ORDINANCE NO. 19458

AN ORDINANCE INTRODUCED BY CITY MANAGER NORTON N. BONAPARTE, JR. AUTHORIZING THE ISSUANCE OF $985,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE COMBINED UTILITY IMPROVEMENT REVENUE BONDS (BUILD AMERICA BONDS – DIRECT PAY TO ISSUER) SERIES 2010-A, $9,155,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE COMBINED UTILITY IMPROVEMENT REVENUE BONDS (RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS) SERIES 2010-B, AND $85,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE COMBINED UTILITY IMPROVEMENT REVENUE BONDS, SERIES 2010-C OF THE CITY OF TOPEKA, KANSAS, UNDER THE AUTHORITY OF K.S.A. 10-1201 ET SEQ., AND ALL AMENDMENTS THERETO.

WHEREAS, pursuant to K.S.A. 10-1201 et seq., as amended (the "Act"), the governing body of the City of Topeka, Shawnee County, Kansas, (the "City") by (1) its Ordinance No. 19171 adopted by two-thirds vote of the members thereof, and published as required by law, expressed its intent to improve the City’s stormwater, wastewater and water supply systems (collectively, the “System”) by replacing the existing distributed control system equipment at the North Topeka Waste Water Treatment Plant with modern cost effective supervised control and data acquisition equipment including the replacement of the software and hardware required to automate and monitor the wastewater treatment facility, reprogramming the programmable logic controllers and human machine interfaces to standardize with the Oakland plant, and replacement of the computer system and any related appurtenances needed for a complete project together with all things necessary and incidental thereto (the "Waste Water Treatment Plant Improvements") and authorizing that notice of the City's intention to make the Waste Water Treatment Plant Improvements and finance the costs thereof be given in accordance with the requirements of the Act and (2); and (2) its Ordinance No. 19256 adopted by two-thirds vote of the members thereof, and published as required by law, expressed its intent to improve the System by rehabilitating the South Kansas River Pump Station and the Potwin Pump Station by making improvements including regulatory compliance upgrades, modifications of the wetwell, barscreen and electrical systems, investigation of cost effective “green” alternatives, addition of flow monitoring of incoming interceptors, demolition of the Potwin Pump Station, installation of a new interceptor to divert flow from the Quinton Interceptor to the South Kansas River Pump Station, installation of improved odor control and related appurtenances together with all things necessary and incidental thereto (the "Pump Station Improvements") (the Waste Water Treatment Plant Improvements and the Pump Station Improvements are collectively referred as the “Improvements”) and authorizing that notice of the City's intention to make the Pump Station
Improvements and finance the costs thereof be given in accordance with the requirements of the Act.

WHEREAS, pursuant to the Act, the City did cause to be published in its official newspaper, a paper of general circulation in the City, its Notice of Intention to complete the Waste Water Treatment Plant Improvements and finance the cost thereof by issuing revenue bonds of the City, in the maximum principal amount of $1,000,000 (less original issue discount), to pay all or part of the cost of the Waste Water Treatment Plant Improvements incurred or to be incurred by the City in connection with the Waste Water Treatment Plant Improvements; and

WHEREAS, a sufficient protest against the making of the Waste Water Treatment Plant Improvements and the issuance of revenue bonds of the City in the maximum principal amount of $1,000,000 to pay the cost thereof was not received by the City Clerk within fifteen (15) days of the date of the publication of the City's Notice of Intention; and

WHEREAS, pursuant to the Act, the City did cause to be published in its official newspaper, a paper of general circulation in the City, its Notice of Intention to complete the Pump Station Improvements and finance the cost thereof by issuing revenue bonds of the City, in the maximum principal amount of $9,635,054 (less original issue discount), to pay all or part of the cost of the Pump Station Improvements incurred or to be incurred by the City in connection with the Pump Station Improvements; and

WHEREAS, a sufficient protest against the making of the Pump Station Improvements and the issuance of revenue bonds of the City in the maximum principal amount of $9,635,054 to pay the cost thereof was not received by the City Clerk within fifteen (15) days of the date of the publication of the City's Notice of Intention; and

WHEREAS, it is necessary at this time that the City proceed forthwith to sell and deliver its (1) Taxable Combined Utility Improvement Revenue Bonds (Build America Bonds – Direct Payment to Issuer) Series 2010-A, in the principal sum of $985,000 (the “Series 2010-A Bonds”), for the purpose of providing funds to (a) permanently finance a portion of the costs of making the Waste Water Treatment Plant Improvements (i.e., $800,000), (b) permanently finance a portion of the costs of making the Pump Station Improvements (i.e., $139,487.80) and (c) fund the debt service reserve fund for the Series 2010-A Bonds; (2) Taxable Combined Utility Improvement Revenue Bonds (Recovery Zone Economic Development Bonds) Series 2010-B, in the principal sum of $9,155,000 (the “Series 2010-B Bonds”), for the purpose of providing funds to (a) permanently finance the balance of the costs of making the Pump Station Improvements (i.e., $8,731,990.70) and (b) fund the debt service reserve fund for the Series 2010-B Bonds; and (3) Taxable Combined Utility Improvement Revenue Bonds, Series 2010-C, in the principal sum of $85,000 (the “Series 2010-C Bonds”) (the Series 2010-A Bonds, Series 2010-B Bonds and Series 2010-C Bonds are collectively referred as the “Bonds”), for the purpose of providing funds to pay the costs of issuing the Bonds, all under the authority of K.S.A. 10-1201 et seq. and Article 1 of Chapter 10, Kansas Statutes Annotated, all as amended; and
WHEREAS, on March 25, 2003, the City combined its stormwater utility with the water and water pollution control utility creating a water, water pollution control and stormwater utility system (the “Combined Utility”); and

WHEREAS, the City on February 19, 2004, issued its Combined Utility Improvement and Refunding Revenue Bonds, Series 2004-A in the amount of $46,180,000 (the “Series 2004-A Bonds”) which, in part, currently refunded the City’s outstanding Series 1998A Water and Water Pollution Control Utility Refunding Revenue Bonds dated June 1, 1998; and

WHEREAS, the City on December 8, 2005, issued its Combined Utility Improvement Revenue Bonds, Series 2005-A in the amount of $14,875,000 (the “Series 2005-A Bonds”); and

WHEREAS, the City on October 18, 2006, issued its Combined Utility Refunding Revenue Bonds, Series 2006-A in the amount of $32,375,000 (the “Series 2006-A Bonds”) which currently refunded all of the City’s outstanding Series 1998B Water and Water Pollution Control Utility Revenue Bonds dated June 1, 1998; and

WHEREAS, the City on October 18, 2006, issued its Combined Utility Refunding Revenue Bonds, Series 2006-B Bonds in the amount of $22,600,000 (the “Series 2006-B Bonds”) which advanced refunded the City’s outstanding Series 2001-A Water and Water Pollution Control Utility Revenue Bonds maturing in the years 2009 through and including 2031; and


WHEREAS, the City on July 17, 2007, issued its Taxable Combined Utility Improvement Revenue Bonds, Series 2007-C in the amount of $2,140,000 (the “Series 2007-C Bonds”); and

WHEREAS, the Bonds are parity obligations of the City’s System and, as such shall have equal lien status with the outstanding Series 2004-A Bonds; the Series 2005-A Bonds, the Series 2006-A Bonds, the Series 2006-B Bonds, the Series 2007-B and the Series 2007-C Bonds; and

WHEREAS, the City has authorized certain loans in the maximum authorized amount of $89,619,672 from the Kansas Department of Health and Environment revolving fund loan program (the “Permitted Loans”) and pledged the revenues from the System to the payment of such Permitted Loans and any additional loans which would constitute Permitted Loans under the Resolution hereinafter provided for; and
WHEREAS, the lien of the Permitted Loans upon the revenues of the System is superior to the lien of the City’s outstanding Series 2004-A Bonds, Series 2005-A Bonds, Series 2006-A Bonds, Series 2006-B Bonds, Series 2007-B Bonds, Series 2007-C Bonds and the Bonds hereby authorized and directed to be issued; and

WHEREAS, the City has received an allocation of $9,364,054 of Recovery Zone Economic Development Bond Authority pursuant to Section 1400U-1 of the Internal Revenue Code of 1986, as amended, (the “Code”) to finance certain economic development activities including public infrastructure and the construction of public facilities in specifically designated areas of the City (the “RZEDB Authority”); and

WHEREAS, the City has by its Ordinance No. 19392 passed and approved March 16, 2010, and published as required by law, designated that part of the City as described in such Ordinance as a Recovery Zone because of the distress factors set forth in such Ordinance; and

WHEREAS, the RZEDB Authority allocated to the City will expire by September 30, 2010, if bonds of the City so designated and issued by the City by such date.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, SHAWNEE COUNTY, KANSAS:

Section 1. That there is hereby authorized and directed to be issued (1) Taxable Combined Utility Improvement Revenue Bonds (Build America Bonds – Direct Payment to Issuer) Series 2010-A, in the principal sum of $985,000 (the “Series 2010-A Bonds”), for the purpose of providing funds to (a) permanently finance a portion of the costs of making the Waste Water Treatment Plant Improvements, (b) permanently finance the costs of making the Pump Station Improvements and (c) fund the debt service reserve fund for the Series 2010-A Bonds; (2) Taxable Combined Utility Improvement Revenue Bonds (Recovery Zone Economic Development Bonds) Series 2010-B, in the principal sum of $9,155,000 (the “Series 2010-B Bonds”), for the purpose of providing funds to (a) permanently finance the balance of the costs of making the Pump Station Improvements and (b) fund the debt service reserve fund for the Series 2010-B Bonds; and (3) Taxable Combined Utility Improvement Revenue Bonds, Series 2010-C, in the principal sum of $85,000 (the “Series 2010-C Bonds”), for the purpose of paying the costs of issuing the Bonds, all as provided by Article 1 of Chapter 10, Kansas Statutes Annotated and Article 12 of Chapter 10 of the Kansas Statutes Annotated, all as amended. The 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 in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution of the Governing Body of the City adopted the same date as the date of the passage and approval of this Ordinance (the "Resolution").

Section 2. That the Mayor and City Clerk are hereby authorized to prepare and execute the Bonds and when so executed, the Bonds shall be registered as required by law and the Governing Body shall annually make provisions for the payment of the principal of, redemption premium, if any, and interest on the Bonds as the same shall become due from the revenues derived by the City from the rates, fees or charges collected by the City from the operation of the
System, including all improvements, extensions and enlargements thereto hereafter constructed or acquired by the City and not from any other fund or source. The Bonds shall constitute a lien upon the revenues produced from the System of the City.

Section 3. That the City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the Resolution all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 4. The City hereby elects to have Section 54AA of the Code apply to the 2010-A Bonds and 2010-B Bonds (together, the “Subsidy Bonds”) so the Subsidy Bonds may be “Build America Bonds” under Code Section 54AA(d). The City is further making the irrevocable election to have Section 54AA(g) of the Code apply to the Subsidy Bonds so the Subsidy Bonds may be “qualified bonds” under Code Section 54AA(g) in order to receive the refundable credits allowed to issuers pursuant to Sections 54AA(g)(1) and 6431 of the Code with respect to “qualified bonds.” In addition to the designation as “Build America Bonds,” the City is designating the 2010-B Bonds, as provided in Code Section 1400U-2(b)(1)(B), as “recovery zone economic development bonds” for purposes of Code Section 1400U-2 in order to receive the refundable credits allowed to issuers pursuant to Code Sections 1400U-2(a) and 6431 with respect to the 2010-B Bonds.

Section 5. That if any portion or provision of this Ordinance or the Bonds shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such portion or provisions shall not affect any of the remaining provisions of this Ordinance or the Bonds, but this Ordinance and said Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 6. That the Bonds shall be issued and sold to the purchaser thereof in accordance with both its bid for the purchase thereof and the terms and conditions of this Ordinance.

Section 7. That this Ordinance shall take effect and be in force from and after its passage and publication in the official City newspaper.
Passed by the Governing Body and approved by the Council of the City of Topeka, Kansas, this 24th day of August, 2010.

CITY OF TOPEKA, KANSAS

ATTEST:

/s/ William W. Bunten
William W. Bunten, Mayor

/s/ Brenda Younger
Brenda Younger, City Clerk

(SEAL)

I, BRENDA YOUNGER, City Clerk of the City of Topeka, Shawnee County, Kansas, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 19458 adopted and approved by the City Council on August 24, 2010.

/s/ Brenda Younger
Brenda Younger, City Clerk