

Did not pass 11/21/2011. (Vote was 2 voting aye, 1 nay, and 1 abstaining.) Need majority to pass. Another meeting scheduled for 11/30/11.

ORDINANCE NO. 11-724

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF A TAX ANTICIPATION NOTE OF THE CITY OF FRIEND, NEBRASKA IN THE MAXIMUM PRINCIPAL AMOUNT OF \$290,342 TO PROVIDE FINANCING FOR CERTAIN OPERATING EXPENSES OF WARREN MEMORIAL HOSPITAL; PRESCRIBING THE FORM AND DETAILS OF THE NOTE; COVENANTING TO PAY SUCH NOTE FROM THE REVENUES OF WARREN MEMORIAL HOSPITAL AND, IF NECESSARY, TO LEVY TAXES IN AMOUNTS SUFFICIENT TO PAY THE PRINCIPAL AND INTEREST ON THE NOTE; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM AND RELATED MATTERS

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

Section 1. The Mayor and Council (the “**Council**”) of the City of Friend, Nebraska (the “**City**”) hereby finds and determines:

(a) The City is duly organized and validly existing as a city of the second class and political subdivision of the State of Nebraska (the “**State**”) under Chapter 17, Reissue Revised Statutes of Nebraska, as amended.

(b) It is necessary, desirable, and advisable and in the best interests of the City that the City provide an operating line of credit to pay expenses incurred at Warren Memorial Hospital (the “**Hospital**”), owned and operated by the City.

(c) The City is authorized pursuant to Section 18-1750, Reissue Revised Statutes of Nebraska, as amended (“**Section 18-1750**”), to borrow money to the amount of 70% of the unexpended balance of total anticipated receipts (as determined pursuant to Section 18-1750) for the current fiscal year and the following fiscal year.

(d) The City anticipates receipts for the current fiscal year and the following fiscal year of \$540,900 from the levying of taxes for the current fiscal year and the following fiscal year, determined pursuant to Section 18-1750.

(e) Based upon the most recent report of the City’s Treasurer, the total general fund expenditures from October 1, 2011 to and including the expected date of issuance of the notes herein authorized (the “**Closing Date**”) is \$126,125, excluding expenditures in November, 2011 from the separate fire equipment sinking fund of \$0, leaving an unexpended balance of total anticipated general fund receipts of not less than \$414,775.

(f) As of the Closing Date, the City will have the principal balance of \$200,000 plus accrued and unpaid interest thereon outstanding in note or warrant indebtedness under the previous promissory note issued by the City in the maximum principal amount of \$363,000 dated November 30, 2009, held by First National Bank, n/k/a Citizens State Bank (“**Previous Note**”), the principal portion of which shall be paid by the issuance of the note authorized hereby.

(g) It is necessary, desirable, and advisable and in the best interest of the City to borrow money and issue its negotiable revolving line of credit promissory note as provided under Section 18-1750, in an aggregate principal amount of \$290,342.

Section 2. (a) For the purpose of paying the costs of certain operational expenses of the Hospital issuing the note herein authorized, there is hereby ordered issued a promissory note to the City in the principal amount of Two Hundred Ninety Thousand Three Hundred Forty Two Dollars (\$290,342), designated as "Promissory Note, Series 2011" (the "**Note**"). The Note shall be fully registered as to both principal and interest on the books of the Note Registrar and Paying Agent designated in **Section 3** of this Ordinance (the "**Registrar**"), bear a Date of Original Issue of the date of execution and delivery thereof, be numbered R-1, be in any denomination, shall mature on the second anniversary of the Date of Original Issue and bear interest, calculated on the basis of a 365/366-day year and actual days elapsed. The Note shall be in the amount advanced by the Purchaser (hereinafter defined) upon request from the City from time to time up to a maximum principal amount of \$290,342, bear interest computed daily on the principal amount from time to time outstanding and unpaid at a rate equal to the Purchaser's base rate for such date minus 1.25%. Interest on the Note is payable on the first anniversary of the Date of Original Issue and at maturity. The outstanding unpaid principal on Note R-1 shall be due and payable at maturity.

Payments of interest due on the Note shall be made by the Registrar by mailing a check or draft on each payment date in the amount due for such interest to the Purchaser at its registered address as shown on the books of registration as required to be maintained in **Section 3** hereof. Payments of principal due at maturity shall be made by the Registrar to the Purchaser upon presentation and surrender of the Note to the Registrar in lawful money of the United States of America. All payments on account of interest or principal made to the Purchaser in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and the Registrar, in respect of the liability upon the Note or claims for interest to the extent of the sum or sums so paid.

Section 3. (a) The Treasurer of the City is hereby designated the Registrar for the Note. The Registrar shall specify its acceptance of the duties, obligations and trusts imposed upon it by the provisions of this Ordinance by a written instrument deposited with the City prior to the issuance of the Note. The City reserves the right to remove the Registrar upon 30-days notice and upon the appointment of a successor Registrar, in which event the predecessor Registrar shall deliver all cash in its possession to the successor Registrar and shall deliver the Bond register to the successor Registrar. The Registrar shall have only such duties and obligations as are expressly specified by this Ordinance and no other duties or obligations shall be implied to the Registrar.

(b) The Registrar shall keep and maintain for the City books for the registration and transfer of the Note at its office in Friend, Nebraska. The names and registered addresses of the registered owner of the Note shall at all times be recorded in such books.

(c) The Registrar shall also be responsible for making the payments of principal and interest as the same fall due upon the Note from funds transferred to it by the City for such purpose. Payment of interest due upon the Note prior to maturity shall be made by the Registrar by mailing a check in the amount due for such interest on each interest payment date to the Purchaser addressed to Purchaser at its registered address as shown on the books of registration as required to be maintained under this **Section 3**. Payments of principal due at maturity, together with any accrued interest then due, shall be made by the Registrar upon presentation and surrender of such Note at the office of the Registrar. The City and the Registrar may treat the registered owner of any Note as the absolute owner of such Note for the purpose of making payment thereon and for all other purposes. All payments on account of interest or principal made to the registered owner of any Note shall be valid and effectual and shall be a discharge of the City and the Registrar in respect of the liability upon such Note or claims for interest to the extent of the sum or sums so paid.

Section 4. The Note is subject to prepayment at any time at the option of the City. Any prepayment shall be applied and mutually agreed between the City and the Purchaser.

Section 5. The Note shall be in substantially in the format attached as Exhibit A to this ordinance.

Section 6. The Note shall be executed on behalf of the City by the manual signatures of the Mayor and Clerk. In case any officer whose signature shall appear on any Note shall cease to be such officer before the delivery of such Note (including any Note delivered to the Registrar for issuance upon transfer), such 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.

Section 7. Upon execution and registration of the Note, and upon delivery of the Previous Note to the Registrar, the Registrar is authorized to (a) deliver the Note to Citizens State Bank, a Nebraska banking corporation, Friend, Nebraska, the purchaser thereof (the "**Purchaser**"), and (b) pay the Purchaser the amount of accrued and unpaid interest on the Previous Note as of the date the same is surrendered and delivered to the Registrar. The current principal balance of the Previous Note (\$200,000) shall be deemed paid by the issuance of the Note which, immediately upon issuance, shall have a beginning principal balance of \$200,000. The Purchaser shall have the right to direct the registration of the Note and the denomination thereof, subject to the restrictions of this Ordinance.

Section 8. The Clerk is directed to make and certify transcripts of the proceedings of the City precedent to the issuance of the Note, one of which transcripts shall be delivered to the purchaser of the Note.

Section 9. City represents, warrants, agrees and covenants with and for the benefit of the registered owner of the Note as follows:

(a) It has duly adopted an operating budget for the current fiscal year with respect to the general fund within the time required by law and levy ad valorem taxes on all of the taxable property within the City as required by law.

(b) The receipts from the levy of taxes together with other sources for the current fiscal year and the following fiscal year legally available for the payment of the principal of and interest on the Note will be sufficient to pay such principal and interest in full when and as the same become due.

(c) It will have on deposit in the Warren Memorial Hospital Fund and the general fund of the City amounts sufficient to pay the principal of and interest on the Note in full when and as the same become due.

(d) It will pay the principal of and interest on the Note from the net revenues of Warren Memorial Hospital. To the extent the same is insufficient for such purposes, it will cause to be levied and collected annually a special levy of taxes upon the taxable value of all the taxable property in the City, in addition to all other taxes, sufficient in rate and amount to pay the principal of and interest on the Note in full when and as the same become due.

(e) In preparing, approving and adopting a budget which controls or provides for the expenditure of its funds, the City will appropriate, allot and approve, in the manner required by law, from the Warren Memorial Hospital Fund and the general fund of the City amounts sufficient to pay the principal of and interest on the Note in full when and as the same become due.

Section 10. There is hereby established with the Registrar a Note Fund (the “**Note Fund**”) to be used solely for the purpose of paying the principal of and interest on the Note. Beginning January 1 of each year, the City shall deposit into the Note Fund such proceeds from the net revenues of Warren Memorial Hospital and the levy of taxes authorized pursuant to **Section 9** of this Ordinance as shall be sufficient to pay the principal of and interest on the Note when and as the same shall become due.

Section 11. Without in any way limiting the power, authority, or discretion elsewhere herein granted or delegated, the Council hereby authorizes and directs the Mayor and all other officers, 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 one of them shall consider necessary, advisable, desirable, or appropriate in connection with this Ordinance, and the issuance, sale, and delivery of the Note, including, without limitation and whenever appropriate, the execution and delivery thereof and of all other related documents, instruments, certifications, and opinions; and delegates, authorizes, and directs the Mayor the right, power, and authority to exercise his own independent judgment and absolute discretion in determining and finalizing the terms, provisions, form and contents of each of the foregoing. The execution and delivery by the Mayor or by any such other officer, officers, agent or agents of the City of any such documents, instruments, certifications, and opinions, or the doing by them of any act in connection with any of the matters which are the subject of this Ordinance, shall constitute conclusive evidence of both the City’s and their approval of 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 action so taken.

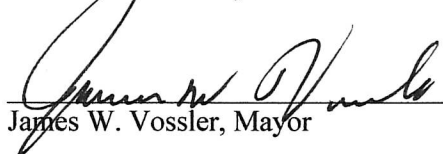
Section 12. If any one or more of the provisions of this Ordinance should be determined by a court of competent jurisdiction to be contrary to law, then such provisions shall be deemed severable from the remaining provisions of this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Note and the owner of the Note shall retain all the rights and benefits accorded to it under this Ordinance and under any applicable provisions of law.

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

Section 13. This Ordinance shall be in full force and effect and after its passage, approval and publication in pamphlet form as provided by law.

Passed and approved this 21st day of November, 2011.

CITY OF FRIEND, NEBRASKA


James W. Vossler, Mayor

Attest:

Debbie Gilmer, City Clerk/Treasurer

Exhibit A

**UNITED STATES OF AMERICA
STATE OF NEBRASKA
COUNTY OF SALINE
CITY OF FRIEND, NEBRASKA
PROMISSORY NOTE, SERIES 2009**

No. R-1

\$290,342.00

<u>Date of Issue</u>	<u>Date of Maturity</u>	<u>Rate of Interest</u>
_____, 2011	_____, 2013	Citizens State Bank Base Rate minus 1.25%

REGISTERED OWNER: CITIZENS STATE BANK

PRINCIPAL AMOUNT: \$290,342.00

The **CITY OF FRIEND, 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 sum of Two Hundred Ninety Thousand Three Hundred Forty-Two Dollars (\$290,342.00) or so much thereof as is disbursed and remains outstanding hereunder as shown on the records of the Registered Owner hereof, not to exceed the Principal Amount specified above with interest thereon from the Date of Issue shown above at the interest rate per annum, specified above, payable annually on _____ of each year, commencing _____ 2012 and at the Date of Maturity (each of such dates an "**Interest Payment Date**"). Such interest shall be computed daily on the then outstanding unpaid balance of the Principal Amount at the then current Rate of Interest and on the basis of a 365/366-day year and actual days elapsed. The principal of this Note (the "Note") is payable upon presentation and surrender of the same at the office of the Treasurer of the City, the registrar and paying agent (the "**Registrar**"). Interest on this Note will be paid by check or draft mailed on each Interest Payment Date by the Registrar to the Registered Owner of this Note, as shown on the books of record maintained by the Registrar to such owner's address as shown on such books and records.

This Note evidences a revolving line of credit. Advances under this Note may be made upon written request submitted only by the Registrar; provided, however, the Registered Owner shall have no obligation to advance funds under this Note if the City is in default under the terms of this Note. City agrees to be liable for all sums advanced under this Note and other amounts described in this Note.

The issuance of this Note was authorized by Ordinance No. 11-724 duly passed and adopted by the Mayor and Council on November 21, 2011 (the "Ordinance") in strict compliance with the provisions of Sections 18-1750, Reissue Revised Statutes of Nebraska, as amended, for the purpose of providing funds to pay certain expenses of Warren Memorial Hospital, owned and operated by the City. Reference is hereby made to the Ordinance, all of the provisions of which any owner of this Note by its acceptance hereof thereby assents, for a description of the nature and extent of the security for the Note, the covenants of the City and the taxes, funds and revenues pledged to the payment of the principal of and interest on the Note. A certified copy of the Ordinance is on file at the office of the Council.

Prepayment of all or any portion of the principal may be made at any time at the option of the City without premium.

If City shall fail to pay any sums hereunder when due, or if an Event of Default shall occur as defined below, then, and in any or all such events, the entire then outstanding unpaid balance of the Principal Amount, together with all accrued and unpaid interest thereon and any other sums due and payable hereunder, shall at the option of the Registered Owner, become immediately due and payable without further notice or demand. The failure of the Registered Owner to exercise its option to accelerate or any of the rights to which the Registered Owner may be entitled shall not constitute a waiver of the right to exercise such option or any other right in the event of any subsequent default whether of the same or different nature. For purposes of this Note, an Event of Default shall include the following:

1. If the City shall fail to pay when due any amount payable under this Note or shall fail to comply with any of the other terms of this Note, time being of the essence; or
2. If the City shall file or there shall be filed against the City, a petition in bankruptcy, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code of the United States or under any other applicable federal, state or other statute or law, or if a receiver, trustee or liquidator shall have been appointed with respect to the City, or all or any substantial part of the City's property.

In the event it becomes necessary for the Registered Owner to employ legal counsel or to take legal action to collect any sums due hereunder, to enforce any provisions hereof or to protect any of the Registered Owner's rights hereunder, the City agrees to pay to the Registered Owner, to the extent permitted by law, in addition to taxable costs of any legal proceedings or actions, reasonable attorney fees actually incurred, and all costs of preparation and conduct of such proceedings, all of which shall be and become a part of the amount due hereunder.

This Note is to be construed according to the laws of the State of Nebraska. Remedies of Registered Owner as provided in this Note shall be cumulative and concurrent and may be pursued singly, successively, or together against the City at the sole discretion of the Registered Owner, and any such remedies shall not be exhausted by any exercise thereof but may be exercised as often as the occasion therefore shall occur. Registered Owner shall not by any acts of admission or commission be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by the Registered Owner, and then only to the extent specifically set forth therein; a waiver on one event shall not be construed as continuing or as a bar to or waiver of such right or remedy on a subsequent event.

The Note is issuable as a fully registered Note as provided in the Ordinance. This Note is transferable by the Registered Owner or such owner's attorney duly authorized in writing at the office of the Registrar in Friend, Nebraska upon surrender and cancellation of this Note, and thereupon a new Note 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 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.

IT IS HEREBY CERTIFIED AND WARRENTED 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. The City agrees that it shall pay the principal of and interest on this Note from the net revenues of Warren Memorial Hospital and to

cause to be levied and collected annually a special levy of taxes on all the taxable property in the City to pay the principal of and interest on the Note as the same become due to the extent such net revenues are insufficient.

IN WITNESS WHEREOF, the Mayor and Council have caused this Note to be executed on behalf of the City by the manual signatures of its Mayor and Clerk, all as of the Date of Issue shown above.

CITY OF FRIEND, NEBRASKA

ATTEST:

By: _____
Mayor

By: _____
Clerk

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