

**ORDINANCE NO. 1001**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF HIGHWAY ALLOCATION FUND PLEDGE BONDS OF THE CITY OF GOTHENBURG, NEBRASKA, IN THE AGGREGATE STATED PRINCIPAL AMOUNT OF NOT TO EXCEED SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) FOR THE PURPOSE OF PAYING THE COSTS OF CERTAIN STREET IMPROVEMENTS AND RELATED IMPROVEMENTS WITHIN THE CITY; PRESCRIBING THE FORM OF SUCH BONDS TO BE ISSUED AND AUTHORIZING OFFICERS OF THE CITY TO APPROVE CERTAIN FINAL TERMS OF THE BONDS; PLEDGING FUNDS TO BE RECEIVED BY THE CITY FROM THE STATE OF NEBRASKA HIGHWAY ALLOCATION FUND FOR THE PAYMENT OF SAID BONDS; PROVIDING FOR THE LEVY AND COLLECTION OF TAXES TO PAY THE SAME IF NECESSARY; PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE DELIVERY OF THE BONDS TO THE PURCHASER; AND PROVIDING FOR THE DISPOSITION OF BOND PROCEEDS; AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.**

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

Section 1. The Mayor and City Council hereby find and determine: that the City of Gothenburg, Nebraska (the "City") requires the construction of certain streets and other appurtenant related improvements within the City, (the "Project") all as set out in the project scope of improvements as prepared by the special engineers for the City; that the City's Engineers heretofore prepared plans, specifications and estimates of cost for the Project; that bids have been taken and a contract awarded for the construction of the aforesaid street improvements; that the City has the authority to fund the Project costs through issuance of highway allocation fund pledge bonds pursuant to Section 66-4,101, R.R.S. Neb. 2018, as amended (the "Act"); that the City has no other funds on hand for the cost of the Project; that funds are required by the City with respect to the Project, including issuance costs, in an amount not less than \$750,000; and, that it is necessary and advisable for the City to provide financing for the Project by the issuance of its bonds and it is necessary and advisable to borrow the sum of not to exceed \$750,000 through the issuance of its Highway Allocation Fund Pledge Bonds, Series 2021 (the "Bonds"); that the City's projected receipts from the Nebraska Highway Allocation Fund for the fiscal year ending September 30, 2021 are \$428,394; that the City has issued and outstanding: (a) \$410,000 in original principal amount of Highway Allocation Fund Pledge Bonds, Series 2017, dated April 5, 2017; (b) \$350,000 in original principal amount of Highway Allocation Fund Pledge Bonds, Series 2018, dated March 15, 2018; and (c) \$1,300,000 in original principal amount of Highway Allocation Fund Pledge Bonds, Series 2020, dated July 15, 2020, (the "Prior Bonds") and no other outstanding bonds issued pursuant to the Act; that based upon the City's current receipts from the Nebraska Highway Allocation Fund, the City anticipates that future receipts will be sufficient to pay debt service on the Prior Bonds and the Bonds as and when the same fall due.

Section 2. (a) The Mayor and Council further find and determine that (i) it is necessary, desirable, advisable and in the best interest of the City to issue the Bonds in order to provide funds to pay the costs of the Project; and, (ii) all conditions, acts and things required by law to exist or to be done precedent to the issuance of the Bonds, in the aggregate stated principal amount of not to exceed \$750,000 pursuant to the Act, and other applicable statutes, do exist and have been done as required by law. To provide funds for the purpose of paying the costs of the Project as set forth in Section 1 hereof, there shall be and there are hereby ordered issued the Highway Allocation Fund Pledge Bonds of the City, in the aggregate stated principal amount of not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000).

(b) The Bonds or any portion thereof are hereby authorized to be sold pursuant to a negotiated sale with such underwriting firm (the "Underwriter") as determined by the Mayor, City Administrator or City

City Treasurer (each, an "Authorized Officer"). In connection with such sale, each Authorized Officer are hereby authorized to specify, determine, designate, establish and appoint, as the case may be, in one or more written designations which may be included in a bond purchase agreement (each, a "Designation"), (i) the aggregate purchase price of the Bonds and the underwriting discount which shall not exceed 2.00%, (ii) the form and contents of any bond purchase agreement in connection with such sale, (iii) the title, dated date, aggregate principal amount (including the aggregate principal amounts of serial Bonds and term Bonds, if any), which aggregate stated principal amount shall not exceed \$750,000, and the final maturity date, which shall not be later than December 15, 2041, (iv) the principal amounts maturing in each year, (v) the rate or rates of interest to be borne by each principal maturity, provided that the true interest cost of the Bonds shall not exceed 3.00%, (vi) the principal payment dates and interest payment dates, (vii) whether the Bonds will be subject to redemption prior to their stated maturity, and if subject to such optional redemption, the provisions governing such redemption, including a redemption price not to exceed 104% of the principal amount then being redeemed plus accrued interest to the date of redemption, (viii) the amount and due date of each sinking fund installment for any of the Bonds issued as term Bonds, (ix) the designation of the Paying Agent and Registrar and the form and content of any agreement between the City and such entity and (x) all other terms and provisions of the Bonds not otherwise specified or fixed by this Ordinance.

Section 3. The Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue for the Bonds shall be date of original delivery. Interest on the Bonds, at the respective rates for each maturity, shall be payable semi-annually on the dates determined in the Designation (each an "Interest Payment Date"), and the Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date, whichever is later. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the fifteenth day immediately preceding the Interest Payment Date (the "Record Date"), subject to the provisions of Section 4 hereof. The Bonds shall be numbered from 1 upwards in the order of their issuance. No Bond shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the Bonds issued shall be as directed by the initial purchaser thereof. Payments of interest due on the Bonds prior to maturity or earlier redemption shall be made by the Paying Agent and Registrar, designated in Section 4 hereof, by mailing a check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each Bond, as of the Record Date for such Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 4 hereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity, together with unpaid accrued interest thereon, shall be made by the Paying Agent and Registrar to the registered owners upon presentation and surrender of the Bonds to the Paying Agent and Registrar. The City and the Paying Agent and Registrar may treat the registered 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 Paying Agent and 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 or principal made to the registered owner of any Bond in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and the Paying Agent and Registrar, in respect of the liability upon the Bonds or claims for interest to the extent of the sum or sums so paid.

Section 4. The Authorized Officers are hereby authorized to designate the Paying Agent and Registrar for the Bonds in a Designation, which Paying Agent and Registrar may be a bank or trust company. Said Paying Agent and Registrar shall serve in such capacities under the terms of an agreement entitled "Paying Agent and Registrar's Agreement" between the City and said Paying Agent and Registrar and the Mayor and City Clerk are hereby authorized to execute said agreement. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the Bonds at its office. The names and registered addresses of the registered owner or owners of the Bonds shall at all times be recorded in such books. Any Bond may be transferred pursuant to its provisions at the office of the

Paying Agent and Registrar by surrender of such Bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to the Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar, on behalf of the City, will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of the transferee owner or owners, a new Bond or Bonds of the same series, interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Bonds by this Ordinance, one Bond may be transferred for several such Bonds of the same series, 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 series, 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 Paying Agent and Registrar shall not be required to transfer any Bond during any period from any Record Date until its 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 5. In the event that payments of interest due on the Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 6. In addition to any mandatory sinking fund redemptions, the Bonds shall be subject to redemption at the option of the City, in whole or in part, prior to maturity at any time on or after five years after the date of original issue, at par plus accrued interest on the principal amount redeemed to the date fixed for redemption (or such other date or dates as may be determined in a Designation). The City may select the Bonds to be redeemed for optional redemption in its sole discretion. Bonds for mandatory redemption shall be selected by the Paying Agent and Registrar using any random method of selection determined appropriate by the Paying Agent and Registrar. Bonds redeemed pursuant to the requirements for mandatory redemption shall be redeemed at par plus accrued interest on the principal amount redeemed. The Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Bonds redeemed in part only shall be surrendered to the Paying Agent and Registrar in exchange for a new Bond evidencing the unredeemed principal thereof. Notice of redemption of any Bond called for redemption shall be given, at the direction of the City in the case of optional redemption and without further direction in the case of mandatory redemption, by the Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such Bond at said owner's registered address. Such notice shall designate the Bond or Bonds to be redeemed by maturity or otherwise, the date of original issue, series and the date fixed for redemption and shall state that such Bond or Bonds are to be presented for prepayment at the office of the Paying Agent and Registrar. In case of any Bond partially redeemed, such notice shall specify the portion of the principal amount of such Bond to be redeemed. No defect in the mailing of notice for any Bond shall affect the sufficiency of the proceedings of the City designating the Bonds called for redemption or the effectiveness of such call for Bonds for which notice by mail has been properly given and the City shall have the right to further direct notice of redemption for any such Bond for which defective notice has been given.

Section 7. If the date for payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the municipality where the Paying Agent and Registrar is located 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 8. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COUNTY OF DAWSON

CITY OF GOTHENBURG, NEBRASKA  
HIGHWAY ALLOCATION FUND PLEDGE BOND  
SERIES 2021

No. \_\_\_\_\_

\$

Interest Rate  
%

Maturity Date  
\_\_\_\_\_, 20\_\_

Date of Original Issue  
\_\_\_\_\_, 2021

CUSIP

Registered Owner: Cede & Co.

Principal Amount:

The CITY OF GOTHENBURG, NEBRASKA (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner specified above, or registered assigns, the Principal Amount specified above in lawful money of the United States of America on the Maturity Date specified above with interest thereon to maturity (or earlier redemption) computed on the basis of a 360-day year consisting of twelve 30-day months from the Date of Original Issue or most recent Interest Payment Date, whichever is later, at the Interest Rate per annum specified above, payable semiannually on \_\_\_\_\_ and \_\_\_\_\_ of each year, beginning \_\_\_\_\_, 20\_\_ (each of such dates an "Interest Payment Date"). The Principal Amount hereof, together with unpaid accrued interest due at maturity or upon earlier redemption, is payable upon presentation and surrender of this bond at the office of \_\_\_\_\_, as the Paying Agent and Registrar, in \_\_\_\_\_, Nebraska. Interest on this bond due prior to maturity or earlier redemption will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day immediately preceding such Interest Payment Date, to such owner's registered address as shown on such books and records. Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the record date such interest was payable, and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purposes become available.

This bond is one of an issue of fully registered bonds (the "Bonds") of the total principal amount of \_\_\_\_\_ (\$ \_\_\_\_\_), of even date and like tenor except as to date of maturity, rate of interest and denomination which were issued by the City in strict compliance with Section 66-4,101, Reissue Revised Statutes of Nebraska, as amended, and other applicable statutes for the purpose of paying the costs of certain street improvements and related improvements in the City. The issuance of such bonds has been authorized by proceedings duly had and an ordinance legally passed and approved by the Mayor and Council of the City (the "Ordinance").

The Bonds are subject to redemption at the option of the City, in whole or in part, at any time on or after five years after the date of delivery, at par plus interest accrued on the principal amount redeemed to the date fixed for redemption.

[In addition, the Bonds shall be subject to mandatory sinking fund redemption payments (with bonds being redeemed at par plus accrued interest) as follows:

\$ \_\_\_\_\_ Principal Maturing December 15, 20\_\_

\$ \_\_\_\_\_ to be called December 15, 20\_\_  
\$ \_\_\_\_\_ to be called December 15, 20\_\_  
\$ \_\_\_\_\_ Payable December 15, 20\_\_]

Notice of redemption shall be given by mail to the registered owner of any Bond to be redeemed at such registered owner's address in the manner specified in the Ordinance authorizing the Bonds. Individual Bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

This Bond is transferable by the Registered Owner or such owner's attorney duly authorizing in writing at the office of the Paying Agent and Registrar upon surrender and cancellation of this Bond, and thereupon a new Bond or Bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Ordinance, subject to the limitations therein prescribed. The City, the Paying Agent and Registrar and any other person may treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all purposes and shall not be affected by any notice to the contrary, whether this Bond be overdue or not.

If the date for payment of the principal of or interest on this Bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City 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.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this Bond 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 said City, including this Bond, does not exceed any limitation imposed by law. For the prompt payment of the principal and interest on this bond and the other bonds of the same issue, the City has pledged funds received and to be received from the Highway Allocation Fund of the State of Nebraska with receipts from such fund to be allocated by the City to payment of principal and interest as the same fall due. In addition, the City hereby covenants and agrees that it shall levy ad valorem taxes upon all the taxable property in the City at such rate or rates, within applicable statutory and constitutional limitations, as will provide funds which together with receipts from the Highway Allocation Fund, as pledged to the payment of such principal and interest and any other money made available and used for such purpose, will be sufficient to make payment of the principal of and interest on this Bond and the other Bonds of the same issue as the same fall due.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE REGISTRAR, DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY BOND ISSUED IN REPLACEMENT

HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

This Bond shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar.

IN WITNESS WHEREOF, the Mayor and Council of the City have caused this Bond to be executed on behalf of the City with the manual or facsimile signatures of the Mayor and the Clerk and by causing the official seal of the City to be impressed or imprinted hereon, all as of the date of original issue specified above.

CITY OF GOTHENBURG, NEBRASKA

\_\_\_\_\_  
(facsimile signature)  
Mayor

ATTEST:

\_\_\_\_\_  
(facsimile signature)  
Clerk  
(SEAL)

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds authorized by Ordinance of the Mayor and Council of the City of Gothenburg, Nebraska, described in the foregoing Bond.

\_\_\_\_\_  
\_\_\_\_\_, Nebraska, Paying Agent and Registrar

**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 Paying Agent for the registration thereof, with full power of substitution in the premises.

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

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

Medallion Signature Guarantee:



Section 9. Each of the Bonds shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and Clerk of the City. The Bonds shall be issued initially as "book-entry-only" bonds using the services of The Depository Trust Company (the "Depository"), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a letter of representations (the "Letter of Representations") 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-only" bonds, the following provisions shall apply:

(a) The City and the Paying Agent and 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 "Bond Participant") or to any person who is an actual purchaser of a Bond from a Bond Participant while the Bonds are in book-entry form (each, a "Beneficial Owner") with respect to the following:

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

(ii) the delivery to any Bond 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

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Bonds. The Paying Agent and 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, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) 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 (ii) 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 certificates representing the Bonds be delivered to the Bond Participants and/or Beneficial Owners of the Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates 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 Letter of Representations.

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

(i) any successor securities depository or its nominee;

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section.

(f) In the event of any partial redemption of a Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of this Ordinance, the books and records of the Paying Agent and 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 or upon termination by the City of book-entry-only form, the City shall immediately provide a supply of bond certificates for issuance upon subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement bond certificates upon transfer or partial redemption, 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. In case any officer whose signature or facsimile thereof shall appear on any Bond shall cease to be such officer before the delivery of such Bond (including any bond certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption) such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such Bond. The Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to the Underwriter, as initial purchaser thereof, upon receipt of the principal amount of the Bonds plus accrued interest thereon, to date of payment for the Bonds and less the Underwriter's discount, in accordance with Section 3 hereof. Such initial purchaser shall have the right to direct the registration of the Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. The Underwriter and its agents, representatives and counsel and the City's bond counsel are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the Bonds, including, without limitation, authorizing the release of the Bonds by the Depository at closing. The Authorized Officers of the City (or any one of them) are hereby authorized to execute a bond purchase agreement for the sale of the Bonds to the Underwriter. The officers of the City, or any one or more of them are hereby further authorized to take any and all actions and enter into any and all agreements deemed necessary or appropriate in connection with the issuance and sale of the Bonds, and any such actions previously taken are hereby ratified and confirmed.

Section 10. The Clerk is directed to make and certify a transcript or transcripts of the proceedings of the Mayor and Council precedent to the issuance of the Bonds, a copy of which shall be delivered to the initial purchaser of the Bonds.

Section 11. The net sale proceeds of the Bonds, along with any necessary funds of the City on hand, shall be applied to pay costs of the Project, which may include reimbursing the City for costs of

the Project already paid. Accrued interest received from the sale of the Bonds, if any, shall be applied to pay interest first falling due on the Bonds. Expenses of issuance of the Bonds may be paid from the proceeds of the Bonds.

Section 12. For the prompt payment of the Bonds and the Prior Bonds, both principal and interest as the same fall due, the City hereby pledges all receipts now or hereafter received by the City from the State of Nebraska Highway Allocation Fund (the "Fund"), as described and referred to in the Act. The pledge provided for in this Section 12 for the Bonds and Prior Bonds provides, however, that such pledge shall not prevent the City from otherwise applying receipts from the Fund in any year so long as sufficient receipts from the Fund have been set aside for the payment of principal and interest falling due in such year on the Bonds and Prior Bonds. In addition, the City further reserves the right to issue additional highway allocation fund pledge bonds payable on a parity with the Bonds and Prior Bonds and equally and ratably secured by a pledge of receipts from the Fund. The City hereby further agrees that it shall levy ad valorem taxes upon all the taxable property in the City at such rate or rates within any applicable statutory and constitutional limitations as will provide funds which, together with receipts from the Fund, as pledged to the payment of the Bonds and the Prior Bonds, and any other monies made available and used for such purpose, will be sufficient to pay the principal of and interest on the Bonds and Prior Bonds as the same fall due (including mandatory sinking fund redemptions).

Section 13. The Authorized Officers or any one or more of them is authorized to approve, deem final and deliver a Preliminary Offering Circular and a final Offering Circular for and on behalf of the City, all in accordance with the requirements of Reg. Sec. 240.15c2-12 of the Securities and Exchange Commission.

Section 14. The City hereby covenants and agrees that it will make no use of the proceeds of the Bonds which would cause the Bonds to be arbitrage bonds 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 Bonds 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 Bonds to constitute "private activity bonds" within the meaning of Section 141 of the Code. The City hereby authorizes the Authorized Officers, as one or more of them deem appropriate, to designate the Bonds as its "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i)(III) of the Code and to covenant and warrant on behalf of the City that the City 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 Bonds are issued (taking into consideration the exception for current refunding issues), if and when such designation is deemed appropriate by them. The Authorized Officers, or any one or more of them, are hereby authorized to make, or cause to be made, any and all certifications deemed necessary in connection with the designation of the Bonds as "qualified tax-exempt obligations".

Section 15. The City's obligations under this Ordinance with respect to any or all of the Bonds herein authorized shall be fully discharged and satisfied as to any or all of such Bonds and any such Bond shall no longer be deemed to be outstanding hereunder if such Bond has been purchased by the City and canceled or when the payment of principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof, (b) shall have been provided for by depositing with a national or state bank having trust powers, or trust company, in trust, solely for such payment (i) sufficient money to make such payment and/or (ii) direct general obligations (including obligations issued or held in book entry form on the books of the Department of Treasury of the United States of America) of or obligations the principal and interest of which are

unconditionally guaranteed by the United States of America (herein referred to as "U.S. Government 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 time or times, as will ensure the availability of sufficient money to make such payments; provided, however, that with respect to any Bond to be paid prior to maturity, the City shall have duly called such Bond for redemption and given notice of such redemption as provided by law or made irrevocable provision for the giving of such notice. Any money so deposited with such bank or trust company in excess of the amount required to pay principal of and interest on the Bonds for which such monies or U.S. Government Obligations were deposited shall be paid over to the City as and when collected.

Section 16. In order to promote compliance with certain federal tax and securities laws relating to the Bonds herein authorized, the policy and procedures attached hereto as Exhibit "A" (the "Post-Issuance Compliance Policy and Procedures") are hereby adopted and approved in all respects. To the extent that there is any inconsistency between the attached Post-Issuance Compliance Policy and Procedures and any similar policy or procedures previously adopted and approved, the Post-Issuance Compliance Policy and Procedures shall control.

Section 17. 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 20<sup>th</sup> day of July, 2021.

**CITY OF GOTHENBURG, NEBRASKA**

ATTEST:

By: Mindy Bussinger  
Clerk

By: James E. Hudson  
Mayor

[SEAL]



## EXHIBIT A

### **Policy and Procedures Federal Tax Law and Disclosure Requirements for Tax-exempt Bonds and/or Build America Bonds**

**ISSUER NAME:** City of Gothenburg, in the State of Nebraska

**COMPLIANCE OFFICER (BY TITLE):** City Clerk

#### **POLICY**

It is the policy of the Issuer identified above (the "Issuer") to comply with all Federal tax requirements and securities law continuing disclosure obligations for its obligations issued as tax-exempt bonds or as direct pay build America bonds to ensure, as applicable (a) that interest on its tax-exempt bonds remains exempt from Federal income tax, (b) that the direct payments associated with its bonds issued as "build America bonds" are received by the Issuer in a timely manner and (c) compliance with any continuing disclosure obligations of the Issuer with respect to its outstanding bonds.

#### **PROCEDURES**

Compliance Officer. Review of compliance with Federal tax requirements and securities law continuing disclosure obligations as generally outlined below shall be conducted by the Compliance Officer identified above (the "Compliance Officer"). To the extent more than one person has been delegated specific responsibilities, the Compliance Officer shall be responsible for ensuring coordination of all compliance review efforts.

Training. The Compliance Officer shall evaluate and review educational resources regarding post-issuance compliance with Federal tax and securities laws, including periodic review of resources published for issuers of tax-exempt obligations by the Internal Revenue Service (either on its website at <http://www.irs.gov/taxexemptbond>, or elsewhere) and the Municipal Securities Rulemaking Board (either on its Electronic Municipal Market Access website ["EMMA"] at <http://www.emma.msrb.org>, or elsewhere).

Compliance Review. A compliance review shall be conducted at least annually by or at the direction of the Compliance Officer. The review shall occur at the time the Issuer's annual audit takes place, unless the Compliance Officer otherwise specifically determines a different time period or frequency of review would be more appropriate.

Scope of Review.

*Document Review.* At the compliance review, the following documents (the "Bond Documents") shall be reviewed for general compliance with covenants and agreements and applicable regulations with respect to each outstanding bond issue:

- (a) the resolution(s) and/or ordinance(s), as applicable, adopted by the governing body of the Issuer authorizing the issuance of its outstanding bonds, together with any documents setting the final rates and terms of such bonds (the "Authorizing Proceedings"),

- (b) the tax documentation associated with each bond issue, which may include some or all of the following (the "Tax Documents"):
- i. covenants, certifications and expectations regarding Federal tax requirements which are described in the Authorizing Proceedings;
  - ii. Form 8038 series filed with the Internal Revenue Service;
  - iii. tax certificates, tax compliance agreements, tax regulatory agreement or similar documents;
  - iv. covenants, agreements, instructions or memoranda with respect to rebate or private use;
  - v. any reports from rebate analysts received as a result of prior compliance review or evaluation efforts; and
  - vi. any and all other agreements, certificates and documents contained in the transcript associated with the Authorizing Proceedings relating to federal tax matters.
- (c) the Issuer's continuing disclosure obligations, if any, contained in the Authorizing Proceedings or in a separate agreement (the "Continuing Disclosure Obligations"), and
- (d) any communications or other materials received by the Issuer or its counsel, from bond counsel, the underwriter or placement agent or its counsel, the IRS, or any other material correspondence relating to the tax-exempt status of the Issuer's bonds or relating to the Issuer's Continuing Disclosure Obligations.

*Use and Timely Expenditure of Bond Proceeds.* Expenditure of bond proceeds shall be reviewed by the Compliance Officer to ensure (a) such proceeds are spent for the purpose stated in the Authorizing Proceedings and as described in the Tax Documents and (b) that the proceeds, together with investment earnings on such proceeds, are spent within the timeframes described in the Tax Documents, and (c) that any mandatory redemptions from excess bond proceeds are timely made if required under the Authorizing Proceedings and Tax Documents.

*Arbitrage Yield Restrictions and Rebate Matters.* The Tax Documents shall be reviewed by the Compliance Officer to ensure compliance with any applicable yield restriction requirements under Section 148(a) of the Internal Revenue Code (the "Code") and timely calculation and payment of any rebate and the filing of any associated returns pursuant to Section 148(f) of the Code. A qualified rebate analyst shall be engaged as appropriate or as may be required under the Tax Documents.

*Use of Bond Financed Property.* Expectations and covenants contained in the Bond Documents regarding private use shall be reviewed by the Compliance Officer to ensure compliance. Bond-financed properties shall be clearly identified (by mapping or other reasonable means). Prior to execution, the Compliance Officer (and bond counsel, if deemed appropriate by the Compliance Officer) shall review (a) all proposed leases, contracts related to operation or management of bond-financed property, sponsored research agreements, take-or-pay contracts or other agreements or arrangements or proposed uses which have the potential to give any entity any special legal entitlement to the bond-financed property, (b) all proposed agreements which would result in disposal of any bond-financed property, and (c) all proposed uses of bond-financed property which were not anticipated at the time the bonds were issued. Such actions could be prohibited by the Authorizing Proceedings, the Tax Documents or Federal tax law.

*Continuing Disclosure.* Compliance with the Continuing Disclosure Obligations with respect to each bond issue shall be evaluated (a) to ensure timely compliance with any annual disclosure requirement,

and (b) to ensure that any material events have been properly disclosed as required by the Continuing Disclosure Obligation.

Record Keeping. If not otherwise specified in the Bond Documents, all records related to each bond issue shall be kept for the life of the indebtedness associated with such bond issue (including all tax-exempt refundings) plus six (6) years.

Incorporation of Tax Documents. The requirements, agreements and procedures set forth in the Tax Documents, now or hereafter in existence, are hereby incorporated into these procedures by this reference and are adopted as procedures of the Issuer with respect to the series of bonds to which such Tax Documents relate.

Consultation Regarding Questions or Concerns. Any questions or concerns which arise as a result of any review by the Compliance Officer shall be raised by the Compliance Officer with the Issuer's counsel or with bond counsel to determine whether non-compliance exists and what measures should be taken with respect to any non-compliance.

VCAP and Remedial Actions. The Issuer is aware of (a) the Voluntary Closing Agreement Program (known as "VCAP") operated by the Internal Revenue Service which allows issuers under certain circumstances to voluntarily enter into a closing agreement in the event of certain non-compliance with Federal tax requirements and (b) the remedial actions available to issuers of certain bonds under Section 1.141-12 of the Income Tax Regulations for private use of bond financed property which was not expected at the time the bonds were issued.