

THE CITY OF LINCOLN, NEBRASKA

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN CONTRACT BETWEEN THE CITY AND THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY (PROJECT NO. C317830) AND A RELATED PROMISSORY NOTE IN A PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000; AND RELATED MATTERS.

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

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

(a) Pursuant to Section 15-717, Reissue Revised Statutes of Nebraska, as amended, and Article VIII, Section 7 of its Home Rule Charter (the "Charter"), the City has owned and now owns and operates one or more sanitary sewer collection systems and one or more sanitary sewer disposal and treatment plants (collectively, the "System") for the use and benefit of the City and its inhabitants.

(b) The City is authorized, pursuant to the provisions of (1) Sections 15-244 and 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended, and (2) Article IX, Section 44 of the Charter, to issue and sell its sanitary sewer revenue bonds and other obligations, payable solely from the revenues derived and to be derived from the operation of the System.

(c) Pursuant to Ordinance No. 18171, adopted by the Council on May 5, 2003, and approved by the Mayor on May 9, 2003, as amended and supplemented to the date of adoption of this Ordinance (collectively the "Bond Ordinance"), the City has issued and outstanding sanitary sewer revenue bonds as follows payable solely from and secured by a lien upon the Net Revenues (as defined in the Bond Ordinance) of the System:

<u>Series of Bonds</u>	<u>Date of Bonds</u>	<u>Amount Issued</u>	<u>Amount Outstanding</u>
Sanitary Sewer Revenue Bonds Series 2003 (the "Series 2003 Bonds") (Ordinance No. 18172)	July 31, 2003	\$55,000,000	\$43,825,000
Sanitary Sewer Revenue Bonds Series 2005 (the "Series 2005 Bonds") (Ordinance No. 18572)	August 3, 2005	\$18,000,000	\$15,525,000

<u>Series of Bonds</u>	<u>Date of Bonds</u>	<u>Amount Issued</u>	<u>Amount Outstanding</u>
Sanitary Sewer Revenue Bonds Series 2007 (the “ Series 2007 Bonds ”) (Ordinance No. 18900)	April 18, 2007	\$20,460,000	\$19,060,000

(d) Pursuant to Ordinance No. 19286 adopted by the Council on August 10, 2009 and approved by the Mayor on August 13, 2009, the City has executed and delivered (1) a Loan Contract, dated August 27, 2009, between Nebraska Department of Environmental Quality (“**NDEQ**”) and the City of Lincoln, Nebraska, Project No. C317078, in the amount of \$5,000,000 (the “**2009 Contract**”) and a related promissory note, dated August 27, 2009 (the “**2009 Note**”), to pay the costs of improvements at the Theresa Street Wastewater Treatment Facility and the Northeast Wastewater Treatment Facility, and (2) an American Recovery and Reinvestment Act Loan Contract, dated August 27, 2009, between Nebraska Department of Environmental Quality and the City of Lincoln, Nebraska, Project No. C317247, in the amount of \$5,000,000 (the “**ARRA Contract**”) and a related promissory note, dated August 27, 2009 (the “**ARRA Note**”), to pay the costs of constructing a portion of the Stevens Creek Trunk Sewer and other renovations and repairs to the existing sewer lines in the City.

(e) It is now necessary, desirable, advisable and in the best interest of the City that it (1) acquire, construct, equip and furnish certain improvements to the System (collectively, the “**2011 Project**”) as specified in Contract C317830 (hereinafter defined) and (2) finance a portion of the costs of the 2011 Project with a loan (the “**Loan**”) from NDEQ, which Loan shall constitute Subordinated Indebtedness (as defined in the Bond Ordinance) payable solely from the Surplus Fund established by the Bond Ordinance on a parity with the 2009 Note and the ARRA Note, junior and inferior to the payment of the principal or redemption price of and interest on the Series 2003 Bonds, the Series 2005 Bonds, the Series 2007 Bonds, and all other Additional Bonds as shall be issued from time to time pursuant to the Bond Ordinance (collectively, the “**Bonds**”) as specified in the Bond Ordinance.

(e) It is necessary, desirable, advisable and in the best interest of the City that it execute and deliver to NDEQ the Loan Contract Between Nebraska Department of Environmental Quality and The City of Lincoln, Nebraska, Project No. C317830 (“**Contract C317830**”) setting forth the terms and conditions upon which NDEQ will make the Loan to the City, the forms of which have been presented to the Council.

Section 2. Definitions. All terms defined in **Section 1.01** of Ordinance No. 18171 shall have the same meanings in this Ordinance as such terms are given in such **Section 1.01**, except as otherwise defined herein.

Section 3. Authorization of Contract. Contract C317830, together with the related Promissory Note of the City (the “**2011 Note**”), in an amount not to exceed \$20,000,000 in the form or substantially the form attached hereto as **Exhibit A** and incorporated herein by reference, but with such changes, modifications, amendments, revisions and alterations thereof as the Finance Director shall, in the exercise of his own independent judgment and absolute discretion, determine to be necessary, proper, appropriate, advisable or desirable in order to accomplish the purposes set forth in Contract 317830, be and the same is in all respects hereby authorized, adopted, specified, accepted, ratified, approved and confirmed, and the Finance Director is hereby authorized to execute and deliver Contract C317830 and the 2011 Note (collectively, the “**Loan Documents**”) for and on behalf of the City.

Section 4. Ratification of Prior Actions; General and Specific Authorizations.

(a) All actions heretofore taken by the City, by the Finance Director and by all other officers, officials, employees and agents of the City, including without limitation the expenditure of funds, and the selection, appointment and employment of consulting engineers, accountants, financial advisors, and bond counsel, in connection with the execution and delivery of the Loan Documents, together with all other actions taken in connection with any of the matters that are the subject hereof, are hereby in all respects authorized, adopted, specified, accepted, ratified, approved and confirmed.

(b) Without in any way limiting the power, authority or discretion granted or delegated elsewhere in this Ordinance, the Council hereby (1) authorizes and directs the Mayor, Finance Director, Treasurer, Clerk, City Attorney, 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 and NDEQ and its counsel, shall consider necessary, advisable, desirable or appropriate in connection with this Ordinance, or other documents used in connection with the execution and delivery of the Loan Documents, including without limitation and whenever appropriate the execution and delivery thereof and of all other related documents, instruments, certifications and opinions, and (2) delegates, authorizes and directs the Finance Director the right, power and authority to exercise his independent judgment and absolute discretion in (A) determining and finalizing the terms, provisions, form and contents of the Loan Documents 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 the execution and delivery of the Loan Documents. The execution and delivery by the Finance Director or by any such other officer, official, employee or agent of any such documents, instruments, certifications and opinions, or the performance by them of any act in connection with any of the matters that are the subject of this Ordinance and of each of the Loan Documents referred to herein, shall constitute conclusive evidence of both the City's and their approval of the terms, provisions and contents thereof and 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.

Section 5. Headings. The headings of sections of this Ordinance are set forth therein solely for convenience of reference only and shall not affect the construction or interpretation of this Ordinance or of any section hereof.

Section 6. Publication and Effectiveness of this Ordinance. This Ordinance, after its passage, shall in lieu of and in place of newspaper publication, be posted by the Clerk in the manner provided for in **Article VII, Section 7** of the Charter of the City, and shall take effect and be in force from and after its passage and posting in accordance with **Article VII, Section 7** of the Charter. The Clerk shall also publish once in the *Lincoln Journal-Star*, a newspaper published and of general circulation in the City, a notice of such passage in substantially the following form:

Notice is hereby given that on _____, 2011, the Council of the City of Lincoln, Nebraska passed Ordinance No. _____ entitled: [here shall be set forth the title of this Third Series Ordinance].

Notice is hereby further given that said Ordinance No. _____ was approved by the Mayor of the City of Lincoln, Nebraska, on _____, 2011.

Copies of said Ordinance No. _____ are on file in the office of the Clerk of the City of Lincoln, Nebraska, Room _____, _____ Building, 555 South 10th Street, Lincoln, Nebraska 68508, and are available for examination by the public.

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INTRODUCED BY:

PASSED _____, **2011.**

AYES: _____

NAYS: _____

ABSENT OR NOT VOTING:

Approved as to Form:

City Attorney

Bond Counsel

CONFLICT OF INTEREST:

APPROVED: _____, **2011.**

Mayor