

12R-282

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 12R-282 by accepting the attached Substitute Resolution to replace the previously provided Bill No. 12R-282.

Introduced by:

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Approved as to Form and Legality:

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City Attorney

Requested by: Lauren Wismer, Bond Counsel

Reason for Request: To reflect finalization of the resolution.

**SUBSTITUTE**

12R-282

Introduce: December 3, 2012

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION DECLARING THE OFFICIAL INTENT OF THE CITY OF LINCOLN, NEBRASKA TO REIMBURSE CERTAIN EXPENSES IN CONNECTION WITH ACQUIRING, CONSTRUCTING, EQUIPPING AND FURNISHING IMPROVEMENTS IN THE CITY'S SOLID WASTE MANAGEMENT FACILITIES FROM THE PROCEEDS OF CITY OF LINCOLN, NEBRASKA SOLID WASTE MANAGEMENT REVENUE BONDS**

**BE IT RESOLVED** by the Council (the "**Council**") of the City of Lincoln, Nebraska (the "**City**") as follows:

**Section 1. Findings.**

(a) The City has begun acquiring, constructing, equipping and furnishing certain improvements to the City's solid waste management facilities (the "**Facilities**") in the current fiscal year, including, without limitation, cell liner, leachate collection system, final cap and access roadway improvements (collectively, the "**Project**"), to provide for the health, safety and welfare of its residents and on and after December 10, 2012, the City anticipates spending funds in the amount of not less than \$6,000,000 to pay the costs of the Project

(b) The City is authorized, pursuant to the provisions of (1) Sections 15-244 and 18-1803 to 18-1805, inclusive, Reissue Revised States of Nebraska, as amended, and (2) Sections 8 and 44 of Article IX of the City's Home Rule Charter (the "**Charter**"), to issue and sell its solid waste management revenue bonds, payable solely from the revenues derived and to be derived of the operation of the Facilities and the City anticipates issuing such bonds in the maximum principal amount of \$6,000,000 (the "**Bonds**") in connection with the Project to finance all or a portion of the costs of the Project.

(c) The City anticipates incurring a portion of the costs of the Project prior to the issuance of the Bonds and desires to preserve its ability to reimburse such costs under the provisions of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the applicable regulations thereunder, including but not limited to Section 1.150-2 thereof (the "**Regulations**").

(d) The Code and the Regulations (collectively, the "**Tax Law**") require that the City declare its official intent to reimburse any original expenditures (except as set forth in the Tax Law) for costs of the Project with the proceeds of tax-exempt obligations not later than 60 days after the payment of such expenditures. The Tax Law requires that the Bonds be issued and a reimbursement allocation be made from the proceeds of the Bonds within 18 months after the later of the date (i) the original expenditure is paid or (ii) the Project is placed in service or abandoned, but in no event more than 3 years after the date the expenditure is paid.

(e) It is necessary, desirable, advisable and in the best interests of the City that it declare its official intent to permit the City to reimburse costs of the Project made by the City from the proceeds of the Bonds in accordance with the requirements of the Tax Law.

**Section 2. Declaration of Intent and Related Matters.**

(a) In accordance with the provisions of the Tax Law, the Council hereby declares the official intent of the City to reimburse all or part of the costs of the Project through the issuance of the Bonds in connection therewith, the interest on which will be excludable from gross income for federal

income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended. Prior to the issuance of the Bonds, the City is authorized to advance money in an amount not to exceed \$6,000,000 for the purposes hereinbefore described.

(b) Except for (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) “de minimis expenditures” defined under Section 1.150-2(f)(1) of the Regulations, and (iii) “preliminary expenditures” defined under Section 1.150-2(f)(2) of the Regulations, no expenditures made in furtherance of the Project have been paid by the City more than 60 days prior to the adoption of this Resolution.

(c) The reasonably expected source of funds to be used to pay debt service on the Bonds will be the revenues generated from the ownership and operation of the Facilities, shall be sufficient to pay principal and interest on the Bonds and shall be pledged to the payment of the principal of and interest on the Bonds.

(d) The Bonds will be issued in the amount and upon the terms and conditions agreed to between the City and the purchaser of the Bonds for the purpose of paying all or a portion of the costs and expenses incident to the planning, acquisition, construction and financing of the Project, the Bonds to be authorized by the Council at a meeting held for such purpose.

(e) As of the date of this Resolution, there are no funds of the City reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Project, other than the contemplated issuance of the Bonds. This Resolution is consistent with the budgetary and financial circumstances of the City as they exist or are reasonably foreseeable on the date hereof.

(f) Notwithstanding any other provision of this Resolution, nothing contained herein is intended to obligate the City to issue the Bonds or to reimburse any particular expenditure.

### **Section 3. Authorizations.**

(a) The Finance Director and the City Controller (each an “**Authorized Officer**”) are hereby authorized to take any further action as such Authorized Officer shall deem necessary or desirable without further action by the Council to carry out the transactions contemplated by this Resolution.

(b) The Authorized Officers shall be, and each of them hereby is, authorized to execute on behalf of the City and to deliver any and all other instruments and documents including, but not limited to, such certificates or instruments as may be required under the terms of this Resolution necessary to be executed and delivered in connection with this Resolution and the approvals made hereby.

(c) The Authorized Officers shall be responsible for making any “reimbursement allocation” described in Section 1.150-2 of the Regulations by transferring the appropriate amount of Bonds proceeds to the City accounts used to temporarily finance some or all of the costs of the Project. Each allocation must be evidenced by an entry on the official books of the City maintained for the Project and shall specifically identify the original expenditure being reimbursed.

**Section 4. Ratification.** All acts and deeds heretofore done by any officer, employee or agent of the City, on behalf of the City, to preserve the City’s ability to reimburse expenditures made in furtherance of the Project with the proceeds of the Bonds are hereby ratified, confirmed and approved.

**Section 5. Effective Dates.** This Resolution will be in full force and effect from and after its passage and adoption by the Council and approval by the Mayor.

**Section 6. Conflicting Resolutions Repealed.** All resolutions of the Council, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

**INTRODUCED BY:**

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**PASSED** \_\_\_\_\_, 2012.

**ABSENT OR NOT VOTING:**

**AYES:** \_\_\_\_\_

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**NAYS:** \_\_\_\_\_

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**APPROVED AS TO FORM:**

**CONFLICT OF INTEREST:**

\_\_\_\_\_  
City Attorney

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**APPROVED:** \_\_\_\_\_, 2012.

\_\_\_\_\_  
Bond Counsel

\_\_\_\_\_  
Mayor

**SUBSTITUTE**

12R-282

Introduce: December 3, 2012

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION DECLARING THE OFFICIAL INTENT OF THE CITY OF LINCOLN, NEBRASKA TO REIMBURSE CERTAIN EXPENSES IN CONNECTION WITH ACQUIRING, CONSTRUCTING, EQUIPPING AND FURNISHING IMPROVEMENTS IN THE CITY'S SOLID WASTE MANAGEMENT FACILITIES FROM THE PROCEEDS OF CITY OF LINCOLN, NEBRASKA SOLID WASTE MANAGEMENT REVENUE BONDS**

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(b) The City is authorized, pursuant to the provisions of (1) Sections 15-244 and 18-1803 to 18-1805, inclusive, Reissue Revised States of Nebraska, as amended, and (2) Sections 8 and 44 of Article IX of the City's Home Rule Charter (the "**Charter**"), to issue and sell its solid waste management revenue bonds, payable solely from the revenues derived and to be derived of the operation of the Facilities and the City anticipates issuing such bonds in the maximum principal amount of \$6,000,000 (the "**Bonds**") in connection with the Project to finance all or a portion of the costs of the Project.

(c) The City anticipates incurring a portion of the costs of the Project prior to the issuance of the Bonds and desires to preserve its ability to reimburse such costs under the provisions of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the applicable regulations thereunder, including but not limited to Section 1.150-2 thereof (the "**Regulations**").

(d) The Code and the Regulations (collectively, the "**Tax Law**") require that the City declare its official intent to reimburse any original expenditures (except as set forth in the Tax Law) for costs of the Project with the proceeds of tax-exempt obligations not later than 60 days after the payment of such expenditures. The Tax Law requires that the Bonds be issued and a reimbursement allocation be made from the proceeds of the Bonds within 18 months after the later of the date (i) the original expenditure is paid or (ii) the Project is placed in service or abandoned, but in no event more than 3 years after the date the expenditure is paid.

(e) It is necessary, desirable, advisable and in the best interests of the City that it declare its official intent to permit the City to reimburse costs of the Project made by the City from the proceeds of the Bonds in accordance with the requirements of the Tax Law.

**Section 2. Declaration of Intent and Related Matters.**

(a) In accordance with the provisions of the Tax Law, the Council hereby declares the official intent of the City to reimburse all or part of the costs of the Project through the issuance of the Bonds in connection therewith, the interest on which will be excludable from gross income for federal

income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended. Prior to the issuance of the Bonds, the City is authorized to advance money in an amount not to exceed \$6,000,000 for the purposes hereinbefore described.

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(c) The reasonably expected source of funds to be used to pay debt service on the Bonds will be the ~~proceeds of the levy of a tax upon all taxable property in the City, which, together with special assessments on property in the Districts~~ revenues generated from the ownership and operation of the Facilities, shall be sufficient to pay principal and interest on the Bonds and shall be pledged to the payment of the principal of and interest on the Bonds.

(d) The Bonds will be issued in the amount and upon the terms and conditions agreed to between the City and the purchaser of the Bonds for the purpose of paying all or a portion of the costs and expenses incident to the planning, acquisition, construction and financing of the Project, the Bonds to be authorized by the Council at a meeting held for such purpose.

(e) As of the date of this Resolution, there are no funds of the City reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Project, other than the contemplated issuance of the Bonds. This Resolution is consistent with the budgetary and financial circumstances of the City as they exist or are reasonably foreseeable on the date hereof.

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**INTRODUCED BY:**

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**PASSED** \_\_\_\_\_, 2012.

**ABSENT OR NOT VOTING:**

**AYES:** \_\_\_\_\_

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**NAYS:** \_\_\_\_\_

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**APPROVED AS TO FORM:**

**CONFLICT OF INTEREST:**

\_\_\_\_\_  
City Attorney

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**APPROVED:** \_\_\_\_\_, 2012.

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Bond Counsel

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Mayor