

ORDINANCE NO. 19647

AN ORDINANCE INTRODUCED BY ACTING CITY MANAGER DANIEL R. STANLEY AUTHORIZING THE CITY OF TOPEKA, KANSAS, TO ISSUE ITS SALES TAX REFUNDING REVENUE BONDS, SERIES 2011, (TOPEKA BOULEVARD BRIDGE) IN THE AGGREGATE PRINCIPAL AMOUNT OF \$14,610,000 FOR THE PURPOSE OF REFUNDING THE CITY'S SALES TAX REVENUE BONDS, SERIES 2006 (TOPEKA BOULEVARD BRIDGE); AUTHORIZING THE EXECUTION OF AN INDENTURE BY AND BETWEEN THE CITY AND U.S. BANK NATIONAL ASSOCIATION, ST. LOUIS, MISSOURI, AS TRUSTEE; AND AUTHORIZING AND APPROVING CERTAIN ADDITIONAL DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

WHEREAS, the City of Topeka, Kansas, a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas, (the "City") and Shawnee County, Kansas, a body corporate and politic under the laws of the State of Kansas, (the "County") entered into an Interlocal Agreement dated November 1, 2001, as rescinded and replaced by an Interlocal Agreement dated December 9, 2004, (collectively, the "Interlocal Agreement") in accordance with the provisions and requirements of K.S.A. 12-2901 et seq., as amended; and

WHEREAS, the City and County established the Joint Economic Development Organization ("JEDO") pursuant to the Interlocal Agreement as a separate legal entity to provide an economic development program for the County and City in accordance with the terms and conditions of the Interlocal Agreement including, but not limited to, the distribution of certain tax revenues, including certain sales tax receipts of the County; and

WHEREAS, the electors of the County, voting at the Primary Election in the County held August 3, 2004, approved the proposition that the one quarter percent (0.25%) countywide retailers' sales tax approved by County citizens on November 7, 2000, be repealed effective December 31, 2004, and a new one-half percent (0.50%) countywide retailers sales tax (the "Sales Tax") be levied to take effect January 1, 2005, and expire twelve (12) years after its effective date to provide revenue for economic development and certain public improvements in and about the County and City; and

WHEREAS, pursuant to the Interlocal Agreement, the City is the recipient of funds derived from the Sales Tax to provide revenues to, among other things, finance certain projects in the City including the removal and replacement of the Topeka Boulevard Bridge over the Kansas River; and

1 **WHEREAS**, the City did (a) by its Ordinance No. 18610, passed and approved April 11,
2 2006, and published as required by law, authorize the removal and replacement of the Topeka
3 Boulevard Bridge over the Kansas River and (b) by its Ordinance No. 18647, passed and
4 approved May 23, 2006, and published as required by law, authorize the issuance of its Sales
5 Tax Revenue Bonds, Series 2006, (Topeka Boulevard Bridge) in the principal amount of
6 \$30,625,000 (the “Bonds”) to pay all or a portion of the costs of the project, which Bonds were
7 issued and secured by the Bond Trust Indenture dated as of June 1, 2006, (the “Indenture”) by
8 and between the City and U.S. Bank National Association, as trustee in connection with the
9 Bonds (the “Trustee”); and

10
11 **WHEREAS**, the County, the City, JEDO, and the Trustee, entered into a certain Pledge
12 of Revenues Agreement dated as of June 1, 2006, (the “Pledge Agreement”) pursuant to which
13 the parties pledged, among other things, to make the payments required under the Pledge
14 Agreement to pay the Bonds and to maintain and not terminate either the Interlocal Agreement
15 or JEDO until the Bonds have been paid; and

16
17 **WHEREAS**, the Bonds maturing on and after December 15, 2012, are subject to optional
18 redemption by the City in accordance with the terms and conditions of the Indenture on and after
19 December 15, 2011, at a redemption price of 100% of the principal amount being redeemed; and

20
21 **WHEREAS**, the City has determined it to be in the best interest of the citizens and
22 taxpayers of the City to issue refunding bonds of the City pursuant to K.S.A. 2010 Supp. 12-
23 195(b)(6), as amended, (the “Act”) to currently refund the Bonds subject to optional redemption
24 December 15, 2011; and

25
26 **WHEREAS**, the parties to Pledge Agreement have amended it to clarify that their intent
27 is that the agreement shall constitute security for the payment of the principal of, redemption
28 premium, if any, and interest on the Bonds and any refunding bonds issued by the City to refund
29 such bonds and other amounts due under any indenture for such refunding bonds; and

30
31 **WHEREAS**, the refunding of the Bonds will result in significant interest cost savings,
32 meeting the City’s present value savings threshold for current refundings and increasing the
33 amount of sales tax receipts available for use on other projects permitted under the Interlocal
34 Agreement; and

35
36 **WHEREAS**, the governing body of the City hereby authorizes and directs the issuance
37 of its Sales Tax Revenue Refunding Bonds, Series 2011, (Topeka Boulevard Bridge) in the
38 principal amount of \$14,610,000 (the “Series 2011 Bonds”) pursuant to both the Act and the
39 terms of the Trust Indenture hereinafter authorized for the purpose of providing funds to (1)
40 currently refund and redeem the outstanding Bonds maturing and/or payable on and after
41 December 15, 2012, (2) fund a deposit to a debt service reserve fund for the Series 2011 Bonds,
42 and (3) pay the costs of issuing the Series 2011 Bonds; and

43
44 **WHEREAS**, the City further finds and determines that it is necessary and desirable in
45 connection with the issuance of the Series 2011 Bonds to execute and deliver a Bond Trust
46 Indenture dated as of October 27, 2011, (the “Indenture”) with U.S. Bank National Association,

1 St. Louis, Missouri, as Trustee, (the “Trustee”) for the purpose of issuing and securing the Series
2 2011 Bonds as provided therein.

3
4 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**
5 **CITY OF TOPEKA, SHAWNEE COUNTY, KANSAS, AS FOLLOWS:**
6

7 **Section 1. Authorization of the Series 2011 Bonds.** In order to obtain funds to be used
8 for the purposes aforesaid, the City is hereby authorized to issue the Series 2011 Bonds in the
9 aggregate principal amount of \$14,610,000 which shall be issued under and secured by and shall
10 have the terms and provisions set forth in the Indenture, and the signatures of the officers of the
11 City executing such Indenture shall constitute conclusive evidence of their approval and the
12 City's approval thereof. The Series 2011 Bonds shall be executed on behalf of the City by the
13 manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of
14 its City Clerk and shall have the corporate seal of the City affixed thereto or imprinted thereon.
15

16 **Section 2. Special Obligations.** The Series 2011 Bonds shall be special obligations of
17 the City payable solely from the sources and in the manner as provided in the Indenture, and
18 shall be secured by a transfer, pledge and assignment of and a grant of a security interest in the
19 Trust Estate (as defined in the Indenture) to the Trustee (as herein defined) and in favor of the
20 registered owners of the Series 2011 Bonds, as provided in the Indenture. The Series 2011
21 Bonds and interest thereon shall not in any respect be a general obligation of the City and shall
22 not be payable in any manner from *ad valorem* taxation, and shall not constitute a pledge of the
23 full faith and credit of the City, but shall be payable solely from the funds provided for in the
24 Indenture. The issuance of the Series 2011 Bonds shall not obligate the City directly, indirectly,
25 or contingently, to levy any form of taxation therefor or to make any appropriation for their
26 payment. No breach by the City of any such pledge, obligation or agreement may impose any
27 liability, pecuniary or otherwise, upon the City or any charge upon its general credit or against its
28 taxing power.
29

30 **Section 3. Authorization and Approval of Documents.** The following documents (the
31 "City Documents") are hereby approved in substantially the forms presented to the City Council
32 at this meeting with such changes therein as shall be approved by the officer of the City
33 executing such documents, such officer's signature thereon being conclusive evidence of such
34 officer's approval and the City's approval thereof:
35

36 (a) Indenture dated as of October 27, 2011, between the City and the Trustee provid-
37 ing for the issuance thereunder of the Series 2011 Bonds and setting forth the terms and
38 provisions applicable to the Series 2011 Bonds, including a pledge and assignment by the City of
39 the Trust Estate to the Trustee for the benefit and security of the registered owners of the Series
40 2011 Bonds upon the terms and conditions as set forth in the Indenture.
41

42 (b) Continuing Disclosure Agreement dated as of October 27, 2011, between the City
43 and the Trustee (the “Disclosure Agreement”);
44

45 (c) Preliminary Official Statement and Official Statement to be in substantially the
46 same form with such changes and additions thereto as are necessary to conform to the

1 transaction, and which is to be given to the Purchaser in connection with the sale of the Series
2 2011 Bonds; and

3
4 (d) Such other City Documents and certificates as may be deemed by the Mayor, City
5 Manager, or City Clerk of the City necessary in order to provide for the issuance and delivery of
6 the Series 2011 Bonds.

7
8 **Section 4. Execution of Series 2011 Bonds and Documents.** The Mayor of the City is
9 hereby authorized and directed to execute the Series 2011 Bonds by manual or facsimile
10 signature and to deliver the Series 2011 Bonds to the Trustee for authentication for and on behalf
11 of and as the act and deed of, the City in the manner provided in the Indenture. The Mayor of
12 the City is hereby authorized and directed to execute and deliver the City Documents for and on
13 behalf of, and as the act and deed of, the City. The Clerk or Deputy Clerk of the City is hereby
14 authorized and directed to attest to the Series 2011 Bonds by manual or facsimile signature, to
15 such of the City Documents, and to such other documents, certificates and instruments, as may
16 be necessary or desirable to carry out and comply with the intent of this Ordinance.

17
18 **Section 5. Preliminary Official Statement.** The *Preliminary Official Statement*
19 respecting the Series 2011 Bonds, in substantially the form presented to the City Council of the
20 City at this meeting, with such changes and additions thereto as are necessary to conform to and
21 describe the transaction, is hereby authorized and approved. The Mayor of the City is hereby
22 authorized and directed to deem the information in the *Preliminary Official Statement* respecting
23 the City to be final as of its date for purposes of Rule 15c2-12 promulgated by the Securities and
24 Exchange Commission. The usage by the underwriters of the *Preliminary Official Statement* in
25 connection with the sale of the Series 2011 Bonds is hereby authorized and approved. The final
26 *Official Statement* respecting the Series 2011 Bonds, in substantially the form of the *Preliminary*
27 *Official Statement*, with such changes therein or amendments or supplements thereto as shall be
28 approved by the representative of the City executing said final *Official Statement*, said
29 representative's execution thereof on behalf of the City to be conclusive evidence of said
30 representative's approval thereof, and the public distribution of the same by the underwriter are
31 hereby approved.

32
33 **Section 6. Continuing Disclosure.** The City hereby covenants with the Purchaser and
34 the holders and owners of the Series 2011 Bonds to provide and disseminate such information, as
35 required by the SEC Rule and as set forth in the Disclosure Agreement, which are incorporated
36 herein by reference. Such covenant shall be for the benefit of and enforceable by the holder and
37 owners of the Series 2011 Bonds.

38
39 **Section 7. Redemption of the Bonds.** Pursuant to the terms and conditions of the
40 Indenture, the City hereby calls the Bonds maturing on and after December 15, 2012, for
41 redemption and payment on December 15, 2011, the Redemption Date. The Bonds are being
42 called at the redemption price of 100 percent of the par value thereof plus accrued interest
43 thereon to the redemption date. Subject to the specific requirements of the Indenture which
44 authorized the issuance of the Bonds, written notice of redemption shall be given in accordance
45 with applicable law by the City of its intention to redeem such bonds by mailing by certified mail
46 a copy of the City's order of redemption (the "Redemption Notice") to U.S. Bank National

1 Association, Attn: Corporate Trust Department, One U.S. Bank Plaza, Mail Code SL-MO-
2 T6CT, St. Louis, Missouri 63101, who upon receipt of the Redemption Notice shall give notice
3 of such call by mailing a copy of the Redemption Notice by first class mail, postage prepaid, to
4 the registered owner of each bond to be redeemed at the address shown on the registration books
5 maintained by the Bond Registrar.
6

7 **Section 8. Further Authority.** The City shall, and the officers, agents and employees of
8 the City are hereby authorized and directed to, take such further action and execute such other
9 documents, certificates and instruments, including, without limitation, any security documents,
10 arbitrage certificate, closing certificates and tax forms, as may be necessary or desirable to carry
11 out and comply with the intent of this Ordinance, and to carry out, comply with and perform the
12 duties of the City with respect to the Series 2011 Bonds and the City Documents.
13

14 **Section 9. Repeal of Conflicting Ordinances.** All prior ordinances of the City or any
15 parts thereof in conflict with any or all of the foregoing ordinances are hereby repealed to the
16 extent of such conflict.
17

18 **Section 10. Severability.** If any section, paragraph, clause or provision of this
19 Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or
20 unenforceability of such section, paragraph, clause or provision shall not affect any remaining
21 provisions of this Ordinance.
22

23 **Section 11. Effective Date.** This Ordinance shall take effect and be in full force
24 immediately after its adoption by the City and publication once in the official newspaper of the
25 City.
26

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