

(Published in The Topeka Metro News on September 19, 2011.)

ORDINANCE NO. 19632

AN ORDINANCE INTRODUCED BY ACTING CITY MANAGER DANIEL R. STANLEY AUTHORIZING THE ISSUANCE OF \$18,900,000 AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2011-A, OF THE CITY OF TOPEKA, KANSAS, UNDER THE AUTHORITY OF K.S.A. 10-116a AND 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 its Ordinance No. 19179 and Ordinance No. 19172, as amended by Ordinance No. 19528 and 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 making certain stormwater collection, sanitary sewer and water distribution improvements together with all things necessary and incidental thereto (the "Improvements") and authorizing that notice of the City's intention to make the Improvements and finance the costs thereof be given in accordance with the requirements of the Act; 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(s) of Intention to complete the Improvements and finance the cost thereof by issuing revenue bonds of the City, in the maximum principal amount of \$3,120,786, to pay all or part of the cost of the Improvements incurred or to be incurred by the City in connection with the Improvements; and

WHEREAS, a sufficient protest against the making of the Improvements and the issuance of revenue bonds of the City in the maximum principal amount of \$3,120,786 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(s) of Intention; and

WHEREAS, the City has heretofore duly authorized, issued and delivered its \$46,180,000 principal amount of Combined Utility Improvement and Refunding Revenue Bonds, Series 2004-A, dated February 19, 2004, (the "Series 2004-A Bonds") pursuant to its Ordinance (the "Series 2004-A Bond Ordinance") and Resolution (the "Series 2004-A Bond Resolution") adopted January 20, 2004, in accordance with the requirements of K.S.A. 10-116a, and K.S.A. 10-1201 et seq., all as amended; and

WHEREAS, as of September 1, 2011, there remains outstanding of the Series 2004-A Bonds the principal amount of \$38,365,000 bearing interest payable semiannually on February 1 and August 1 each year and maturing on August 1, as follows:

SERIAL BONDS

MATURITY	PRINCIPAL	INTEREST
<u>(August 1)</u>	<u>AMOUNT</u>	<u>RATE</u>
2012	\$1,100,000	3.100%
2013	1,135,000	3.300
2014	1,175,000	3.450
2015	1,220,000	3.650
2016	1,265,000	3.800
2017	1,315,000	4.000
2018	1,370,000	4.000
2019	1,425,000	4.125
2020	1,490,000	4.250
2021	1,555,000	4.250

TERM BONDS

MATURITY	PRINCIPAL	INTEREST
<u>(August 1)</u>	<u>AMOUNT</u>	<u>RATE</u>
2023	\$ 3,315,000	4.50%
2029	11,960,000	4.50
2033	10,040,000	4.50

WHEREAS, pursuant to Section 203 of the Series 2004-A Bond Ordinance, the State Treasurer of the State of Kansas, Topeka, Kansas, was designated as the City's Paying Agent and Bond Registrar for the payment of the principal of and interest on the Refunded Bonds hereinafter defined; and

WHEREAS, pursuant to Section 301 of the Series 2004-A Bond Resolution, the Series 2004-A Bonds maturing on August 1, 2012, and thereafter, are subject to redemption and payment at the option of the City on August 1, 2011, and thereafter in whole or in part on any date, at the redemption price equal to the principal amount thereof with a redemption premium of one percent of the principal amount redeemed, such redemption premium to decline one-half of one percent (1/2 of 1%) each Interest Payment Date thereafter, plus accrued interest thereon to the date fixed for redemption and payment; and

WHEREAS, the City has determined and hereby determines that it is in the best interest of the City and the patrons and taxpayers thereof that the Series 2004-A Bonds maturing on August 1, 2014, through and including August 1, 2021, the August 1, 2023 Term Bond and \$1,770,000 of the August 1, 2029 Term Bond subject to mandatory redemption and payment on August 1, 2024, (i.e., the aggregate amount \$15,900,000) (the "Refunded Bonds") be paid and

redeemed on October 1, 2011, and that refunding revenue bonds of the City payable from the revenues derived from the operation of the System of the City be issued in the aggregate principal amount of \$15,780,000 to be utilized for such purpose; and

WHEREAS, such refunding would provide a more orderly plan of financing for the City and result in a general restructuring of the debt service obligation of the City with respect to its combined utility, as hereinafter defined; and

WHEREAS, it is necessary at this time that the City proceed forthwith to sell and deliver its Combined Utility Improvement and Refunding Revenue Bonds, Series 2011-A, in the principal sum of \$18,900,000 (the "Bonds"), for the purpose of providing funds to (1) permanently finance the costs of making the Improvements (i.e., \$3,120,000), (2) currently refund the Refunded Bonds, (3) fund a debt service reserve fund for the Bonds and (4) pay the costs of issuing the Bonds, under the authority of K.S.A. 10-116a, K.S.A. 10-1201 et seq. and Article 1 of Chapter 10, Kansas Statutes Annotated, all as amended; and

WHEREAS, on March 25, 2003, the City combined its stormwater utility with the water and water pollution control utility creating a water, water pollution control and stormwater utility system (the "Combined Utility"); and

WHEREAS, as previously herein recited, the City on February 19, 2004, issued its Series 2004-A Bonds in the amount of \$46,180,000 which, in part, currently refunded the City's outstanding Series 1998A Water and Water Pollution Control Utility Refunding Revenue Bonds dated June 1, 1998; and

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

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

WHEREAS, the City on October 18, 2006, issued its Combined Utility Refunding Revenue Bonds, Series 2006-B Bonds in the amount of \$22,600,000 (the "Series 2006-B Bonds") which advanced refunded the City's outstanding Series 2001-A Water and Water Pollution Control Utility Revenue Bonds maturing in the years 2009 through and including 2031; and

WHEREAS, the City on July 17, 2007, issued its Combined Utility Improvement and Refunding Revenue Bonds, Series 2007-B in the amount of \$5,210,000 (the "Series 2007-B Bonds") which, in part, currently refunded the August 1, 2007, maturity of the City's outstanding (1) Series 2001-A Water and Water Pollution Control Utility Revenue Bonds, (2) Series 2004-A Combined Utility Improvement and Refunding Revenue Bonds, (3) Series 2005-A Combined Utility Improvement Revenue Bonds, and (4) Series 2006-B Combined Utility Refunding Revenue Bonds; and

132
133 **WHEREAS**, the City on July 17, 2007, issued its Taxable Combined Utility
134 Improvement Revenue Bonds, Series 2007-C in the amount of \$2,140,000 (the "Series 2007-C
135 Bonds"); and

136
137 **WHEREAS**, the City on September 22, 2010, issued its (1) Taxable Combined Utility
138 Improvement Revenue Bonds (Build America Bonds – Direct Payment to Issuer) Series 2010-A
139 in the amount of \$985,000, (the "Series 2010-A Bonds") (2) Taxable Combined Utility
140 Improvement Revenue Bonds (Recovery Zone Economic Development Bonds) Series 2010-B in
141 the amount of \$9,155,000, (the "Series 2010-B Bonds") and (3) Taxable Combined Utility
142 Improvement Revenue Bonds, Series 2010-C in the amount of \$85,000 (the "Series 2010-C
143 Bonds"); and

144
145 **WHEREAS**, the Bonds are parity obligations of the City's System and, as such shall
146 have equal lien status with the outstanding Series 2004-A Bonds; the Series 2005-A Bonds, the
147 Series 2006-A Bonds, the Series 2006-B Bonds, the Series 2007-B Bonds, the Series 2007-C
148 Bonds, the Series 2010-A Bonds, the Series 2010-B Bonds, and the Series 2010-C Bonds; and

149
150 **WHEREAS**, the City has authorized certain loans in the maximum authorized amount of
151 \$141,338,637 from the Kansas Department of Health and Environment revolving fund loan
152 program (the "Permitted Loans") and pledged the revenues from the System to the payment of
153 such Permitted Loans and any additional loans which would constitute Permitted Loans under
154 the Resolution hereinafter provided for; and

155
156 **WHEREAS**, the lien of the Permitted Loans upon the revenues of the System is superior
157 to the lien of the City's outstanding Series 2004-A Bonds, Series 2005-A Bonds, Series 2006-A
158 Bonds, Series 2006-B Bonds, Series 2007-B Bonds, Series 2007-C Bonds, Series 2010-A Bonds,
159 Series 2010-B Bonds, Series 2010-C Bonds and the Bonds hereby authorized and directed to be
160 issued.

161
162 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**
163 **CITY OF TOPEKA, SHAWNEE COUNTY, KANSAS:**

164
165 **Section 1.** That there is hereby authorized and directed to be issued Combined Utility
166 Improvement and Refunding Revenue Bonds, Series 2011-A, of the City in the aggregate
167 principal amount of \$18,900,000 for the purposes of providing funds to (1) permanently finance
168 the costs of making the Improvements, (2) currently refund the Refunded Bonds, (3) fund a debt
169 service reserve fund for the Bonds and (4) pay the costs of issuing the Bonds, as provided by
170 Article 1 of Chapter 10, Kansas Statutes Annotated, K.S.A. 10-116a and Article 12 of Chapter 10
171 of the Kansas Statutes Annotated, all as amended. The Bonds shall be dated and bear interest,
172 shall mature and be payable at such times, shall be in such form, shall be subject to redemption
173 and payment prior to the maturity thereof and shall be issued in the manner prescribed and
174 subject to the provisions, covenants and agreements set forth in a resolution of the Governing
175 Body of the City adopted the same date as the date of the passage and approval of this Ordinance
176 (the "Resolution").

Section 2. That the Mayor and City Clerk are hereby authorized to prepare and execute the Bonds and when so executed, the Bonds shall be registered as required by law and the Governing Body shall annually make provisions for the payment of the principal of, redemption premium, if any, and interest on the Bonds as the same shall become due from the revenues 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. 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 5. 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 6. That this Ordinance shall take effect and be in force from and after its passage and publication in the official City newspaper.

Passed and approved by the governing body of the City of Topeka, Kansas, this 13th day of September, 2011.

CITY OF TOPEKA, KANSAS

ATTEST:

William W. Bunten, Mayor

Brenda Younger, City Clerk

(SEAL)

223 **I, BRENDA YOUNGER**, City Clerk of the City of Topeka, Shawnee County, Kansas,
224 do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 19632
225 adopted and approved by the City Council on September 13, 2011.
226
227
228
229
230

Brenda Younger, City Clerk