

ORDINANCE NO. 1102

OF

THE CITY OF HORTON, KANSAS

PASSED

OCTOBER 9, 2009

\$1,635,000

**ELECTRIC UTILITY SYSTEM REFUNDING REVENUE BONDS
SERIES 2009**

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF \$1,635,000 PRINCIPAL AMOUNT OF ELECTRIC UTILITY SYSTEM REFUNDING REVENUE BONDS, SERIES 2009, OF THE CITY OF HORTON, KANSAS, FOR THE PURPOSE OF PROVIDING FUNDS TO REFUND THE CITY'S OUTSTANDING ELECTRIC UTILITY SYSTEM REVENUE BONDS; 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 is a city of the second 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 City heretofore issued and has Outstanding under the Act the Electric Utility System Revenue Bonds, Series 2002 (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, the Issuer does not have Outstanding any System Indebtedness, other than the Refunded Bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HORTON, 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 (specifically including K.S.A. 10-116a), and K.S.A. 10-620 *et seq.*, 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 Obligations" means any leases or other obligations of the Issuer payable from the Revenues, other than the Bonds.

"Bond Resolution" means the resolution to be adopted by the governing body of the City prescribing the terms and details of the Series 2009 Bonds and making covenants with respect thereto.

"Bonds" means the Series 2009 Bonds and any Additional Bonds.

"City" means the City of Horton, Kansas.

"Clerk" means the duly appointed and acting Clerk of the Issuer or, in the Clerk's absence, the duly appointed Deputy Clerk 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 standard accounting practices, including without limiting the generality of the foregoing, current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, 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 provided for in the Bond Resolution.

"Fiscal Year" means the twelve month period ending on December 30.

"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 Bonds.

"Parity Bonds" means any Additional Bonds hereafter issued pursuant to the Bond Resolution and standing on a parity and equality with the Series 2009 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 Series 2009 Bonds with respect to the lien on the Net Revenues.

"Parity Resolution" means the Bond Resolution and the ordinances and/or resolutions under which any Additional Bonds which constitute Parity Bonds are hereafter issued.

"Refunded Bonds" means the Series 2002 Bonds maturing in the years 2010 to 2022, inclusive, in the aggregate principal amount of \$1,570,000.

"Refunded Bonds Redemption Date" means November 1, 2009.

"Refunded Bonds Resolution" means each ordinance and the resolution which authorized the Refunded Bonds.

"Revenue Fund" means the Electric Utility 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, 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 2009 Bonds" means the Issuer's Electric Utility System Refunding Revenue Bonds, Series 2009, in the aggregate principal amount of \$1,635,000, authorized by this Ordinance.

"Series 2002 Bonds" means the Issuer's Electric Utility System Revenue Bonds, Series 2002, dated April 1, 2002.

"Series 2002 Resolution" means jointly the Issuer's Ordinance No. 1036 and Resolution No. 02-0318, which authorized the Series 2002 Bonds.

"State" means the State of Kansas.

"System" means the electric generating plants and all appurtenances thereto, the electric distribution system, and the electric street lighting system, now serving the City and its inhabitants and others, together with all extensions and improvements thereto hereafter made or acquired by the City

"System Indebtedness" means collectively all Bonds and all Additional Obligations.

Section 2. Authorization of the Series 2009 Bonds. There shall be issued and hereby are authorized and directed to be issued the Electric Utility System Refunding Revenue Bonds, Series 2009, of the City in the principal amount of \$1,635,000, for the purpose of providing funds to: (a) refund the Refunded Bonds; and (b) pay costs of issuance of the Series 2009 Bonds.

Section 3. Security for the Series 2009 Bonds. The Series 2009 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 2009 Bonds. The Series 2009 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 2009 Bonds, either as to principal or interest.

The covenants and agreements of the City contained herein and in the Series 2009 Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2009 Bonds, all of which Series 2009 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 2009 Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Series 2009 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 2009 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 2009 Bonds.

Section 4. Terms, Details and Conditions of the Series 2009 Bonds. The Series 2009 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 Bonds 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 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 2009 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.

PASSED by the governing body of the City on October 9, 2009 and signed by the Mayor.

(SEAL)

Mayor

ATTEST:

Clerk

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