

(Published in the Topeka Metro News April 4, 2007)

ORDINANCE NO. 18837

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the execution of a loan agreement between Topeka, Kansas and the State of Kansas, for the purpose of obtaining a loan from the Kansas Water Pollution Control Revolving Fund for the purpose of financing a Wastewater Treatment Project.

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

WHEREAS, the Federal Water Quality Act of 1987 (the “Federal Act”) established revolving fund program for public wastewater treatment systems to assist in financing the costs of infrastructure needed to achieve or maintain compliance with the Federal Act and to protect the public health and authorized the Environmental Protection Agency (the “EPA”) to administer a revolving loan program operated by the individual states; and

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

WHEREAS, by passage of the Kansas Water Pollution Control Revolving Fund Act, K.S.A. 65-3321 through 65-3329, inclusive (the “Loan Act”), the State of Kansas (the “State”) has established the Kansas Water Pollution Control Revolving Fund (the “Revolving Fund”) for purposes of the Federal Act; and

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

WHEREAS, the Kansas Development Finance Authority (the “Authority”) and KDHE

have entered into a Pledge Agreement (the “Pledge Agreement”) pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities for public wastewater treatment projects (the “Projects”) and to pledge the Loan Repayments (as defined in the Pledge Agreement) received pursuant to such Loan Agreements to the Authority; and

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

WHEREAS, Topeka, Kansas (the “Municipality”) is a municipality as said term is defined in the Loan Act which operates a wastewater collection, pumping, and treatment system (the “System”); and

WHEREAS, the System is a public Wastewater Treatment Works, as said term is defined in the Loan Act; and

WHEREAS, the Municipality has, pursuant to the Loan Act, submitted an Application to KDHE to obtain a loan from the Revolving Fund to finance the costs of improvements to its System consisting of the following (the “Project”):

1. The existing 20 inch diameter Deer Creek Pump Station force main will be replaced with a 30 inch diameter force main. This force main extends from the pump station to the headworks of the Oakland Wastewater Treatment Plant.
2. Rehabilitation of anaerobic sludge digesters at the Oakland Wastewater Treatment Plant will include replacement of the mixing systems, gas piping,

valves, recirculation pumps, electrical components and sludge force main. The digesters will be cleaned and structural repairs will be completed as needed; and

WHEREAS, the Municipality has taken all steps necessary and has complied with the provisions of the Loan Act and the provisions of K.A.R. 28-16-110 to 28-16-138 (the “Regulations”) applicable thereto necessary to qualify for the loan; and

WHEREAS, KDHE has informed the Municipality that it has been approved for a loan in the amount of not to exceed nine million three hundred seventeen thousand dollars [\$9,317,000.00] (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 Loan and to enter into a loan agreement and certain other documents relating thereto, and to take certain actions required in order to implement the Loan Agreement.

Section 1. Authorization of Loan Agreement. The Municipality is hereby authorized to accept the Loan and to enter into a certain Loan Agreement, with an effective date of February 9, 2007, with the State of Kansas acting by and through the Kansas Department of Health and Environment (the “Loan Agreement”) to finance the Project Costs (as defined in the Loan Agreement). The City Manager and Clerk are hereby authorized to execute 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 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 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 Loan and such additional amount as may validly become due, and (iii) pay all other amounts due at any time under this 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 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 Loan and the Loan Agreement shall not be included within any limitation on the bonded indebtedness of the Municipality.

Section 3. Further Authority. The City Manager, 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, 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 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 March 27, 2007.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk