

ORDINANCE NO. 50-294

OF

THE CITY OF WICHITA, KANSAS

PASSED

JULY 19, 2016

**WATER AND SEWER UTILITY REVENUE BONDS
SERIES 2016A**

ORDINANCE NO. 50-294

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2016A, OF THE CITY OF WICHITA, KANSAS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Wichita, 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 Council (the "Governing Body") of the City has heretofore by Ordinance No. 39-888, adopted May 26, 1987, and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility" (the "Utility"); 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 Utility, 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 Utility; and

WHEREAS, the Governing Body has heretofore by various resolutions, duly adopted, found and determined it to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend or enlarge the Utility (the "Projects"), and found and determined it to be necessary and advisable to issue revenue bonds pursuant to the provisions of the Act in order to pay the costs thereof; and

WHEREAS, the Governing Body caused to be published in the City's official newspaper, notices of the City's intention to construct the Projects and issue such revenue bonds determined necessary by the aforesaid resolutions; and within the 15-day period after the publication of each such notice as required by the Act, no written protest was filed in the Office of the City Clerk against the Projects and the issuance of such revenue bonds, and the City is, therefore, now authorized to construct the Projects and to issue said revenue bonds; and

WHEREAS, other than the Outstanding Parity Bonds, the City does not have outstanding any bonds payable from the Net Revenues of the Utility; and

WHEREAS, the Governing Body hereby finds and determines that each and all of the conditions precedent to the issuance of additional Revenue bonds on a parity with and co-equal in priority and lien to the existing revenue bond indebtedness of the Utility have, or can and will be satisfied prior to or upon the issuance of such additional revenue bonds; and

WHEREAS, the Governing Body hereby finds it necessary and desirable to provide for the issuance and delivery of the Series 2016A Bonds payable from Net Revenues of the Utility and to authorize and provide for the execution and delivery of certain agreements and supporting documents.

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

Section 1. Definitions of Words and Terms. In addition to words and terms defined elsewhere herein or in the Outstanding Parity Bond Resolutions, 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, specifically including K.S.A. 10-620 *et seq.* and K.S.A. 10-1201 *et seq.*, as amended by Charter Ordinance No. 211, all as amended and supplemented from time to time.

“Additional Bonds” means any bonds secured by the Revenues hereafter issued pursuant to the Bond Resolution.

“Additional Indebtedness” means, collectively, Additional Bonds and Additional Obligations.

“Additional Obligations” means any leases or other obligations of the Issuer payable from the Revenues, other than the Bonds.

“Bond Reserve Account” means the Water and Sewer Utility Bond Service Reserve Account.

“Bond Resolution” means collectively the Outstanding Parity Bond Resolutions, the Series 2016A Bond Resolution, the Series 2016B Bond Resolution and any supplemental resolution authorizing any Additional Indebtedness.

“Bonds” means, collectively, Outstanding Parity Bonds, the Series 2016A Bonds, the Series 2016B Bonds and any Additional Bonds.

“City” means the City of Wichita, 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.

“Current Expenses” means, as applied to either component of the Utility, the Issuer's reasonable and necessary current expenses of operation, repair and maintenance, and shall include, without limiting the generality of the foregoing, (a) all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, (b) all administrative expenses, (c) any reasonable payments to pension or retirement funds properly chargeable to each component of the Utility, (d) insurance premiums, (e) engineering expenses relating to operation, repair and maintenance, (f) legal expenses, (g) any lawful fiscal agency commissions and expenses in connection with the payment of the principal of and the interest and any redemption premium on Outstanding Bonds, (h) any taxes which may be lawfully imposed on either component of the Utility or the income therefrom and reserves for such taxes, (i) the expenses of collecting rates, fees and charges for the use of and for the services furnished or to be furnished by the Utility, (j) if required by law, the payment of the principal of and the interest on outstanding bonds and other obligations heretofore issued by the Issuer or by improvement districts heretofore annexed by the City to pay the cost of any portion of the Utility to the extent that the special assessments and taxes pledged for the payment of such principal and interest shall be insufficient for such purposes and to the extent that such payment shall not be made from the Improvement Account, and (k) any other expenses required to be paid by the Issuer under the provisions of this Resolution or by law. “Current Expenses” shall *not* include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, the Payment to the City, or any deposits or

transfers to the credit of the Principal and Interest Account, the Bond Reserve Account, the Depreciation and Replacement Account or the Improvement Account.

“Depreciation and Replacement Account” means the Water and Sewer Utility Depreciation and Replacement Account.

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

“Governing Body” means the duly elected and/or appointed and acting persons comprising the City Council of the Issuer.

“Gross Revenues” means all income and revenues derived and collected by the Issuer from the operation of the Utility, including investment and rental income, net proceeds from business interruption insurance 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 Utility Indebtedness, but excluding non-cash contributions capital contributions, 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.

“Improvement Account” means the Water and Sewer Utility Improvement Account.

“Issuer” means the City and any successors or assigns.

“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, the amount of the excess of Gross Revenues deposited to the credit of the Revenue Fund, over the Current Expenses of the respective components of the Utility paid from the Revenue Fund during such period; such amount specifically excluding Debt Service Requirements paid, depreciation, amortization and capital expenditures for improvements to the Utility.

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

“Outstanding Parity Bonds” means the Outstanding Series 2005B Bonds, Series 2009B Bonds, Series 2010 Bonds, Series 2011A Bonds, Series 2012A Bonds, Series 2014A Bonds, Series 2015B Bonds, Series 2015C Bonds and Series 2015D Bonds.

“Outstanding Parity Bond Resolution” means the ordinances and resolutions authorizing the issuance of the Outstanding Parity Bonds.

“Parity Bonds” means the Outstanding Parity Bonds, the Series 2016A Bonds, the Series 2016B Bonds and any Additional Bonds hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Series 2016A Bonds with respect to the Net Revenues.

“Parity Indebtedness” means, collectively, the Parity Bonds and Parity Obligations.

“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.

“Payment to the City” shall mean the payment to the City’s general fund as a payment for operation of the Utility. The amount of the annual Payment to the City shall be governed by the terms of such ordinances of the City which are then in effect with respect to the then outstanding Utility Indebtedness.

“Project” shall mean, collectively, the repairs, alterations, extensions, reconstructions, enlargements or improvements to the Utility referred to in the Preamble hereto, as more fully delineated in the City Clerk’s Certificate as to Proceedings, dated July 19, 2016 and any Substitute Project.

“Series 2005B Bonds” means the Issuer’s Water and Sewer Utility Refunding Revenue Bonds, Series 2005B, dated August 17, 2005.

“Series 2009B Bonds” means the Issuer’s Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), dated June 30, 2009.

“Series 2010 Bonds” means, collectively, the Series 2010A Bonds and the Series 2010B Bonds.

“Series 2010A Bonds” means the Issuer’s Water and Sewer Utility Revenue Bonds, Series 2010A, dated October 15, 2010.

“Series 2010B Bonds” means the Issuer’s Water and Sewer Utility Revenue Bonds, Series 2010B (Taxable Under Federal Law), dated October 15, 2010.

“Series 2011A Bonds” means the Issuer’s Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, dated November 17, 2011.

“Series 2012A Bonds” mean the Issuer’s Water and Sewer Utility Revenue Bonds, Series 2012A, dated May 1, 2012.

“Series 2014A Bonds” means the Issuer’s Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, dated August 1, 2014.

“Series 2014B Bonds” means the Issuer’s Water and Sewer Utility Revenue Bonds, Series 2014B, dated December 1, 2014.

“Series 2015B Bonds” means the Issuer’s Water and Sewer Utility Refunding Revenue Bonds, Series 2015B, dated April 1, 2015.

“Series 2015C Bonds” means the Issuer’s Water and Sewer Utility Revenue Bonds, Series 2015C, dated November 1, 2015.

“Series 2015D Bonds” means the Issuer’s Water and Sewer Utility Refunding Revenue Bonds, Series 2015D, dated November 1, 2015.

“Series 2016A Bond Reserve Subaccount” shall mean the Water and Sewer Utility Revenue Bonds, Series 2016A, Bond Reserve Subaccount created within the Bond Reserve Account.

“Series 2016A Bonds” means the Issuer’s Water and Sewer Utility Revenue Bonds, Series 2016A, dated August 1, 2016, authorized by this Ordinance.

“Series 2016B Bonds” means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2016B, dated August 1, 2016.

“State” means the State of Kansas.

“Substitute Project” means a substitute or additional project of the Utility authorized in the manner set forth in the Bond Resolution.

“Utility” shall mean the combined City of Wichita, Kansas Water Utility and Sewer Utility, and any improvements, extensions and enlargements thereto hereafter constructed or acquired.

“Utility Indebtedness” means collectively the Bonds and any Additional Obligations which are secured by an interest in, the Gross Revenues.

Section 2. Authorization of the Series 2016A Bonds. There shall be issued and hereby are authorized and directed to be issued the Water and Sewer Utility Revenue Bonds, Series 2016A, of the City in the principal amount of \$23,810,000, for the purpose of providing a portion of the funds to: (a) pay all or a portion of the costs of the Project; (b) make a deposit to the Series 2016A Bond Reserve Subaccount; and (c) pay costs of issuance of the Series 2016A Bonds.

Section 3. Security for the Series 2016A Bonds. The Series 2016A 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 2016A Bonds. The Series 2016A 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 2016A Bonds, either as to principal or interest.

The covenants and agreements of the City contained herein and in the Series 2016A Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2016A Bonds, all of which Series 2016A 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 2016A Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Series 2016A 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 Indebtedness. The Series 2016A Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Parity Indebtedness; and the Parity Indebtedness shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Series 2016A Bonds.

Section 4. Terms, Details and Conditions of the Series 2016A Bonds. The Series 2016A 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 hereafter adopted by the governing body of the City.

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 Utility, including all repairs, alterations, extensions, reconstructions, enlargements or improvements thereto hereafter constructed or acquired by the City, as will produce Gross Revenues sufficient to (a) pay Current Expenses; (b) pay the principal of and interest on the Utility 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 Utility as provided in this Ordinance and the Bond Resolution. The Bond Resolution may establish requirements in excess of the requirements set forth herein.

Section 6. Further Authority. The Mayor, City Manager, Director of Finance, City 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 2016A 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 and publication in the official City newspaper.

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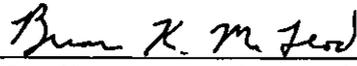
PASSED by the City Council of the City of Wichita, Kansas, on July 19, 2016.




Jeff Longwell, Mayor


Karen Sublett, City Clerk

APPROVED AS TO FORM:

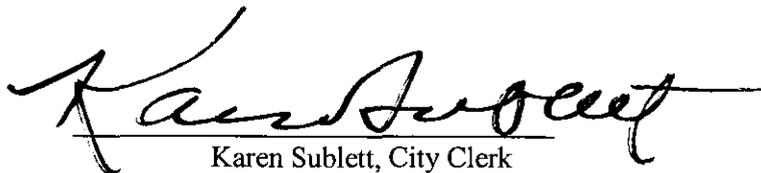

for Jennifer Magaña, Director of Law and
City Attorney

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CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on July 19, 2016; that the record of the final vote on its passage is found on page ____ of journal ____; and that the Ordinance or a summary thereof was published in *The Wichita Eagle* on July 22, 2016.

DATED: July 22, 2016.


Karen Sublett, City Clerk

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