

ORDINANCE NO. 942

AN ORDINANCE AUTHORIZING A LOAN FROM A BANK TO THE CITY, EVIDENCED BY A PROMISSORY NOTE, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED SEVEN HUNDRED FIFTEEN THOUSAND DOLLARS (\$715,000) TO PROVIDE FINANCING FOR A PORTION OF THE COSTS OF CONSTRUCTING CERTAIN STREET AND OTHER NECESSARY IMPROVEMENTS IN AND FOR THE CITY; PRESCRIBING THE TERMS AND FORM OF SUCH LOAN AND PROMISSORY NOTE; PROVIDING FOR PAYMENT OF THE INTEREST ON AND PRINCIPAL OF SUCH LOAN AND PROMISSORY NOTE; PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND RELATED MATTERS

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

Section 1. The Mayor and Council (the "Council") of the City of Gothenburg, Nebraska (the "City") hereby find and determine as follows:

(a) It is necessary for the City to finance a portion of the costs of certain street and other necessary improvements in and for the City (the "Project");

(b) The City has proposed to finance the Project through a loan (the "Loan") to the City from First State Bank, Gothenburg, Nebraska, (the "Bank") evidenced by a promissory note (the "Note"), pursuant to authority granted to the City in Section 18-201, Reissue Revised Statutes of Nebraska (the "Act");

(c) Pursuant to the requirements of the Act, financing the Project through traditional bond financing would be impractical and could not be completed within the time restraints facing the City for the Project;

(d) The public notice for the meeting at which this ordinance is being considered included a clear notation that this ordinance authorizing a direct borrowing from a bank was on the agenda;

(e) The municipal budget of the City for fiscal year 2016-17 is \$21,325,643 and the City has no other indebtedness outstanding which is authorized under to the Act;

(f) The City considered financing options from multiple financial institutions prior to consideration of this ordinance; and

(g) All conditions, acts and things required by law to exist or to be done precedent to the Loan, evidenced by the Note, in the principal amount of not to exceed \$715,000 pursuant to the Act, for the purpose of financing the Project and related expenses, do exist and have been done in due form and time as required by law.

Section 2. (a) The Mayor and Council further find and determine that all conditions, acts and things required by law to exist or to be done precedent to the Loan, evidenced by the Note, pursuant to the Act, do exist and have been done as required by law. The Note shall consist of one fully registered Note without coupons, bearing interest at a rate of two percent (2.00%) per annum. To evidence the Loan, the Note or any portion thereof is hereby authorized to be issued to the Bank pursuant to terms approved by

the Mayor or City Administrator (each, an "Authorized Officer"). In connection therewith, an Authorized Officer is hereby authorized to execute a Designation of Final Terms, which may be evidenced by the terms of the Note as delivered to the Bank, (the "Designation") to specify, determine, designate, establish and appoint, as the case may be (i) the maximum drawable principal amount of the Note, in an amount not to exceed \$715,000, (ii) the dated date and final maturity date of the Note, which shall not be later than 2 years after the date of the Note, (iii) the dates on which principal and interest will be paid on the Loan, (iv) the date of delivery and date of the Note (the "Date of Original Issue"), (v) the amount of the Initial Advance (defined herein) and the amounts, terms and limitations of any and all subsequent Advances, and (vi) all other terms and provisions of the Note not otherwise specified or fixed by this Ordinance, including but not limited to terms of the Note as may be required by the Bank which are, in an Authorized Officer's sole discretion, reasonable and appropriate.

(b) On the Date of Original Issue, an initial advance (the "Initial Advance") will be made in the principal amount of not less than \$50,000 (which amount may be determined in the Designation), by transferring such amount to the City. All subsequent advances (each, an "Advance") will be made, if at all, upon the written request of the City to the Bank, at least five Business Days prior to the date on which such Advance is to be made.

(c) The Note shall be subject to prepayment at the option of the City at any time (or on or after such other date as may be determined in the Designation), in whole, or in part from time to time in such principal amount as the City, in its sole and absolute discretion shall determine. If less than all of the principal amount thereof is to be prepaid, no surrender of the Note shall be necessary.

Section 3. Interest on the Note shall accrue from the Date of Original Issue and be paid at maturity or earlier redemption by check or draft mailed by the Registrar or its successor on such date to the Bank at its address as it appears on the Note Register maintained by the Registrar or its successor subject to the provisions of the following paragraph. The principal of and interest on the Note is payable in lawful money of the United States of America.

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

Section 4. The Note shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and Clerk and shall have the City Seal impressed or imprinted on the Note. In case any officer whose signature or a facsimile of whose signature shall appear on the Note and shall cease to be such officer before the delivery of the Note, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery. Notwithstanding such execution, the Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until a certificate of authentication on the Note has been duly executed by the manual signature of the Registrar. The executed certificate of authentication on the Note shall be conclusive evidence that it has been authenticated and delivered under this Ordinance.

Section 5. The Note shall be in substantially the following form, with such changes as may be approved by an Authorized Officer:

UNITED STATES OF AMERICA
STATE OF NEBRASKA
CITY OF GOTHENBURG, NEBRASKA
PROMISSORY NOTE

Interest Rate
2.00%

Maturity Date
_____, 20____

Date of Delivery
_____, 2017

REGISTERED OWNER: FIRST STATE BANK, GOTHENBURG, NEBRASKA

PRINCIPAL AMOUNT: SEE SCHEDULE I ATTACHED HERETO

The CITY OF GOTHENBURG, NEBRASKA (the "City"), hereby acknowledges itself to owe and for value received, hereby promises to pay to the Registered Owner named above or its registered permitted assigns, but only from the sources and other funds hereinafter described in lawful money of the United States of America, on the Maturity Date stated above (or earlier as hereinafter referred to), on the dates herein specified, the lesser of (i) the principal sum of \$715,000, or (ii) the aggregate principal amount advanced by the Registered Owner from time to time as shown in the attached Schedule I, together with interest on the unpaid principal balance from time to time outstanding, computed on a three hundred sixty (360) day year with twelve 30-day months, as follows:

The unpaid principal balance of this Note shall bear interest at a rate of 2.00% per annum from the Date of Issue through and including the Maturity Date. All interest on this Note shall be computed on the basis of a three hundred sixty (360) day year with twelve 30-day months.

Interest on the unpaid principal balance of this Note shall be due and payable at maturity or earlier redemption hereof. A final installment representing the entire unpaid principal balance of this Note, and all accrued and unpaid interest thereon and all fees and charges in connection therewith, shall be due and payable on the Maturity Date reflected above.

The Principal Amount and the interest due at maturity, on the dates herein specified, or upon redemption prior to maturity, is payable to the Registered Owner hereof in lawful money of the United States of America without need for presentation and surrender of this note. Principal and interest on this note shall be paid by check or draft mailed by the City Treasurer of the City (the "Registrar") on the date such principal and interest is due and payable to the Registered Owner at such Registered Owner's address as it appears on the registration books of the Registrar. For the prompt payment of this note, both principal and interest at the time the same becomes due, the full faith, credit, and resources of the City are hereby pledged. This note is subject to prepayment at the option of the City prior to the stated maturity thereof at any time.

This note is issued for the purpose of financing the costs of constructing certain street and other necessary improvements in and for the City and paying the costs of issuance of this note. This note is issued under the authority of and in compliance with the laws of the State of Nebraska governing the City, and pursuant to Ordinance No. 942 of the City (the "Ordinance") duly enacted and by proceedings duly had by the Mayor and Council.

This note is transferable by the Registered Owner hereof as provided by the Ordinance and subject to the restrictions on transfer specified in Section 7 of the Ordinance and only upon delivery of a Bank Letter, as described in the Ordinance. The City and the Registrar may deem and treat the Registered Owner hereof as the absolute owner for the purpose of receiving payment of or on account of principal hereof, premium, if any, and interest due hereon and for all other purposes.

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

The City has in the Ordinance designated such note as a "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this note did exist, did happen and were done and performed in regular and due form and time as required by law, and that the indebtedness of the City, including this note, does not exceed any statutory limitation imposed by law. The City agrees that this note shall be secured by and be payable from any and all general fund resources of the City, including but not limited to any and all authorized levies of taxes, and shall not, to the fullest extent permitted by law, be limited as to payment to the City's general fund resources for any specific fiscal year, pursuant to Section 18-201, Reissue Revised Statutes of Nebraska. The City reserves the right to provide for payment of principal and interest on the Note from the further issuance of notes, bonds or other methods of financing.

This note shall not be valid or become obligatory for any purpose until it shall have been authenticated by the execution by the Registrar of the Certificate of Authentication endorsed hereon.

The records of the Registered Owner as to the Principal Amount and accrued interest outstanding, the date of the advances of such Principal Amount and payment of principal and interest on the Note shall be binding upon all parties.

IN WITNESS WHEREOF, the Mayor and Council have caused this note to be executed on behalf of the City by the manual or facsimile signatures of its Mayor and Clerk and have caused the City Seal to be impressed or imprinted hereon, all as of the Date of Issue set forth above.

CITY OF GOTHENBURG, NEBRASKA

ATTEST:

By: Brandi Kloeping
(Facsimile Signature)
Clerk

By: _____
(Facsimile Signature)
Mayor

[S E A L]

NOTE REGISTRAR AND PAYING AGENT'S
CERTIFICATE OF AUTHENTICATION

This note is described in the within-mentioned Ordinance.

CITY TREASURER, CITY OF
GOTHENBURG, NEBRASKA, Note Registrar
and Paying Agent

By: Brandi Kloeping

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

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within note 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 6. The Note shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and Clerk. In case any officer whose signature or facsimile thereof shall appear on the Note shall cease to be such officer before the delivery of such Note (including any note certificate delivered to the Registrar for issuance upon transfer), such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of the Note. The Note shall not be valid and binding on the City until authenticated by the Registrar. The Note shall be delivered to the Registrar for registration and authentication. Upon execution, registration and authentication of the Note, they shall be delivered to the City Treasurer, who is authorized to deliver them to the Bank upon receipt of (a) the Initial Advance, and (b) delivery to the City of a Bank Letter in substantially the form of Exhibit A hereto, but with such changes as may be approved by an Authorized Officer.

Section 7. The City Treasurer of the City of Gothenburg, Nebraska, is hereby appointed as Note Registrar and Paying Agent (the "Registrar") for the Note. The Registrar shall keep the books for the registration and transfer of Note at its office in Gothenburg, Nebraska. The name and registered address of the registered owner of the Note shall at all times be recorded in such books. The transfer of the Note may be registered upon the books kept for the registration and registration of transfer of Note only (i) upon presentation and surrender thereof to the Registrar together with an assignment duly executed by the registered owner or such registered owner's attorney or legal representative in such form as shall be satisfactory to the Registrar, (ii) if the City shall consent to such transfer in its discretion and (iii) if the assignee is a bank and the registered owner has obtained from such proposed transferee and provided to the Registrar, prior to such transfer and assignment, a Bank Letter in substantially the form of Exhibit A hereto. Upon any such registration of transfer, the City shall execute and the Registrar shall authenticate and deliver in exchange for such Note, a new Note. The Registrar may impose a charge sufficient to defray all costs and expenses incident to registrations of transfer and exchanges. In each case the Registrar shall require the payment by the owner requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

The Registrar shall be responsible for making the payments of principal and interest as the same fall due upon the Note from funds provided by the City for such purpose. Payments shall be made by the Registrar by mailing a check in the amount due for principal and interest to the registered owner of the Note, addressed to such owner's registered address as shown on the books of registration as required to be maintained under this Section 7. The City and the Registrar may treat the registered owner of the Note as the absolute owner of the Note for purposes of making payment thereon and for all other purposes. All payments on account of interest or principal made to the registered owner of the Note shall be valid and effectual and shall be a discharge of the City and the Registrar in respect of the liability upon the Note or claims for interest to the extent of the sum or sums so paid.

Section 8. After the Note is executed by the City it shall be delivered to the Registrar for authentication and registration as to ownership. After execution, authentication and registration of the Note, the City Treasurer is authorized and directed to deliver the Note to the Bank upon receipt of the Initial Advance (or such other amount as may be determined in the Designation).

Section 9. The City hereby agrees that the Loan, evidenced by the Note, shall be secured by and be payable from any and all general fund resources of the City, including but not limited to any and all authorized levies of taxes, and shall not, to the fullest extent permitted by law, be limited as to payment to the City's general fund resources for any specific fiscal year. The City reserves the right to provide for payment of principal and interest on the Note from the further issuance of notes, bonds or other methods of financing.

Section 10. The Clerk shall make and certify one or more complete transcripts of the proceedings had and done by the City precedent to the issuance of said Note, one of which transcripts shall be delivered to the purchaser of the Note. After being executed by the Mayor and Clerk, said Note shall be delivered to purchaser.

Section 11. The City hereby covenants and agrees that it will make no use of the proceeds of the Note which would cause the Note to be an arbitrage bond within the meaning of Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and further covenants to comply with said Sections 103(b)(2) and 148 and all applicable regulations thereunder throughout the term of said issue, including all requirements with respect to payment and reporting of rebates, if applicable. The City hereby covenants to take all action necessary to preserve the tax-exempt status of the interest on the Note for federal income tax purposes under the Code with respect to taxpayers generally. The City further agrees that it will not take any actions which would cause the Note to constitute "private activity bonds" within the meaning of Section 141 of the Code. The City hereby designates the Note as its "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i)(III) of the Code and covenants and warrants that it does not reasonably expect to issue bonds or other obligations aggregating in principal amount more than \$10,000,000 during the calendar year in which the Note is issued (taking into consideration the exception for current refunding issues). The Mayor is hereby authorized to make, or cause to be made, any and all certifications deemed necessary in connection with the designation of the Note as "qualified tax-exempt obligations".

Section 12. The City's obligation under this Ordinance shall be fully discharged and satisfied as to the Note authorized and issued hereunder, and said Note shall no longer be deemed outstanding hereunder when payment of the principal of such Note plus interest thereon to the date of maturity or redemption thereof (a) shall have been made or caused to be made in accordance with the terms thereof; or (b) shall have been provided by depositing with the Registrar or in escrow with a national or state bank having trust powers, in trust solely for such payment (i) sufficient moneys to make such payment or (ii) direct general obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States of America or obligations of an agency of the United States of America (herein referred to as "Government Obligations"), in such amount and maturing as to principal and interest at such times, as will insure the availability of sufficient moneys to make such payment, and such Note shall cease to draw interest from the date of 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 Note called or to be called for redemption prior to the stated maturity thereof, notice of redemption shall have been duly given. If moneys shall have been deposited in accordance with the terms hereof with the Registrar as escrow agent in trust for that purpose sufficient to pay the principal of such Note, together with all interest due thereon to the due date thereof or to the date fixed for the redemption thereof, as the case may be, all liability of the City for such payment shall forthwith cease, determine and be completely discharged, and such Note shall no longer be considered outstanding.

Section 13. Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the Council hereby (a) authorizes and directs the Authorized Officers, the 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, the initial purchaser of the Note and its counsel, shall consider necessary, advisable, desirable or appropriate in connection with this Ordinance and issuance, sale and delivery of the Note, including without limitation and whenever appropriate the execution and delivery thereof and of all other related documents, instruments, certifications and opinions, and (b) delegates, authorizes and directs the Mayor the right, power and authority to exercise his or her own independent judgment and absolute discretion in (i) determining and finalizing the terms, provisions, form and contents of any official statement utilized in offering the Note for sale to the public, (ii) determining and finalizing all other terms and provisions to be carried by the Note not specifically set forth in this Ordinance, and (iii) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to

effectuate the issuance, sale and delivery of the Note. The execution and delivery by the Mayor 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 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 14. If any one or more of the provisions of this Ordinance should be determined by a court of competent jurisdiction to be contrary to law, then such provisions shall be deemed severable from the remaining provisions of this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Note and the owners of the Note shall retain all the rights and benefits accorded to them under this Ordinance 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 in any particular case in any jurisdiction or jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstances, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 15. All ordinances, resolutions or orders, or parts thereof in conflict with the provisions of this Ordinance are to be extent of such conflict hereby repealed.

Section 16. This Ordinance shall be in force and take effect from and after its passage and publication in pamphlet form as provided by law.

PASSED AND APPROVED this 27th day of June, 2017.

ATTEST:

Mayor

Joyce E. Hudson

Brandi Klopping
City Clerk

[SEAL]

EXHIBIT A
FORM OF BANK LETTER

_____, 2017

City of Gothenburg, Nebraska
Gothenburg, Nebraska

Gilmore & Bell, P.C.
Omaha, Nebraska

Re: \$ _____ Promissory Note, dated _____, 2017

Ladies and Gentlemen:

The undersigned, First State Bank, (the "Bank") as lender and holder of the above-referenced note (the "Note") issued by the City of Gothenburg, Nebraska, (the "City") pursuant to and on the terms set forth in Ordinance No. 942 of the City passed by the City Council on June 20th, 2017, (the "Ordinance") hereby represents and warrants to you that:

1. Capitalized terms used herein and not otherwise defined are used with the meanings given such terms in the Ordinance.

2. The Bank has duly authorized, by all necessary action, the purchase of the Note and the right to receive the payments of principal of and interest on the Note pursuant to the terms and provisions of the Ordinance (the "Payments").

3. The Bank is a banking institution and has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the loan represented by the Note, the Payments, and the Ordinance. The Bank is able to bear the economic risks of that investment, including a complete loss of such loan.

4. The Bank understands that the obligations of the City to make the Payments under the Ordinance and the Note are payable from the sources described in the Ordinance.

5. The Bank acknowledges that it has either been supplied with or has been given access to information, including financial statements and other financial information, which it has asked for and the Bank has had the opportunity to ask questions and receive answers from appropriate officers of the City concerning the City, the Note, the Payments, the Ordinance and the security therefor, so that the Bank has been able to evaluate the risks and merits of purchasing the Note and make its decision to purchase the Note on the terms set forth in the Ordinance.

6. The Bank made its own inquiry and analysis with respect to the Ordinance, the Note, the Payments, and the security therefor, and other factors affecting the security and payment of such payments set forth in the Ordinance. The Bank is aware that the business of the City involves certain economic variables and risks that could adversely affect the security for the payments to be made by the City to the Bank under the terms of the Ordinance and the Note. The Bank has examined the legal documents relating to the Note and the Ordinance, including the proposed legal opinion to be delivered by Gilmore & Bell, P.C. as to the validity of and tax status of interest on the Note.

CERTIFICATE AS TO PUBLICATION
IN PAMPHLET FORM

The undersigned City Clerk of the City of Gothenburg, Nebraska hereby certifies that the attached is a true and correct copy of Ordinance No. 942 as passed by the Mayor and Council on June 20th, 2017, and as published in pamphlet form on June 28th, 2017.

Brandi Klopping
City Clerk

(SEAL)

NOTICE OF PASSAGE AND
PUBLICATION OF ORDINANCE

Public notice is hereby given that the Mayor and Council of the City of Gothenburg, Nebraska, at their meeting on June 20th, 2017, have passed and approved Ordinance No. 942 the title of which reads as follows:

ORDINANCE NO. 942

AN ORDINANCE AUTHORIZING A LOAN FROM A BANK TO THE CITY, EVIDENCED BY A PROMISSORY NOTE, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED SEVEN HUNDRED FIFTEEN THOUSAND DOLLARS (\$715,000) TO PROVIDE FINANCING FOR A PORTION OF THE COSTS OF CONSTRUCTING CERTAIN STREET AND OTHER NECESSARY IMPROVEMENTS IN AND FOR THE CITY; PRESCRIBING THE TERMS AND FORM OF SUCH LOAN AND PROMISSORY NOTE; PROVIDING FOR PAYMENT OF THE INTEREST ON AND PRINCIPAL OF SUCH LOAN AND PROMISSORY NOTE; PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND RELATED MATTERS

Said Ordinance has been published in pamphlet form. Copies of the Ordinance as so published are available at the office of the City Clerk at the City Hall in Gothenburg, Nebraska.

Brandi Klopping
City Clerk