

**ORDINANCE NO. 9249**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF WATER AND SEWAGE SYSTEM IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2016-A, OF THE CITY OF LAWRENCE, KANSAS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

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**WHEREAS**, the City of Lawrence, Kansas (the “City”) is a city of the first class, duly created, organized and existing under the Constitution and laws of the State; and

**WHEREAS**, the City is authorized under the provisions of the Act, to issue and sell revenue bonds for the purpose of paying all or part of the cost of the acquisition, construction, reconstruction, alteration, repair, improvement, extension or enlargement of the System, provided that the principal of and interest on such revenue bonds shall be payable solely from the Net Revenues derived by the City from the operation of the System; and

**WHEREAS**, the governing body of the City has pursuant to Resolution No. 7155 declared its intention under the Act to make certain improvements to the System (the “Project”) at an estimated cost of \$50,790,000 and to issue water and sewage system revenue bonds in an amount of not to exceed \$61,000,000; notice of such intention was published one time in the official newspaper of the City and no sufficient written protest thereto was filed with the Clerk within fifteen (15) days after said publication date all as set forth in the Act; and

**WHEREAS**, none of such revenue bonds so authorized by Resolution No. 7155 have been issued; and

**WHEREAS**, the City previously issued and has Outstanding the Refunded Bonds and is authorized by K.S.A. 10-116a to issue refunding revenue bonds of the City for the purpose of refunding the Refunded Bonds; and

**WHEREAS**, in order to achieve interest cost savings through early redemption of the Refunded Bonds and to provide an orderly plan of finance for the City, it has become desirable and in the best interest of the City and the System to refund the Refunded Bonds; and

**WHEREAS**, and the City proposes to issue \$[PRINCIPAL AMOUNT] of its water and sewer system revenue bonds to pay a portion of the costs of the Project, refund the Refunded Series 2007 Bonds, refund a portion of the Refunded Series 2009-A Bonds, and pay costs of issuance related thereto; and

**WHEREAS**, the governing body of the City has caused plans and specifications for the Project and an estimate of the cost thereof to be made which have previously been accepted and approved and shall be placed on file in the office of the Clerk; and

**WHEREAS**, the Issuer does not have Outstanding any System Indebtedness other than the Parity Bonds and the KDHE Loans; and

**WHEREAS**, the Parity Resolution provides the City may issue Additional Bonds which constitute Parity Bonds upon the satisfaction of certain conditions; and

**WHEREAS**, prior to or simultaneously with the issuance of the Series 2016-A Bonds, such terms and conditions will be satisfied.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS, AS FOLLOWS:**

**Section 1. Definitions of Words and Terms.** In addition to words and terms defined elsewhere herein, the following words and terms in this Ordinance shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**“Act”** means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-620 *et seq.*, and K.S.A. 10-1201 *et seq.*, all as amended and supplemented from time to time.

**“Additional Bonds”** means any bonds secured by the Revenues hereafter issued pursuant to *Article IX* of the Bond Resolution and any other similar provision in any Parity Resolution.

**“Additional Obligations”** means any leases or other obligations secured by the Revenues, other than Additional Bonds, hereafter issued pursuant to *Article IX* of the Bond Resolution and any other similar provision in any Parity Resolution.

**“BAB Interest Subsidy Payments”** means payments to be received by the City from the U.S. Department of the Treasury under Code §§ 54AA(g) and 6431 in connection with the payments of interest on the Series 2009-A Bonds.

**“Bond Resolution”** means the resolution to be adopted by the governing body of the City prescribing the terms and details of the Series 2016-A Bonds and making covenants with respect thereto.

**“Bonds”** means the Series 2016-A Bonds and any Additional Bonds.

**“City”** means the City of Lawrence, Kansas.

**“Clerk”** means the duly appointed and acting Clerk of the City or, in the Clerk’s absence, the duly appointed Deputy, Assistant or Acting Clerk.

**“Expenses”** means all reasonable and necessary expenses of operation, maintenance and repair of the System and keeping the System in good repair and working order (other than interest paid on System Indebtedness and depreciation and amortization charges during the period of determination), determined in accordance with generally accepted accounting principles, including without limiting the generality of the foregoing, current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, employee’s health, hospitalization, pension and retirement benefits, costs of materials and supplies, paying agent fees and expenses, annual audits, periodic Consultant’s reports, properly allocated share of charges for insurance, the cost of purchased water, gas and power, if any, for System operation, obligations (other than for borrowed money or for rents payable under capital leases) incurred in the ordinary course of business, liabilities incurred by endorsement for collection or deposit of checks or drafts received in the ordinary course of business, short-term obligations incurred and payable within a particular Fiscal Year, other obligations or indebtedness incurred for the purpose of leasing (pursuant to a true or operating lease) equipment, fixtures, inventory or other personal property, and all other expenses incident to the operation of the System, but shall exclude all general administrative expenses of the City not related to the

operation of the System and transfers into the Debt Service Reserve Account and Depreciation and Emergency Account provided for in the Bond Resolution.

**“Fiscal Year”** means the twelve month period ending on December 31.

**“KDHE Loans”** means the Loan Agreement between the Kansas Department of Health and Environment, acting on behalf of the State of Kansas (KDHE”), and the City, effective as of November 29, 1999, as amended by (i) a First Amendment to the Loan Agreement between KDHE and the City, effective as of August 11, 2000, and (ii) a Second Amendment to the Loan Agreement between KDHE and the City, effective as of June 14, 2007.

**“Mayor”** means the duly elected and acting Mayor or, in the Mayor’s absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

**“Net Revenues”** means, for the period of determination, all Revenues less all Expenses.

**“Ordinance”** means this Ordinance authorizing the issuance of the Series 2016-A Bonds.

**“Outstanding”** means:

(a) when used with reference to Bonds, as of a particular date of determination, all Bonds theretofore, authenticated and delivered, except the following Bonds:

(i) Bonds theretofore canceled by the paying agent for such Bonds or delivered to the paying agent for such Bonds for cancellation pursuant to the ordinance and resolution authorizing the issuance of such Bonds;

(ii) Bonds deemed to be paid in accordance with the provisions of *Section 1101* of the Bond Resolution or any similar provisions of any resolution applicable to any such Bonds;

(iii) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under the applicable resolution authorizing such Bonds;

(iv) Bonds, the principal or interest of which has been paid by a bond insurer; and

(b) with respect to any System Indebtedness that is not a Bond, as of the date of determination, all such System Indebtedness theretofore issued or incurred by the Issuer, except to the extent the obligation to make payments on such System Indebtedness has been discharged in accordance with the terms of the instrument or instruments creating or evidencing such Indebtedness.

**“Parity Bonds”** means the Outstanding Series 2008 Bonds, Series 2009-A Bonds, Series 2015 Bonds, Series 2015-B Bonds and Series 2016-A Bonds and any Additional Bonds hereafter issued pursuant to the Bond Resolution and standing on a parity and equality with the Series 2016-A Bonds with respect to the lien on the Net Revenues.

**“Parity Obligations”** means any Additional Obligations hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Parity Bonds with respect to the lien on the Net Revenues.

**“Parity Resolution”** means the Series 2008 Resolution, the Series 2009-A Resolution, the Series 2015 Resolution, the Series 2015-B Resolution and the Bond Resolution and the ordinances and/or resolutions under which any Additional Bonds which constitute Parity Bonds are hereafter issued.

**“Project”** means, the acquisition, construction, reconstruction, alterations, repair, improvements, extensions or enlargements of the System described in Resolution No. 7155 of the City and referred to in the Preamble to this Ordinance.

**“Refunded Bonds”** means, collectively, the Refunded Series 2007 Bonds and the Refunded Series 2009-A Bonds.

**“Refunded Series 2007 Bonds”** means the Series 2007 Bonds maturing in the years 2016 to 2032, inclusive, in the aggregate principal amount of \$18,820,000.

**“Refunded Series 2009-A Bonds”** means the Series 2009-A Bonds maturing in the years 2018 to 2034, inclusive, in the aggregate principal amount of \$8,075,000.

**“Refunded Bonds Redemption Date”** means November 1, 2017.

**“Refunded Bonds Resolution”** means each ordinance and resolution which authorized the Refunded Bonds.

**“Revenue Fund”** means the Water and Sewage System Revenue Fund referred to in the Bond Resolution.

**“Revenues”** means all income and revenues derived and collected by the City from the operation and ownership of the System, including investment and rental income, net proceeds from business interruption insurance, BAB Interest Subsidy Payments, transfers from the Surplus Account to the Revenue Fund of Net Revenues derived in a prior Fiscal Year and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on System Indebtedness, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

**“Series 2007 Bonds”** means the Issuer’s Water and Sewage System Improvement Revenue Bonds, Series 2007, dated June 15, 2007.

**“Series 2008 Bonds”** means the Issuer’s Water and Sewage System Improvement Revenue Bonds, Series 2008, dated October 1, 2008.

**“Series 2008 Resolution”** means collectively the Issuer’s Ordinance No. 8325 and Resolution No. 6802, which authorized the Series 2008 Bonds.

**“Series 2009-A Bonds”** means the Issuer’s Taxable Water and Sewage System Improvement Revenue Bonds, Series 2009-A (Build America Bonds – Direct Pay), dated August 6, 2009.

**“Series 2009-A Resolution”** means collectively the Issuer’s Ordinance No. 8433 and Resolution No. 6844, which authorized the Series 2009-A Bonds.

**“Series 2015 Bonds”** means the Issuer’s Water and Sewage System Improvement Revenue Bonds, Series 2015, dated April 28, 2015.

**“Series 2015 Resolution”** means collectively the Issuer’s Ordinance No. 9102 and Resolution No. 7111, which authorized the Series 2015 Bonds.

**“Series 2015-B Bonds”** means the Issuer’s Water and Sewage System Refunding Revenue Bonds, Series 2015-B, dated August 18, 2015.

**“Series 2015-B Resolution”** means collectively the Issuer’s Ordinance No. 9131 and Resolution No. 7128, which authorized the Series 2015-B Bonds.

**“Series 2016-A Bonds”** means the Issuer’s Water and Sewage System Improvement and Refunding Revenue Bonds, Series 2016-A, in the aggregate principal amount of \$[PRINCIPAL AMOUNT] authorized by this Ordinance and the Bond Resolution

**“State”** means the State of Kansas.

**“System”** means the entire combined waterworks plant and system and sewerage plant and system owned and operated by the City for the production, storage, treatment and distribution of water, and for the collection, treatment and disposal of sewage, to serve the needs of the City and its inhabitants and others, including all appurtenances and facilities connected therewith or relating thereto, together with all extensions, improvements, additions and enlargements thereto hereafter made or acquired by the City.

**“System Indebtedness”** means collectively all Parity Bonds, all Parity Additional Obligations, all Additional Bonds, all Additional Obligations, all Junior Lien Obligations and all Subordinate Lien Bonds which are payable out of, or secured by an interest in, the Revenues.

**Section 2. Authorization of the Series 2016-A Bonds.** There shall be issued and are hereby authorized and directed to be issued the Water and Sewage System Improvement and Refunding Revenue Bonds, Series 2016-A, of the City in the aggregate principal amount of \$[PRINCIPAL AMOUNT] for the purpose of providing funds to: (a) pay a portion of the costs of the Projects; (b) refund the Refunded Series 2007 Bonds; (c) refund a portion of the Refunded Series 2009-A Bonds; (d) pay a portion of the interest on the Series 2016-A Bonds; and (e) pay costs of issuance of the Series 2016-A Bonds.

**Section 3. Security for the Series 2016-A Bonds.** The Series 2016-A Bonds shall be special obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the City hereby pledges said Net Revenues to the payment of the principal of and interest on the Series 2016-A Bonds. The interest on the portion of the Series 2016-A Bonds allocable to refunding the Refunded Series 2009-A Bonds to and including Refunded Bonds Redemption Date shall be primarily payable from the proceeds of certain United States Government Obligations and cash held in the Escrow Fund – Series 2009-A. The Series 2016-A Bonds shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Series 2016-A Bonds, either as to principal or interest.

The covenants and agreements of the City contained herein and in the Series 2016-A Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2016-A Bonds, all of which Series 2016-A Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Series 2016-A Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Series 2016-A Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Net Revenues with any Parity Bonds. The Series 2016-A Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Parity Bonds; and

the Parity Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Series 2016-A Bonds.

**Section 4. Terms, Details and Conditions of the Series 2016-A Bonds.** The Series 2016-A Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Bond Resolution.

**Section 5. Rate Covenant.** The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the System, including all repairs, alterations, extensions, reconstructions, enlargements or improvements thereto hereafter constructed or acquired by the City, as will produce Revenues sufficient to (a) pay Expenses; (b) pay the principal of and interest on the System Indebtedness as and when the same become due; and (c) provide reasonable and adequate reserves for the payment of the Parity Bonds and the interest thereon and for the protection and benefit of the System as provided in this Ordinance and the Bond Resolution. The Bond Resolution, Parity Resolutions and Parity Obligation Documents may establish requirements in excess of the requirements set forth herein.

**Section 6. Further Authority.** The 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 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 7. Governing Law.** This Ordinance and the Series 2016-A Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 8. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City, approval by the Mayor and publication (or a summary thereof) in the official City newspaper.

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**PASSED** by the governing body of the City on June 7, 2016 and **APPROVED AND SIGNED** by the Mayor.

(SEAL)

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Mayor

ATTEST:

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Clerk

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