

(Published in *The Augusta Daily Gazette* on October 15, 2011)

ORDINANCE NO. 1498

AN ORDINANCE OF THE CITY OF ANDOVER, KANSAS, APPROVING THE ISSUANCE OF \$995,000 AGGREGATE PRINCIPAL AMOUNT OF THE ANDOVER PUBLIC BUILDING COMMISSION, REFUNDING REVENUE BONDS, SERIES B, 2011 (PARK FACILITIES PROJECT) FOR THE PURPOSE OF PROVIDING FOR THE REFUNDING AND EARLY REDEMPTION OF CERTAIN OF THE COMMISSION'S OUTSTANDING IMPROVEMENT REVENUE BONDS, SERIES 2001 (PARK FACILITIES PROJECT) AND THE OUTSTANDING IMPROVEMENT REVENUE BONDS, SERIES A, 2003 (PARK FACILITIES PROJECT); PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A SIXTH SUPPLEMENTAL LEASE BY AND BETWEEN THE PUBLIC BUILDING COMMISSION AND THE CITY; AND AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BETWEEN THE COMMISSION, THE CITY, AND DEWAAY FINANCIAL NETWORK, LLC, AS UNDERWRITER OF THE BONDS.

WHEREAS, the Andover Public Building Commission (the "Commission") is a public building commission established under K.S.A. 12-1757, *et seq.*, as amended by and as chartered from with substitute and additional provisions under Charter Ordinance No. 15 (collectively, the "PBC Act") of the City of Andover, Kansas (the "City"); and

WHEREAS, pursuant to the PBC Act and K.S.A. 10-116a, as amended (collectively, the "Act"), the Commission is authorized to issue revenue bonds for the purpose of providing funds to acquire, construct, equip, and furnish buildings or other facilities maintained and operated for the affairs and activities of the City and retire any bonds issued for their acquisition and improvement; and

WHEREAS, the Commission has previously issued its Improvement Revenue Bond, Series 2001 (Park Facilities Project) (the "2001 Bonds") in the original principal amount of \$635,000 of which \$355,000 currently remains outstanding. for the purpose of providing funds to acquire, improve and equip certain park and recreation facilities located in the City (the "2001 Project"); and

WHEREAS, the Commission has previously issued its Improvement Revenue Bond, Series A, 2003 (Park Facilities Project) (the "2003 Bonds") in the original principal amount of \$760,000 of which \$640,000 currently remains outstanding. for the purpose of providing funds to acquire and improve certain park and recreation facilities located in the City (the "2003 Project"); and

HEREAS, the City has previously leased certain Land and the previously existing improvements to the Commission under and pursuant to a certain Site Lease and Subordination

Agreement, dated as of November 15, 2001 (the “2001 Site Lease”), as supplemented and amended by (i) a First Supplemental Site Lease and Subordination Agreement, dated as of October 15, 2003 (the “First Supplemental Site Lease”), (ii) a Second Supplemental Site Lease and Subordination Agreement, dated as of March 15, 2006 (the “Second Supplemental Site Lease”) and (iii) a Third Supplemental Site Lease and Subordination Agreement, dated as of August 1, 2010 (the “Third Supplemental Site Lease”), all by and between the City, as lessor, and the Commission, as lessee; and

WHEREAS, the Commission has heretofore issued its revenue bonds in numerous series for park and recreational facilities and city hall facilities which (together with the aforementioned Land and previously existing improvements) are leased back to the City pursuant to a Lease Agreement dated as of November 15, 2001 (the “2001 Lease”), as supplemented and amended by (i) a First Supplemental Lease Agreement dated as of October 15, 2003 (the “First Supplemental Lease”), (ii) a Second Supplemental Lease Agreement dated as of July 15, 2004 (the “Second Supplemental Lease”), (iii) a Third Supplemental Lease Agreement dated as of March 15, 2006 (the “Third Supplemental Lease”), (iv) a Fourth Supplemental Lease Agreement dated as of August 1, 2010 (the “Fourth Supplemental Lease”) and (v) a Fifth Supplemental Lease Agreement dated as of August 15, 2011 (the “Fifth Supplemental Lease”); and

WHEREAS, the City desires the Commission issue its Refunding Revenue Bonds, Series B, 2011 (Park Facilities Project) in the aggregate principal amount of \$995,000 (the “Series B, 2011 Bonds”) for the purpose of (i) refunding and redeeming the Outstanding 2001 Bonds maturing on and after November 1, 2012 and the Outstanding 2003 Bonds and (ii) paying certain costs of issuance of the Series B, 2011 Bonds; and

WHEREAS, the City finds and determines that it is necessary and desirable in connection with the issuance of the Series B, 2011 Bonds (1) to enter into the Sixth Supplemental Lease, with the Commission pursuant to which the City shall continue to lease the Project in consideration of payments of Sixth Supplemental Basic Rent, Additional Rent and other charges provided for therein; and (2) to execute and deliver a Bond Purchase Agreement (the “Bond Purchase Agreement”) by and between the Commission, the City, and DeWaay Financial Network, LLC, as underwriter of the Bonds.

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

Section 1. Definition of Terms. All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the 2001 Lease, as amended and supplemented, including the Sixth Supplemental Lease herein authorized.

Section 2. Approval of the Series B, 2011 Bonds. The governing body of the City hereby approves the issuance of the Series B, 2011 Bonds by the Commission.

Section 3. Authorization of the Sixth Supplemental Lease. The City is hereby authorized to enter into and deliver the Sixth Supplemental Lease dated as of November 1, 2011, by and between the Commission and the City.

Section 4. Authorization of Bond Purchase Agreement. The City is hereby authorized to enter into and deliver the Bond Purchase Agreement dated as of November 2, 2011, by and between the Commission, the City, and DeWaay Financial Network, LLC, Wichita, Kansas (the “Underwriter”), pursuant to which the Bonds shall be sold and delivered to the Underwriter.

Section 5. Authorization of Arbitrage Rebate Compliance Agreement. The City is hereby authorized to enter into and deliver the Arbitrage Rebate Compliance Agreement dated as of November 1, 2011, by and between the Commission and the City, relating to certain matters within the scope of Section 148 of the Internal Revenue Code of 1986, as amended.

Section 6. Execution of Documents. The Mayor is hereby authorized and directed to execute and deliver the Sixth Supplemental Lease and the Bond Purchase Agreement for and on behalf of and as the act and deed of the City, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his or her execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk, or any deputy thereof or assistant thereto, is hereby authorized and directed to attest the execution of the Sixth Supplemental Lease and the Bond Purchase Agreement, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 7. Request to Conditionally Call certain 2001 Bonds and 2003 Bonds for Redemption and Payment Prior to their Maturities. The City hereby instructs, as the tenant, the Commission to conditionally call, redeem, and pay prior to maturity all of the 2001 Bonds maturing on or after November 1, 2012 and the 2003 Bonds maturing on or after October 1, 2012 (collectively, the “Refunded Bonds”). The City further instructs the Commission to provide any and all necessary notice that, pursuant to Section 3.2 of the Resolution No. APBC-01-02 adopted November 13, 2001 and Section 3.2 of Resolution No. APBC-03-02 adopted October 14, 2003, the Tenant intends to redeem and pay on December 1, 2011 (the “Redemption Date”), the Refunded Bonds. Said Refunded Bonds shall be redeemed at a redemption price equal to the principal amount thereof, plus accrued interest thereon to said Redemption Date.

The election and intent to redeem the Refunded Bonds herein set forth is subject to the issuance by the Commission pursuant to a Resolution, of its Refunding Revenue Bonds prior to the Redemption Date for the purpose, in part, of providing for the payment and defeasance of the Refunded Bonds. Any notice of redemption required to be mailed to the Bondholders must be conditioned upon the issuance of such Refunding Revenue Bonds.

Section 8. Further Authority. 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 (including without limitation any necessary Arbitrage Rebate Compliance Agreement) 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 Sixth Supplemental Lease and the Bond Purchase Agreement, all as necessary to carry out and give effect to the transactions contemplated hereby and thereby.

Section 9. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the City and publication once in the official newspaper of the City.

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PASSED AND APPROVED by the governing body of the City of Andover, Kansas this 11th day of October, 2011.

CITY OF ANDOVER, KANSAS

[seal]

By _____
Ben Lawrence, Mayor

ATTEST:

By _____
Susan C. Renner, City Clerk

EXCERPT OF MINUTES

The governing body of the City of Andover, Kansas met in regular session at the usual meeting place in said City on October 11, 2011, at 7:00 p.m., with the Mayor Ben Lawrence presiding, and the following members of the governing body present: Byron Stout IV, Sheri Geisler, Dave Tingley, Clark Nelson, Caroline Hale, and Troy Tabor.

and the following members absent: n/a

Among other business, there came on for consideration an Ordinance entitled:

AN ORDINANCE OF THE CITY OF ANDOVER, KANSAS, APPROVING THE ISSUANCE OF \$995,000 AGGREGATE PRINCIPAL AMOUNT OF THE ANDOVER PUBLIC BUILDING COMMISSION, REFUNDING REVENUE BONDS, SERIES B, 2011 (PARK FACILITIES PROJECT) FOR THE PURPOSE OF PROVIDING FOR THE REFUNDING AND EARLY REDEMPTION OF CERTAIN OF THE COMMISSION'S OUTSTANDING IMPROVEMENT REVENUE BONDS, SERIES 2001 (PARK FACILITIES PROJECT) AND THE OUTSTANDING IMPROVEMENT REVENUE BONDS, SERIES A, 2003 (PARK FACILITIES PROJECT); PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A SIXTH SUPPLEMENTAL LEASE BY AND BETWEEN THE PUBLIC BUILDING COMMISSION AND THE CITY; AND AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BETWEEN THE COMMISSION, THE CITY, AND DEWAAY FINANCIAL NETWORK, LLC, AS UNDERWRITER OF THE BONDS.

Thereupon, the Ordinance was considered and discussed; and on motion of Council Member Nelson, seconded by Council Member Hale, the Ordinance was adopted by the majority of all members present.

Thereupon, the Ordinance was given No. 1498 and was directed to be signed by the Mayor and attested by the City Clerk and was directed to be published once in the official newspaper of the City of Andover, Kansas as required by law.

CITY CLERK'S
CERTIFICATION OF EXCERPT OF MINUTES

I hereby certify that the foregoing is a true and correct Excerpt of the Minutes of the October 11, 2011 meeting of the Governing Body of the City of Andover, Kansas.

[seal]

Susan C. Renner, City Clerk