

**Execution Copy**

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**THE CITY OF LINCOLN, NEBRASKA**

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**ORDINANCE NO. \_\_\_\_\_**

**(Passed November \_\_, 2006)**

**Approved November \_\_, 2006)**

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**Authorizing Not to Exceed**

**\$27,000,000**

**GENERAL OBLIGATION HIGHWAY ALLOCATION FUND BONDS,  
SERIES 2006**

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**Exhibit A – Built Environment (1960)**

CITY OF LINCOLN, NEBRASKA

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION HIGHWAY ALLOCATION FUND BONDS, SERIES 2006 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$27,000,000 FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF CONSTRUCTING IMPROVEMENTS TO STREETS AND STATE HIGHWAY OR FEDERAL-AID ROUTES OF THE CITY AND TO PAY THE COSTS OF ISSUING THE BONDS; PRESCRIBING CERTAIN OF THE TERMS OF THE BONDS; DELEGATING, AUTHORIZING AND DIRECTING THE FINANCE DIRECTOR TO EXERCISE HIS OR HER OWN INDEPENDENT JUDGMENT AND ABSOLUTE DISCRETION IN (A) DETERMINING, FIXING AND FINALIZING THE PRINCIPAL AMOUNT, RATES OF INTEREST AND THE OTHER TERMS AND PROVISIONS OF THE BONDS NOT SPECIFIED HEREIN, (B) DETERMINING THE MANNER IN WHICH SUCH BONDS SHALL BE SOLD, (C) ACCEPTING A BID OR NEGOTIATING AN AGREEMENT FOR THE PURCHASE OF SUCH BONDS, AND (D) DETERMINING AND FIXING THE TERMS AND PROVISIONS OF ANY SUCH SALE AGREEMENT; PLEDGING FUNDS RECEIVED FROM THE NEBRASKA HIGHWAY ALLOCATION FUND AND PROVIDING FOR THE LEVY OF A TAX ON ALL OF THE TAXABLE PROPERTY WITHIN THE CITY TO PAY THE PRINCIPAL OF AND INTEREST ON SUCH BONDS; ESTABLISHING THE TERMS AND CONDITIONS UPON WHICH ADDITIONAL HIGHWAY ALLOCATION FUND BONDS MAY BE ISSUED; AND RELATED MATTERS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:

**Section 1. Findings and Determinations.** The Council (the “Council”) of The City of Lincoln, Nebraska (the “City”) hereby finds and determines:

(a) It is necessary, desirable and advisable that the City construct improvements to certain streets and state highways or federal-aid routes of the City as shall be determined by the Mayor and Council from time to time (collectively, the “Project”).

(b) The estimated costs for such improvements are not less than \$27,000,000.

(c) Pursuant to Section 66-4,101, Reissue Revised Statutes of Nebraska, as amended (the “Act”), the City is authorized (1) to issue its general obligation highway allocation fund bonds to pay the costs of the Project, (2) to pledge funds received from the State of Nebraska Highway Allocation Fund (the “Highway Allocation Fund”) to the payment of the principal thereof and the interest thereon, and (3) to levy and collect a tax at such rate or rates within any applicable charter, statutory or constitutional limitation upon all the taxable property with the City, except intangible property, which, together with receipts from the Highway Allocation Fund pledged to the payment of such bonds and any other money made available and used for that purpose, will be sufficient in amount to pay the principal thereof and the interest thereon when and as the same become due.

(d) Pursuant to Ordinance No. 18290 passed by the Council on January 26, 2004 and approved by the Mayor on January 29, 2004 (the “2004 Ordinance”), the City has previously issued \$35,000,000 aggregate principal amount of its General Obligation Highway Allocation Fund Bonds, Series 2004 (the

“**Series 2004 Bonds**”), all of which are outstanding and unpaid, and pledged its receipts from the Highway Allocation Fund for the payment of the principal thereof and the interest thereon.

(e) The 2004 Ordinance permits the issuance of additional general obligation highway allocation fund bonds on a parity with the Series 2004 Bonds if the maximum annual debt service on all highway allocation fund bonds of the City outstanding upon the issuance of such additional bonds does not exceed the receipts from the Highway Allocation Fund for the prior fiscal year of the City.

(f) The City received \$14,644,718.47 from the Highway Allocation Fund for the fiscal year ended August 31, 2006, and the City’s expected receipts from the Highway Allocation Fund for its current fiscal year are not less than \$15,000,000.00.

(g) Except for the Series 2004 Bonds, the City has no bonds or other evidences of bonded indebtedness outstanding issued pursuant to or payable under the Act, the maximum annual debt service on the Series 2004 Bonds is \$3,360,400.00, and the maximum annual debt service on the bonds herein authorized will not exceed \$2,250,000.00.

(h) Taking into consideration available funds of the City for such purposes, it will be necessary for the City to issue its general obligation highway allocation fund bonds in the aggregate principal amount of not to exceed \$27,000,000 (the “**Bonds**”) to pay the costs of the Project.

(i) All conditions, acts and things required to exist or to be done precedent to the issuance of the Bonds, the pledging of funds and the levying of taxes as provided by the Act and in this Ordinance do exist and have been done as required by law.

**Section 2. Authorization of Bonds.** For the purpose of providing funds to (a) pay the costs of the Project and issuing the Bonds, there shall be, and there are hereby ordered to be, issued pursuant to the Act, highway allocation fund bonds in an aggregate principal amount not to exceed \$27,000,000, designated “City of Lincoln, Nebraska General Obligation Highway Allocation Fund Bonds, Series 2006.”

**Section 3. Definitions.** In addition to words and terms elsewhere defined herein:

“**Beneficial Owner**” means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“**Bond Counsel**” means Gilmore & Bell, P.C., or other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the City.

“**Bonds**” means the City’s General Obligation Highway Allocation Fund Bonds, Series 2006, authorized to be issued pursuant to the Act and this Ordinance in an aggregate principal amount not to exceed \$27,000,000.

“**Book-Entry Bonds**” means Bonds registered in the name of a nominee of the Depository as the registered owner thereof pursuant to the terms and provisions hereof.

“**Clerk**” means the Clerk, the Deputy Clerk, the Acting Clerk or the Acting Deputy Clerk of the City.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

**“Construction Fund”** mean the Highway Allocation Construction Fund described in **Section 25(a)**.

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

**“Controller”** means the Controller or Acting Controller of the City or any successor officer acting in the same or similar capacity.

**“Council”** means the governing body of the City.

**“Debt Service Fund”** means the Highway Allocation Debt Service Fund described in **Section 25(b)**.

**“Deposit Securities”** means direct or unconditionally guaranteed obligations of the United States, including any such obligations issued in book-entry form.

**“Depository”** shall have the meaning specified in **Section 10**.

**“Escrow Obligations”** means (a) Deposit Securities, (b) certificates of deposit issued by a bank or trust company which are (1) fully insured by the Federal Deposit Insurance Corporation or similar corporation chartered by the United States or (2) secured by a pledge of any Deposit Securities having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured, which security is held in a custody account by a custodian satisfactory to the Registrar or the Treasurer, as the case may be, or (c)(1) evidences of a direct ownership in future interest or principal on Deposit Securities, which Deposit Securities are held in a custody account by a custodian satisfactory to the Registrar or the Treasurer, as the case may be, pursuant to the terms of a custody agreement in form and substance acceptable to the Registrar or the Treasurer, as the case may be, and (2) obligations issued by any state of the United States or any political subdivision, public instrumentality or public authority of any state, which obligations are fully secured by and payable solely from Deposit Securities, which Deposit Securities are held pursuant to an agreement in form and substance acceptable to the Registrar or the Treasurer, as the case may be, and, in any such case, maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient money to make the payment secured thereby.

**“Finance Director”** means the Finance Director or the Acting Finance Director of the City.

**“Highway Allocation Fund”** means the State of Nebraska Highway Allocation Fund established by Section 39-2401, Reissue Revised Statutes of Nebraska, as amended.

**“Interest Payment Date”** means the dates determined by the Finance Director in accordance with the provisions of **Section 6**.

**“Ordinance”** means this ordinance as from time to time amended or supplemented.

**“2004 Ordinance”** means Ordinance No. 18290 passed by the Council on January 26, 2004 and approved by the Mayor on January 29, 2004 authorizing the Series 2004 Bonds.

**“Outstanding”** when used with reference to the Bonds means, as of any date, all Bonds theretofore issued and not yet paid or discharged under the terms of this Ordinance.

**“Owner,”** with respect to a Bond, means the registered owner of such Bond.

**“Participant”** shall have the meaning specified in **Section 10(a)**.

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

“**Project**” means such improvements to the City’s streets and state highway or federal-aid routes as shall be approved by the Mayor and Council from time to time and paid from the proceeds of Bonds.

“**Record Date**” means, with respect to the Bonds, such day as shall be determined by the Finance Director in accordance with the provisions of **Section 6** hereof.

“**Registrar**” means the person, corporation, partnership or other entity selected and appointed by the Finance Director to act as paying agent and registrar for the Bonds pursuant to **Section 6** hereof, and any successor thereto.

“**Representation Letter**” shall have the meaning specified in **Section 10** hereof.

“**Reserve Fund**” means the Highway Allocation Debt Service Reserve Fund established by the Finance Director with respect the Bonds in accordance with the provisions of **Section 25(c)**.

“**Serial Bonds**” means Bonds which mature in consecutive years and all of the principal of which is due at the stated maturity thereof.

“**Series 2004 Bonds**” means the \$35,000,000 aggregate principal amount of the City’s General Obligation Highway Allocation Fund Bonds, Series 2004, dated March 17, 2004.

“**State**” means the State of Nebraska.

“**Street Construction Fund**” means the Street Construction Fund created and established by Section 3.20.220 of the Lincoln Municipal Code.

“**Tax Certificate**” means the Federal Tax Certificate executed and delivered by the City in connection with the issuance of the Bonds, as the same may be amended or supplemented in accordance with its provisions.

“**Term Bonds**” means Bonds stated to be payable by their terms by operation of a sinking fund account on one or more specified dates.

“**Treasurer**” means the Treasurer, the Deputy Treasurer, the Acting Treasurer or the Acting Deputy Treasurer of the City.

“**United States**” means the United States of America.

**Section 4. Pledge of Receipts from Highway Allocation Fund; Application of Bond Proceeds; Additional Highway Allocation Fund Bonds**

(a) ***Pledge of Receipts from Highway Allocation Fund.*** For the prompt payment of the Bonds, both principal or redemption price and interest, when and as the same shall become due, the City hereby pledges all receipts now or hereafter received by the City from the Highway Allocation Fund, as provided by the Act. The pledge provided for in this **Section 4(a)** shall not prevent the City from applying receipts from the Highway Allocation Fund in any year so long as sufficient receipts therefrom have been set aside for the payment of the principal or redemption price of and interest on the Bonds falling due in such year. To the extent that other legally available money of the City appropriated for such purposes is insufficient to pay the

principal or redemption price of and interest on the Bonds when and as the same shall become due, the City hereby further agrees that it will cause to be levied and collected annually a tax on all the taxable property in the City within any applicable charter, statutory and constitutional limitations sufficient in amount to pay the principal or redemption price of and interest on the Bonds until the same is fully paid. The provisions of this Ordinance shall constitute a contract between the City and the owners of the Bonds, and any owner may either in law or equity, by suit, action, mandamus or other proceedings enforce or compel performance of this Ordinance.

(b) ***Application of Bond Proceeds.*** The net proceeds of the sale of the Bonds shall be received by the Finance Director and deposited, credited, used and applied as follows:

(1) Accrued interest, if any, received upon the issuance of the Bonds shall be deposited into the Debt Service Fund.

(2) The amount, if any, determined by the Finance Director shall be deposited into the Reserve Fund which may be established for the Bonds.

(3) The balance of the proceeds of the Bonds shall be deposited into the Highway Allocation Construction Fund.

(c) ***Additional Highway Allocation Fund Bonds.*** Notwithstanding anything in this Ordinance to the contrary, the City reserves the right to issue additional highway allocation fund bonds (“**Additional Bonds**”) payable on a parity with the Series 2004 Bonds and the Bonds and equally and ratably secured by a pledge of receipts from the Highway Allocation Fund if the maximum annual debt service on all highway allocation fund bonds of the City outstanding upon the issuance of the Additional Bonds does not exceed the receipts from the Highway Allocation Fund for the prior fiscal year of the City.

#### **Section 5. Payment of Bonds.**

(a) Payments of the interest due on any Bond shall be made by the Registrar by mailing a check or draft in the amount due for such interest on each Interest Payment Date to the Owner thereof as of the Record Date for such Interest Payment Date, to such Owner’s registered address as shown on the books of registration maintained under **Section 24**. Payment of the principal due at maturity or the or redemption price on the date fixed for redemption prior to maturity of any Bond shall be made by the Registrar to the Owner upon presentation and surrender of such Bond to the Registrar. The City and the Registrar may treat the Owner of any Bond as the absolute owner of such Bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Registrar shall be affected by any notice or knowledge to the contrary whether such Bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest, principal or redemption price made to the Owner thereof in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and the Registrar in respect of the liability upon such Bond or claims for interest to the extent of the amount so paid.

(b) In the event that payments of the interest due on any Bond on any Interest Payment Date are not paid when due, such interest shall cease to be payable to the Owner as of the Record Date for such Interest Payment Date and shall be payable to the Owner thereof as of a special date of record for payment of such defaulted interest as shall be designated by the Registrar whenever money for the purpose of paying such defaulted interest becomes available.

#### **Section 6. Authority of Finance Director With Respect to Bonds.**

The Finance Director is hereby authorized to specify, set, designate, determine, establish and appoint, as the case may be, and in each case in accordance with and subject to the provisions of this Ordinance, (a)

the date of original issue of and the manner of numbering the Bonds, (b) the aggregate principal amount of Bonds to be issued, which shall in no event exceed \$27,000,000, (c) the principal maturity dates of the Bonds and the principal amount to mature on each such maturity date; provided, however, that no Bond shall have a final maturity later than August 31, 2027, (d) the Bonds to be issued as (1) Serial Bonds and (2) Term Bonds, (e) the Interest Payment Dates and the related Record Dates for the Bonds, (f) the rate or rates of interest to be carried by each maturity of the Bonds such that the yield on the Bonds (computed in conformance with the provisions of the Code) shall not exceed 5.00%, (g) whether or not the Bonds shall be subject to redemption prior to their stated maturity, and if subject to such prior redemption the provisions governing such prior redemption, the redemption price (not to exceed 104% of the principal amount then being redeemed plus accrued interest to the date of redemption) payable upon such redemption and the respective periods in which differing redemption prices shall be payable, (h) the amount and due date of each sinking fund installment for any of the Bonds which are issued as Term Bonds, (i) the form and content of (1) any notice of sale or similar document used by the City if the Bonds are sold at public sale, or (2) the form and content, terms and provisions of any bond purchase or similar agreement with respect to the Bonds between the City and one or more purchasers selected by the Finance Director, together with the price at which the Bonds shall be sold to such purchasers pursuant thereto (not less than 98.00% of the aggregate principal amount thereof) and the price or prices at which such purchasers may offer and sell the same to the public, (j) whether the Bonds shall be secured by a Reserve Fund and, if so, the balance to be maintained therein and the source of funds therefor, (k) the identity of the Registrar for the Bonds, the form and contents of any agreement for services to be provided by the Registrar and the compensation to be paid for so acting, and (l) all of the other terms and provisions of the Bonds not otherwise specified or fixed by the provisions of this Ordinance. Notwithstanding any other provision of this Ordinance, the maximum annual debt service on all Bonds issued hereunder shall not exceed \$2,250,000. The Finance Director, in the exercise of his or her own independent judgment and absolute discretion, is hereby authorized to impose such additional covenants, restrictions, terms and conditions with respect to the Bonds as shall be required by any national rating agency to maintain the ratings in effect with respect to the Bonds on the date of adoption of this Ordinance.

**Section 7. Delivery of Bonds.** Upon execution and authentication, the Bonds shall be delivered to the Treasurer who is authorized to deliver them to the initial purchaser(s) designated by the Finance Director, upon receipt of the purchase price as agreed upon by the Finance Director and such initial purchaser(s). Such initial purchaser(s) shall have the right to direct the registration of the Bonds as to ownership. The Clerk is hereby authorized and directed to make and certify a transcript of the proceedings with respect to the Bonds, a copy of which transcript shall be delivered to such initial purchaser(s).

**Section 8. Form of Bonds Generally.** The Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The Bonds issued under this Ordinance shall be substantially in the form set forth in this **Section 8**, with such appropriate variations, omissions and insertions as are permitted or required by this Ordinance and with such additional changes as the Finance Director may deem necessary or appropriate. All such Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or of any securities exchange on which the Bonds may be listed or any usage or requirement of law with respect thereto.

The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COUNTY OF LANCASTER

THE CITY OF LINCOLN

GENERAL OBLIGATION HIGHWAY ALLOCATION FUND BOND  
SERIES 2006

<u>Date of Original Issue</u>	<u>Date of Maturity</u>	<u>Rate of Interest</u>	<u>CUSIP No.</u>
_____, 2006		%	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THE BOND SET FORTH ON THE FOLLOWING PAGES, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH AT THIS PLACE.

IN WITNESS WHEREOF, THE CITY OF LINCOLN, NEBRASKA, by its Council, has caused this bond to be signed by the manual or facsimile signature of its Mayor and to be registered in the office of its Finance Director by and countersigned with the manual or facsimile signature of such Finance Director or Acting Finance Director, and its corporate seal, or facsimile thereof, to be imprinted hereon.

Registered in the Office of the  
Finance Director of the City of  
Lincoln, Nebraska

**THE CITY OF LINCOLN, NEBRASKA**

By: \_\_\_\_\_  
(facsimile signature)  
Mayor

\_\_\_\_\_  
(facsimile signature)  
Finance Director of the  
City of Lincoln, Nebraska

(Facsimile Seal)

**REGISTRAR'S CERTIFICATE OF AUTHENTICATION**

This bond is one of the Bonds described in the within-mentioned Bond Ordinance.

\_\_\_\_\_, Registrar

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

THE CITY OF LINCOLN, NEBRASKA (the "City") acknowledges itself indebted to, and for value received hereby promises to pay to the Registered Owner specified above, or registered assigns, on the

Date of Maturity stated above (or earlier as hereinafter referred to), the Principal Amount stated above upon presentation and surrender of this bond at the office of the bond registrar and paying agent, \_\_\_\_\_, in Lincoln, Nebraska (the “**Registrar**”), and in like manner to pay interest on the Principal Amount at the Rate of Interest stated above from the Date of Original Issue stated above, or the most recent interest payment date to which interest has been paid or duly provided for, as specified below, to maturity or earlier redemption, payable semiannually on \_\_\_\_\_ and \_\_\_\_\_ of each year beginning \_\_\_\_\_, 2006 (each an “**Interest Payment Date**”), until payment in full of such Principal Amount by check or draft mailed to the Registered Owner hereof as shown on the bond registration books maintained by the Registrar on the \_\_\_\_\_ day of the month preceding the month in which an Interest Payment Date occurs, at such owner’s address as it appears on such bond registration books. The principal of this bond and the interest hereon are payable in any coin or currency which on the respective dates of payment thereof is legal tender for the payment of debts due the United States of America.

This bond is one of an authorized series of bonds (the “**Bonds**”) of like designation herewith aggregating \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in principal amount issued by the City all of like date and tenor except as to denomination, Date of Maturity, Interest Rate and redemption provisions which have been issued by the City for the purpose of paying the costs of constructing improvements to certain streets and state highways or federal-aid routes of the City under the authority of and in full compliance with the Constitution and statutes of the State of Nebraska, including particularly Section 66-4,101, Reissue Revised Statutes of Nebraska, as amended and paying the costs of issuing such bonds and pursuant to Ordinance No. \_\_\_\_\_ duly passed by the Council on November \_\_\_, 2006 and approved by the Mayor on November \_\_\_, 2006 and all other ordinances amendatory thereof or supplemental thereto (Ordinance No. \_\_\_\_\_ and all other ordinances amendatory thereof or supplemental thereto being herein referred to collectively as the “**Ordinance**”) and by proceedings duly had by the Mayor and Council.

This bond is issued on a parity with and is payable from the same sources as the City’s General Obligation Highway Allocation Fund Bonds, Series 2004 (the “**Series 2004 Bonds**”) previously issued by the City and any additional highway allocation fund bond issuance in accordance with the provisions of the Ordinance (the “**Additional Bonds**”). In the Ordinance, the City has pledged funds received and to be received from the Highway Allocation Fund of the State of Nebraska and allocates such receipts to payment of the principal hereof and the interest hereon when and as the same becomes due on a parity with the Series 2004 Bonds and any Additional Bonds. In addition, the City has covenanted and agreed that to the extent other legally available money of the City appropriated for such purposes is insufficient to pay the principal of and interest on the Bonds when and as the same shall become due, it shall levy ad valorem taxes upon all the taxable property in the City at such rate or rates, within applicable Charter, statutory and constitutional limitations, which, together with receipts from the Highway Allocation Fund and any other money made available and used for such purpose, will be sufficient to make payment of the principal of and interest on the Bonds as the same shall become due.

Reference is hereby made to the Ordinance, a copy of which is on file in the office of the Clerk, and to all the provisions of which any owner of this bond by its acceptance hereof hereby assents, for a description of and the nature and extent of the security for the Bonds; the Highway Allocation Fund and tax revenues pledged to the payment of the principal of and interest on the Bonds; the terms and provisions upon which the covenants made therein may be discharged at or prior to the maturity or redemption of the Bonds and the Bonds thereafter no longer be secured by the Ordinance or be deemed to be outstanding thereunder, if money or certain specified securities shall have been deposited with the Registrar or the Treasurer sufficient and held in trust solely for the payment thereof; and for the other terms and provisions thereof.

The Bonds are subject to redemption prior to maturity, at the option of the City, on or after \_\_\_\_\_, \_\_\_\_\_, in whole at any time or in part from time to time in such principal

amounts and from such maturity or maturities as the City may, in its sole and absolute discretion, determine and by lot within a maturity, at a redemption price equal to the percentage of the principal amount of the bond to be redeemed set forth below together with the interest accrued on such principal amount to the date fixed for redemption:

Period During Which Redeemed <u>(Inclusive)</u>	Redemption Price <u>(% of Principal Amount)</u>
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In the event this bond is called for prior redemption, notice of such redemption shall be given by first class mail to the Registered Owner at its address as shown on the registration books maintained by the Registrar not less than 30 days prior to the date fixed for redemption. If this bond shall have been duly called for redemption and notice of such redemption duly given as provided, then upon such redemption date this bond shall become due and payable and if money for the payment of this bond at the then applicable redemption price and the interest accrued on the principal amount hereof to the date of redemption shall be held for the purpose of such payment by the Registrar, interest shall cease to accrue and become payable hereon from and after the redemption date.

This bond is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the designated office of the Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Ordinance and upon surrender and cancellation of this bond. Upon such transfer, a new bond or bonds of the same series and of the same maturity, of authorized denomination or denominations and for the same aggregate principal amount, will be issued to the transferee in exchange therefor. The City and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal or redemption price hereof and interest due hereon and for all other purposes.

The Bonds are issuable only as fully registered bonds in the denomination of \$5,000 or any integral multiple thereof not exceeding the principal amount maturing in any one year. As provided in the Ordinance and subject to certain limitations therein set forth, the Bonds are exchangeable for a like aggregate principal amount of Bonds of a different authorized denomination, as requested by the Registered Owner or its duly authorized attorney upon surrender thereof to the Registrar.

It is hereby certified, recited and declared that all acts, conditions and things required to have happened, to exist and to have been performed precedent to and in the issuance of the Bonds have happened, do exist and have been performed in regular and due time, form and manner; that the Bonds do not exceed any constitutional, statutory or charter limitation on indebtedness; and that provision has been made for the payment of the principal of and interest on the Bonds as provided in the Ordinance.

***[The remainder of this page intentionally left blank.]***

(FORM OF ASSIGNMENT)

**ASSIGNMENT**

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

\_\_\_\_\_  
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 Registrar 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:

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

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

**Section 9. Details of Bonds.**

(a) Each Bond shall bear interest from the Interest Payment Date next preceding the date on which it is authenticated, unless authenticated on an Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or, unless authenticated prior to the first Interest Payment Date, in which event it shall bear interest from its date of original issue; provided, however, that if at the time of authentication of any Bond, interest is in default, such Bond shall bear interest from the date to which interest has been paid.

(b) Both the principal of and the interest on each Bond shall be payable in any coin or currency of the United States which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The principal of all Bonds upon maturity or the redemption price payable upon redemption prior to maturity and the interest due thereon shall be payable at the designated office of the Registrar, upon presentation and surrender of such Bonds as the same shall become due and payable. Payment of the interest on each Bond due prior to maturity or earlier redemption shall be by check mailed by the Registrar on each Interest Payment Date to the person whose name appears on the registration books of the Registrar as the Owner thereof, at such Owner's address as it appears on such registration books on the Record Date.

(c) The City shall provide the Registrar with a supply of bond certificates for initial issuance and for subsequent transfers. In the event that such supply of certificates shall be insufficient to meet the

requirements of the Registrar for issuance of replacement bond certificates upon transfer, the City agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting officers. Each Bond shall be executed by the manual or facsimile signatures of the Mayor and the Finance Director of the City and the original or a facsimile of the official seal of the City shall be impressed or printed thereon. In case any officer whose signature or facsimile signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond (including any bond certificates delivered to the Registrar for issuance upon transfer or partial redemption), such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such person had remained in office until such delivery. Any Bond may be signed by such persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

**Section 10. Book-Entry Bonds.** The Bonds shall be issued initially as Book-Entry 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 the Finance Director is 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 Bonds.

Upon the issuance of the Bonds as Book-Entry 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 Bonds as securities depository (each, a “**Participant**”) or to any person who is an actual purchaser of a Bond from the 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 Participant with respect to any ownership interest in the Bonds;

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

(3) the payment to any Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Bonds. The Registrar shall make payments with respect to the 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 Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated 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 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 Bonds or (2) to make available Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such Bonds shall designate.

(c) If the City determines that it is desirable that Bonds representing the Bonds be delivered to the Participants and/or Beneficial Owners of the Bonds and so notifies the City and

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

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

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

(1) any successor securities depository or its nominee; and

(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 10**.

(f) In the event of any partial redemption of a Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of **Section 9(c)**, the books and records of the Registrar shall govern and establish the principal amount of such Bond as is then Outstanding and all of the Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced, the City shall immediately provide a supply of printed bond certificates for issuance upon the transfers from the Depository and subsequent transfer or in the event of partial redemption in accordance with the provisions of **Section 9(c)**.

**Section 11. Authentication of Bonds.** Only such Bonds as shall have endorsed thereon a certificate of authentication duly executed by the Registrar shall be entitled to any benefit or security under this Ordinance. No Bonds shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Registrar, and such certificate of the Registrar upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Ordinance. The Registrar's certificate of authentication on any Bond shall be deemed to have been duly executed if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time.

**Section 12. Exchange of Bonds.** Bonds, upon surrender thereof at the designated office of the Registrar, together with an assignment duly executed by the bondholder or its attorney or legal representative in such form as shall be satisfactory to the Registrar, may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same maturity, of any denomination or denominations authorized by this Ordinance and bearing interest at the same rate, and in substantially the same form as the Bonds surrendered for exchange. The City shall make provision for the exchange of the Bonds at the designated office of the Registrar.

**Section 13. Negotiability, Registration and Transfer of Bonds.** The Registrar shall keep books for the registration and registration of transfer of Bonds as provided in this Ordinance. The transfer of any Bond may be registered only upon the books kept for the registration and registration of transfer of Bonds upon surrender thereof to the Registrar, together with an assignment duly executed by the Owner or its attorney or legal representative in such form as shall be satisfactory to the Registrar. Upon any such registration of transfer the City shall execute and the Registrar shall authenticate and deliver in exchange for such Bond a new Bond or Bonds, registered in the name of the transferee, of any denomination or denominations

authorized by this Ordinance in an aggregate principal amount equal to the principal amount of such Bond surrendered or exchanged, of the same maturity and bearing interest at the same rate.

In all cases in which Bonds shall be exchanged or the transfer of Bonds shall be registered hereunder, the City shall execute and the Registrar shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchange or registration of transfer shall forthwith be canceled by the Registrar. Neither the City nor the Registrar shall make a charge for the first such exchange or registration of transfer of any Bond for each holder. The City or the Registrar, or both, may make a charge for shipping, printing and out-of-pocket costs for every subsequent exchange or registration of transfer of any Bond sufficient to reimburse it or them for any and all costs required to be paid with respect to such exchange or registration of transfer. Neither the City nor the Registrar shall be required to make any such exchange or registration of transfer of Bonds during the period between the relevant Record Date and an Interest Payment Date or, in the case of any proposed redemption of Bonds, after notice of the redemption of such Bonds or any portion thereof shall have been given pursuant to **Section 21**.

**Section 14. Ownership of Bonds.** As to any Bond, the Owner shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and interest on such Bond and the interest on any such Bond shall be made only to or upon the order of the Owner thereof or its legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

**Section 15. Disposition and Destruction of Bonds.** All Bonds surrendered to the Registrar for payment shall be canceled upon such payment by the Registrar and, upon written request of the Finance Director, shall be destroyed.

**Section 16. CUSIP Identification Numbers.** At the sole option of the Finance Director, CUSIP identification numbers may be printed on the Bonds, but no such number shall be deemed to be a part of any Bond or a part of the contract evidenced thereby, and no liability shall attach to the City or any officer or agent thereof (including without limitation the Registrar) because of or on account of such CUSIP identification numbers or any use made thereof.

**Section 17. Redemption of Bonds.** At the option of the City, the Bonds issued under the provisions of this Ordinance may be made subject to redemption, both in whole and in part and at such times and redemption prices, as may be determined by the Finance Director in accordance with the provisions of **Section 6**; provided, however, that Term Bonds shall be made subject to redemption to the extent of any sinking fund requirement therefor in each year in which there is a sinking fund requirement in respect of such Term Bonds.

**Section 18. Redemption at the Direction of the City.** In the case of any redemption of any Bonds at the direction of the City, the Finance Director will select the maturities and principal amounts thereof to be redeemed and the Finance Director shall give written notice to the Registrar specifying the redemption date and the maturities and principal amounts to be redeemed, and directing the Registrar to give notice of redemption to the Owners of Bonds selected for redemption. The City shall give such notice at least 15 business days (or such shorter period as may be agreed to by the Registrar) before the last day on which the Registrar may give notice of redemption to such Owners.

**Section 19. Redemption Otherwise than at the City's Direction.** Whenever the Registrar is required or authorized to redeem Bonds otherwise than at the direction of the City, the Registrar shall, subject to receipt of any notice from the City pursuant to **Section 21**, select the Bonds to be redeemed and shall give the notice of redemption.

**Section 20. Selection of Bonds to be Redeemed.** If less than all Bonds are to be redeemed, the principal amount and the maturity or maturities of Bonds to be redeemed may be selected by the City in its sole and absolute discretion. The City shall give written notice of its selection not later than 15 business days (or such shorter period as may be agreed to by the Registrar) before the last day on which the Registrar may give notice of redemption to the Owners. If the City does not give notice of its selection, the Registrar shall select the Bonds to be redeemed in inverse order of maturity. If less than all of the Bonds of like maturity are to be redeemed, the particular Bonds or portions of Bonds to be redeemed shall be selected at random by the Registrar in such manner as the Registrar in its discretion may deem fair and appropriate.

**Section 21. Notice of Redemption.** Each notice of redemption of Bonds shall be mailed first class, postage prepaid by the Registrar not less than 30 days prior to the redemption date to each Owner whose Bonds are called for redemption. Each notice of redemption shall designate the Bonds to which such notice relates, the date of issue, the redemption date, the redemption price, the place or places of redemption (including the name and appropriate address or addresses of the Registrar), the CUSIP number (if any) of the maturity or maturities, and, if less than all of any such maturity, the distinctive certificate numbers of the Bonds of such maturity to be redeemed and, in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on such date there will become due and payable on each of such Bonds the redemption price thereof or of such specified portion of the principal amount thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the date fixed for redemption, and that from and after such redemption date, interest thereon shall cease to accrue. Each notice shall state that such Bonds shall be surrendered at the address or addresses of the Registrar specified in the redemption notice. Neither the City nor the Registrar shall have any responsibility for any defect in the CUSIP number that appears on any Bond or in any redemption notice with respect thereto, and any such redemption notice may contain a statement to the effect that CUSIP numbers have been assigned by an independent service agency for convenience of reference and that neither the City nor the Registrar shall be liable for any inaccuracy in such numbers.

Failure of any Owner to receive notice or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

**Section 22. Payment of Redeemed Bonds.** Notice having been given in the manner provided in **Section 21**, the Bonds, or portions thereof so called for redemption, shall become due and payable on the redemption date so designated at the redemption price thereof, plus interest accrued and unpaid to the redemption date, and, upon presentation and surrender thereof at the office specified in such notice, such Bonds, or portions thereof, shall be paid at the redemption price thereof, plus interest accrued and unpaid to the redemption date. If any Bond is redeemed in part, the City shall execute, and the Registrar shall authenticate and deliver, upon the surrender of such Bond, without charge to the Owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, a Bond of like maturity in any authorized denomination. If, on the redemption date, money for the redemption of all the Bonds or portions thereof of any like maturity to be redeemed, together with interest to the redemption date, shall be available therefor on such date and if notice of redemption shall have been given as provided, then, from and after the redemption date interest on the Bonds or portion thereof of such maturity so called for redemption shall cease to accrue and become payable. If such money shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

**Section 23. Cancellation of Redeemed Bonds.** All Bonds surrendered or redeemed pursuant to the provisions of this Ordinance shall be canceled.

**Section 24. The Registrar.** The Registrar shall keep and maintain for the City books for the registration and transfer of the Bonds at its designated office. The name(s), registered address(es) and tax identification number(s) of the Owners of the Bonds shall at all times be recorded in such books. Any Bond

may be transferred pursuant to its provisions at the designated office of the Registrar by surrender of such Bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the Owner in person or by such Owner's duly authorized agent, and the Registrar, on behalf of the City, will then deliver at its office (or send by registered mail to the transferee Owner(s) at such transferee Owner's risk and expense), registered in the name of the transferee Owner(s), a new Bond or Bonds of the same interest rate, aggregate principal amount and maturity. One Bond may be transferred for several such Bonds of the same interest rate and maturity, and for a like aggregate principal amount, and several such Bonds may be transferred for one or several such Bonds, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a Bond, the surrendered Bond shall be canceled and destroyed. All Bonds issued upon transfer of the Bonds so surrendered shall be valid obligations of the City evidencing the same obligation as the Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the Bonds upon transfer of which they were delivered. The City and the Registrar shall not be required to transfer any Bond during any period from any Record Date until the immediately following Interest Payment Date or to transfer any Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

**Section 25. Highway Allocation Construction Fund; Highway Allocation Debt Service Fund; Highway Allocation Debt Service Reserve Fund.**

(a) **Highway Allocation Construction Fund.** The net proceeds of the Bonds remaining after the deposit required by **Section 4(b)(i)** has been made shall be deposited by the Finance Director or the Controller in a special capital projects fund, which is hereby created, established and designated as the 2006 Highway Allocation Construction Fund, and shall be disbursed according to such procedures as shall be established by the Finance Director or the Controller (1) to pay the costs of constructing the Project, subject to the restrictions set forth in the following paragraph, and (2) to pay the costs of issuing the Bonds.

Expenditure of Bond proceeds deposited in the 2006 Highway Allocation Construction Fund are subject to the following restrictions:

(1) not more than 20% of such proceeds may be expended for improvements within the area set forth on Exhibit A attached hereto and made a part hereof; and

(2) \$750,000 shall be made available for improvements to local streets located within "low to moderate" income areas of the City determined [to be provided]; provided, however, that (A) not less than 50% of the costs of such improvements shall be paid by the owners of property benefited from such improvements and (B) work on such improvements shall be initiated not later than two years after the date of issuance of the Bonds.

(b) **Highway Allocation Debt Service Fund.** For so long as any of the Bonds remain outstanding, the City shall maintain the Highway Allocation Debt Service Fund (the "**Debt Service Fund**") established by the 2004 Ordinance for the purposes of paying the principal or redemption price of and interest on the Bonds. There shall be deposited into the Debt Service Fund as and when received, (1) any accrued interest received upon the issuance, sale and delivery of the Bonds, (2) each month, from balances in the Street Construction Fund of the City constituting money received from the Highway Allocation Fund of the State, in addition to amounts required to be deposited with respect to the Series 2004 Bonds, an amount such that if the same amount is deposited each month into the Highway Allocation Debt Service Fund, there shall be on deposit therein balances sufficient to pay the principal of and interest on the Bonds when and as the same shall become due, (3) such other legally available funds of the City as shall be determined by the Finance Director which is required or which is accompanied by directions that such money is to be paid into the Debt Service Fund, and (4) all ad valorem taxes levied and collected by the City under this Ordinance. Money in the Debt Service Fund shall be used solely for the payment of the principal or redemption price of and interest on the Series 2004 Bonds, the Bonds and any Additional Bonds at or prior to maturity.

(c) **Highway Allocation Debt Service Reserve Fund.** The City may, upon determination by the Finance Director that such action is necessary, desirable, advisable and in the best interest of the City, establish a debt service reserve fund (the “**2006 Reserve Fund**”) for the Bonds which shall be for the benefit and security of the Bonds. In connection with the establishment of the 2006 Reserve Fund, the following provisions shall apply:

(1) The 2006 Reserve Fund shall be held by the City and administered in accordance with the provisions hereof.

(2) If any withdrawal from the 2006 Reserve Fund is made for the purpose of **Section 25 (c)(3)(A)**, the amount of such withdrawal shall be restored by the City in no more than 12 substantially equal, consecutive, monthly installments, each payable on the last business day of the month, commencing with the month in which the withdrawal is made; provided that, if any withdrawal is made and if, prior to the restoration of the amount withdrawn, an additional withdrawal is made, such additional withdrawal shall be restored in equal monthly installments over the remainder of the restoration period for the initial withdrawal.

(3) Any money on deposit in the 2006 Reserve Fund shall be applied as follows:

(A) On the date of each required payment from the Highway Allocation Debt Service Fund, money in the 2006 Reserve Fund shall be applied to cure any deficiency in the Debt Service Fund with respect to the Bonds.

(B) Any amount in the 2006 Reserve Fund in excess of the balance required to be maintained therein shall be transferred to the Debt Service Fund and credited against the payments of the principal and interest next becoming due on the Bonds.

(C) On the Interest Payment Date immediately preceding the final maturity date of the Bonds, money held in the 2006 Reserve Fund shall be deposited into the Debt Service Fund and credited against the deposits required to be made into the Debt Service Fund with respect to the Bonds but only to the extent that, immediately following such crediting and transfer, the amount on deposit in the 2006 Reserve Fund is equal to the lesser of (i) the balance required to be maintained therein with respect to the Bonds and (ii) the amount of principal and interest due in respect of the Bonds on such final maturity date.

(4) The City shall be permitted to substitute a letter of credit, surety bond or other credit enhancement (each, a “**Credit Facility**”) for funds on deposit in the 2006 Reserve Fund, provided that:

(A) the Credit Facility (including any replacement Credit Facility) is issued by a bank, trust company, national banking association or insurance company whose unsecured long term debt obligations (in the case of a bank, trust company or national banking association) or whose claims paying abilities (in the case of an insurance company) are rated not lower than the “AAA” rating category by a rating agency at the time the Credit Facility is issued and at the time of each extension or renewal thereof;

(B) the issuer of the Credit Facility receives as security for any reimbursement obligation in respect of the Credit Facility a lien solely on amounts in the Street Construction Fund on a parity with any Bonds then outstanding; and

(C) the Credit Facility (including any replacement Credit Facility, if provided by a different issuer) has an initial term of not less than one year and any extension, renewal or replacement (if provided by the same issuer) thereof has a term of not less than one year.

Upon such substitution, funds on deposit in the 2006 Reserve Fund which, when added to the face amount of the Credit Facility, exceed the balance required to be maintained therein with respect to the Bonds shall be applied as provided in **Section 25(c)(3)(B)** (subject to yield restriction, if any, as determined by Bond Counsel). Thereafter, the Credit Facility shall be considered a part of the 2006 Reserve Fund and the amount available thereunder shall be included in any calculations of the amount required to be retained in the 2006 Reserve Fund; provided that, (i) if the sum of the amount available under the Credit Facility and the amount of money on deposit in the 2006 Reserve Fund exceed the amount required to be on deposit therein, the City shall be permitted (a) to cause the amount available under the Credit Facility to be reduced by an amount equal to such excess, or (b) to direct that the excess money be applied as permitted under **Section 25(c)(3)(B)**, and (ii) if the Credit Facility is not extended, renewed or replaced at least six months prior to its scheduled expiration or termination date, the City shall be obligated to restore the difference between the amount required to be maintained therein and the value of such Reserve Fund computed without regard to the Credit Facility prior to the expiration or termination date of such Credit Facility.

**Section 26. Transfer of Funds to Registrar.** The Finance Director is hereby authorized and directed to withdraw from the Debt Service Fund sums sufficient to fully pay the principal of and interest on the Bonds as and when the same become due and to pay the charges for services rendered by the Registrar, and to forward such sums to the Registrar in immediately available funds no less than five business days before the date when such principal, interest and fees mature or become due.

**Section 27. Highway Allocation Fund Rebate Account.** The City shall establish and the Treasurer shall maintain for the Bonds an account in the City's Arbitrage Rebate Fund, separate from any other fund or account established and maintained hereunder, which account shall be designated by the Finance Director as the 2006 Highway Allocation Fund Rebate Account (the "**Rebate Account**"). All money at any time deposited in the Rebate Account in accordance with the provisions of the Tax Certificate shall be held by the Treasurer for the account of the City in trust for payment to the federal government of the United States, and neither the City nor the owner of any Bond shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Account shall be governed hereby and by the Tax Certificate. The Treasurer shall invest all amounts held in the Rebate Account in accordance with the Tax Certificate. Money shall not be transferred from the Rebate Account except in accordance with the Tax Certificate.

**Section 28. Payment of Certain Expenses.** The Council hereby declares its intent to (a) budget, appropriate and pay from the City's General Fund certain expenses in connection with rehabilitating constructing and improving streets, intersections, interchanges, sidewalks, bikeways and trails, snow removal and other costs in connection with streets and street improvement projects in an amount not less than the debt service on the Bonds becoming due in such fiscal year and (b) adjust the City's property tax levy in an amount sufficient to pay such expenses. The Council further declares its intent to (1) phase in such actions equally over a three-year period beginning with the 2007-08 fiscal year and (2) continue such actions for so long as any Bonds are Outstanding.

**Section 29. Discharge of Liens and Obligations.** The City's obligations under this Ordinance and the liens, pledges, dedications, covenants and agreements of the City herein made or provided for shall be fully discharged and satisfied as to any of the Bonds issued hereunder, and such Bonds shall no longer be deemed Outstanding if such Bonds shall have been purchased and canceled by the City or, as to any of such Bonds not theretofore purchased and canceled by the City, when payment of the principal or redemption price of such Bonds plus interest thereon to the respective dates of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof; or (b) shall have been provided for by depositing

with a state or national bank having trust powers or trust company in trust solely for such payment (1) sufficient money to make such payment and/or (2) Escrow Obligations in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal at such times as will ensure the availability of sufficient money to make such payment and such Bonds shall cease to draw interest from the date fixed for their redemption or maturity and, except for the purposes of such payment, shall no longer be entitled to the benefits of this Ordinance; provided that, with respect to any such Bonds called or to be called for redemption, the City shall have duly given notice of redemption or made irrevocable provision for such notice. Any such money so deposited with such state or national bank or trust company as provided herein may be invested and reinvested in Deposit Securities at the direction of the City and all interest and income from all such Deposit Securities in the hands of such bank or trust company which are not required to pay principal and interest on the Bonds for which such deposit has been made shall be paid to the City as and when realized and collected.

### **Section 30. Tax Covenants.**

(a) The City covenants and agrees 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 gross income for federal income tax purposes of the interest on the Bonds and (2) it will not use or permit the use of any proceeds of Bonds or any other funds of the City nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

(b) The City covenants and agrees that (1) it will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds, (2) it will use the proceeds of the Bonds as soon as practicable and with all reasonable dispatch for the purposes for which the Bonds are issued, and (3) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City in any manner, or take or omit to take any action, that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

(c) The City covenants and agrees that it will pay or provide for the payment from time to time of all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any Treasury Regulations applicable to the Bonds from time to time. This covenant shall survive payment in full or defeasance of the Bonds. The City specifically covenants to pay or cause to be paid to the United States, the required amounts of rebatable arbitrage at the times and in the amounts as determined by the Tax Certificate. Notwithstanding anything to the contrary contained herein, 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 gross income for federal income tax purposes of interest on the Bonds.

(d) The City covenants and agrees that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a “private activity bond.”

The above covenants shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to the provisions of this Ordinance until the final maturity date of all Bonds outstanding.

**Section 31. Continuing Disclosure.** The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Ordinance, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an event of default hereunder; however, any Participating Underwriter or any Beneficial Owner

or any other owner of a 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 31**.

**Section 32. General and Specific Authorizations; Ratification of Prior Actions.** Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the Council hereby (a) authorizes and directs the Mayor, the Finance Director, the Treasurer, the Clerk, the City Attorney, the Controller, any individual authorized to act on their behalf, and all other officers, officials, employees and agents 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, or any of them, in consultation with Bond Counsel, the purchaser(s) of the Bonds and its or their counsel, shall consider necessary, advisable, desirable or appropriate in connection with this Ordinance, including without limitation the execution and delivery of all related documents, instruments, certifications and opinions, and (b) delegates, authorizes and directs the Finance Director or the Controller the right, power and authority to exercise his or her own independent judgment and absolute discretion in (1) determining and finalizing all terms and provisions to be carried by the Bonds not specifically set forth in this Ordinance and (2) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to effectuate issuance, sale and delivery of the Bonds. The execution and delivery by the Finance Director or the Controller or by any such other officers, officials, employees or agents 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 Ordinance, shall constitute conclusive evidence of both the City's and their approval of the terms, provisions and contents thereof and of all changes, modifications, amendments, revisions and alterations made therein and shall conclusively establish their absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the City of the documents, instruments, certifications and opinions so executed and the actions so taken.

All actions heretofore taken by the Finance Director and all other officers, officials, employees and agents of the City, including without limitation the expenditure of funds and the selection, appointment and employment of Bond Counsel and financial advisors and agents, in connection with issuance and sale of any Bonds, together with all other actions taken in connection with any of the matters which are the subject hereof, be and the same is hereby in all respects authorized, adopted, specified, accepted, ratified, approved and confirmed.

**Section 33. Proceedings Constitute Contract; Enforcement Thereof.** The provisions of this Ordinance, of any supplemental ordinance, and of any resolutions or other proceedings providing for the sale of the Bonds and the terms and provisions thereof shall constitute a contract between the City and the owners of the Bonds and the provisions thereof shall be enforceable by any owner for the equal benefit and protection of all such owners similarly situated, by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is presently or may hereafter be authorized under the laws of the State in any court of competent jurisdiction. Such contract is made under and is to be construed in accordance with the laws of the State.

After the issuance and delivery of the Bonds, this Ordinance and any supplemental ordinance shall not be repealable, but shall be subject to modification or amendment to the extent and in the manner provided in this Ordinance, but to no greater extent and in no other manner.

**Section 34. Benefits of Ordinance Limited to the City and Owners of the Bonds.** With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or any Bond is intended or should be construed to confer upon or give to any person other than the City, the owners, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements and

provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City and the owners from time to time of any Bond as herein and therein provided.

**Section 35. No Personal Liability.** No officer or employee of the City shall be individually or personally liable for the payment of the principal or redemption price of or interest on any Bond. Nothing herein contained shall, however, relieve any such officer or employee from the performance of any duty provided or required by law.

**Section 36. Effect of Saturdays, Sundays and Legal Holidays.** Whenever this Ordinance requires any action to be taken on a Saturday, Sunday or legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday, such time shall continue to run until midnight on the next succeeding business day.

**Section 37. Partial Invalidity.** If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City or the Registrar to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of any of the Bonds, but the owner of any Bond shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all 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 circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

**Section 38. Applicable Law and Place of Enforcement of this Ordinance.** The Ordinance shall be construed and interpreted in accordance with the laws of the State. All suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in Lincoln, Nebraska except to the extent necessary for enforcement, by any trustee or receiver appointed by or pursuant to the provisions of this Ordinance, or remedies under this Ordinance.

**Section 39. Effect of Article and Section Headings and Table of Contents.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

**Section 40. Repeal of Inconsistent Ordinance.** Any ordinance of the City, and any part of any ordinance or resolution, inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

**Section 41. Publication and Effectiveness of This Ordinance.** Pursuant to Article VII, Section 7, of the City Charter, this Ordinance shall be posted on the official bulletin board of the City in lieu of and in place of newspaper publication with notice of passage and such posting to be given by publication one time in the official newspaper by the Clerk.

**INTRODUCED BY:**

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**PASSED** \_\_\_\_\_, **2006.**

**ABSENT OR NOT VOTING:**

**AYES:** \_\_\_\_\_

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**NAYS:** \_\_\_\_\_

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**Approved as to Form:**

**CONFLICT OF INTEREST:**

\_\_\_\_\_  
**City Attorney**

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**APPROVED:** \_\_\_\_\_, **2006.**

\_\_\_\_\_  
**Bond Counsel**

\_\_\_\_\_  
**Mayor**

**EXHIBIT A**

**BUILT ENVIRONMENT (1960)**