

(Published in The Topeka Metro News on August 30, 2010.)

ORDINANCE NO. 19458

AN ORDINANCE INTRODUCED BY CITY MANAGER NORTON N. BONAPARTE, JR. AUTHORIZING THE ISSUANCE OF \$985,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE COMBINED UTILITY IMPROVEMENT REVENUE BONDS (BUILD AMERICA BONDS – DIRECT PAY TO ISSUER) SERIES 2010-A, \$9,155,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE COMBINED UTILITY IMPROVEMENT REVENUE BONDS (RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS) SERIES 2010-B, AND \$85,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE COMBINED UTILITY IMPROVEMENT REVENUE BONDS, SERIES 2010-C OF THE CITY OF TOPEKA, KANSAS, UNDER THE AUTHORITY OF K.S.A. 10-1201 ET SEQ., AND ALL AMENDMENTS THERETO.

WHEREAS, pursuant to K.S.A. 10-1201 et seq., as amended (the "Act"), the governing body of the **City of Topeka, Shawnee County, Kansas**, (the "City") by (1) its Ordinance No. 19171 adopted by two-thirds vote of the members thereof, and published as required by law, expressed its intent to improve the City's stormwater, wastewater and water supply systems (collectively, the "System") by replacing the existing distributed control system equipment at the North Topeka Waste Water Treatment Plant with modern cost effective supervised control and data acquisition equipment including the replacement of the software and hardware required to automate and monitor the wastewater treatment facility, reprogramming the programmable logic controllers and human machine interfaces to standardize with the Oakland plant, and replacement of the computer system and any related appurtenances needed for a complete project together with all things necessary and incidental thereto (the "Waste Water Treatment Plant Improvements") and authorizing that notice of the City's intention to make the Waste Water Treatment Plant Improvements and finance the costs thereof be given in accordance with the requirements of the Act and (2); and (2) its Ordinance No. 19256 adopted by two-thirds vote of the members thereof, and published as required by law, expressed its intent to improve the System by rehabilitating the South Kansas River Pump Station and the Potwin Pump Station by making improvements including regulatory compliance upgrades, modifications of the wetwell, barscreen and electrical systems, investigation of cost effective "green" alternatives, addition of flow monitoring of incoming interceptors, demolition of the Potwin Pump Station, installation of a new interceptor to divert flow from the Quinton Interceptor to the South Kansas River Pump Station, installation of improved odor control and related appurtenances together with all things necessary and incidental thereto (the "Pump Station Improvements") (the Waste Water Treatment Plant Improvements and the Pump Station Improvements are collectively referred as the "Improvements") and authorizing that notice of the City's intention to make the Pump Station

Improvements and finance the costs thereof be given in accordance with the requirements of the Act

WHEREAS, pursuant to the Act, the City did cause to be published in its official newspaper, a paper of general circulation in the City, its Notice of Intention to complete the Waste Water Treatment Plant Improvements and finance the cost thereof by issuing revenue bonds of the City, in the maximum principal amount of \$1,000,000 (less original issue discount), to pay all or part of the cost of the Waste Water Treatment Plant Improvements incurred or to be incurred by the City in connection with the Waste Water Treatment Plant Improvements; and

WHEREAS, a sufficient protest against the making of the Waste Water Treatment Plant Improvements and the issuance of revenue bonds of the City in the maximum principal amount of \$1,000,000 to pay the cost thereof was not received by the City Clerk within fifteen (15) days of the date of the publication of the City's Notice of Intention; and

WHEREAS, pursuant to the Act, the City did cause to be published in its official newspaper, a paper of general circulation in the City, its Notice of Intention to complete the Pump Station Improvements and finance the cost thereof by issuing revenue bonds of the City, in the maximum principal amount of \$9,635,054 (less original issue discount), to pay all or part of the cost of the Pump Station Improvements incurred or to be incurred by the City in connection with the Pump Station Improvements; and

WHEREAS, a sufficient protest against the making of the Pump Station Improvements and the issuance of revenue bonds of the City in the maximum principal amount of \$9,635,054 to pay the cost thereof was not received by the City Clerk within fifteen (15) days of the date of the publication of the City's Notice of Intention; and

WHEREAS, it is necessary at this time that the City proceed forthwith to sell and deliver its (1) Taxable Combined Utility Improvement Revenue Bonds (Build America Bonds – Direct Payment to Issuer) Series 2010-A, in the principal sum of \$985,000 (the “Series 2010-A Bonds”), for the purpose of providing funds to (a) permanently finance a portion of the costs of making the Waste Water Treatment Plant Improvements (i.e., \$800,000), (b) permanently finance a portion of the costs of making the Pump Station Improvements (i.e., \$139,487.80) and (c) fund the debt service reserve fund for the Series 2010-A Bonds; (2) Taxable Combined Utility Improvement Revenue Bonds (Recovery Zone Economic Development Bonds) Series 2010-B, in the principal sum of \$9,155,000 (the “Series 2010-B Bonds”), for the purpose of providing funds to (a) permanently finance the balance of the costs of making the Pump Station Improvements (i.e., \$8,731,990.70) and (b) fund the debt service reserve fund for the Series 2010-B Bonds; and (3) Taxable Combined Utility Improvement Revenue Bonds, Series 2010-C, in the principal sum of \$85,000 (the “Series 2010-C Bonds”) (the Series 2010-A Bonds, Series 2010-B Bonds and Series 2010-C Bonds are collectively referred as the “Bonds”), for the purpose of providing funds to pay the costs of issuing the Bonds, all under the authority of K.S.A. 10-1201 et seq. and Article 1 of Chapter 10, Kansas Statutes Annotated, all as amended; and

89 **WHEREAS**, on March 25, 2003, the City combined its stormwater utility with the water
90 and water pollution control utility creating a water, water pollution control and stormwater utility
91 system (the “Combined Utility”); and
92

93 **WHEREAS**, the City on February 19, 2004, issued its Combined Utility Improvement
94 and Refunding Revenue Bonds, Series 2004-A in the amount of \$46,180,000 (the “Series 2004-
95 A Bonds”) which, in part, currently refunded the City’s outstanding Series 1998A Water and
96 Water Pollution Control Utility Refunding Revenue Bonds dated June 1, 1998; and
97

98 **WHEREAS**, the City on December 8, 2005, issued its Combined Utility Improvement
99 Revenue Bonds, Series 2005-A in the amount of \$14,875,000 (the “Series 2005-A Bonds”); and
100

101 **WHEREAS**, the City on October 18, 2006, issued its Combined Utility Refunding
102 Revenue Bonds, Series 2006-A in the amount of \$32,375,000 (the “Series 2006-A Bonds”) which
103 currently refunded all of the City’s outstanding Series 1998B Water and Water Pollution
104 Control Utility Revenue Bonds dated June 1, 1998; and
105

106 **WHEREAS**, the City on October 18, 2006, issued its Combined Utility Refunding
107 Revenue Bonds, Series 2006-B Bonds in the amount of \$22,600,000 (the “Series 2006-B
108 Bonds”) which advanced refunded the City’s outstanding Series 2001-A Water and Water
109 Pollution Control Utility Revenue Bonds maturing in the years 2009 through and including 2031;
110 and
111

112 **WHEREAS**, the City on July 17, 2007, issued its Combined Utility Improvement and
113 Refunding Revenue Bonds, Series 2007-B in the amount of \$5,210,000 (the “Series 2007-B
114 Bonds”) which, in part, currently refunded the August 1, 2007, maturity of the City’s outstanding
115 (1) Series 2001-A Water and Water Pollution Control Utility Revenue Bonds, (2) Series 2004-A
116 Combined Utility Improvement and Refunding Revenue Bonds, (3) Series 2005-A Combined
117 Utility Improvement Revenue Bonds, and (4) Series 2006-B Combined Utility Refunding
118 Revenue Bonds; and
119

120 **WHEREAS**, the City on July 17, 2007, issued its Taxable Combined Utility
121 Improvement Revenue Bonds, Series 2007-C in the amount of \$2,140,000 (the “Series 2007-C
122 Bonds”); and
123

124 **WHEREAS**, the Bonds are parity obligations of the City’s System and, as such shall
125 have equal lien status with the outstanding Series 2004-A Bonds; the Series 2005-A Bonds, the
126 Series 2006-A Bonds, the Series 2006-B Bonds, the Series 2007-B and the Series 2007-C Bonds;
127 and
128

129 **WHEREAS**, the City has authorized certain loans in the maximum authorized amount of
130 \$89,619,672 from the Kansas Department of Health and Environment revolving fund loan
131 program (the “Permitted Loans”) and pledged the revenues from the System to the payment of
132 such Permitted Loans and any additional loans which would constitute Permitted Loans under
133 the Resolution hereinafter provided for; and
134

135 **WHEREAS**, the lien of the Permitted Loans upon the revenues of the System is superior
136 to the lien of the City's outstanding Series 2004-A Bonds, Series 2005-A Bonds, Series 2006-A
137 Bonds, Series 2006-B Bonds, Series 2007-B Bonds, Series 2007-C Bonds and the Bonds hereby
138 authorized and directed to be issued; and
139

140 **WHEREAS**, the City has received an allocation of \$9,364,054 of Recovery Zone
141 Economic Development Bond Authority pursuant to Section 1400U-1 of the Internal Revenue
142 Code of 1986, as amended, (the "Code") to finance certain economic development activities
143 including public infrastructure and the construction of public facilities in specifically designated
144 areas of the City (the "RZEDB Authority"); and
145

146 **WHEREAS**, the City has by its Ordinance No. 19392 passed and approved March 16,
147 2010, and published as required by law, designated that part of the City as described in such
148 Ordinance as a Recovery Zone because of the distress factors set forth in such Ordinance; and
149

150 **WHEREAS**, the RZEDB Authority allocated to the City will expire by September 30,
151 2010, if bonds of the City so designated and issued by the City by such date.
152

153 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**
154 **CITY OF TOPEKA, SHAWNEE COUNTY, KANSAS:**
155

156 **Section 1.** That there is hereby authorized and directed to be issued (1) Taxable
157 Combined Utility Improvement Revenue Bonds (Build America Bonds – Direct Payment to
158 Issuer) Series 2010-A, in the principal sum of \$985,000 (the "Series 2010-A Bonds"), for the
159 purpose of providing funds to (a) permanently finance a portion of the costs of making the Waste
160 Water Treatment Plant Improvements, (b) permanently finance the costs of making the Pump
161 Station Improvements and (c) fund the debt service reserve fund for the Series 2010-A Bonds;
162 (2) Taxable Combined Utility Improvement Revenue Bonds (Recovery Zone Economic
163 Development Bonds) Series 2010-B, in the principal sum of \$9,155,000 (the "Series 2010-B
164 Bonds"), for the purpose of providing funds to (a) permanently finance the balance of the costs
165 of making the Pump Station Improvements and (b) fund the debt service reserve fund for the
166 Series 2010-B Bonds; and (3) Taxable Combined Utility Improvement Revenue Bonds, Series
167 2010-C, in the principal sum of \$85,000 (the "Series 2010-C Bonds"), for the purpose of
168 providing funds to pay the costs of issuing the Bonds, all as provided by Article 1 of Chapter 10,
169 Kansas Statutes Annotated and Article 12 of Chapter 10 of the Kansas Statutes Annotated, all as
170 amended. The Bonds shall be dated and bear interest, shall mature and be payable at such times,
171 shall be in such form, shall be subject to redemption and payment prior to the maturity thereof
172 and shall be issued in the manner prescribed and subject to the provisions, covenants and
173 agreements set forth in a resolution of the Governing Body of the City adopted the same date as
174 the date of the passage and approval of this Ordinance (the "Resolution").
175

176 **Section 2.** That the Mayor and City Clerk are hereby authorized to prepare and execute
177 the Bonds and when so executed, the Bonds shall be registered as required by law and the
178 Governing Body shall annually make provisions for the payment of the principal of, redemption
179 premium, if any, and interest on the Bonds as the same shall become due from the revenues
180 derived by the City from the rates, fees or charges collected by the City from the operation of the

System, including all improvements, extensions and enlargements thereto hereafter constructed or acquired by the City and not from any other fund or source. The Bonds shall constitute a lien upon the revenues produced from the System of the City.

Section 3. That the City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the Resolution all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 4. The City hereby elects to have Section 54AA of the Code apply to the 2010-A Bonds and 2010-B Bonds (together, the "Subsidy Bonds") so the Subsidy Bonds may be "Build America Bonds" under Code Section 54AA(d). The City is further making the irrevocable election to have Section 54AA(g) of the Code apply to the Subsidy Bonds so the Subsidy Bonds may be "qualified bonds" under Code Section 54AA(g) in order to receive the refundable credits allowed to issuers pursuant to Sections 54AA(g)(1) and 6431 of the Code with respect to "qualified bonds." In addition to the designation as "Build America Bonds," the City is designating the 2010-B Bonds, as provided in Code Section 1400U-2(b)(1)(B), as "recovery zone economic development bonds" for purposes of Code Section 1400U-2 in order to receive the refundable credits allowed to issuers pursuant to Code Sections 1400U-2(a) and 6431 with respect to the 2010-B Bonds.

Section 5. That if any portion or provision of this Ordinance or the Bonds shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such portion or provisions shall not affect any of the remaining provisions of this Ordinance or the Bonds, but this Ordinance and said Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 6. That the Bonds shall be issued and sold to the purchaser thereof in accordance with both its bid for the purchase thereof and the terms and conditions of this Ordinance.

Section 7. That this Ordinance shall take effect and be in force from and after its passage and publication in the official City newspaper.

217 Passed by the Governing Body and approved by the Council of the City of Topeka,
218 Kansas, this 24th day of August, 2010.

219
220 **CITY OF TOPEKA, KANSAS**

221
222
223 **ATTEST:**

/s/ William W. Bunten
224 **William W. Bunten, Mayor**

225
226 /s/ Brenda Younger
227 **Brenda Younger, City Clerk**

228
229 **(SEAL)**

230
231
232
233
234 **I, BRENDA YOUNGER**, City Clerk of the City of Topeka, Shawnee County, Kansas,
235 do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 19458
236 adopted and approved by the City Council on August 24, 2010.

237
238
239
240 /s/ Brenda Younger
241 **Brenda Younger, City Clerk**