

ORDINANCE NO. 2050

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF BOND ANTICIPATION NOTES OF THE CITY OF LEXINGTON, NEBRASKA, IN THE PRINCIPAL AMOUNT OF SIX HUNDRED THOUSAND DOLLARS (\$600,000) FOR THE PURPOSE OF PROVIDING INTERIM FINANCING FOR THE COSTS OF CONSTRUCTING STREET IMPROVEMENTS IN STREET IMPROVEMENT DISTRICT NO. 9602 AND STORM SEWER IMPROVEMENTS IN STORM SEWER DISTRICT NO. 9601 OF SAID CITY PENDING THE ISSUANCE OF PERMANENT GENERAL OBLIGATION VARIOUS PURPOSE BONDS OF THE CITY; PRESCRIBING THE FORM OF SAID NOTES; AGREEING TO ISSUE THE CITY'S GENERAL OBLIGATION VARIOUS PURPOSE BONDS TO PAY THE NOTES AT MATURITY OR TO PAY THE NOTES FROM OTHER AVAILABLE FUNDS; ENTERING INTO A CONTRACT ON BEHALF OF THE CITY WITH THE HOLDERS OF SAID NOTES; AND PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.

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

Section 1. The Mayor and Council hereby find and determine that the City has by ordinance created Street Improvement District No. 9602; that the City is authorized to construct street improvements in said district because insufficient objections were filed to the creation of said district after publication of notice as provided by law and by virtue of the provisions of Sections 16-623 and 16-626, R.R.S. Neb. 1943, as amended; that the City has contracted for the work in said district; that the estimated cost for work in said district as described above is not less than \$\_\_\_\_\_.

Section 2. The Mayor and Council further find and determine that the City has by ordinance created Storm Sewer District No. 9601; that the City is authorized to construct storm sewer improvements in said district because insufficient objections were filed to the creation of said district after publication of notice as provided by law, the Mayor and Council have ordered the making of such improvements and by virtue of the provisions of Sections 16-672.11, R.R.S. Neb. 1943, as amended; that the City has contracted for the work in said district; that the

estimated cost for work in said district as described above is not less than \$\_\_\_\_\_.

Section 3. The Mayor and Council further find and determine that it is therefore necessary and advisable that the City issue its notes pending permanent financing pursuant to Sections 16-623, 16-626, 16-672.11, 18-1801 and 18-1802, R.R.S. Neb. 1943, as amended: that pursuant to Section 10-137, R.R.S. Neb. 1943, the City is authorized to issue notes for the purpose of providing temporary financing for the costs of the improvements in said districts and to pay the cost of issuing the notes; that all conditions, acts and things required by law to exist or to be done precedent to the issuance of Bond Anticipation Notes in the amount of \$600,000 to pay such total estimated costs of improvements in said districts do exist and have been done as required by law.

Section 4. For the purpose of providing interim financing for the costs of the improvements set out in Sections 1 and 2, pending the issuance of permanent general obligation Various Purpose Bonds by the City of Lexington, there shall be and there are hereby ordered issued notes of the City of Lexington, Nebraska, to be known as Bond Anticipation Notes, 1996 Series, (the "1996 Notes" or "Notes") of the aggregate principal amount of Six Hundred Thousand Dollars (\$600,000), with said notes bearing interest at the rate of 4.25% per annum (said interest to be computed on the basis of a 360-day year consisting of twelve 30-day months), and to become due on May 15, 1997. The Notes 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 Notes shall be May 15, 1996. Interest on the Notes shall be payable at maturity, on May 15, 1997, and the Notes shall bear such interest from the date of original issue. The Notes shall be numbered from 1 upwards in the order of their issuance. The initial numbering and principal

amounts for each of the Notes shall be designated by the City Treasurer as directed by the initial purchaser thereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity, together with any unpaid interest accrued thereon, shall be made by said Paying Agent and Registrar to the registered owners upon presentation and surrender of the Notes to said Paying Agent and Registrar. The City and said Paying Agent and Registrar may treat the registered owner of any Note as the absolute owner of such Note 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 Note 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 Note in accordance with the terms of this ordinance shall be valid and effectual and shall be a discharge of the City and said Paying Agent and Registrar, in respect of the liability upon the Notes or claims for interest to the extent of the sum or sums so paid.

Section 5. The City Treasurer is hereby designated as Paying Agent and Registrar for the Notes. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the Notes at the City's offices. The names and registered addresses of the registered owner or owners of the Notes shall at all times be recorded in such books. Any Note may be transferred pursuant to its provisions at the offices of said Paying Agent and Registrar by surrender of such Note for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said 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 such transferee owner or owners, a new Note or Notes of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Notes by this ordinance, one such Note may be transferred for several such Notes of the same interest rate and maturity, and for a like aggregate principal amount, and several such Notes may be transferred for one or several such Notes, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a Note, the surrendered Note or Notes shall be cancelled and destroyed. All Notes issued upon transfer of the Notes so surrendered shall be valid obligations of the City evidencing the same obligations as the Notes surrendered and shall be entitled to all the benefits and protection of this ordinance to the same extent as the Notes upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any Note for a period of 30 days next preceding the date fixed for redemption.

Section 6. If the date for payment of the principal of or interest on the Notes shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of Lexington, 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 7. The Notes of this issue shall be subject to redemption, in whole or in part, prior to maturity at the option of the City at any time on or after November 15, 1996, at par plus accrued interest on the principal amount redeemed to the date fixed for redemption. The City may

select the Notes to be redeemed in its sole discretion, but Notes shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Notes redeemed in part only shall be surrendered to the Paying Agent and Registrar in exchange for new Notes evidencing the unredeemed principal thereof. Notice of redemption of any Note called for redemption shall be given at the direction of the City by the Paying Agent and Registrar by mail not less than thirty days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such Note at such owner's registered address. Such notice shall designate the Note or Notes to be redeemed by number, the date of original issue and the date fixed for redemption and shall state that such Note or Notes are to be presented for prepayment at the office of the Paying Agent and Registrar. In case of any Note partially redeemed, such notice shall specify the portion of the principal amount of such Note to be redeemed. No defect in the mailing of notice for any Note shall affect the sufficiency of the proceedings of the City designating the Notes called for redemption or the effectiveness of such call for Notes 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 Note for which defective notice has been given.

Section 8. The Notes shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COUNTY OF DAWSON

BOND ANTICIPATION NOTE, 1996 SERIES  
OF THE CITY OF LEXINGTON, NEBRASKA

No.

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP No.</u>
	May 15, 1997	May 15, 1996	

Registered Owner:

Principal Amount:

Dollars

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Lexington, in the County of Dawson, in the State of Nebraska, 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) from the date of original issue at the rate per annum specified above, payable on May 15, 1997. Said interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The principal hereof together with any unpaid interest accrued thereon due at maturity or upon earlier redemption is payable upon presentation and surrender of this note at the office of the City Treasurer of Lexington, Nebraska, Paying Agent and Registrar, in Lexington, Nebraska.

All notes of this issue are subject to redemption prior to maturity on November 15, 1996, or at any time thereafter at par plus accrued interest on the principal amount redeemed to the date set for redemption. Notice of redemption shall be given by mail to the registered owner of any note to be redeemed, not less than thirty days prior to the date set for redemption, in the manner specified in the ordinance authorizing the issuance of said notes. Individual notes may be redeemed in part but only in the amount of \$5,000 or any integral multiple thereof.

This note is one of an issue of fully registered notes of the total principal amount of \$600,000, of even date and like tenor herewith, except as to denomination, which were issued by the City for the purpose of providing interim financing for the cost of constructing street improvements in Street Improvement District No. 9602 and storm sewer improvements in Storm Sewer District No. 9601, pending the issuance of general obligation Various Purpose Bonds or other bonds of the City. The issuance of this note and the other notes of this issue has been lawfully authorized by an ordinance duly passed, approved and published by the Mayor and Council of the City of Lexington in strict compliance with Section 10-137, Reissue Revised

Statutes of Nebraska, 1943, as amended.

The City hereby certifies and warrants that it has taken all actions necessary and appropriate for authorization of the construction of said improvements and agrees that the notes of this issue shall be paid from the proceeds of Various Purpose Bonds or other bonds issued by the City at or before the maturity of the notes of this issue. The City reserves the right to issue additional bond anticipation notes to pay additional costs of said improvements or other improvements or to pay or redeem the notes of this issue.

This note is transferable by the registered owner or such owner's attorney duly authorized in writing at the office of the City Treasurer of Lexington, Nebraska, as Paying Agent and Registrar, upon surrender and cancellation of this note and thereupon a new note or notes of the same aggregate principal amount will be issued to the transferee as provided in the ordinance authorizing said issue of notes, 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 note 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 note be overdue or not.

If the date for payment of the principal or interest on the notes shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of Lexington 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 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 limitation imposed by law.

This note shall not be valid for any purpose until the Certificate of Authentication hereon shall have been signed by the Paying Agent and Registrar.

IN WITNESS WHEREOF, the Mayor and Council of the City of Lexington, Nebraska, have caused this note to be executed on behalf of the City with the signatures of its Mayor and City Clerk, both of which signatures may be facsimile signatures, and by having affixed hereto or imprinted hereon the City's seal, all as of the date of issue shown above.

**THE CITY OF LEXINGTON, NEBRASKA**

(SEAL)

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This note is one of the series designated therein and has been registered to the owner named in said note and the name of such owner has been recorded in the books of record maintained by the undersigned as Paying Agent and Registrar for said issue of notes.

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City Treasurer,  
Paying Agent and Registrar  
for the City of Lexington, Nebraska

(FORM OF ASSIGNMENT)

For value received, hereby sells, assigns and transfers unto \_\_\_\_\_  
\_\_\_\_\_, (Social Security or Taxpayer I.D.  
No. \_\_\_\_\_) the within note and hereby irrevocably constitutes and appoints  
\_\_\_\_\_, attorney,  
to transfer the same on the books of registration in the office of the within-mentioned Paying  
Agent and Registrar with full power of substitution in the premises.

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

\_\_\_\_\_  
Registered Owner(s)

Signature Guaranteed

By \_\_\_\_\_

\_\_\_\_\_  
Authorized Officer

Note: The signature(s) of this assignment MUST CORRESPOND with the name(s) as written on the face of the within note in every particular, without alteration, enlargement or any change whatsoever, and must be guaranteed by a commercial bank or a trust company or by a firm having membership on the New York, Midwest or other stock exchange.

Section 9. Each of the Notes shall be executed on behalf of the City with the facsimile signatures of the Mayor and the City Clerk and shall have imprinted thereon the City's seal. The Notes shall be issued initially as "book-entry-only" notes under the services of The Depository Trust Company (the "Depository"), with one typewritten note certificate 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 Notes. Upon the issuance of the Notes as "book-entry-only" notes, 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 Notes as securities depository (each, a "Note Participant") or to any person who is an actual purchaser of a Note from a Note Participant while the Notes 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 Note Participant with respect to any ownership interest in the Notes,

(ii) the delivery to any Note Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Notes, including any notice of redemption, or

(iii) the payment to any Note Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Notes. The Paying Agent and Registrar shall make payments with respect to the Notes 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 Notes to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Note.

(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 Notes 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 Notes or (ii) to make available Notes registered in whatever name or names as the Beneficial Owners transferring or exchanging such Notes shall designate.

(c) If the City determines that it is desirable that certificates representing the Notes be delivered to the ultimate beneficial owners of the Notes 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 Note Participants of the availability through the Depository of note certificates representing the Notes. In such event, the Paying Agent and Registrar shall issue, transfer and exchange note certificates representing the Notes 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 Note is registered in the name of the Depository or any nominee thereof, all payments with respect to such Note and all notices with respect to such Note shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Notes may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Notes 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.

If for any reason the Depository resigns and is not replaced, the City shall immediately provide a supply of printed note certificates, duly executed by manual or facsimile signatures of the Mayor and City Clerk and sealed with the City's seal, for issuance upon the transfers from the Depository and 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 certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of such certificates and to direct their execution by manual or facsimile signatures of its then duly qualified and acting Mayor and City Clerk and by imprinting thereon or affixing thereto the City's seal. In case any officer whose signature or facsimile thereof shall appear on any Note shall cease to be such officer before the delivery of such Note (including such note 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 Note. After execution of the Notes they shall be delivered to the Paying Agent and Registrar for registration and said Paying Agent and Registrar shall execute a certificate on each Note showing such registration and authentication thereof. Upon execution and registration of the Notes, they shall be delivered to the City Treasurer who is authorized to deliver them to Smith Barney Inc., Chiles Heider Division, as initial purchaser thereof upon receipt of 99.1% of the principal amount of the Notes plus accrued interest thereon to date of payment for the Notes. Said initial purchaser shall have the right to direct the registration of the Notes and the denominations, subject to the restrictions of this ordinance.

Section 10. The City Clerk is hereby directed to make and certify a transcript of the proceedings of the City precedent to the issuance of said Notes which shall be delivered to the purchaser of said Notes.

Section 11. The City hereby covenants and agrees to take all steps necessary for the completion of the improvements described in Sections 1 and 2 hereof in such a manner that upon

completion the City will be authorized to issue and sell its general obligation Various Purpose Bonds or other bonds to pay the costs of said improvements and hereby covenants and agrees to issue and sell its general obligation Various Purpose Bonds or other bonds in a sufficient amount and at such times as will enable it to take up and pay off the Bond Anticipation Notes herein ordered issued, both principal and interest, at or prior to maturity, to the extent not paid from other sources. The City reserves the right to issue additional bond anticipation notes for the purpose of paying further costs of the improvements described in Sections 1 and 2 and for the purpose of paying costs of further public improvements of the City and further reserves the right to issue such notes for purposes of paying or refunding the Notes herein authorized at or prior to maturity.

Section 12. The proceeds of the Notes of this issue shall be held by the City Treasurer in a separate fund (the "1996 Construction Fund") and applied, upon order of the Mayor and Council, to pay costs of the improvements described in Sections 1 and 2 hereof and issuance expenses for the Notes. Moneys in the 1996 Construction Fund not required for immediate use may be invested in any investments which are permissible for a city of the class to which the City of Lexington belongs.

Section 13. The holders of the Notes of this issue shall be subrogated to all rights of the holders of any claims which are paid from the proceeds of said Notes.

Section 14. The City hereby covenants to the purchasers and holders of the Notes hereby authorized that it will make no use of the proceeds of said Note issue, including monies held in any sinking fund for the Notes, which would cause the Notes to be arbitrage bonds within the meaning of Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended (the

"Code"), and further covenants to comply with said Sections 103(b) and 148 and all applicable regulations thereunder throughout the term of said issue. The City hereby covenants and agrees to take all actions necessary under the Code to maintain the tax exempt status (as to taxpayers generally) of interest payable on the Notes. The City hereby designates the Notes 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 tax-exempt bonds or other tax-exempt obligations aggregating in principal amount more than \$10,000,000 during calendar 1996.

Section 15. In accordance with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission, the City hereby agrees that it will provide the following continuing disclosure information:

(a) to each nationally recognized municipal securities information repository (a "NRMSIR") and to the initial purchaser of the Notes, the City shall provide annual financial and operating information generally consistent with the information set forth under the heading "FINANCIAL STATEMENT" in the Official Statement for said Notes and the City's audited financial statements; such information is expected to be available not later than seven months after the end of each fiscal year for the City; audited financial information shall be provided for governmental, fiduciary and proprietary fund types based on generally accepted accounting principles applied to government units and in accordance with the standards set by the Governmental Accounting Standards Board;

(b) in a timely manner to each NRMSIR or to the Municipal Securities Rule Making Board ("MSRB"), notice of the occurrence of any of the following events with respect to the Notes, if in the judgment of the City, such event is material:

- (1) principal and interest payment delinquencies,
- (2) non-payment related defaults,
- (3) unscheduled draws on debt service reserves reflecting financial difficulties (there are no debt service reserves established for the Notes under the terms of the Ordinance),
- (4) adverse tax opinions or events affecting the tax-exempt status of

the Notes,

- (5) modifications to rights of the Noteholders,
- (6) note calls,
- (7) defeasances,
- (8) release, substitution, or sale of property securing repayment of the Notes, and
- (9) rating changes if any (the Notes are not rated and no rating for the Notes is expected to be requested).

The City has not undertaken to provide notice of the occurrence of any other material event, except the events listed above.

(c) in a timely manner to each NRMSIR or to the Municipal Securities Rule Making Board ("MSRB") notice of any failure on the part of the City to provide required annual financial information not later than seven months from the close of the City's fiscal year.

The City reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the City, consistent with the Rule. The City hereby agrees that such covenants are for the benefit of the registered owners of the Notes (including Beneficial Owners) and that such covenants may be enforced by any registered owner or Beneficial Owner, provided that any such right to enforcement shall be limited to specific enforcement of such undertaking and any failure shall not constitute an event of default under the Ordinance. The continuing disclosure obligations of the City under the Ordinance, as described above, shall cease when none of the Notes remain outstanding. The undertakings provided for in this Section 15 are provided by the City as a precautionary measure with the understanding that for purposes of the Rule the Notes might be determined to be part of the same issue with certain other securities being issued contemporaneously



by the City.

Section 16. The Preliminary Official Statement is hereby approved and the Mayor and City Clerk are hereby authorized to approve on behalf of the City a final Official Statement with any changes deemed appropriate by them.

Section 17. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

PASSED AND APPROVED this 4th day of April,

1996.

Robert J. Hawk  
Mayor

Jon E. Mehal  
City Clerk

(SEAL)

