the Warehouse, several invoices were misplaced. Councilman Yeager questioned a charge for gas at the swimming pool. City Manager Caskie explained that natural gas is used to heat the swimming pool. She advised Council that alternative heating systems will be investigated to lessen the need for natural gas.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

- A request from Tony Peterson to erect a hangar on City property at the Alliance Municipal Airport was the next item for Council’s discussion.

Tony Peterson, 5671 Sarpy Road addressed Council and requested assistance researching funding possibilities to build a new hangar. He indicated that several individuals would like hangars. Mayor Kusek asked staff to research options for the City to erect a hangar to rent spaces to Mr. Peterson and others and report back to Council by December 4, 2008.

- The next item on Council’s agenda was Resolution No. 08-101 regarding calling the Series 2001 Electric Bonds.

Mr. Bruce Lefler, representative of Ameritus Investment Corporation addressed Council explaining the bond process.

Motion by Mayor Kusek, seconded by Councilman Dickenson to approve Resolution No. 08-101 which follows in its entirety:

**CITY OF ALLIANCE, NEBRASKA**

**RESOLUTION NO. 08-101**

**A RESOLUTION OF THE CITY OF ALLIANCE, NEBRASKA CALLING \$4,240,000 PRINCIPAL AMOUNT OF ELECTRIC REVENUE BONDS, SERIES 2001, DATED JULY 11, 2008, FOR PAYMENT AND REDEMPTION PRIOR TO MATURITY**

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:**

**Section 1.** The Mayor and Council of the City of Alliance, Nebraska (the “City”) hereby finds and determines as follows:

(a) The City has previously issued \$4,400,000 principal amount of its Electric Revenue Bonds, Series 2001, dated July 11, 2001 (the “**Outstanding Bonds**”), pursuant to Ordinance No. 1859, as amended and supplemented from time to time, including, without limitation, Ordinance No. 2421, duly passed by the Council and approved by the Mayor on June 7, 2001 (collectively, the “**Ordinance**”); bearing interest and maturing as follows:

<b><u>Maturity (December 15)</u></b>	<b><u>Principal Amount</u></b>	<b><u>Interest Rate</u></b>
2008	\$390,000	4.30%
2009	410,000	4.40

2010	425,000	4.55
2011	445,000	5.00
2012	465,000	5.00
2013	490,000	4.90
2014	510,000	5.00
2015	540,000	5.10
2016	565,000	5.15

The Outstanding Bonds are redeemable at the option of the City at any time on or after June 15, 2008 at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest to the date fixed for redemption.

All of the Outstanding Bonds are unpaid and a legal liability against the City, provision for the payment of which may be made by the lawful issuance and sale of electric revenue refunding bonds of the City pursuant to Sections 10-142, and 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended.

**Section 2.** All of the Outstanding Bonds are hereby irrevocably called for redemption and payment on October 30, 2008 (the “**Redemption Date**”) at a redemption price equal to 100% of the principal amount thereof plus accrued interest thereon to the Redemption Date.

Notice of the call for redemption, identifying the Refunded Bonds to be redeemed, shall be given by the Paying Agent for the Refunded Bonds, The Fremont National Bank and Trust Company, Fremont, Nebraska, upon mailing a copy of the redemption notice by first-class mail, postage prepaid, at least thirty days prior to the date fixed for redemption to the registered owner of each Refunded Bond to be redeemed at the address shown on the registration books; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bond with respect to which no such failure has occurred. Any notice mailed as provided in the Ordinance shall be conclusively presumed to have been duly given, whether or not the registered owner of such Outstanding Bond receives the notice.

Holders of the Outstanding Bonds shall present the same for payment and redemption on the Redemption Date at the office of the Paying Agent for the Refunded Bonds, The Fremont National Bank and Trust Company, the place of payment thereof, and interest on the Refunded Bonds shall cease on and after the Redemption Date.

**Section 3.** A true copy of this resolution shall be filed with the Paying Agent at least thirty (30) days prior to Redemption Date.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

- The next item for Council's review was Ordinance No. 2632 authorizing the issuance and sale of Electric Revenue Refunding Bonds, Series 2008.

Motion by Mayor Kusek, seconded by Councilman Dickenson to approve Ordinance No. 2632 on first reading. City Clerk Jines read the ordinance by title which follows in its entirety:

**CITY OF ALLIANCE, NEBRASKA**

**ORDINANCE NO. 2632**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF \$3,800,000 PRINCIPAL AMOUNT OF ELECTRIC REVENUE BONDS, SERIES 2008 FOR THE PURPOSE OF (1) PROVIDING FOR THE PAYMENT AND REDEMPTION OF \$4,240,000 PRINCIPAL AMOUNT OF ELECTRIC REVENUE BONDS, SERIES 2001, (2) PROVIDING FOR A DEPOSIT INTO THE BOND RESERVE FUND, AND (3) PAYING THE COSTS OF ISSUANCE OF THE BONDS HEREIN AUTHORIZED; PRESCRIBING THE FORM AND DETAILS OF SAID BONDS; PLEDGING AND HYPOTHECATING THE REVENUE AND EARNINGS OF THE ELECTRIC LIGHT AND POWER PLANT AND TRANSMISSION AND DISTRIBUTION SYSTEM OWNED OR TO BE OWNED BY THE CITY FOR THE PAYMENT OF SUCH BONDS; LIMITING PAYMENT OF SUCH REVENUE BONDS SOLELY TO THE REVENUES DERIVED FROM THE CITY'S ELECTRIC SYSTEM; PROVIDING FOR THE SALE OF SUCH REVENUE BONDS PURSUANT TO A BOND PURCHASE AGREEMENT; PROVIDING FOR THE APPLICATION OF THE PROCEEDS OF SUCH ELECTRIC REVENUE BONDS; MAKING APPLICABLE TO SAID REVENUE BONDS THE TERMS, PROVISIONS, COVENANTS AND CONDITIONS APPLICABLE TO REVENUE BONDS ISSUED PURSUANT TO ORDINANCE NOS. 1859, 1977, 2098 AND 2421 OF THE CITY, AS FROM TIME TO TIME AMENDED AND SUPPLEMENTED; PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND CERTAIN OTHER RELATED MATTERS.**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:**

**Section 1. Findings.** The Mayor and Council of the City of Alliance, Nebraska (the "City") hereby finds and determines that:

- (a) The City has for many years and now owns, maintains and operates an electric light and power plant and related electric transmission lines and distribution system (the "**Electric System**") within the City for the use and benefit of the City and its inhabitants, which constitutes a "revenue producing facility" as described in Sections 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended (the "**Act**").

(b) Pursuant to the Act and Ordinance Nos. 1859, 1977, 2098 and 2421 of the City, adopted November 25, 1985, November 9, 1989, July 8, 1993 and June 7, 2001, respectively (collectively, the “**Existing Ordinance**”), the City has heretofore issued, unpaid and has outstanding on the date hereof \$4,240,000 principal amount of the City’s Electric Revenue Bonds, Series 2001, dated July 11, 2001 (the “**Outstanding Bonds**”) payable solely out of the revenues derived from the operation of the Electric System (the “**Revenues**”).

(c) It is necessary, desirable, advisable and in the best interests of the City that the City provide for the payment and redemption of all of the Outstanding Bonds by the issuance of electric revenue refunding bonds of the City pursuant to the provisions of Sections 10-142 and 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended, as provided herein.

(d) Pursuant to the Existing Ordinance, the City may issue refunding bonds thereunder without restriction or limitation if such refunding bonds refund all of the Bonds then outstanding.

(e) The Outstanding Bonds are the only obligations of the City payable from the Revenues and the electric revenue refunding bonds authorized herein will refund all of the Outstanding Bonds.

(f) All conditions, acts and things required by law to exist or to be done precedent to the issuance of the Series 2008 Bonds herein authorized do exist and have been done and performed in regular and due time as provided by law.

**Section 2. Definitions.** Unless the context shall clearly indicate some other meaning or unless such word or term is otherwise defined in this 2008 Ordinance, for all purposes of this 2008 Ordinance, all words and terms used in this 2008 Ordinance which are defined in the Existing Ordinance shall have the respective meanings specified in the Existing Ordinance. In addition to the words and terms elsewhere defined in this 2008 Ordinance and unless the context shall clearly indicate some other meaning or may otherwise require, the words and terms defined in this section shall, for all purposes of this 2008 Ordinance and of any certificate, opinion, order, direction, instrument or document herein or therein mentioned, have the respective meanings specified in this section, with such definitions to be equally applicable to both the singular and plural forms of any word or term defined and vice versa.

(a) “**Continuing Disclosure Certificate**” means the Continuing Disclosure Certificate executed by the City dated the date of issuance and delivery of the Series 2008 Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

(b) “**2008 Ordinance**” means this ordinance as the same may be amended and supplemented from time to time.

(c) “**Participating Underwriter**” shall have the meaning ascribed thereto in the Continuing Disclosure Certificate.

(d) “**Registrar**” means The Fremont National Bank and Trust Company, Fremont,

Nebraska, appointed as Bond Registrar and Paying Agent’s Agreement pursuant to **Section 7(a)** of this 2008 Ordinance.

(e) **“Redemption Date”** means October 30, 2008.

(f) **“Reserve Requirement”** means, with respect to a series of Bonds, an amount equal to the lesser of (i) the maximum annual debt service for such series of Bonds, or (ii) 125% of average annual debt service of such series of Bonds, but not to exceed in either case 10% of the aggregate principal amount of such series of Bonds initially issued.

(g) **“Series 2008 Bonds”** means the \$3,800,000 City of Alliance, Nebraska Electric Revenue Refunding Bonds, Series 2008, authorized pursuant to **Section 3**.

**Section 3. Authorization of Series 2008 Bonds; Principal Maturities; Redemption.** For the purpose of providing funds (a) for the payment and redemption of the Outstanding Bonds on the Redemption Date, (b) to make a deposit into the Bond Reserve Fund with respect to the Series 2008 Bonds, and (c) to pay the costs of issuance thereof, there are hereby authorized to be issued bonds of the City of Alliance, Nebraska, to be known as Electric Revenue Refunding Bonds, Series 2008 (the **“Series 2008 Bonds”**), of the aggregate principal amount of Three Million Eight Hundred Thousand Dollars (\$3,800,000) numbered consecutively from 1 upwards in order of issuance, in the denomination of \$5,000 and integral multiples thereof, fully registered as to both principal and interest on the books of the Registrar, with a Date of Original Issue of the date of delivery thereof and payment therefor, maturing and bearing interest, calculated on the basis of a 360-day year consisting of twelve 30-day months, as follows:

<u>Date of Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
December 15, 2009	\$430,000	2.20%
December 15, 2010	455,000	2.60
December 15, 2011	465,000	3.00
December 15, 2012	475,000	3.25
December 15, 2013	495,000	3.50
December 15, 2014	510,000	3.70
December 15, 2015	530,000	3.90
December 15, 2016	440,000	4.10

The Series 2008 Bonds maturing on or after December 15, 2013 shall be subject to redemption at the option of the City prior to the stated maturities thereof at any time on or after the fifth anniversary of the date of their original issue as a whole, or in part from time to time, in such principal amounts and from such maturity or maturities as the City, in its sole and absolute discretion, may determine. In the event that less than all of the Series 2008 Bonds of any maturity

are to be called for redemption, the particular Series 2008 Bonds of such maturity to be redeemed shall be selected by lot. Any redemption of the Series 2008 Bonds shall be at a redemption price equal to the principal amount thereof, together with the interest accrued on such principal amount to the date fixed for redemption.

The Series 2008 Bonds shall be redeemed in whole multiples of \$5,000 and if any Series 2008 Bond be in a denomination in excess of \$5,000, portions of the principal amount thereof in installments of \$5,000 or any multiples thereof may be redeemed, and if less than all of the principal amount thereof is to be redeemed, in such case upon the surrender of such Series 2008 Bond there shall be issued to the registered owner thereof without charge therefor, for the then unredeemed balance of the principal amount thereof, Series 2008 Bonds of like series, maturity and interest rates in any of the authorized denominations provided by this 2008 Ordinance.

Notice of redemption of Series 2008 Bonds stating their designation, date, maturity and principal amounts shall be given by the Registrar by mailing such notice by first-class mail, postage prepaid, not less than thirty (30) days prior to the date fixed for redemption to the registered owners at their most recent addresses appearing upon the books of registry, but failure to mail such notice shall not affect the proceedings for redemption. Notice of redemption need not be given to the holder of any Series 2008 Bond, whether registered or not, who has waived notice of redemption. Notice of redemption having been given as provided above or notice of redemption having been waived by the owners of Series 2008 Bonds called for redemption who have not been given such notice as provided above, the Series 2008 Bonds so called for redemption shall become due and payable on the designated redemption date. The City shall give written notice to the Registrar of its election to redeem Series 2008 Bonds at least forty-five days prior to such redemption date, or such shorter period as shall be acceptable to the Registrar. If on or before such redemption date funds sufficient to pay the Series 2008 Bonds so called for redemption at the applicable redemption price and accrued interest to said date have been deposited or caused to have been deposited by the City with the Registrar for the purposes of such payment and notice of redemption thereof has been given or waived as hereinbefore provided, then from and after the date fixed for redemption interest on such Series 2008 Bonds so called shall cease to accrue and become payable. If such funds shall not have been so deposited with the Registrar as provided on or before the date fixed for redemption, such call for redemption shall be revoked and the Series 2008 Bonds so called for redemption shall continue to be Outstanding the same as though they had not been so called, and shall continue to bear interest until paid at such rate as they would have borne had they not been called for redemption, and shall continue to be protected by this 2008 Ordinance and entitled to the benefits and security hereof.

**Section 4. Interest Payments.** Interest on the Series 2008 Bonds at the respective rates for each maturity is payable on June 15 and December 15 of each year, beginning June 15, 2009 (each of such dates an “**Interest Payment Date**”) from the Date of Original Issue or the most recent Interest Payment Date, whichever is later, until maturity or earlier redemption by check or draft mailed by the Registrar or its successor on such Interest Payment Date to the registered owner of each Series 2008 Bond at such registered owner’s address as it appears on the Bond Register maintained by the Registrar or its successor at the close of business on the last business day of the month preceding the month in which each Interest Payment Date occurs (the “**Record Date**”)



<u>Rate</u>	<u>Maturity</u>	<u>Original Issue</u>	<u>Number</u>
	December 15, 20__	October 30, 2008	

**REGISTERED OWNER:****PRINCIPAL AMOUNT:**

The **CITY OF ALLIANCE, NEBRASKA**, a city of the first class and a political subdivision of the State of Nebraska (the “**City**”), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner specified above, or registered assigns, on the Date of Maturity specified above, but only out of the special fund designated below, the Principal Amount specified above in lawful money of the United States of America, together with interest thereon calculated on the basis of a 360-day year consisting of twelve 30-day months from the Date of Original Issue specified above at the rate of interest per annum specified above payable on June 15 and December 15 of each year beginning June 15, 2009 (each of such dates an “**Interest Payment Date**”) to maturity or earlier redemption.

The Principal Amount and the interest due at maturity or upon redemption prior to maturity is payable to the Registered Owner at the office of The Fremont National Bank and Trust Company (the “**Registrar**”) upon presentation and surrender of this bond. Interest on this bond due prior to maturity or earlier redemption shall be paid by check or draft mailed on such Interest Payment Date to the Registered Owner at such Registered Owner’s address as it appears on the registration books of the Registrar at the close of business on the last business day of the month preceding the month in which an Interest Payment Date occurs (the “**Record Date**”). Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the Record Date such interest was payable, and shall be payable to the person who is the Registered Owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Registrar whenever money for such purpose become available.

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

The bonds of the series of which this bond is one maturing on or after December 15, 2013 are subject to redemption at the option of the City prior to the stated maturities thereof at any time on and after the fifth anniversary of the date of their original issue as a whole, or in part from time to time, in such principal amounts and from such maturity or maturities as the City, in its sole and absolute discretion, may determine. In the event that less than all the bonds of a maturity are to be called for redemption, the particular bonds of such maturity to be redeemed shall be selected by lot by the Registrar. Any redemption of the bonds of the series of which this bond is one shall be at a redemption price equal to the principal amount thereof, together with the interest accrued on such

principal amount to the date fixed for redemption.

Bonds shall be redeemed in whole multiples of \$5,000 and if any bond be in a denomination in excess of \$5,000, portions of the principal amount thereof in installments of \$5,000 or any multiples thereof may be redeemed, and if less than all of the principal amount thereof is to be redeemed, in such case upon the surrender of such bond there shall be issued to the registered owner thereof without charge therefor, for the then unredeemed balance of the principal amount thereof, registered bonds of like series, maturity and interest rates in any of the authorized denominations provided by the Ordinance (hereinafter defined).

Notice of redemption of this bond shall be given to the Registered Owner hereof by first-class mail, postage prepaid, not less than thirty (30) days prior to the date fixed for redemption, all as more particularly set forth in the Ordinance (hereinafter defined). Notice of redemption having been given as provided in the Ordinance (hereinafter defined), or notice of redemption having been waived, and funds for the payment thereof having been deposited with the Registrar, this bond shall cease to bear interest from and after the date fixed for redemption.

This bond is one of a series of bonds issued in the aggregate principal amount of \$[Principal Amount] numbered consecutively from 1 upwards in order of issuance, being in the denomination of \$5,000 and integral multiples thereof, of even date and like tenor herewith except as to amount, date of maturity, rate of interest and priority of redemption, issued by the City for the purpose of providing for the payment and redemption of all of the City's outstanding Electric Revenue Bonds, Series 2001, dated July 11, 2001, making a deposit into the reserve fund for the bonds of the series of which this bond is one, and payment of the costs of issuance of the bonds, in strict compliance with Sections 10-142 and 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, and all laws amendatory thereof or supplementary thereto. The issue of this bond and the other bonds of this series have been authorized by Ordinance Nos. 1859, 1977, 2098, 2421 and \_\_\_\_\_ of the City (collectively, the "**Ordinance**") lawfully enacted by proceedings duly had by the Mayor and Council of the City all in strict conformity with the laws of the State of Nebraska.

This bond and the interest hereon are payable solely from the revenue and earnings of the electric light and power plant and related transmission lines and distribution system of the City (together, the "**Electric System**") including all improvements, enlargements, extensions and betterments thereof. Under the Ordinance, all revenues collected, derived and to be derived by the City from the operation and use of the Electric System and all improvements, enlargements, extensions and betterments thereof will be deposited in a separate special fund designated as the "Electric Revenue Fund" of the City which fund shall be used only (a) to pay the reasonable expenses of operating, maintaining and repairing the Electric System, (b) to set aside and pay into the City of Alliance, Nebraska, Electric Revenue Bond Fund (the "**Bond Fund**"), amounts sufficient to pay as and when the same severally become due, the principal of and interest on the bonds of this issue, and on any bonds or notes of the City heretofore or hereafter issued under the authority of the laws of the State of Nebraska and ordinances of the City which are payable by their terms from the revenues of the Electric System on a parity with the series of bonds of which this bond is one, (c) to set aside and pay into the City of Alliance, Electric Revenue Bond Reserve Fund (the "**Reserve Fund**"), reasonable reserves for the payment of the principal of and interest on bonds as provided

in the Ordinance, (d) to make replacements, improvements, enlargements, extensions and betterments of and to the Electric System and (e) otherwise as specified in the Ordinance. This bond does not constitute a general obligation of the City nor an indebtedness of the City within any constitutional or statutory limitation.

The City hereby covenants with the owner of this bond that it will keep and perform all covenants and agreements contained in the Ordinance authorizing this series of combined revenue bonds and will fix, establish, maintain and collect rates, fees or charges for the use of or services rendered by the Electric System including all improvements, extensions, enlargements and betterments thereof which will provide revenue sufficient, together with other funds of the City available therefor as provided by the Ordinance, to pay the cost of operating, maintaining and repairing the Electric System, and pay the principal of and interest on this bond and on the series of which it is a part, and the principal of and interest on any other bonds of the City heretofore or hereafter issued in accordance with the provisions of the Ordinance and payable from said revenues, and provide adequate reserves therefor. In accordance with the provisions of Sections 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended, this bond and the series of which it is a part shall be a lien only upon the revenue and earnings of the Electric System for the payment of the principal of and interest on such bonds, including this bond, a sufficient portion of the revenue and earnings of the Electric System is hereby irrevocably pledged. This bond and the series of which it is a part have been authorized and issued under the provisions of the Ordinance, to which Ordinance reference is made for a description of the covenants of the City with respect to the collection, segregation and application of the revenue and the earnings of the Electric System, the nature and extent of the security for such bonds, the rights, duties and obligations of the City with respect thereto and the rights of the owners thereof. Under the terms of the Ordinance, the City has covenanted and agreed to issue no bonds superior to the bonds of the series of which this bond is one and the City has the right to issue additional parity bonds payable from the same sources and secured by the same revenues and earnings as this bond and the series of which it is a part; provided, however, that such additional bonds may be so issued only in accordance with and subject to the covenants, conditions and restrictions relating thereto set forth in the Ordinance. The Registered Owner of this bond shall have no right to enforce the provisions of the Ordinance or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Ordinance or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Ordinance.

The transfer of this bond is registerable by the Registered Owner hereof in person or by his attorney or legal representative at the office of the Registrar, but only in the manner and subject to the limitations and conditions provided in the Ordinance and upon surrender and cancellation of this bond by the Registrar. Upon any such registration of transfer, the City shall execute and the Registrar shall authenticate and deliver in exchange for this bond a new registered bond or bonds, registered in the name of the transferee, of authorized denominations, in an aggregate principal amount of this bond, of the same series and maturity and bearing interest at the same rate. The City and the Registrar may deem and treat the Registered Owner hereof as the absolute owner for the purpose of receiving payment of or on account of principal hereof, premium, if any, and interest due hereon and for all other purposes.

The City has, in the Ordinance authorizing the issue of bonds of which this bond is one, designated such issue of bonds as “qualified tax-exempt obligations” pursuant to Section 265(b)(3)(B)(i) of the Internal Revenue Code of 1986, as amended.

**IT IS HEREBY CERTIFIED AND WARRANTED** that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this bond and the series of which it is a part in order to make the same legal and binding obligations of the City according to the terms thereof, do exist, have happened and were done and performed in regular and due form and manner as required by law and that before the issuance of this bond, provision has been duly made for the collection and segregation of the revenues and earnings of the Electric System and for the application of the same as hereinbefore provided.

This bond shall not be valid or become obligatory for any purpose until this bond shall have been authenticated by the Registrar.

**IN WITNESS WHEREOF**, the Mayor and Council have caused this bond to be executed on behalf of the City by the facsimile signatures of the Mayor and Clerk and to have the City Seal impressed or imprinted on each bond, all as of the Date of Original Issue specified above.

**CITY OF ALLIANCE, NEBRASKA**

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_

Mayor

( S E A L )

**REGISTRAR’S CERTIFICATE OF AUTHENTICATION**

This bond is one of the bonds of the series designated therein and issued under the provisions of the within-mentioned Ordinance.

**THE FREMONT NATIONAL BANK AND TRUST COMPANY**, Registrar

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

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ASSIGNMENT

**FOR VALUE RECEIVED**, the undersigned hereby sells, assigns and transfers unto

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Print or Type Name, Address and Social Security Number  
or other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ agent to transfer the within Bond on the Bond Register kept by the Paying Agent for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

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Name of Eligible Guarantor Institution as defined by SEC Rule 17 Ad-15 (17 CFR 240.17 Ad-15)

By: \_\_\_\_\_

Title: \_\_\_\_\_

### **Section 7. Bond Registrar and Paying Agent.**

(a) The Fremont National Bank and Trust Company, Fremont, Nebraska, is hereby designated to serve as Bond Registrar and Paying Agent's Agreement (the "**Registrar**") for the Series 2008 Bonds. The Registrar shall serve in such capacities under the terms of an agreement entitled "Bond Registrar and Paying Agent's Agreement" between the City and Registrar (the "**Agreement**"), the form of which is hereby approved. The Mayor and Clerk are hereby authorized to execute the Agreement in substantially the form presented but with such changes as they shall deem appropriate or necessary. Upon merger or consolidation of the Registrar with another corporation, if the resulting corporation is a bank or trust company authorized by law to conduct such business, such corporation shall be authorized to act as successor Registrar. The City agrees to pay the reasonable and customary charges to the Registrar for the services performed. The City reserves the right to remove the Registrar and to appoint a successor Registrar as provided in the Agreement, in which event the predecessor Registrar shall deliver all cash and Bonds in its possession to the successor Registrar and shall deliver the bond register to the successor Registrar. The Registrar shall have only such duties and obligations as are expressly specified by this 2008 Ordinance and the Agreement and no other duties or obligations shall be implied to the Registrar.

(b) The Registrar shall keep and maintain for the City books for the registration and transfer of the Series 2008 Bonds at its offices. The names and registered addresses of the registered owners of the Series 2008 Bonds shall at all times be recorded in such books. Any of the Series

2008 Bonds may be transferred pursuant to its provisions at said office upon surrender of such Series 2008 Bond for transfer accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner in person or by his duly authorized agent. To the extent of the denominations authorized for the Series 2008 Bonds by this 2008 Ordinance, one Series 2008 Bond may be transferred for several such Series 2008 Bonds of the same interest rate and maturity and for a like aggregate principal amount, and several such Series 2008 Bonds may be transferred for one or several such Series 2008 Bonds, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In all cases in which the transfer of registered Series 2008 Bonds shall be registered hereunder, the City shall execute and the Registrar shall authenticate and deliver at the earliest practicable time Series 2008 Bonds in accordance with the provisions of this 2008 Ordinance. All Series 2008 Bonds surrendered in any such registration of transfer shall forthwith be canceled by the Registrar. Neither the City nor the Registrar shall make a charge for the first such registration of transfer of any Series 2008 Bond for each owner. The City or the Registrar, or both, may make a charge for shipping, printing and out-of-pocket costs for every subsequent registration of transfer of any Series 2008 Bond sufficient to reimburse it or them for any and all costs required to be paid with respect to exchange or registration of transfer. Series 2008 Bonds issued upon transfer or exchange of Series 2008 Bonds shall be dated as of the date six months preceding the Interest Payment Date next following the date of registration thereof in the office of the Registrar, unless such date of registration shall be an Interest Payment Date, in which case they shall be dated as of such date of registration; provided, however, that if, as shown by the records of the Registrar, interest on the Series 2008 Bonds shall be in default, the Series 2008 Bonds issued in lieu of Series 2008 Bonds surrendered for transfer or exchange may be dated as of the date to which interest has been paid in full on the Series 2008 Bonds surrendered; and provided further, that if the date of registration shall be prior to the first Interest Payment Date, the Series 2008 Bonds shall be dated as of their Date of Original Issue. All Series 2008 Bonds issued upon transfer of the Series 2008 Bonds so surrendered shall be valid obligations of the City evidencing the same obligations as the Series 2008 Bonds surrendered and shall be entitled to all the benefits and protection of this 2008 Ordinance to the same extent as the Series 2008 Bonds upon transfer of which they were delivered. The Registrar shall not be required to transfer Series 2008 Bonds during any period from any Record Date until its immediately following Interest Payment Date or to transfer any Series 2008 Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

(c) The Registrar shall also be responsible for making the payments of principal and interest as the same fall due upon the Series 2008 Bonds from funds provided by the City for such purposes. Payments of interest due upon the Series 2008 Bonds prior to maturity or redemption shall be made by the Registrar by mailing a check in the amount due for such interest on each interest payment date to the registered owner of each Series 2008 Bond at such owner's registered address as shown on the books of registration required to be maintained under this **Section 7**. Payments of principal due at maturity or at any date fixed for redemption prior to maturity, together with any accrued interest then due, shall be made by the Registrar upon presentation and surrender of such Series 2008 Bond. The City and the Registrar may treat the registered owner of any Series 2008 Bond as the absolute owner of such Series 2008 Bond for purposes of making payments thereon and for all other purposes. All payments on account of interest or principal made to the registered owner of any Series 2008 Bond shall be valid and effectual and shall be a discharge of

the City and the Registrar in respect of the liability upon the Series 2008 Bonds or claims for interest to the extent of the sum or sums so paid.

**Section 8. Execution of Series 2008 Bonds.** The Series 2008 Bonds shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and Clerk. The Series 2008 Bonds shall be issued initially as “book-entry-only” bonds using the services of The Depository Trust Company (the “**Depository**”), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a letter of understanding and representation (the “**Representation Letter**”) in the form required by the Depository, for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Series 2008 Bonds. Upon the issuance of the Series 2008 Bonds as “book-entry-only” bonds, the following provisions shall apply:

(a) The City and the Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Series 2008 Bonds as securities depository (each, a “**Bond Participant**”) or to any person who is an actual purchaser of a Series 2008 Bond from the Bond Participant while the Bonds are in book-entry form (each, a “**Beneficial Owner**”) with respect to the following:

(1) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the Series 2008 Bonds;

(2) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Series 2008 Bonds, including any notice of redemption; or

(3) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Series 2008 Bonds. The Registrar shall make payments with respect to the Series 2008 Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Series 2008 Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Series 2008 Bond.

(b) Upon receipt by the Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Registrar shall issue, transfer and exchange Series 2008 Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the City and Registrar to do so, the City and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (1) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Series 2008 Bonds or (2) to make available Series 2008 Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such Series 2008 Bonds shall designate.

(c) If the City determines that it is desirable that bonds representing the Series 2008 Bonds be delivered to the Bond Participants and/or Beneficial Owners of the Series 2008 Bonds and

so notifies the City and Registrar in writing, the Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bonds representing the Series 2008 Bonds. In such event, the City and Registrar shall issue, transfer or exchange bonds representing the Series 2008 Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this 2008 Ordinance to the contrary, so long as any Series 2008 Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Series 2008 Bond and all notices with respect to such Series 2008 Bond shall be made and given, respectively, to the Depository as provided in the Representation Letter.

(e) Registered ownership of the Series 2008 Bonds may be transferred on the books of registration maintained by the Registrar, and the Series 2008 Bonds may be delivered in physical form to the following:

- (1) any successor securities depository or its nominee;
- (2) any persons, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section.

(f) In the event of any partial redemption of a Series 2008 Bond unless and until such partially redeemed Series 2008 Bond has been replaced in accordance with the provisions of **Section 8** of this 2008 Ordinance, the books and records of the Registrar shall govern and establish the principal amount of such Series 2008 Bond as is then outstanding and all of the Series 2008 Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced, the City shall immediately provide a supply of printed bonds for issuance upon the transfers from the Depository and subsequent transfers or in the event of partial redemption. In the event that such supply of bonds shall be insufficient to meet the requirements of the City and Registrar for issuance of replacement Series 2008 Bonds upon transfer or partial redemption, the City agrees to order printed an additional supply of bonds and to direct their execution by manual or facsimile signature of an authorized officer of the City and the authentication by the manual signature of an authorized officer of the Registrar. In case any officer whose signature or facsimile thereof shall appear on any Series 2008 Bond shall cease to be such officer before the delivery of such Series 2008 Bond (including any bonds delivered to the Registrar for issuance upon transfer), such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such Series 2008 Bond. No Series 2008 Bond shall be valid or obligatory unless and until the Certificate of Authentication thereon shall have been duly executed by the Registrar. The Series 2008 Bonds shall be delivered to the Registrar for registration and authentication. Upon execution, registration and authentication of the Series 2008 Bonds, the Registrar is authorized to deliver them to Ameritas Investment Corp. (the “**Underwriter**”), as the underwriter thereof, upon receipt of the purchase price set forth in the Bond Purchase Agreement (herein defined). The Underwriter shall have the right to direct the registration

of the Series 2008 Bonds and the denominations thereof within each maturity, subject to the restrictions of this 2008 Ordinance.

**Section 9. Deposits of Funds.** The City covenants and agrees that so long as any of the Series 2008 Bonds remain Outstanding, after the deposits to the Operation and Maintenance Fund required by **Section 11(a)** of Ordinance No. 1859 have been made, the City will allocate credit and deposit all of the remaining moneys at the time in the Electric Revenue Fund as follows:

(a) The City shall next pay and deposit monthly from the Electric Revenue Fund to the Bond Fund, to the extent necessary to meet at the maturity thereof all interest on and the principal of all Bonds issued pursuant to the Ordinance which shall include the following amounts:

(1) Beginning on November 15, 2008 and continuing on the 15<sup>th</sup> day of each month thereafter so long as any of the Series 2008 Bonds herein authorized remain Outstanding and unpaid, an amount not less than amount which, if the same amount were deposited each month, would be sufficient to pay the interest becoming due on the Series 2008 Bonds on the next succeeding Interest Payment Date.

(2) Beginning on January 15, 2009, and continuing on the 15<sup>th</sup> day of each month thereafter so long as any of the Series 2008 Bonds herein authorized remain Outstanding and unpaid, an amount not less than amount which, if the same amount were deposited each month, would be sufficient to pay the principal amount of the Series 2008 Bonds becoming due on the next succeeding principal maturity date.

All amounts credited to the Bond Fund in accordance with (1) and (2) above shall be used and expended by the City without further authorization for the sole purpose of paying when due the principal of and interest on the Series 2008 Bonds herein authorized.

(b) The City covenants and agrees that, from the proceeds of the Series 2008 Bonds it will upon the date of issuance and delivery of the Series 2008 Bonds cause to be credited and deposited to the Bond Reserve Fund with respect to the Series 2008 Bonds an amount equal to the Reserve Requirement for the Series 2008 Bonds.

**Section 10. Incorporation of Provisions of Existing Ordinance** The Mayor and Council have previously passed and approved the provisions of the Existing Ordinance and (a) Sections 9 to 13 (except Subsection 11(e)), inclusive, Sections 15 to 17, inclusive, and Sections 19 to 21, inclusive, and Section 25 of Ordinance No. 1859, (b) Sections 9 and 10 of Ordinance No. 1977 and (c) Section 16 of Ordinance No. 2098 are hereby incorporated herein by this reference as though fully set forth herein.

**Section 11. Deposit of Series 2008 Bond Proceeds.** The proceeds of the sale of the Series 2008 Bonds, including any interest accrued on the Series 2008 Bonds from their date to the date of delivery of and payment therefor, shall be received by the City and shall be paid over, deposited and credited, and used and applied, as follows:

(a) An amount equal to the interest accrued, if any, on the Series 2008 Bonds from the Date of Original Issue to the date of delivery of and payment therefor shall be paid over to the Registrar and deposited in the Bond Fund;

(b) An amount equal to the Reserve Requirement with respect to the Series 2008 Bonds shall be credited and deposited in the Bond Reserve Fund;

(c) Such amount as shall be necessary, together with all amounts on deposit in the Bond Fund and the Bond Reserve Fund with respect to the Outstanding Bonds, as will be sufficient for the payment and redemption of all of the Outstanding Bonds on the Redemption Date, shall be transferred to the paying agent for the Outstanding Bonds to be used to pay and redeem in full all of the Outstanding Bonds on the Redemption Date.

(d) The remaining balance of the proceeds of the Bonds shall be held by the City and used to pay the costs of issuance of the Series 2008 Bonds.

#### **Section 12. Tax Covenants.**

(a) The City covenants that (1) 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 Series 2008 Bonds, and (2) it will not use or permit the use of any proceeds of Series 2008 Bonds or any other funds of the City, nor 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 Series 2008 Bonds. The City 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 Series 2008 Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

(b) The City covenants that (1) it will use the proceeds of the Series 2008 Bonds as soon as practicable for the purposes for which the Series 2008 Bonds are issued, and (2) it will not invest or directly or indirectly use or permit the use of any proceeds of the Series 2008 Bonds or any other funds of the City in any manner, or take or omit to take any action, that would cause the Series 2008 Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

(c) The City covenants that it will pay or provide for the payment from time to time of all arbitrage rebate to the United States of America pursuant to Section 148(f) of the Code and the Tax Certificate. This covenant shall survive payment in full or defeasance of the Series 2008 Bonds. The Tax Certificate may be amended or replaced if, in the opinion of bond counsel, such amendment or replacement will not adversely affect the exclusion from federal gross income of the interest on the Series 2008 Bonds.

(d) The City covenants that it will not use any portion of the proceeds of the Series 2008 Bonds, including any investment income earned on such proceeds, directly or indirectly, (1) in a manner that would cause any Series 2008 Bond to be a “private activity bond” within the meaning of Section 141(a) of the Code, or (2) to make or finance a loan to any Person.

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

(1) the aggregate face amount of all tax exempt obligations (other than private activity bonds which are not “qualified 501(c)(3) bonds”) which will be issued by the City (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

(2) the City (including all subordinate entities thereof) will not issue an aggregate principal amount of obligations designated by the City 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 Mayor is hereby authorized to take such other action as may be necessary to make effective the designation in this **Section 12(e)**.

(f) The foregoing covenants shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to the Ordinance or any other provision of this 2008 Ordinance, until the final Maturity of all Bonds Outstanding.

**Section 13. Continuing Disclosure Certificate.** The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate (hereinafter defined). Notwithstanding any other provision of this 2008 Ordinance, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an event of default; however, the registered owner of any Series 2008 Bond may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this **Section 13**. The Continuing Disclosure Certificate, in the form or substantially the form presented to the meeting, but with such changes, modifications, amendments, revisions, and alterations therein, thereof, or thereto, as the Mayor shall in the exercise of his own independent judgment and absolute discretion determine to be necessary, proper, appropriate, advisable, or desirable in order to effectuate the issuance, sale, and delivery of the Series 2008 Bonds, be and the same is hereby in all respects authorized, adopted, specified, accepted, ratified, approved and confirmed. The Mayor is hereby authorized to execute the Continuing Disclosure Certificate.

**Section 14. Bond Purchase Agreement.**

(a) The Bond Purchase Agreement (the “**Purchase Agreement**”) to be entered into between the City and the Underwriter with respect to the purchase of the Series 2008 Bonds from the City, in the form or substantially the form presented to the meeting, but with such changes, modifications, amendments, revisions, and alterations therein, thereof, or thereto, and bearing such date, as the Mayor shall in the exercise of his own independent judgment and absolute discretion determine to be necessary, proper, appropriate, advisable, or desirable in order to effectuate the

issuance, sale, and delivery of the Series 2008 Bonds, be and the same is hereby in all respects authorized, adopted, specified, accepted, ratified, approved, and confirmed. The Mayor is hereby authorized to execute the Purchase Agreement.

(b) Sale of the Series 2008 Bonds to the Underwriter pursuant to the Purchase Agreement is hereby in all respects authorized, adopted, specified, accepted, ratified, approved, and confirmed.

**Section 15. Preliminary Official Statement.** The Preliminary Official Statement dated September 18, 2008 is hereby ratified and approved and the final Official Statement is hereby authorized and approved by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The Mayor is hereby authorized to execute the final Official Statement as so supplemented, amended and completed, and the use and public distribution of the final Official Statement by the Underwriter in connection with the reoffering of the Series 2008 Bonds is hereby authorized. The proper officials of the City are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

**Section 16. Defeasance.** The City's obligations under this 2008 Ordinance shall be fully discharged and satisfied as to the Bonds authorized and issued hereunder, and said Bonds shall no longer be deemed outstanding hereunder when payment of the principal thereof plus interest thereon to the date of maturity or redemption thereof (a) shall have been made or caused to have been made in accordance with the terms thereof and hereof, or (b) shall have been provided for by depositing with the Registrar, or in escrow with a national or state bank having trust powers in trust solely for such payment (i) sufficient money to make such payment or (ii) direct general obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States of America, or obligations of any agency of the United States of America (herein referred to as "**Government Obligations**"), in such amount and with such maturities as to principal and interest as will insure the availability of sufficient money to make such payment, and thereupon such Bonds shall cease to draw interest from the date of their redemption or maturity and, except for the purposes of such payments, shall no longer be entitled to the benefits of this 2008 Ordinance; provided that, with respect to any Bonds called or to be called for redemption prior to the stated maturity thereof, notice of redemption shall have been duly given or provided for. If money shall have been deposited in accordance with the terms hereof with the Registrar or escrow agent in trust for that purpose sufficient to pay the principal of such Bonds and all interest due thereon to the due date thereof or to the date fixed for the redemption thereof, all liability of the City for such payment shall forthwith cease, determine and be completely discharged, and all such Bonds shall no longer be considered outstanding.

**Section 17. General Authorization.** Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the City hereby (1) authorizes and directs the City Manager, the City Attorney, the Clerk, the City Treasurer and all other officers and employees of the City to carry out or cause to be carried out, and to perform such obligations of the City and such other actions as they, in consultation with bond counsel, the underwriter and its counsel, and financial advisors to the City in connection with issuance, sale and delivery by the City of the Series

2008 Bonds, shall consider necessary, advisable or desirable in connection with the 2008 Ordinance, the Preliminary Official Statement, the Official Statement (hereinafter mentioned) and issuance, sale and delivery of the Series 2008 Bonds, including without limitation, the execution and delivery thereof and of all other related documents, instruments, certifications, and opinions, and (2) delegates, authorizes and directs the City Manager, the City Attorney, the City Treasurer and the Clerk the right, power and authority to exercise their own independent discretion and judgment in (a) determining and finalizing the terms, provisions, form and contents of each of the documents hereinbefore identified and referred to, and (b) determining and finalizing the terms, provisions, form and contents of a Preliminary Official Statement and final Official Statement of the City for use in connection with issuance, sale and delivery of the Bonds. The execution and delivery by the City Manager, City Attorney, Clerk, City Treasurer or by any such other officer or officers or employee or employees of the City of any such documents, instruments, certifications and opinions, or the doing by them of any act in connection with any of the matters which are the subject of this 2008 Ordinance, shall constitute conclusive evidence of both the City's and their approval of all changes, modifications, amendments, revisions and alterations made therein at or prior to the execution and delivery thereof and shall conclusively establish their absolute, unconditional and irrevocable authority with respect thereto from the City and the approval and ratification by the City of the documents, instruments, certifications and opinion so executed and the actions so taken.

**Section 18. Severability.** If any one or more of the provisions of this 2008 Ordinance should be determined by a court of competent jurisdiction to be contrary to law, then such provisions shall be deemed severable from the remaining provisions of this 2008 Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this 2008 Ordinance or of the Series 2008 Bonds and the owners of the Series 2008 Bonds shall retain all the rights and benefits accorded to them under this 2008 Ordinance and under any applicable provisions of law.

If any provisions of this 2008 Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid in any particular case in any jurisdiction or jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstances, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

**Section 19. Repeal of Conflicting Ordinances.** All ordinances, resolutions or orders, or parts thereof in conflict with the provisions of this 2008 Ordinance are to the extent of such conflict hereby repealed.

**Section 20. Publication of Ordinance; Effective Date.** This 2008 Ordinance shall take effect and be in force after its enactment and publication in pamphlet form as provided by law.

Motion by Councilman Dickenson, seconded by Councilwoman Rowley to suspend the statutory rule requiring three separate readings of Ordinance No. 2632.

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

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2632 on final reading with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Mayor Kusek stated, “the passage and adoption of Ordinance No. 2632 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- The next item for Council’s consideration was Ordinance No. 2627 approving the Final Plat of the Replat of Block 2, Wyoming Addition.

Motion by Councilman Dickenson, seconded by Councilman Benzel to approve Ordinance No. 2627 on first reading. City Clerk Jines read the ordinance by title which follows in its entirety:

**ORDINANCE NO. 2627**

AN ORDINANCE APPROVING THE FINAL PLAT OF THE REPLAT OF BLOCK 2, WYOMING ADDITION TO THE CITY OF ALLIANCE, BOX BUTTE COUNTY, NEBRASKA.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:

SECTION 1. The City of Alliance has received the application of Colorado Hospitality Services, Inc., to approve the Final Plat of the Replat of Block 2, Wyoming Addition to the City of Alliance, Box Butte County, Nebraska.

SECTION 2. The Planning Commission has held a public hearing on September 9<sup>th</sup>, 2008, to consider the Final Plat, and after such hearing has recommended approval of the Final Plat of the Replat of Block 2, Wyoming Addition to the City of Alliance, Box Butte County, Nebraska.

SECTION 3. The City Council finds that all public improvements that are to be required at this time have been completed. No additional infrastructure or improvements are required at this time. No improvement guarantees are required.

SECTION 4. The City Council finds that the Final Plat contains the information required by 11-413.

SECTION 5. The Final Plat of the Replat of Block 2, Wyoming Addition to the City of Alliance, Box Butte County, Nebraska, is approved by the City of Alliance and shall be filed with the County Clerk as provided by City Code and State law within 30 days of this approval. The plat map which has been prepared is a part of these proceedings and is attached hereto and is incorporated herein and made a part hereof by reference.

SECTION 6. This ordinance shall be in full force and effect from and after its approval, passage, and publication according to law.

Community Development Director Rick Houck explained the plat will divide the property into two commercial (C-3) lots which will separate the motel and restaurant establishments which currently exist. An easement has been placed on the final plat for parking by both entities.

Motion by Councilman Dickenson, seconded by Councilwoman Rowley to waive the statutory reading with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2627 on final reading with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Mayor Kusek stated, "the passage and adoption of Ordinance No. 2627 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published."

- The first reading of Ordinance No. 2628 approving the Final Plat of Block One, Margaret's Second Addition to the City of Alliance was the next item for Council's review.

Motion by Councilman Dickenson, seconded by Councilwoman Rowley to approve Ordinance No. 2628 on first reading. City Clerk Jines read the ordinance by title which follows in its entirety:

**ORDINANCE NO. 2628**

AN ORDINANCE APPROVING THE FINAL PLAT OF BLOCK ONE, MARGARET'S SECOND ADDITION TO THE CITY OF ALLIANCE, BOX BUTTE COUNTY, NEBRASKA.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:

SECTION 1. The City of Alliance has received the application of Leonard L. Green and James J. Wiltgen to approve the Final Plat of Block One, Margaret's Second Addition to the City of Alliance, Box Butte County, Nebraska.

SECTION 2. The Planning Commission has held a public hearing on September 9<sup>th</sup>, 2008, to consider the Final Plat, and after such hearing has recommended approval of the Final Plat of Block One, Margaret's Second Addition to the City of Alliance, Box Butte County, Nebraska.

SECTION 3. The City Council finds that all public improvements that are to be required at this time have been completed. No additional infrastructure or improvements are required at this time. No improvement guarantees are required.

SECTION 4. The City Council finds that the Final Plat contains the information required by 11-413.

SECTION 5. The Final Plat of Block One, Margaret's Second Addition to the City of Alliance, Box Butte County, Nebraska, is approved by the City of Alliance and shall be filed with the County Clerk as provided by City Code and State law within 30 days of this approval. The plat map which has been prepared is a part of these proceedings and is attached hereto and is incorporated herein and made a part hereof by reference.

SECTION 6. This ordinance shall be in full force and effect from and after its approval, passage, and publication according to law.

Motion by Councilman Dickenson, seconded by Councilwoman Rowley to waive the statutory reading with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2628 on final reading with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Mayor Kusek stated, “the passage and adoption of Ordinance No. 2628 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- The first reading of Ordinance No. 2629 vacating Lots 1 and 2, Son Shine Addition was the next item on Council’s agenda.

Motion by Mayor Kusek, seconded by Councilwoman Rowley to approve Ordinance No. 2629 on first reading. City Clerk Jines read the ordinance which follows in its entirety:

### **ORDINANCE NO. 2629**

AN ORDINANCE VACATING LOTS 1 AND 2, SON SHINE ADDITION, TO THE CITY OF ALLIANCE, BOX BUTTE COUNTY, NEBRASKA.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:

SECTION 1. The City of Alliance has received the application of Dorothy L. Schnell to vacate Lots 1 and 2, Son Shine Addition to the City of Alliance, Box Butte County, Nebraska.

SECTION 2. The Planning Commission has held a public hearing to consider the vacation of Lots 1 and 2, Son Shine Addition to the City of Alliance, Box Butte County, Nebraska, and has recommended that Lots 1 and 2, Son Shine Addition be vacated as the boundaries of the lots lie entirely within Son Shine Third Addition to the City of Alliance, Box Butte County, Nebraska.

SECTION 3. Lots 1 and 2, Son Shine Addition is hereby vacated, as its boundaries lie entirely within Son Shine Third Addition.

SECTION 4. The owner shall, pursuant to law, pay the cost of recording this ordinance with the Register of Deeds, who shall make the appropriate notations on the original plat.

SECTION 5 This ordinance shall be in full force and effect from and after its approval, passage, and publication according to law.

Community Development Director Rick Houck explained when Son Shine Third Addition was approved, they replatted as part of Son Shine Third Addition these two lots and and Son Shine Original Addition. The title company approached the subdividers indicating that clear title cannot be guaranteed on the new lots because the old lots have not been vacated.

Motion by Councilwoman Rowley, seconded by Councilman Dickenson to waive the

statutory reading with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2629 on final reading with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Mayor Kusek stated, “the passage and adoption of Ordinance No. 2629 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- Ordinance No. 2630 authorizing the sale and conveyance of Lot B, Replat of Lots 33, 34, 35, and 36, Block 5, Lakefield Addition to Clau-Chin Construction, Inc. was the next item for Council’s consideration.

Motion by Councilman Yeager, seconded by Councilwoman Rowley to approve Ordinance No. 2630 on first reading. City Clerk Jines read the ordinance by title which follows in its entirety:

**ORDINANCE NO. 2630**

AN ORDINANCE PROVIDING FOR THE SALE AND CONVEYANCE OF LOT B, REPLAT OF LOTS 33, 34, 35, AND 36, BLOCK 5, LAKEFIELD ADDITION, AN ADDITION TO THE CITY OF ALLIANCE, BOX BUTTE COUNTY, NEBRASKA, ACCORDING TO THE RECORDED PLAT THEREOF.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:

SECTION 1. The City of Alliance has received an offer from Clau-Chin Construction, Inc., a Nebraska Corporation, to purchase Lot B, Replat of Lots 33, 34, 35, and 36, Block 5, Lakefield Addition, an Addition to the City of Alliance, Box Butte County, Nebraska, under the Developer Master Agreement, in the amount of \$5,166.00.

SECTION 2. The real estate is not used in the operation of public utilities, and is not a state armory for the use of the State of Nebraska or the State Armory, as provided in §16-201 R.R.S. Neb. 1943.

SECTION 3. The City Clerk shall cause notice of this sale to be published as required by law. If, within the time prescribed by law, a legally sufficient remonstrance against the sale has not been filed, the Mayor and City Clerk are by this ordinance authorized to execute and deliver to the purchaser the City's quitclaim deed for the herein described property upon payment of the purchase price provided for herein and in the purchase agreement.

Remonstrance against such sale is defined as a petition signed by legal electors of Alliance, Nebraska, equal in number to thirty percent (30%) of the electors voting at the last regular municipal election. Said petition shall be filed with the governing body of the City within thirty days (30) of the passage and publication of this Ordinance. In the event a remonstrance is received which is legally sufficient, said property shall not then, nor within one year thereafter, be sold.

SECTION 4. This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

Motion by Councilwoman Rowley, seconded by Councilman Benzel to waive the statutory reading with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2630 on final reading with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Mayor Kusek stated, "the passage and adoption of Ordinance No. 2630 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published."

- The next item for Council's discussion was Ordinance No. 2631 approving the 2009 schedule of regular meetings for the Alliance City Council.

Motion by Councilwoman Rowley, seconded by Councilman Dickenson to approve Ordinance No. 2631 on first reading. City Clerk Jines read the ordinance by title which followed in its entirety:

**ORDINANCE NO. 2631**

AN ORDINANCE ESTABLISHING THE TIME AND PLACE OF REGULAR COUNCIL MEETINGS FOR THE CALENDAR YEAR 2009.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:

SECTION 1. Nebraska Statutes at Section 19-615 provide that ". . . the Council shall meet at such time and place as it may prescribed by ordinance, but not less frequently than twice each month in cities of the first class."

SECTION 2. The City Code provides at Chapter 1, Section 101, that "The City Council shall hold its regular meeting on the first and third Thursday of each month. The Council may, by adoption of a calendar each year, establish regular meeting dates other than the first and third Thursday of each month."

SECTION 3. Attached hereto is a "proposed 2009 calendar," which is incorporated herein by reference as if fully set forth.

SECTION 4. The City Council of Alliance, Nebraska shall conduct regular meetings during calendar year 2009 on the dates that are indicated on the attached proposed 2009 calendar at the hour of 7:00 o'clock P.M. at the Board of Education Room, 1604 Sweetwater Avenue, Alliance, Nebraska. The time and place of these meetings may be changed from time to time as provided by law.

SECTION 5. This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

Motion by Councilman Dickenson, seconded by Councilwoman Rowley to amend Ordinance No. 2631 to change the first meeting in July from July 2, 2008 to July 1, 2008.

Roll call vote on the amendment with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Motion by Councilwoman Rowley, seconded by Councilman Dickenson to amend Ordinance No. 2631 to change the second meeting in September from September 17, 2008 to September 24, 2008.

Roll call vote on the amendment with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Motion by Mayor Kusek, seconded by Councilman Dickenson to waive the statutory reading requiring three separate readings of Ordinance No. 2631 as amended with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2631 as amended on final reading with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Mayor Kusek stated, “the passage and adoption of Ordinance No. 2631 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- The next item for Council’s discussion was Ordinance No. 2624 establishing an Occupation Tax for Hotel Companies which will be included in the Alliance Municipal Code within Chapter 2.

Motion by Councilman Dickenson, seconded by Councilman Yeager to approve Ordinance No. 2624 on second reading. City Clerk Jines read the ordinance by title which follows in its entirety:

**ORDINANCE NO. 2624**

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, CREATING CHAPTER 2 ARTICLE 12 AND ESTABLISHING THE METHOD FOR CALCULATING THE OCCUPATION TAX FOR COMPANIES WHO OPERATE A HOTEL, AND CREATING AN ENFORCEMENT AND REPORTING SYSTEM FOR HOTEL COMPANY OCCUPATION TAXES AND RATES; PROVIDES FOR AN EFFECTIVE DATE; REPEALS ORDINANCE IN CONFLICT.

SECTION 1. Hotel companies provide lodging services to people within the City of Alliance.

SECTION 2. The City of Alliance has decided to impose an occupation tax on the hotel companies, without regard to the type of business entity that operates the hotel services in the City of Alliance.

SECTION 3. The Alliance Municipal Code at Chapter 2 shall be amended to include the addition of Article 12, as follows:

## CHAPTER 2

### ARTICLE 12

#### HOTEL COMPANIES OCCUPATION TAX

##### 2-1201. OCCUPATION TAX; REQUIREMENT TO PAY.

An occupation tax is hereby levied and imposed on every person or business entity who engages in the business of operating a hotel for revenue in the City of Alliance. All hotel companies doing business in the City are required to pay an occupation tax as set forth herein.

##### 2-1202. HOTEL ACCOMMODATIONS.

Each person engaged in the business of operating a hotel in the City shall pay an occupation tax in the amount of two percent (2%) of the basic rental rates charged per occupied room per night.

##### 2-1203. HOTEL DEFINED.

Hotel shall mean any facility in which the public may, for a consideration, obtain sleeping accommodations in any space ordinarily used for accommodations. The term shall include hotels, motels, bed and breakfast accommodations, tourist hotels, campgrounds, courts, lodging houses, inns and nonprofit hotels; but "hotel" shall not be defined so as to include hospitals, sanitariums, nursing homes, chronic care centers, dormitories, or facilities operated by an educational institution and regularly used to house students.

##### 2-1204. OCCUPIED ROOM, DEFINED; EXCEPTIONS.

A. Occupied room shall mean any space ordinarily used for sleeping

accommodations and for which any occupant has, for consideration, obtained the use or possession, or the right to use or possess, for a period not to exceed thirty (30) continuous days. The term shall include camping space, trailer space or recreational vehicle space. The term does not include a function room such as a ballroom, banquet room, reception room, or meeting room, provided it is not used as temporary sleeping accommodations.

- B. The term “occupied room” shall not mean, and no tax imposed by this article shall be measured by or collected for:
1. Complimentary or other sleeping accommodations for which no consideration is charged;
  2. Sleeping accommodations for which the consideration is paid by a person not subject to the sales and use tax imposed by the Nebraska Revenue Act of 1967, as it is amended from time to time; or
  3. Sleeping accommodations leased by an employer for use by its employees when a specific room is the subject of the lease, the lease extends for more than thirty (30) consecutive days, and consideration is actually paid for use during at least thirty (30) consecutive days.

2-1205. COLLECTION.

The tax imposed by this article shall be collected by the hotel operator from the occupant of each room to which the tax applies. The tax may be shown as an add-on to the charge for occupancy of the rooms and shall be collectible at the time the lodging is furnished, regardless of when the charge for the occupancy is paid. The operator shall remain responsible for payment of all taxes imposed whether or not the taxes are actually collected from the guests.

2-1206. RECORDS.

It shall be unlawful for any hotel operator subject to this article to fail to maintain or fail to make available to the City, upon seventy-two (72) hours notice, written records accurately and completely evidencing the number of rooms occupied, the dates the rooms are occupied, the amount of occupation tax due or paid under this article, and such other information as is required by the Director of Finance and Administration. Such records shall be maintained for a period of three (3) years after the occupation tax is due.

## 2-1207. DUE DATE.

Notwithstanding any contrary provision of this chapter, the tax imposed by this article shall be due and payable on the first day of each calendar month next succeeding the month during which the room was occupied. All taxes not paid by the twenty-fifth day of the month in which they are due and payable shall be deemed to be delinquent. The operator shall be assessed a penalty of ten percent (10%) on all delinquent amounts as well as interest of one percent (1%) per month or fraction thereof from the first of the month in which such tax becomes due and payable until the date of payment.

## 2-1208. REVENUE MEASURE.

The provisions of this Section are enacted solely as a revenue measure of the City.

## 2-1209. INTENT.

It is the intent of the City Council that a portion of the revenue generated by the occupation tax imposed by this Article shall be appropriated annually to fund the purposes set forth at Neb. Rev. Stat. §13-315 and to fund the operation of the Knight Museum and Sandhills Center.

## 2-1210. PENALTY.

Any person, partnership, firm or corporation violating any of the provisions of Sections 2-1201 through 2-1207 shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished in accordance with Section 12-101 of this Code. Each distinct act or violation of the terms of Sections 2-1201 through 2-1207 shall constitute a separate offense.

SECTION 4. The calculation of the amount of occupation tax due under Sections 2-1201 and 2-1202 of this ordinance as amended shall commence \_\_\_\_\_, 2008.

SECTION 5. That any other ordinance or section passed and approved prior to the passage, approval, and publication or posting of this ordinance and in conflict with the provisions is herewith repealed.

SECTION 6. This ordinance shall take effect and be in full force from and after its passage, approval and publication or posting as required by law.

City Manager Caskie explained the current rate is 7% sales tax, 2% visitor's promotion fund, 2% visitor's improvement fund, and a 1% state lodging tax for a total of 12% tax on rooms. The proposed Occupation Tax will elevate the tax to 14% on rooms. She estimated the revenue from the Occupation Tax as \$44,000 - \$50,000 per year. The recommendation is to spend \$25,000 per year for promotion for the City and the rest to offset the funds needed to operate the new Knight Museum and Sandhills Center. Ms. Caskie indicated that \$90,000 is budgeted for the entire branding campaign for the year with \$20,000 of the money provided from the State of Nebraska. She advised Council the tax would take effect beginning April 1, 2009.

Mr. Leonard Green, 5831 Knox Road and Marge Turek, 941 CR 70. Hemingford, NE addressed Council on behalf of the Holiday Inn indicating their opposition to the Occupation Tax. They feel a higher tax will deter visitors to the City of Alliance and force them to surrounding communities with a lower tax on hotel rooms. She advised Council that the majority of her patrons are business travelers. Ms. Turek asked if the City could include restaurants in the Occupation Tax. She also asked if the City is working with the Box Butte County Tourism office to promote tourism.

Patricia Jones, 808 Cheyenne addressed Council as a member of the Box Butte County Visitor's Committee. She indicated that no representative from the City has attended their monthly meetings which are held the last Wednesday of every month to address tourism issues.

Councilwoman Rowley suggested representatives from the City attend the Box Butte County Visitor's Committee meeting in October.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

- The next item on Council's agenda was the third reading of Ordinance No. 2623 amending the Alliance Municipal Code clarifying All-Terrain Vehicle use.

Motion by Councilman Benzel, seconded by Councilwoman Rowley to approve Ordinance No. 2623 on third reading.

Motion by Councilman Benzel, seconded by Councilman Dickenson to amend the title of Ordinance No. 2623 to delete the words “to limit the age of” and insert the word “prohibiting.”

Roll call vote on the amendment with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

City Clerk Jines read the ordinance by title which follows in its entirety:

**ORDINANCE NO. 2623**

AN ORDINANCE AMENDING THE ALLIANCE MUNICIPAL CODE BY AMENDING SECTION 321 ARTICLE 3 AT CHAPTER 3, RELATING TO ALL-TERRAIN VEHICLES; PROHIBITING ANY PASSENGERS ON AN ATV; AND REPEAL EXISTING PROVISIONS OF CITY CODE NOT CONSISTENT HEREWITH.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:

SECTION 1. The Nebraska State Statutes allow cities of the first class to regulate the travel of vehicles on city streets.

SECTION 2. The City of Alliance has authorized All Terrain Vehicles (ATV) to be operated in the City of Alliance upon authorized streets and subject to certain rules and regulations.

SECTION 3. The Alliance Municipal Code at Chapter 3, shall be amended to include the addition to Article 3, Section 3-321 as follows:

3-321. ALL-TERRAIN VEHICLE PERSONS AUTHORIZED.

Any person operating an all-terrain vehicle shall be 19 years of age and have a valid Class O operator's license as provided in Neb. Rev. Stat. 60-4,126. No one shall be permitted to be a passenger on an all-terrain vehicle within the City of Alliance.

SECTION 4. That current applicable City Codes of the City of Alliance, Nebraska, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. This ordinance shall be in full force and effect from and after its approval, passage, and publication according to law.

Leo Frohman, 935 Missouri addressed Council advising them that he has purchased an ATV that is designed for two riders which is within the State of Nebraska guidelines.

Motion by Mayor Kusek, seconded by Councilman Benzel to postpone further consideration of the third reading of Ordinance No. 2623 until October 16, 2008.

Roll call vote on to postpone further consideration of Ordinance No. 2623 as amended with the following results:

Voting Aye: Kusek, Benzel.

Voting Nay: Dickenson, Rowley, Yeager.

Motion failed.

Roll call vote on the final reading of Ordinance No. 2623 as amended with the following results:

Voting Aye: Dickenson, Rowley, Yeager.

Voting Nay: Kusek, Benzel.

Motion carried.

Mayor Kusek stated, “the passage and adoption of Ordinance No. 2623 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- The next item for Council’s discussion was Ordinance No. 2622 amending the Alliance Municipal Code with regard to the designation of Snow Emergency Routes.

Motion by Mayor Kusek, seconded by Councilman Dickenson to approve Ordinance No. 2622 on second reading. City Clerk Jines read the ordinance by title which follows in its entirety:

### **ORDINANCE NO. 2622**

AN ORDINANCE AMENDING THE ALLIANCE MUNICIPAL CODE BY AMENDING SECTION 701 ARTICLE 7 AT CHAPTER 3, RELATING TO ESTABLISHMENT OF SNOW EMERGENCY ROUTES; AND REPEALING EXISTING PROVISIONS OF CITY CODE NOT CONSISTENT HEREWITH.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ALLIANCE, NEBRASKA:

SECTION 1. The City of Alliance has established Snow Emergency Routes to facilitate travel during and after a snow storm to provide for public safety and welfare.

SECTION 2. The City of Alliance to make the emergency routes more efficient desires to make changes to the establishment of certain snow routes.

SECTION 3. The Alliance Municipal Code at Chapter 3, shall be amended at Article 7, Section 3-701 as follows:

#### **3-701. ESTABLISHMENT OF SNOW EMERGENCY ROUTES.**

The following streets are declared to be snow emergency routes within the City. The City Manager (or someone designated by the City Manager, but always referred to herein as the City Manager) shall, at his discretion, place appropriate signs or other traffic control devices indicating the existence of snow emergency routes. A designation of any street, avenue, road, or

highway, or portion thereof as a snow emergency route shall in no way affect any previous designation of that street, avenue, road, or highway for any other purposes but shall be in addition thereto. The following streets or highways are designated as emergency snow arterial streets:

U. S. Highway Nos. 385 and 2 within the corporate limits;  
Cody Avenue from Tenth Street to Kansas Street;  
Emerson Avenue from the northern corporate limits to Third Street;  
Box Butte Avenue from Twenty-fifth Street to First Street;  
Mississippi Avenue from Tenth Street to Third Street;  
Potash Avenue from Third Street to Kansas Street;  
East Third Street from Flack Avenue to the corporate limits;  
All of Tenth Street included within the corporate limits;  
Sixteenth-Street from Buchfinck Avenue to Box Butte Avenue;  
Twenty-fifth Street from Emerson Avenue to Sweetwater Avenue;  
Eighth Street from Emerson Avenue to Mississippi Avenue;  
Kansas Street from Highway 2 to Highway 385;  
Buchfinck Avenue from Tenth Street to Sixteenth Street.

SECTION 4. That current applicable City Codes of the City of Alliance, Nebraska, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. This ordinance shall be in full force and effect from and after its approval, passage, and publication according to law.

Public Facilities Director Eric Lenz provided Council with a map outlining the school bus route.

Motion by Councilman Yeager, seconded by Councilman Rowley amend Ordinance No. 2622 to add Black Hills Avenue from Third Street to Tenth Street, Sixth Street from Mississippi Avenue to Grand Avenue, Grand Avenue from Sixth to Seventh Streets, Seventh Street from Grand Avenue proceeding to Mississippi Avenue and delete Eighth Street from Mississippi to Emerson Avenues and delete Cody Street from Third Street to Tenth Street.

Roll call vote on the amendment to Ordinance No. 2622 with the following results:

Voting Aye: Dickenson, Benzel, Rowley, Yeager.

Voting Nay: Kusek.

Motion carried.

Roll call vote on Ordinance No. 2622 as amended with the following results:

Voting Aye: Dickenson, Benzel, Rowley, Yeager.

Voting Nay: Kusek.

Motion carried.

- Resolution No. 08-96 establishing a Rental and Use Policy for the use of the Knight Museum and Sandhills Center was the next item on Council's agenda.

Motion by Councilman Yeager, seconded by Councilwoman Rowley to approve Resolution No. 08-96 which follows in its entirety:

#### **RESOLUTION NO. 08-96**

*WHEREAS*, The City of Alliance by the generosity of the Eldred Foundation has received a new facility for the Knight Museum and Sandhills Center; and

*WHEREAS*, The building was designed and built to allow for people or organization to hold activities at the new building; and

*WHEREAS*, Staff has drafted a Museum Rental Policy for consideration of Council; and

*WHEREAS*, It is necessary to implement policies for the rental of the Museum to control the activities that occur in the new facility.

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and City Council of the City of Alliance, Nebraska, that the “Museum Rental Policy” which was prepared and is attached hereto and incorporated herein and made a part hereof by reference is approved and adopted.

City Manager Caskie explained that the rates will not change once the exhibits are in place and that the rates are comparable with the Gering Civic Center. Councilman Benzel voiced his opinion that the rate for a City staff member to be present after hours should be raised from \$10.00 per hour to \$15.00 per hour to compensate for the overtime accrued. City Manager Caskie advised Council that a decision will need to be made as to whether alcoholic beverages will be allowed to be served inside the museum. City Clerk Jines explained the licensed caterer’s can apply for a Caterer’s License which would allow them to serve alcohol and that non-profit groups can apply for a Special Designated Use permit. Private party guidelines will not apply in a public facility which will deem it impossible for individuals to prepare their own food for an event and also serve alcohol. Councilman Yeager asked if the City would be absorbing the liability for each event held at the museum. City Manager Caskie will be investigating the liability issue further.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Rowley, Yeager.

Voting Nay: Benzel.

Motion carried.

- The next item for Council’s consideration was Resolution No. 08-97 authorizing the amendment of Exhibit D of the Service Schedule M contract with the Municipal Energy Agency of Nebraska.

Motion by Councilwoman Rowley, seconded by Councilman Yeager to approve Resolution No. 08-97 which follows in its entirety:

**RESOLUTION 08-97**

WHEREAS, The City of Alliance adopted Ordinance No. 1734 on 1/21/1982, which authorized the execution of the Service Schedule M Total Power Requirements Power Purchase Agreement (hereinafter referred to as "SSM") with the Municipal Energy Agency of Nebraska (hereinafter referred to as "MEAN"); and,

WHEREAS, City has received notice that on May 15, 2008, the MEAN Board of Directors approved entering into a Purchase and Sale Agreement with Black Hills Wyoming, Inc. to purchase 23.5% (approximately 20 MW) ownership interest in Wygen I, which is a coal-fired, steam electric generating unit with a net generating capability of approximately 85 MW; and,

WHEREAS, City has received notice that on November 15, 2007, the MEAN Board of Directors approved entering into an agreement with the Heartland Consumers Power District to purchase 19.55% (approximately 10 MW) of wind-generated energy from the Wessington Springs Wind Project; and,

WHEREAS, City has received notice that on August 16, 2007, the MEAN Board of Directors approved entering into an agreement with the Waverly Light & Power, a municipal utility of the City of Waverly, Iowa, for the partial assignment to MEAN of Waverly's interest currently equal to 0.4% (approximately 3 MW) of the energy generating capability and energy associated therewith, of Council Bluffs Energy Center Unit 4 (now known as Walter Scott Energy Center Unit 4); and,

WHEREAS, City has received notice that on August 16, 2007, the MEAN Board of Directors approved entering into an agreement with the Waverly Light & Power, a municipal utility of the City of Waverly, Iowa, for the partial assignment to MEAN of Waverly's interest currently equal to 1.1% (approximately 7 MW) of the energy generating capability and energy associated therewith, of the Louisa Generating Station; and,

WHEREAS, Each of the power supply resources described in the four preceding recitals constitutes or has been designated by the MEAN Board of Directors as a "Project" within the meaning of SSM (such power supply resources are hereinafter referred to collectively as the "Projects"); and,

WHEREAS, SSM has been in effect since the date of execution and City continues to be a Total Requirements Purchaser under SSM; and,

WHEREAS, City has received a Notice to Service Schedule M Participants to amend Exhibit D to SSM dated August 29, 2008, pursuant to Section 3.01(c) of SSM, a copy of which

is attached; and,

WHEREAS, City recognizes its right, pursuant to Section 3.01(c) of SSM, to advise MEAN within sixty (60) days of its receipt of the Notice to Service Schedule M Participants that it does not want to participate in each of the Projects, as described in the Notice, and, therefore, become a Contract Purchaser; and,

WHEREAS, City determines it is in the best interest of the City and its ratepayers to decline exercising this right, consent to participation in each of the Projects, and amend Exhibit D of SMM, and, therefore, remain a Total Requirements Purchaser.

NOW, THEREFORE, BE IT RESOLVED that:

1. City finds and declares that it is in the public interest of the City and its ratepayers that City remain a Total Requirements Purchaser under SSM and consent to the amendment of Exhibit D to SSM by adding each of the following Projects as an additional Project for all purposes of SSM:
  - a. 23.5% undivided ownership interest in Wygen I (approximately 20 MW)
  - b. 19.55% participation purchase in the Wessington Springs Wind Project (approximately 10MW)
  - c. Supplemental Agreement for Partial Assignment of Ownership Interest in Council Bluffs Energy Center Unit 4, dated August 7, 2007, with the Waverly Light & Power, a municipal utility of the City of Waverly, Iowa, for the partial assignment to MEAN of Waverly's interest currently equal to 0.4% (approximately 3 MW) of the energy generating capability and energy associated therewith, of Council Bluffs Energy Center Unit 4 (now known as Walter Scott Energy Center Unit 4), until termination of Waverly's Service Schedule M Agreement with MEAN
  - d. Supplemental Agreement for Partial Assignment of Ownership Interest in Louisa Generating Station, dated August 7, 2007, with the Waverly Light & Power, a municipal utility of the City of Waverly, Iowa, for the partial assignment to MEAN of Waverly's interest currently equal to 1.1% (approximately 7 MW) of the energy generating capability and energy associated therewith, of the Louisa Generating Station, until termination of Waverly's Service Schedule M Agreement with MEAN
2. It is hereby ordered and directed that the City of Alliance, acting through its Mayor and City Clerk, consent to amend Exhibit D to SSM, a copy of Exhibit D being attached hereto and made a part hereof.
3. The City of Alliance does hereby reaffirm each of the objectives, terms and conditions set forth in SSM, as amended.

4. The City of Alliance does hereby acknowledge and agree that: (a) MEAN's acquisition of a 23.5% undivided ownership interest in Wygen I constitutes the acquisition of nongovernmental output property within the meaning of Section 141 (d) of the Internal Revenue Code; and (b) in order to enable MEAN to establish and maintain the tax exempt status of interest on the bonds it will issue to finance the acquisition of its interest in Wygen I, City will use all of the electricity delivered to it by MEAN from Wygen I to serve customers located in service areas it has served for at least 10 years and such other areas as are approved by MEAN pursuant to generally applicable and uniformly applied rates and charges.

Electric Superintendent Larry Heinrich explained the end contract will not change, MEAN is simply buying more base energy which is the lowest rate we pay.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

- Resolution No. 08-98 authorizing staff to begin soliciting bids for the First Quarter Capital Purchases was the next item for Council's consideration.

Motion by Councilman Dickenson, seconded by Councilman Benzel to approve Resolution No. 08-98 which follows in its entirety:

#### **RESOLUTION NO. 08-98**

*WHEREAS*, The City of Alliance annually adopts a Capital Improvements Plan to aid in budgeting and organizing purchasing; and

*WHEREAS*, The City staff has submitted for City Council review a proposed schedule of capital improvement purchases to be initiated, and in some cases completed, in the first quarter of the 2008-2009 fiscal year; and

*WHEREAS*, The City Manager has reviewed and approved the proposed schedule of capital purchases for the first quarter of the 2008-2009 fiscal year.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that the schedule of capital purchases for the first quarter of the 2008-2009 fiscal year, totaling \$157,000.00 is hereby approved.

*BE IT FURTHER RESOLVED*, that City staff is authorized to proceed with the purchases noted on the schedule.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Rowley, Yeager.

Voting Nay: Benzel.

Motion carried.

- Resolution No. 08-99 was the next item for Council's review. The resolution authorizes funds to be encumbered from the 2007-2008 Budget for expenditure in the 2008-2009 Budget.

Motion by Councilman Benzel, seconded by Councilwoman Rowley to approve Resolution No. 08-99 which follows in its entirety:

#### **RESOLUTION NO. 08-99**

*WHEREAS*, The City of Alliance is responsible for the construction, operation and maintenance of departments and facilities in the City of Alliance; and

*WHEREAS*, Projects were budgeted for completion in the 2007-2008 Budget; and

*WHEREAS*, Some of the Projects have not been completed and the funds for the project need to be encumbered from the 2007-2008 Budget so that the funds can be shown as expenditures in the 2008-2009 Budget.

*WHEREAS*, The Council had determined that the project should be completed and that the funds should be encumbered.

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and City Council of the City of Alliance, Nebraska, that the funds from the departments as listed in the attached document will be encumbered from the 2007-2008 Budget for expenditure in the 2008-2009 Budget.

*BE IT FURTHER RESOLVED* that the 2008-2009 Budget is hereby amended to provide for the allotment and expenditure of these funds.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

- The last item on Council's agenda was a board resignation and a board appointment.

Motion by Mayor Kusek, seconded by Councilwoman Rowley to accept the resignation of Rachel Gonzalez from the Alliance Planning Commission.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

Motion by Mayor Kusek, seconded by Councilman Yeager to appoint Earl Jones to the Alliance Planning Commission for a term expiring December, 2010.

Roll call vote with the following results:

Voting Aye: Kusek, Dickenson, Benzel, Rowley, Yeager.

Voting Nay: None.

Motion carried.

- Mayor Kusek announced the ground breaking ceremony for the Nebraska State Veteran's Cemetery in Alliance will be held October 10, 2008 at 11:00 a.m. with Governor Dave Heineman in attendance.
- Mayor Kusek stated, "there being no further business to come before the Alliance City Council, the meeting is adjourned at 9:50 p.m."

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Dan Kusek, Mayor

(SEAL)

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Linda S. Jines, City Clerk