Bill No. 76 **Introduce: May 4, 2009**

THE CITY OF LINCOLN, NEBRASKA

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ORDINANCE NO. _____

(Passed May ___, 2009

Approved _____, 2009)

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AN ORDINANCE AMENDING ORDINANCE NO. 19151

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 19151 TO PROVIDE FOR THE SALE OF THE BONDS BY A NEGOTIATED SALE, A PUBLIC SALE OR A PRIVATE PLACEMENT; TO REPEAL CERTAIN PROVISIONS OF ORDINANCE NO. 19151, IN CONNECTION THEREWITH; TAKING OTHER ACTION IN CONNECTION WITH THE FOREGOING; AND RELATED MATTERS.

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

Section 1. The Council (the **"Council"**) of The City of Lincoln, Nebraska (the **"City"**) hereby finds and determines as follows:

(a) Pursuant to the provisions of Ordinance No. 19151 (the "**Ordinance No. 19151**") passed by the Council on September 29, 2008, and approved by the Mayor on October 2, 2008, the City authorized the issuance of not to exceed $3,750,000 in aggregate principal amount of its Perot Systems Tax Allocation Bonds (the "**Bonds**") to finance the Perot Systems Project (as defined in the Bond Ordinance).

(b) Capitalized terms used and not otherwise defined in this Ordinance have the meanings assigned to those terms in the Ordinance No. 19151.

(c) Ordinance No. 19151 provided for the sale of the Bonds pursuant to a negotiated sale.

(d) It is necessary, desirable, advisable and in the best interest of the City that certain amendments be made to Ordinance No 19151 to provide for the sale of the Bonds by a negotiated sale, a public sale or a private placement, as determined by the Finance Director in the exercise of his sole and absolute discretion, because of developments in the capital and tax-exempt municipal markets subsequent to the adoption of the Bond Ordinance.

Section 2. (a) In this Ordinance:

"Purchaser" means the purchaser of the Bonds whether the Bonds are sold, in the sole discretion and determination of the Finance Director (a) by a negotiated sale, (b) by a public sale to the responsible bidder(s) offering to purchase the Bonds at the lowest true interest costs to the City at the public sale for the Bonds, or (c) by a private placement to a single purchaser.

(b) The following definition in Ordinance No. 19151 is hereby amended to read as follows:

"**Registra**r" means either (a) Wells Fargo Bank, National Association or (b) the City Treasurer, as determined by the Finance Director to be in the best interest of the City, as registrar and paying agent with respect to the Bonds.

Section 3. Section 3.2 of Ordinance No 19151 is hereby amended to read as follows:

Section 3.2. Form of Bonds Generally. The definitive Bonds are issuable in registered form in such denominations as the Finance Director shall designate. The Bonds issued under the provisions of this Article shall be substantially in the form set forth in **Article IX**, 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.

Section 4. Section 3.3 (d) of Ordinance No. 19151 is hereby amended to read as follows:

(d) The Finance Director is hereby authorized to hereafter, from time to time, specify, set, designate, determine, establish, approve, execute, deliver and appoint, as the case may be, and in each case in accordance with and subject to the provisions of this Ordinance, (1) the date of original issue of the Bonds and the manner of numbering, (2) the principal amount of the Bonds to be issued, which shall in no event exceed an aggregate of $3,750,000 in original principal amount, and the authorized denominations thereof, (3) whether the Bonds shall be issued in Book-Entry-Only form or otherwise, (4) the Principal Payment Date(s) for the Bonds and the principal amount of the Bonds to mature on each of such dates, (5) the date of final maturity of the Bonds, which shall in no event be later than December 31, 2023, (6) the date or dates upon which the Bonds shall be sold, and whether the Bonds shall be sold by a negotiated sale, a public sale or a private placement, (7) if the Bonds are to be sold (A) at a public sale, the form of the Notice of Sale and the Purchaser, and (B) by a negotiated sale or a private placement, the identity of the Purchaser and the purchase price to be paid therefor (which shall not be less than ninety-eight percent (98.00%) of the principal amount thereof, and the form and contents of any purchase agreement for the Bonds; (8) the rate or rates of interest to be carried by the Bonds (not to exceed 7.50% for any maturity), (9) 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) payable upon such redemption and the respective periods in which differing Redemption Prices shall be payable, (10) the form and contents of any Preliminary Official Statement, final Official Statement or other offering or disclosure document used by the City in connection with the issuance, sale and delivery of the Bonds, together with all related certifications and documents to the extent necessary to enable the Purchaser to comply with Rule 15c2-12 of the Securities and Exchange Commission, if applicable, (11) the identity of the Registrar, and (12) all of the other terms and provisions of each Series of Bonds not otherwise specified or fixed by the provisions of this Ordinance. The Finance Director is hereby authorized and directed to approve, execute and deliver for and on behalf of the City all necessary agreements, certificates or other documents necessary to effect the issuance, sale and delivery of the Bonds to the Purchaser.

Section 5. Section 3.3(f) of the Bond Ordinance is hereby amended to read as follows:

(f) If the Finance Director determines that the Bonds shall all be initially issued as Book-Entry-Only Bonds, the Bonds shall be subject to the following provisions:

(1) Except as otherwise provided in **Sections 3.3(f)(3)** and **(4)**, the registered owner of all of the Bonds shall initially be Cede & Co., as nominee for DTC. Payment of semiannual interest for any Bond registered as of each record date in the name of Cede & Co. shall be made by wire transfer of New York clearinghouse or equivalent next-day funds to the account of Cede & Co. on the Interest Payment Date for the Bonds at the address indicated on the record date for Cede & Co. in the registry books of the City kept by the Registrar.

(2) The Bonds shall be initially issued in the form of separate single authenticated fully registered Bonds in the amount of each separate stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the registry books of the City kept by the Registrar in the name of Cede & Co., as nominee of DTC. The Registrar and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal or Redemption Price of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Owners, registering the transfer of Bonds, obtaining any consent or other action to be taken by Owners and for all other purposes whatsoever, and neither the Registrar nor the City shall be affected by any notice to the contrary. Neither the Registrar nor the City shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other person which is not shown on the registration books of the Registrar as being a Owner, with respect to the accuracy of any records maintained by DTC or any Participant, the payment by DTC or any Participant of any amount in respect of the principal or Redemption Price of or interest on the Bonds; any notice which is permitted or required to be given to Owners; the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds; or any consent given or other action taken by DTC as Owner. The Registrar shall pay all of the principal of or Redemption Price and interest on the Bonds only to DTC, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of or Redemption Price and interest on the Bonds to the extent of the sum or sums so paid. Except under the conditions of **Sections 3.3(f)(3)** and **(4)**, no person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the City to make payments of principal of or Redemption Price and interest pursuant hereto. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to record dates, the term "Cede & Co." herein shall refer to such new nominee of DTC.

(3) If DTC gives notice to the City or the Registrar pursuant to its representation letter that it will discontinue providing its services as securities depository with respect to the Bonds, the City shall either appoint a successor securities depository or terminate the book-entry system for the Bonds.

(A) Any successor securities depository must be a clearing agency registered with the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 and must enter into an agreement with the City and the Registrar agreeing to act as the depository and clearing agency for all the Bonds. After such agreement has become effective, DTC shall present the Bonds for registration of transfer and the Registrar shall register them in the name of the successor securities depository or its nominee. If a successor securities depository has not accepted such position prior to the effective date of DTC's termination of its services, the book-entry system shall automatically terminate and may not be reinstated without the consent of all the registered Owners of the Bonds.

(B) If the City elects to terminate the book-entry system for the Bonds, it shall so notify the Registrar in writing received by the Registrar not less than thirty (30) days in advance of such date of termination, which date shall be stated in such notice. Not less than ten (10) days in advance of such termination date the

City shall provide the Registrar with such number of blank bond certificates as the City and the Registrar shall mutually agree upon. From and after such termination date, upon presentation of the Bonds, or any of them, by DTC or its nominee to the Registrar for registration of transfer, the Registrar shall register the transfer and all provisions of **Section 3.3(f)** shall immediately cease to be in effect.

(4) The City may elect to terminate the book-entry system for the Bonds at any time by giving written notice to DTC and the Registrar. On the effective date of such termination, the provisions of this **Section 3.3(f)** shall cease to be in effect, except that the Registrar shall continue to comply with applicable provisions of the representation letter with respect to Bonds as to which DTC remains the registered Owner. After such termination, the Registrar shall, upon presentation of Bonds by DTC or its nominee for registration of transfer or exchange, make such transfer or exchange.

(5) Upon the appointment of a successor securities depository or termination of the book-entry system, the Registrar shall give notice of such event to the registered Owners of Bonds (through DTC) and (A) of the name and address of the successor securities depository or (B) that Bonds may now be obtained by the Beneficial Owners, or their nominees, upon proper instructions being given to DTC by the relevant Participant and compliance by DTC with the provisions hereof regarding registration of transfers.

(6) Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC (or any successor nominee), all payments with respect to the principal or Redemption Price of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the representation letter.

(7) In connection with any notice or other communication to be provided to Owners, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give DTC notice of such record date not less than 30 calendar days in advance of such record date to the extent possible.

(g) Bonds issued upon transfer or exchange of Bonds shall be dated as of the date of original issue or the Interest Payment Date six months preceding the Interest Payment Date next following the date of registration thereof in the office of the Registrar, as shall be appropriate, 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 Bonds shall be in default, the Bonds issued in lieu of Bonds surrendered for transfer or exchange may be dated as of the date to which interest has been paid in full on the Bonds surrendered; and provided further, that if the date of registration shall be prior to the first interest payment date, the Bonds shall be dated as of their date of original issue. The Bonds shall bear interest from their date of original issue.

(h) When any of the Bonds shall have been duly called for redemption and payment thereof duly made or provided for, interest thereon shall cease from and after the date specified for the redemption thereof.

(i) The Bonds, registration provisions, form of authentication and form of assignment pertaining thereto shall be substantially in the forms set forth below with such changes as may be determined by the Finance Director and such other necessary or appropriate variations, omissions and insertions as are incidental to numbering, denominations, interest rate or rates, registration

provisions, redemption provisions and other details thereof or as are otherwise permitted or required by law or this Ordinance.

(j) The net proceeds derived by the City from issuance and sale of the Bonds shall be applied by the Finance Director to (A) the payment of the costs of the Project, (B) paying the interest accruing and falling due on the Bonds through and including November 1, 2010, (C) the payment of the costs of issuance of the Bonds, and (D) for such other purposes related to the Project and the City Improvements as the Finance Director may direct.

Section 6. Section 3.6 of Ordinance No. 19151 is hereby amended to read as follows:

Section 3.6. Negotiability, Registration and Transfer of Bonds. The Registrar is hereby appointed as Registrar for the Bonds and as such shall keep books for the registration and registration of transfer of Bonds as provided in this Ordinance. If determined by the Finance Director to be appropriate, the transfer of any Bond may be restricted pending receipt by the City of evidence that the assignee is a bank or a qualified institutional buyer as defined in Rule 144A promulgated by the Securities and Exchange Commission and the Owner has obtained and provided to the City, prior to such transfer and assignment, an investor's letter in form and substance satisfactory to the City and its counsel. 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 his 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 Series and 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 Owner. 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 the 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 Article IV.

Section 7. Section 3.10(a) of the Ordinance No. 19151 is hereby amended to read as follows:

(a) The Registrar (as determined by the Finance Director) is hereby appointed as Registrar with respect to the Bonds. If determined by the Finance Director to be appropriate, the Registrar shall serve under the terms of an agreement entitled "Bond Registrar and Paying Agent Agreement" (the **"Registrar's Agreement"**) between the City and the Registrar in substantially the form of **Exhibit A** attached hereto and made a part hereof. The Finance Director is hereby authorized to execute the Registrar's Agreement. If the Registrar shall merge or consolidate with another entity and the resulting entity is a bank or trust company authorized by law to conduct

such business, such resulting entity shall serve as Registrar. The City reserves the right to remove the Registrar upon 30 days' notice and upon the appointment of a successor Registrar, 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 stated herein and in the Registrar's Agreement and no other duties or obligations shall be implied to the Registrar.

Section 8. 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 the Bonds, but the Owners of the Bonds 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 9. 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 the State 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 10. Effect of Article and Section Headings and Table of Contents. The headings or titles of the several Articles and Sections, 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 11. Repeal of Inconsistent Ordinances. The definition of "Registrar" and Sections 3.2, 3.3(d), 3.3(f), 3.6 and 3.10(a) of Ordinance No. 19151 are hereby repealed. 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 12. 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 City Clerk.

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INTRODUCED BY:

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PASSED _____, 2009.

AYES: _____

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NAYS: _____

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CONFLICT OF INTEREST:

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APPROVED: _____, 2009.

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Mayor

ABSENT OR NOT VOTING:

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Approved as to Form:

_____
City Attorney

_____
Bond Counsel