

ORDINANCE NO. 2393

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA AUTHORIZING AND APPROVING A LEASE-PURCHASE TRANSACTION WITH BOKF, NATIONAL ASSOCIATION, THE PROCEEDS OF WHICH WILL BE USED TO PAY THE COSTS TO ACQUIRE AND INSTALL EQUIPMENT AT THE CITY'S EXISTING WASTEWATER PLANT; APPROVING THE ISSUANCE, SALE AND DELIVERY OF \$820,000 PRINCIPAL AMOUNT OF CERTIFICATES OF PARTICIPATION IN SUCH LEASE; FIXING IN PART AND PROVIDING FOR THE FIXING IN PART OF CERTAIN PROVISIONS OF THE LEASE AND RELATED DOCUMENTS; AND RELATED MATTERS.

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

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

(a) It is necessary, desirable, advisable and in the best interests of the City that the City acquire and install equipment at the City's existing wastewater plant (collectively, the "**Project**").

(b) The City has carefully considered the options available to it with respect to financing the acquisition of the Project.

(d) In order to facilitate the foregoing and to pay the cost thereof, it is necessary and desirable for the City to take the following actions:

1. Enter into a License and Easement (the "**License and Easement**") between the City, as grantor, and BOKF, National Association, Lincoln, Nebraska (the "**Trustee**"), as grantee, pursuant to which the City grants a license and easement with respect to the Real Property to the Trustee on the terms and conditions set forth therein, in substantially the form entered into in connection with the City's \$430,000 of Certificates of Participation, Series 2015 (the "**Prior Financing**"), and made a part hereof by this reference;

2. Enter into a Lease-Purchase Agreement (the "**Lease**") with the Trustee, pursuant to which the City, as lessee, will lease the Project from the Trustee, as lessor, with an option to purchase the Trustee's interest in the Project and pursuant to which the parties shall agree that the Project shall remain the personal property of the Trustee, in substantially the form entered into in connection with the Prior Financing;

3. Execute and deliver a Tax Compliance Agreement (the "**Tax Agreement**") pursuant to which the City makes certain representations and covenants related to the exclusion of the interest portions of basic rent under the Lease from gross income for purposes of federal income taxation, in substantially the form entered into in connection with the Prior Financing;

4. Approve a Declaration of Trust (the "**Declaration of Trust**") by the Trustee, pursuant to which the Certificates of Participation, Series 2017 (the "**Certificates of Participation**"), evidencing proportionate interests of the owners thereof in basic rent payments

to be made by the City under the Lease, will be executed and delivered, in substantially the form entered into in connection with the Prior Financing; and

5. Approve and deem final a Preliminary Offering Circular and an Offering Circular respecting the Certificates of Participation, to be in substantially the same form as the Preliminary Offering Circular with respect to the Certificates of Participation, in the form used to market the Certificates of Participation (the “**Preliminary Offering Circular**,” and together, the “**Offering Circular**”).

The License and Easement, the Lease and the Tax Agreement are referred to together herein as the “**City Documents**.”

Section 2. Authorization and Approval of City Documents and Declaration of Trust. The City Documents and the Declaration of Trust are hereby approved in substantially the forms entered into in connection with the Prior Financing, with such changes therein as are approved by the Mayor, the City Manager, the City Clerk and the Finance Director of the City (each, an “**Authorized Officer**”).

The Authorized Officers, or each individually, are hereby authorized to make such changes, additions or deletions with respect to the Lease as may be in the best interests of the City prior to the signing thereof. An Authorized Officer’s execution of the City Documents will be conclusive evidence of such approval.

Each Authorized Officer is hereby authorized and directed to execute and deliver the City Documents and to approve changes to the Declaration of Trust on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to affix the City’s seal to the City Documents and attest such seal.

Section 3. Approval of Offering Circular. The Preliminary Offering Circular is hereby ratified and approved and deemed final in the form used to market the Certificates of Participation. An Authorized Officer is further authorized to approve the final Offering Circular and to distribute such documents to investors and the public.

Section 4. The Certificates of Participation shall be sold to Ameritas Investment Corp., the underwriter thereof (the “**Underwriter**”) pursuant to a Certificate Purchase Agreement (the “**Purchase Agreement**”) between the City and the Underwriter with respect to the Certificates of Participation, as presented herewith. The Certificate Purchase Agreement, in the form presented herewith, is hereby approved, adopted, ratified and affirmed and the Authorized Officers, or any one or more of them, are hereby authorized to enter into the Purchase Agreement on behalf of the City.

Section 5. The Mayor, City Manager, Finance Director, City Clerk and City Attorney are hereby authorized to execute and deliver for and on behalf of the City the City Documents and all additional certificates, documents, opinions, or other papers and to perform all other acts as they may deem necessary or appropriate in order to implement and carry out the matters herein authorized.

Section 6. 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 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 special tax counsel, the lessor and its counsel and the Underwriter, shall consider necessary, advisable, desirable or appropriate in connection with this Ordinance, including, without limitation, the execution and delivery of all related documents, instruments, certifications and opinions, and (b) delegates, authorizes and directs

to the Authorized Officers, or each individually, the right, power and authority to exercise his or her independent judgment and absolute discretion in (1) determining and finalizing the terms and provisions of the Lease and the Certificates of Participation not specifically set forth in this Ordinance and (2) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to effectuate the execution and delivery of the City Documents and the issuance, sale and delivery of the Certificates of Participation. The execution and delivery by the Authorized Officers, or each individually, 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 that 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 of 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.

All actions heretofore taken by the Authorized Officers and all other officers, officials, employees and agents of the City including, without limitation, the expenditure of funds and the selection, appointment and employment of special tax counsel, financial advisors, and other agents in connection with the execution and delivery of the City Documents and the issuance, sale and delivery of the Certificates of Participation, together with all other actions taken in connection with any of the matters that are the subject hereof, are in all respects hereby authorized, adopted, specified, accepted, ratified, approved and confirmed.

Section 7. The provisions of this Ordinance, of any supplemental ordinance, and of any resolutions or other proceedings providing for the execution and delivery of the City Documents and the sale of the Certificates of Participation and the terms and provisions thereof shall constitute a contract between the City, the lessor and the registered owners of the Certificates of Participation, and the provisions thereof shall be enforceable by any owner of a Certificate of Participation for the equal benefit and protection of all such owners similarly situated, by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is presently or may hereafter be authorized under the laws of the State of Nebraska (the “State”) in any court of competent jurisdiction. Such contract is made under and is to be construed in accordance with the laws of the State.

After the execution and delivery of the City Documents, and the issuance, sale and delivery of the Certificates of Participation, this Ordinance and any supplemental ordinance shall not be subject to repeal, but shall be subject to modification or amendment only to the extent and in the manner provided for in this Ordinance.

Section 8. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance, the City Documents or the Certificates of Participation is intended or should be construed to confer upon or give to any person other than the City, the Trustee and the registered owners of the Certificates of Participation, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, lease or provision herein contained. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the lessor and the registered owners from time to time of the Certificates of Participation as herein and therein provided.

Section 9. No officer or employee of the City shall be individually or personally liable for the performance of any duties or obligations under the City Documents or the payment of the principal of or

interest on any Certificate of Participation. Nothing herein contained shall, however, relieve any such officer or employee from the performance of any duty provided or required by law.

Section 10. Whenever this Ordinance or the City Documents requires any action to be taken on a Saturday, Sunday or legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Ordinance or the City Documents the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday, such time shall continue to run until midnight on the next succeeding business day.

Section 11. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such lease or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the City Documents, but the lessor and the registered owners of the Certificates of Participation shall retain all the rights and benefits afforded to them hereunder and under the City Documents or any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatsoever.

Section 12. This Ordinance shall be construed and interpreted in accordance with the laws of the State. All suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State except to the extent necessary for enforcement, by any trustee or receiver appointed by or pursuant to the provisions of this Ordinance, or remedies under this Ordinance.

Section 13. Any ordinance of the City, and any part of any ordinance or resolution, inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

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Section 14. This Ordinance shall take effect and be in force from and after its passage and publication in pamphlet form as provided by law.

PASSED AND APPROVED this 9th day of May, 2017.

ATTEST:

John Fagot, Mayor

Pamela Baruth
City Clerk