

1 (Published in the Topeka Metro News September 24, 2008)

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3 **ORDINANCE NO. 19163**

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5 AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. relating to the  
6 execution of a loan agreement amendment between the City of  
7 Topeka, Kansas, and the State of Kansas, for the purpose of  
8 obtaining a loan from the Kansas Public Water Supply Loan Fund for  
9 the purpose of financing a public water supply project, KPWSLF  
10 Project No. 2419; establishing a dedicated source of revenue for  
11 repayment of such loan; authorizing and approving certain documents  
12 in connection therewith; and authorizing certain other actions in  
13 connection with the Loan Agreement.  
14

15 WHEREAS, the Safe Drinking Water Act Amendments of 1996 [PL 104-182] to the  
16 Safe Drinking Water Act (the "Federal Act") established the Drinking Water Loan Fund to  
17 assist public water supply systems in financing the costs of infrastructure needed to  
18 achieve or maintain compliance with the Federal Act and to protect the public health and  
19 authorized the Environmental Protection Agency (the "EPA") to administer a revolving loan  
20 program operated by the individual states; and

21 WHEREAS, to fund the state revolving fund program, the EPA will make annual  
22 capitalization grants to the states, on the condition that each state provide a state match for  
23 such state's revolving fund; and

24 WHEREAS, by passage of the Kansas Public Water Supply Loan Act, K.S.A. 65-  
25 163d *et seq.*, as amended (the "Loan Act"), the State of Kansas (the "State") has  
26 established the Kansas Public Water Supply Loan Fund (the "Revolving Fund") for  
27 purposes of the Federal Act; and

28 WHEREAS, under the Loan Act, the Secretary of the Kansas Department of Health  
29 and Environment ("KDHE") is given the responsibility for administration and management of  
30 the Revolving Fund; and

31 WHEREAS, the Kansas Development Finance Authority (the "Authority") and KDHE  
32 have entered into a Pledge Agreement (the "Pledge Agreement") pursuant to which KDHE  
33 agrees to enter into Loan Agreements with Municipalities for public water supply projects  
34 (the "Projects") and to pledge the Loan Repayments (as defined in the Pledge Agreement)  
35 received pursuant to such Loan Agreements to the Authority; and

36 WHEREAS, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to  
37 issue revenue bonds (the "Bonds") for the purpose of providing funds to implement the  
38 State's requirements under the Federal Act and to loan the same, together with available  
39 funds from the EPA capitalization grants, to municipalities within the State for the payment  
40 of Projects Costs (as said terms are defined in the Loan Act); and

41 WHEREAS, the City of Topeka, Kansas (the "Municipality") is a municipality as said  
42 term is defined in the Loan Act which operates a water system (the "System"); and

43 WHEREAS, the System is a public water supply system, as said term is defined in  
44 the Loan Act; and

45 WHEREAS, the Municipality has, pursuant to the Loan Act, submitted an Application  
46 to KDHE to obtain a loan from the Revolving Fund to finance the costs of improvements to  
47 its System consisting of the following:

48 Installation of approximately 7,200 feet of 18-inch PVC pipe along Indian Hills Road  
49 to resolve pressure and capacity problems; and

50 WHEREAS, the Municipality has taken all steps necessary and has complied with  
51 the provisions of the Loan Act and the provisions of K.A.R. 28-15-50 to 28-15-65 (the  
52 "Regulations") applicable thereto necessary to qualify for the loan; and

53 WHEREAS, KDHE and the Municipality previously entered into a loan agreement for

project No. 2419 in the amount of one million seven hundred forty-six thousand three hundred sixty-two dollars (\$1,746,362.00); and

WHEREAS, KDHE has informed the Municipality that it has approved the amendment of the prior loan agreement, approving the municipality for a loan in the amount of not to exceed three million six hundred nineteen thousand nine dollars and forty-eight cents (\$3,619,009.48) (the "Loan") in order to finance the Project; and

WHEREAS, the governing body of the Municipality hereby finds and determines that it is necessary and desirable to accept the First Amendment to the Loan and to enter into the First Amendment to the Loan Agreement and certain other documents relating thereto, and to take certain actions required in order to implement the First Amendment to the Loan Agreement.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. AUTHORIZATION OF THE FIRST AMENDMENT TO THE LOAN AGREEMENT. The Municipality is hereby authorized to accept the First Amendment to the Loan and to enter into a certain First Amendment to the Loan Agreement, with an effective date of April 17, 2008, for Kansas Public Water Supply Loan Fund Project No. 2419, with the State of Kansas acting by and through the Kansas Department of Health and Environment (the "First Amendment to the Loan Agreement") to finance the Project Costs (as defined in the First Amendment to the Loan Agreement). The city manager, and clerk are hereby authorized to execute the First Amendment to the Loan Agreement in substantially the form presented to the governing body this date, with such changes or modifications thereto as may be approved by the city manager and the city attorney, the city manager's execution of the First Amendment to the Loan Agreement being conclusive

evidence of such approval.

Section 2. ESTABLISHMENT OF DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF LOAN. Pursuant to the Loan Act, the Municipality hereby establishes a dedicated source of revenue for repayment of the amended Loan. The Municipality shall collect such rates, fees, and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality, as will provide revenues sufficient to (i) pay the costs of operation and maintenance of the System, (ii) pay the principal of and the interest on the amended Loan and such additional amount as may validly become due, and (iii) pay all other amounts due at any time under the First Amendment to the Loan Agreement; provided, however, the lien of KDHE on the System revenues of the Municipality's System shall be superior to the lien on such System revenues to the Municipality's outstanding System Revenue Bonds. The obligation of the Municipality to make Loan Repayments shall be secured by a Financial Guaranty Insurance Policy issued in favor of KDHE but obtained by and at the cost of the Municipality. The Municipality has obtained a commitment from MBIA Insurance Corporation to provide the Policy herein referenced.

In accordance with the Loan Act, the obligations under the amended Loan and the First Amendment to the Loan Agreement shall not be included within any limitation on the bonded indebtedness of the Municipality.

Section 3. FURTHER AUTHORITY. The city manager, 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, and 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 4. GOVERNING LAW. The ordinance and the First Amendment to the Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

Section 5. EFFECTIVE DATE. This Ordinance shall take effect and be in full force from and after its passage and approval by the governing body of the City and publication in the official city newspaper.

PASSED and APPROVED by the City Council September 16, 2008.

CITY OF TOPEKA, KANSAS

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William W. Bunten, Mayor

ATTEST:

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Brenda Younger, City Clerk