

1 (Published in the Topeka Metro News April 21, 2006)
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3 ORDINANCE NO. 18619
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5 AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. relating to the
6 execution of a loan agreement between the City of Topeka, Kansas
7 and the State of Kansas, for the purpose of obtaining a loan from the
8 Kansas Public Water Supply Loan Fund for the purpose of financing a
9 public water supply project, KPWSLF Project No. 2420; establishing a
10 dedicated source of revenue for repayment of such loan; authorizing
11 and approving certain documents in connection therewith; and
12 authorizing certain other actions in connection with the Loan
13 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
30 of 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 11,600 feet of 24-inch PVC pipe along Highway 75 to
49 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 has informed the Municipality that it has been approved for a
54 loan in the amount of not to exceed three million three hundred ninety-five thousand four
55 hundred forty-three dollars (\$3,395,443.00) (the "Loan") in order to finance the Project; and

56 WHEREAS, the governing body of the Municipality hereby finds and determines that
57 it is necessary and desirable to accept the Loan and to enter into a loan agreement and
58 certain other documents relating thereto, and to take certain actions required in order to
59 implement the Loan Agreement.

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

61 Section 1. AUTHORIZATION OF LOAN AGREEMENT. The Municipality is
62 hereby authorized to accept the Loan and to enter into a certain Loan Agreement, with an
63 effective date of March 31, 2006, for Kansas Public Water Supply Loan Fund Project No.
64 2420, with the State of Kansas acting by and through the Kansas Department of Health
65 and Environment (the "Loan Agreement") to finance the Project Costs (as defined in the
66 Loan Agreement). The city manager, and clerk are hereby authorized to execute the Loan
67 Agreement in substantially the form presented to the governing body this date, with such
68 changes or modifications thereto as may be approved by the city manager and the city
69 attorney, the city manager's execution of the Loan Agreement being conclusive evidence of
70 such approval.

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

86 In accordance with the Loan Act, the obligations under the Loan and the Loan
87 Agreement shall not be included within any limitation on the bonded indebtedness of the
88 Municipality.

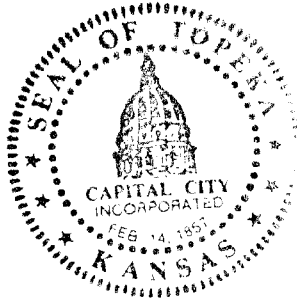
89 Section 3. FURTHER AUTHORITY. The city manager, clerk and other city
90 officials are hereby further authorized and directed to execute any and all documents and
91 take such actions as they may deem necessary or advisable in order to carry out and
92 perform the purposes of the ordinance, and to make alterations, changes or additions in

93 the foregoing agreements, statements, instruments and other documents herein approved,
94 authorized and confirmed which they may approve, and the execution or taking of such
95 action shall be conclusive evidence of such necessity or advisability.

96 Section 4. GOVERNING LAW. The ordinance and the Loan Agreement shall be
97 governed exclusively by and construed in accordance with the applicable laws of the State
98 of Kansas.

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

102 PASSED and APPROVED by the City Council APR 18 2006



103
104
105 William W. Buntten
106 William W. Buntten, Mayor
107

108 ATTEST:

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111 Iris E. Walker
112 Iris E. Walker, City Clerk
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APPROVED AS TO FORM AND LEGALITY
DATE <u>3/23/06</u> BY <u>BBC</u>
TO BE CODIFIED _____
NOT TO BE CODIFIED <u>X</u>