

ORDINANCE NO. 20169

AN ORDINANCE INTRODUCED BY CITY MANAGER BRENT TROUT AUTHORIZING THE CITY OF TOPEKA, KANSAS, TO ISSUE ITS REVENUE BOND (SUNFLOWER FOUNDATION PROJECT), SERIES 2019, IN THE PRINCIPAL AMOUNT OF \$10,000,000 FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION, RENOVATION, FURNISHING AND EQUIPPING OF CERTAIN NONPROFIT HEALTH CARE EDUCATIONAL AND RESOURCE FACILITIES IN THE CITY; AUTHORIZING THE EXECUTION OF A TRUST INDENTURE BETWEEN THE CITY AND SECURITY BANK OF KANSAS CITY, AS TRUSTEE; AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY AND SUNFLOWER FOUNDATION: HEALTH CARE FOR KANSANS, A KANSAS NONPROFIT CORPORATION; AND AUTHORIZING AND APPROVING CERTAIN ADDITIONAL DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BOND.

WHEREAS, the City of Topeka, Kansas, (the “City”) is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended, (the “Act”) to acquire, construct, renovate, improve, and equip certain facilities (as defined in the Act) for commercial, hospital, industrial and manufacturing purposes, and to enter into leases and lease-purchase agreements with any persons, firm or corporation for said facilities, and to issue revenue bonds for the purpose of paying the costs of any such facilities; and

WHEREAS, Sunflower Foundation: Health Care for Kansans, a Kansas nonprofit corporation (the “Foundation”) has requested that the City issue revenue bonds in the principal amount of \$10,000,000 for the purpose of providing funds together with other funds of the Foundation to, among other things, (i) finance the acquisition, construction, renovation, furnishing and equipping of a nonprofit health care educational and resource facility (the “Project” and together with the existing facilities and the Site on which such Project is to be located, the “Facility”), and (ii) pay certain expenses associated with the issuance of the revenue bonds; and

WHEREAS, pursuant to public notice published in The Metro News on December 31, 2018, a public hearing was held by the Governing Body on January 15, 2019, in accordance with the requirements of law, to consider the issuance by the City of such revenue bonds; and

WHEREAS, the Governing Body does hereby find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the City and the State of Kansas that the City issue its Revenue Bond (Sunflower Foundation Project), Series 2019 (the “Bond”), to be dated the date of issuance, in the principal amount of \$10,000,000 for the purpose of providing funds, together with other funds of the Foundation, to (i) finance the costs of the Project to be leased by the City to the Foundation, as hereinafter provided, and (ii) pay certain expenses associated with the issuance of the Bond; and

WHEREAS, the Bond shall be payable solely and only from certain fees, rentals, revenues and other amounts derived by the City under the Lease Agreement (the “Lease”) and the Trust Indenture (the “Indenture”) hereinafter authorized, and, under certain circumstances, from the proceeds of insurance and condemnation awards; and

52 **WHEREAS**, the City further finds and determines that it is necessary and desirable in connection
53 with the issuance of the Bond to execute and deliver the Indenture with Security Bank of Kansas City, as
54 trustee (the "Trustee"), for the purpose of issuing and securing the Bond as provided therein; to enter into
55 the Lease between the City, as lessor, and the Foundation, as lessee, for the purpose of leasing the Facility
56 to the Foundation in consideration for payments of Basic Rent, Additional Rent and other charges
57 provided for therein to provide for the payment of the Bond; and to execute such other documents and
58 agreements in connection with the issuance of the Bond as hereinafter provided;

59
60 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY**
61 **OF TOPEKA, SHAWNEE COUNTY, KANSAS, AS FOLLOWS:**
62

63 **Section 1. Authorization of the Bond.** In order to obtain funds to be used for the purposes
64 aforesaid, the City is hereby authorized to issue the Bond in the principal amount of \$10,000,000, which
65 shall be issued under and secured by and shall have the terms and provisions set forth in the Indenture,
66 and the signatures of the officers of the City executing such Indenture and the hereinafter referred to Bond
67 Purchase Agreement shall constitute conclusive evidence of their approval and the City's approval
68 thereof. The Bond shall be executed on behalf of the City by the manual or facsimile signature of the
69 Mayor and attested by the manual or facsimile signature of its City Clerk and shall have the corporate seal
70 of the City affixed thereto or imprinted thereon.
71

72 **Section 2. Limited Obligations.** The Bond shall be a special limited obligation of the City
73 payable solely from the sources and in the manner as provided in the Indenture, and shall be secured by a
74 transfer, pledge and assignment of and a grant of a security interest in the Trust Estate (as defined in the
75 Indenture) to the Trustee and in favor of the registered owners of the Bond, as provided in the Indenture.
76 The Bond and interest thereon shall not in any respect be a general obligation of the City and shall not be
77 payable in any manner from taxation and shall not constitute a pledge of the full faith and credit of the
78 City, but shall be payable solely from the funds provided for in the Lease and the Indenture. The issuance
79 of the Bond shall not, directly, indirectly or contingently, obligate the City to levy any form of taxation
80 therefor or to make any appropriation for its payment. The City shall not in any event be liable for the
81 payment of the principal of, redemption premium, if any, or interest on the Bond or for the performance
82 of any pledge, obligation or agreement of any kind whatsoever which may be undertaken by the City. No
83 breach by the City of any such pledge, obligation or agreement may impose any liability, pecuniary or
84 otherwise, upon the City or any charge upon its general credit or against its taxing power.
85

86 **Section 3. Authorization and Approval of Documents.** The following documents (the "City
87 Documents") are hereby approved in substantially the forms presented to the Governing Body at this
88 meeting with such changes therein as shall be approved by the officer of the City executing such
89 documents, such officer's signature thereon being conclusive evidence of such officer's approval and the
90 City's approval thereof:
91

92 (a) Trust Indenture between the City and the Trustee, providing for the issuance
93 thereunder of the Bond and setting forth the terms and provisions applicable to the Bond,
94 including a pledge and assignment by the City of the Trust Estate to the Trustee for the benefit
95 and security of the registered owners of the Bond upon the terms and conditions as set forth in the
96 Indenture.
97

98 (b) Lease Agreement between the Foundation and the City under which the City will
99 lease the Facility to the Foundation in consideration of payments which will be sufficient to pay
100 the principal of, redemption premium, if any, and interest on the Bond upon the terms and
101 conditions as set forth in the Lease.
102

103 (c) Private Placement Bond Purchase Agreement (the "Bond Purchase Agreement"),
104 among the City, the Foundation, and INTRUST Bank, N.A. (the "Purchaser"), regarding the sale
105 of the Bond by the City to the Purchaser.
106

107 (d) Tax Compliance Agreement (the "Tax Compliance Agreement"), among the
108 City, the Foundation and the Trustee, under which the Foundation makes certain representations
109 and agreements relating to the tax status of the Bond.
110

111 The authorization of the City Documents is subject to the execution and delivery of a Guaranty
112 Agreement from the Foundation to the Trustee, pursuant to which the Foundation will guarantee the
113 timely payment of Basic Rent and Additional Rent by the Foundation under the Lease, in form and
114 substance submitted to the Governing Board, with such changes thereto as is approved by the officers of
115 the City herein authorized to execute the City Documents.
116

117 **Section 4. Execution of Bonds and Documents.** The Mayor of the City is hereby authorized
118 and directed to execute the Bond by manual or facsimile signature and to deliver the Bond to the Trustee
119 for authentication for and on behalf of and as the act and deed of the City in the manner provided in the
120 Indenture. The Mayor of the City is hereby authorized and directed to execute and deliver the City
121 Documents for and on behalf of and as the act and deed of the City. The Clerk of the City is hereby
122 authorized and directed to attest to the Bond by manual or facsimile signature, to such of the City
123 Documents, and to such other documents, certificates and instruments, as may be necessary or desirable
124 to carry out and comply with the intent of this Ordinance.
125

126 **Section 5. Further Authority.** The City shall, and the officers, agents and employees of the
127 City are hereby authorized and directed to, take such further action, and execute such other documents,
128 certificates and instruments, including, without limitation, any security documents, arbitrage certificate,
129 closing certificates and tax forms, as may be necessary or desirable to carry out and comply with the
130 intent of this Ordinance, and to carry out, comply with and perform the duties of the City with respect to
131 the Bond and the City Documents.
132

133 **Section 6. Repeal of Conflicting Ordinances.** All prior ordinances of the City or any parts
134 thereof in conflict with any or all of the foregoing ordinances are hereby repealed to the extent of such
135 conflict.
136

137 **Section 7. Severability.** If any section, paragraph, clause or provision of this Ordinance shall for
138 any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section,
139 paragraph, clause or provision shall not affect any remaining provisions of this Ordinance.
140

141 **Section 8. Effective Date.** This Ordinance shall take effect and be in full force immediately
142 after its adoption by the City and publication once in the official newspaper of the City.
143
144

PASSED and approved by the Governing Body this 5th day of February, 2019.

CITY OF TOPEKA, KANSAS

Michelle De La Isla, Mayor

ATTEST:

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. 20169 adopted and approved by the Governing Body on February 5, 2019.

Brenda Younger, City Clerk