

ORDINANCE NO. 48-351

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, AUTHORIZING AND PROVIDING FOR CONSTRUCTING, RECONSTRUCTING, ALTERING, REPAIRING, IMPROVING, EXTENDING OR ENLARGING OF THE MUNICIPAL WATER AND SEWER UTILITY AND FOR FUNDING OF REQUIRED RESERVES FOR OUTSTANDING WATER AND SEWER REVENUE BONDS OF THE CITY OF WICHITA, KANSAS; AUTHORIZING THE ISSUANCE OF THE CITY'S \$121,765,000 AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2009A, AND \$12,790,000 AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2009B (TAXABLE UNDER FEDERAL LAW) TO PAY A PORTION OF THE COST THEREOF; MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS AND SUPPORTING DOCUMENTS.

WHEREAS, the City of Wichita, Kansas (the "City"), is a first class city duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the City is authorized under the laws of the State to issue general obligation bonds to construct, reconstruct, alter, repair, improve, extend or enlarge its municipal utilities; and

WHEREAS, 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, pursuant to the provisions of the Act (as such term is defined herein) and Ordinance No. 41-934 of the City, adopted January 26, 1993 (the "Series 1993 Ordinance"), the City issued \$76,320,000 original principal amount of Water and Sewer Utility Refunding and Improvement Revenue Bonds, Series 1993, dated February 1, 1993 (the "Series 1993 Bonds"), which Series 1993 Bonds were payable from and had a first and prior lien on the Net Revenues (as such term is defined herein) derived by the City from the operation of the Utility; and

WHEREAS, pursuant to the provisions of the Act, the Series 1993 Ordinance and various ordinances and resolutions of the City, the City has heretofore issued \$64,930,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 1997 (the "Series 1997 Bonds"); \$29,135,000 original principal amount of Water and Sewer Utility Refunding Revenue Bonds, Series 1998 (the "Series 1998 Bonds"); \$48,950,000 original principal amount

of Water and Sewer Utility Revenue Bonds, Series 1999 (the “Series 1999 Bonds”); \$7,220,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 2000 (the “Series 2000 Bonds”); \$16,325,000 original principal amount of Water and Sewer Utility Refunding Revenue Bonds, Series 2001 (the “Series 2001 Bonds”); \$120,365,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 2003 (the “Series 2003 Bonds”); \$45,535,000 original principal amount of Water and Sewer Utility Refunding Revenue Bonds, Series 2005A (the “Series 2005A Bonds”); \$26,695,000 Water and Sewer Utility Refunding Revenue Bonds, Series 2005B (the “Series 2005B Bonds”); \$46,975,000 Water and Sewer Utility Revenue Bonds, Series 2005C (the “Series 2005C Bonds”); \$51,140,000 Water and Sewer Utility Revenue Bonds, Series 2006 (the “Series 2006 Bonds”); and \$29,460,000 Water and Sewer Utility Revenue Bonds, Series 2008A (the “Series 2008A Bonds”); and

WHEREAS, the Series 1993 Bonds and Series 1997 Bonds are no longer Outstanding; and

WHEREAS, the Outstanding Series 1998 Bonds, Series 1999 Bonds, Series 2000 Bonds, Series 2001 Bonds, Series 2003 Bonds, Series 2005A Bonds, Series 2005B Bonds, Series 2005C Bonds, Series 2006 Bonds and Series 2008A Bonds (collectively, the “Outstanding Parity Bonds”) are payable from and have a co-equal first and prior lien on the Net Revenues (as such term is defined herein) derived by the City from the operation of the Utility; and

WHEREAS, pursuant to the provisions of the ordinances of the City authorizing such existing revenue bond indebtedness of the Utility, the City is authorized to issue additional revenue bonds for extensions, enlargements and improvements to the Utility, and such additional revenue bonds may be on a parity with and co-equal in priority and lien to the existing revenue bond indebtedness of the Utility, provided that certain conditions are satisfied; and

WHEREAS, the Governing Body has heretofore by various resolutions, duly adopted, found and determined it to be necessary and advisable to (a) construct, reconstruct, alter, repair, improve, extend or enlarge the Utility (“Projects”), and (b) fund necessary reserves for the Outstanding Parity Bonds (“Reserve Funding”) and has found and determined it to be necessary and advisable to issue revenue bonds pursuant to the provisions of K.S.A. 10-1201 *et seq.*, as amended and supplemented (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, provide the Reserve Funding 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, the Reserve Funding and the issuance of such revenue bonds, and the City is, therefore, now authorized to construct the Projects, proceed with the Reserve Funding and to issue said revenue bonds; 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 2009 Bonds payable from Net Revenues of the Utility and to authorize and provide for the execution and delivery of certain agreements and supporting documents;

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

Section 1. Definitions. All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Resolution herein referenced.

Section 2. Authorization of and Security for Series 2009 Bonds; Pledge of Net Revenues. Pursuant to the Bond Ordinance, the Governing Body hereby authorizes, orders and directs that there shall be issued and delivered the following series of revenue bonds (referred to collectively, as the "Series 2009 Bonds"): (a) "City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009A," in the aggregate total principal amount of \$121,765,000, as provided by and under the authority of the Act, for the purpose of providing the necessary funds to pay the Project Costs, fund a reasonable reserve for the Series 2009A Bonds, and pay Costs of Issuance associated with the Series 2009A Bonds; and (b) "City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law)," in the aggregate total principal amount of \$12,790,000, as provided by and under the authority of the Act, for the purpose of providing the necessary funds to pay the Reserve Funding, fund a reasonable reserve for the Series 2009B Bonds, and pay Costs of Issuance associated with the Series 2009B Bonds.

The principal amount of the Series 2009 Bonds, premium, if any, and the interest thereon are secured by and shall be paid by the City solely from the Net Revenues derived from the operation of the Utility, and the rates, fees and charges collected for the use thereof or service therefrom, and not from any other fund or source; and the Series 2009A Bonds and Series 2009B Bonds are hereby made a first and prior lien on the Net Revenues produced from the Utility, which lien is on a parity with and co-equal to each other and to the lien on the Net Revenues of the Series 1998 Bonds, the Series 1999 Bonds, the Series 2000 Bonds, the Series 2001 Bonds, the Series 2003 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds and the Series 2008A Bonds; and the City hereby irrevocably pledges the Net Revenues derived from the operation of the Utility to the payment of the Series 2009 Bonds.

The Series 2009A Bonds and Series 2009B Bonds shall not have any priority with respect to the payment of principal or interest over each other or over any revenue bonds of the City hereafter issued in accordance with the provisions of the Resolution (as hereinafter defined) which are on a parity with the Series 2009 Bonds, nor shall any other revenue bonds of the City heretofore or hereafter issued have any priority over the payment from the Net Revenues of the principal of or the interest on the Series 2009 Bonds.

The Series 2009 Bonds shall not be nor constitute general obligations of the City nor

shall they constitute an indebtedness of the City within the meaning of any constitutional or statutory provision, and the City shall be under no obligation to levy any taxes to pay any of the principal of or the interest on the Series 2009 Bonds.

Section 3. Terms, Details and Conditions of the Bonds. Each series of Series 2009 Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such form, 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 a resolution (the “Resolution”) hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Series 2009 Bonds, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

Section 4. Rate Covenant. While any of the Series 2009 Bonds remain Outstanding, the rates, fees and charges for the use of the services rendered by the Utility shall be reasonable and just and subject to the conditions and limitations in this Ordinance and the Resolution, provided, and it is hereby covenanted and agreed that, such rates, fees and charges, after payment of the costs of operating and maintaining the Utility, shall be sufficient to produce Net Revenues Available for Debt Service each year equal to not less than one hundred twenty percent (120%) of the current year’s Debt Service Requirements for all revenue bond indebtedness of the Utility; shall be sufficient to comply with the conditions of this Ordinance and the Resolution and the terms of the Series 2009 Bonds and provide adequate reserves; and shall provide for at least one hundred percent (100%) coverage of the City’s obligations with respect to the Payment to the City and to the repayment of Policy Costs then due and owing to the Initial Provider; provided that, in determining the Net Revenues Available for Debt Service, estimated additional net income to be derived from rate increases in effect and being charged prior to the end of the applicable year, as determined by the Consulting Engineers, may be taken into account, and that, without giving effect to any such adjustments from rate increases, Net Revenues Available for Debt Service shall be equal to at least one hundred percent (100%) of the current year’s Debt Service Requirements for all revenue bond indebtedness of the Utility.

In providing for compliance with the covenants and provisions contained herein and the Resolution, it shall be the policy of the City that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues Available for Debt Service with respect to revenue bonds issued for improvements to each such component of the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

Section 5. Maintenance of Utility; Collection, Segregation and Disposition of Revenues. The City hereby covenants to operate and maintain the Utility in accordance with the requirements set forth in the Resolution. The City hereby further covenants and agrees that from and after the date of passage of this Ordinance, the Gross Revenues derived by the City from the operation of the Utility, including the Gross Revenues from all extensions and improvements to the Utility hereafter constructed or acquired by the City, will be deposited into the Water and Sewer Utility Revenue Fund created and currently maintained by the City, and shall be segregated and kept separate and apart from all other moneys, revenues, funds and

accounts of the City, all as more specifically provided in the Resolution.

Section 6. Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Series 2009A Bonds remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Series 2009A Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Series 2009A Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Series 2009A Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Series 2009A Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Series 2009A Bonds to be “arbitrage bonds” within the meaning of Section 103(b)(2) of the Code and to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Series 2009A Bonds for so long as any of the Series 2009A Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Series 2009A Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Series 2009A Bonds and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Ordinance and the Resolution, the Rebate Amount as described in the Tax Compliance Certificate.

Section 7. Designation. Pursuant to K.S.A. 10-620 *et seq.*, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State of Kansas, Topeka, Kansas, is hereby designated as the initial Paying Agent and Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days’ written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

Section 8. Further Authority. The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Series 2009 Bonds, a Bond Purchase Agreement between the City and Citigroup Global Markets Inc. and George K. Baum & Company, as co-underwriters for the Series 2009 Bonds, and the Series 2009 Bonds in accordance with the provisions of the Resolution. The

Governing Body hereby further authorizes, orders and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Series 2009 Bonds, final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Series 2009 Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement, the Bond Purchase Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Series 2009 Bonds and the Official Statement.

Section 9. Effective Date. This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

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**PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas
on June 16, 2009.**

(Seal)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law