
ORDINANCE NO. 20447

OF

THE CITY OF TOPEKA, KANSAS

PASSED

AUGUST 15, 2023

**COMBINED UTILITY REVENUE BONDS
SERIES 2023-A**

ORDINANCE NO. 20447

AN ORDINANCE INTRODUCED BY ACTING CITY MANAGER RICHARD NIENSTADT AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF \$89,385,000 AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY REVENUE BONDS, SERIES 2023-A, OF THE CITY OF TOPEKA, KANSAS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Topeka, Kansas (the “City”) is a city of the first class, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the City is authorized under the provisions of the K.S.A. 10-1201 *et seq.* (the “Act”), to issue and sell revenue bonds for the purpose of paying all or part of the cost of the acquisition, construction, reconstruction, alteration, repair, improvement, extension or enlargement of the City’s water, water pollution control and stormwater utilities (collectively, the “System”), provided that the principal of and interest on such revenue bonds shall be payable solely from the Net Revenues derived by the City from the operation of the System; and

WHEREAS, by proceedings duly had, the governing body of the City is previously authorized or hereby authorized, and has declared or declares its intention under the Act, to acquire, construct, reconstruct, alter, repair, improve, extend or enlarge the System, all as more fully listed on ***Schedule I*** to the hereinafter defined Bond Resolution (collectively, the “Project”), and to issue its Combined Utility Revenue Bonds in an amount of not to exceed \$96,260,000; notices of such intention were published one time in the official newspaper of the City and no sufficient written protest thereto was filed with the Clerk within fifteen (15) days after the dates of said publications, all as set forth in the Act; and

WHEREAS, the Project will not cause duplication of existing utility service furnished by a private utility in the City; and

WHEREAS, the City is authorized under the Act to issue its Combined Utility Revenue Bonds, Series 2023-A (the “Series 2023-A Bonds”) in an amount not to exceed \$96,260,000 in order to finance all or a portion of the costs of the Project, make necessary deposits to a bond reserve account and pay the costs of issuance for the Series 2023-A Bonds; and

WHEREAS, the Parity Resolution provides the City may issue Additional Bonds which constitute Parity Bonds upon the satisfaction of certain conditions; and

WHEREAS, prior to or simultaneously with the issuance of the Series 2023-A Bonds, such terms and conditions will be satisfied.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS, AS FOLLOWS:

Section 1. Definitions of Words and Terms. In addition to words and terms defined elsewhere herein, the following words and terms in this Ordinance shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural

and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

“Act” means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-620 *et seq.*, and K.S.A. 10-1201 *et seq.*, all as amended and supplemented from time to time.

“Additional Bonds” means any bonds secured by the Net Revenues hereafter issued pursuant to the Bond Resolution.

“Additional Obligations” means any leases or other obligations of the City payable from the Gross Revenues or Net Revenues, other than Permitted Loans and the Bonds.

“Bond Resolution” means the resolution to be adopted by the governing body of the City prescribing the terms and details of the Series 2023-A Bonds and making covenants with respect thereto.

“Bonds” means the Series 2014-A Bonds, Series 2016-A Bonds, Series 2017-A Bonds, Series 2018-A Bonds, Series 2019-A Bonds, Series 2020-A Bonds, Series 2021-A Bonds, Series 2021-B Bonds, Series 2023-A Bonds, and any Additional Bonds.

“Chief Financial Officer” means the duly appointed and Chief Financial Officer of the City or, in the Chief Financial Officer’s absence, the duly appointed Deputy or Assistant Chief Financial Officer or Director of Administrative and Financial Services of the City.

“City” means the City of Topeka, Kansas.

“Clerk” means the duly appointed and acting Clerk of the City or, in the Clerk’s absence, the duly appointed Deputy, Assistant or Acting Clerk.

“Expenses” means the sum of (a) ordinary expenses of maintenance, operation and repair, (b) administrative expenses, (c) reasonable pension fund contributions, (d) insurance expense, (e) legal expense and (f) payments on Permitted Loans; provided, however, Expenses shall not include payment in lieu of taxes, debt service payments on System Indebtedness, depreciation, amortization or other non-cash items.

“Fiscal Year” means the twelve-month period ending on December 31.

“Gross Revenues” means all receipts and revenues derived by the City from the operation of the Combined Utility, including investment earnings, and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on System Indebtedness, but excluding any grants, proceeds of bond issues and/or insurance proceeds, any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

“Junior Lien Bonds” means the Series 2021-B Bonds any Additional Bonds payable from, and secured by a lien on the Net Revenues, which lien is junior to that of any Parity Bonds, but senior to that of the Subordinate Lien Bonds.

“Mayor” means the duly elected and acting Mayor of the City or, in the Mayor’s absence, the duly appointed and/or elected Deputy Mayor or Acting Mayor of the City.

“Net Revenues” means, for the period of determination, Gross Revenues of the Combined Utility minus the sum of (a) Expenses and (b) any required deposits to the Rebate Fund as required under the Bond Resolution, or any other Rebate Fund created in connection with the issuance of the Bonds.

“Ordinance” means this Ordinance authorizing the issuance of the Series 2023-A Bonds.

“Parity Bonds” means the Outstanding Series 2014-A Bonds, Series 2016-A Bonds, Series 2017-A Bonds, Series 2018-A Bonds, Series 2019-A Bonds, Series 2020-A Bonds, Series 2021-A Bonds, Series 2023-A Bonds, and any Additional Bonds hereafter issued pursuant to the Bond Resolution and standing on a parity and equality with the Series 2023-A Bonds with respect to the lien on the Net Revenues.

“Parity Resolution” means collectively each ordinance and resolution which authorized the issuance of the Parity Bonds, the Bond Resolution and the ordinances and/or resolutions under which any Additional Bonds which constitute Parity Bonds are hereafter issued.

“Permitted Loans” means any State Revolving loans between the Kansas Department of Health and Environment and the City for public drinking water improvements, pollution control improvements, or stormwater improvements

“Project(s)” means the acquisition, construction, reconstruction, alterations, repair, improvements, extensions or enlargements of the System described in the Preamble to this Ordinance, and ***Schedule I*** to the Bond Resolution, or any Substitute Project.

“Revenue Fund” means the Water, Water Pollution Control, and Stormwater Utility Revenue Fund referred to in the Bond Resolution.

“Series 2014-A Bonds” means the City's Combined Utility Improvement and Refunding Revenue Bonds, Series 2014-A, dated December 23, 2014.

“Series 2016-A Bonds” means the City's Combined Utility Improvement and Refunding Revenue Bonds, Series 2016-A, dated September 6, 2016.

“Series 2017-A Bonds” means the City's Combined Utility Revenue Bonds, Series 2017-A, dated September 5, 2017.

“Series 2018-A Bonds” means the City's Combined Utility Revenue Bonds, Series 2018-A, dated September 11, 2018.

“Series 2019-A Bonds” means the City's Combined Utility Refunding and Improvement Revenue Bonds, Series 2019-A, dated September 17, 2019.

“Series 2020-A Bonds” means the City's Combined Utility Refunding and Improvement Revenue Bonds, Series 2020-A, dated September 8, 2020.

“Series 2021-A Bonds” means the City's Combined Utility Refunding and Improvement Revenue Bonds, Series 2021-A, dated September 7, 2021.

“Series 2021-B Bonds” means the City's Taxable Combined Utility Junior Lien Revenue Bonds, Series 2021-B, dated September 7, 2021.

“Series 2023-A Bonds” means the City's Combined Utility Revenue Bonds, Series 2023-A, authorized by this Ordinance.

“State” means the State of Kansas.

“Subordinate Lien Bonds” means any Additional Bonds or Additional Obligations payable from the Net Revenues on a subordinate lien basis to any Parity Bonds and Junior Lien Bonds, and which constitute general obligations of the City.

“Substitute Project” means a substitute or additional project of the System authorized in the manner set forth in the Bond Resolution.

“System” or “Combined Utility System” means the combined water, water pollution control and stormwater utility facilities of the City, including the entire waterworks plant and system owned and operated by the City for the production, storage, treatment and distribution of drinking water, the water pollution control plant and system owned and operated by the City for the collection, treatment and disposal of sanitary and stormwater waste, and the City’s stormwater inlets, pipes, levees, creeks and rivers and publicly owned or maintained ditches, channels, detention ponds and stormwater quality best management practices, including all appurtenances and facilities connected therewith or relating thereto, together with all extensions, improvements, additions and enlargements thereto hereafter made or acquired by the City.

“System Indebtedness” means collectively all Bonds and Additional Obligations, which are payable out of, or secured by an interest in, the Gross Revenues, except Permitted Loans.

Section 2. Authorization of the Series 2023-A Bonds. There shall be issued and are hereby authorized and directed to be issued the Combined Utility Revenue Bonds, Series 2023-A, of the City in the aggregate principal amount of \$89,385,000 for the purpose of providing funds to: (a) pay costs of the Project; (b) pay costs of issuance of the Series 2023-A Bonds; and (c) make a deposit to the Bond Reserve Account.

Section 3. Security for the Series 2023-A Bonds. The Series 2023-A Bonds shall be special obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the City hereby pledges said Net Revenues to the payment of the principal of and interest on the Series 2023-A Bonds. The Series 2023-A Bonds shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Series 2023-A Bonds, either as to principal or interest.

The covenants and agreements of the City contained herein and in the Series 2023-A Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2023-A Bonds, all of which Series 2023-A Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Series 2023-A Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Series 2023-A Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Net Revenues with any Parity Bonds. The Series 2023-A Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Parity Bonds; and the Parity Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Series 2023-A Bonds.

Section 4. Terms, Details and Conditions of the Series 2023-A Bonds. The Series 2023-A Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Bond Resolution hereafter adopted by the governing body of the City.

Section 5. Rate Covenant. The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the System, including all repairs, alterations, extensions, reconstructions, enlargements or improvements thereto hereafter constructed or acquired by the City, as will produce Revenues sufficient to (a) pay Expenses; (b) pay the principal of and interest on the Bonds as and when the same become due; and (c) provide reasonable and adequate reserves for the payment of the Bonds and the interest thereon and for the protection and benefit of the System as provided in this Ordinance and the Bond Resolution, provided, however, that such rates, fees and charges of the water, water pollution control and stormwater utilities shall not be set or otherwise established so that the rates, fees or charges of one such division subsidize the other. The Bond Resolution may establish requirements in excess of the requirements set forth herein.

Section 6. Further Authority. The Mayor, Clerk and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 7. Governing Law. This Ordinance and the Series 2023-A Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 8. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

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PASSED AND APPROVED by the Governing Body on August 15, 2023 and **SIGNED** by the Mayor.

(SEAL)

Mayor

ATTEST:

Clerk

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