

(Published in *The Augusta Daily Gazette* on November 17, 2012) ✓

ORDINANCE NO. 1522

AN ORDINANCE OF THE CITY OF ANDOVER, KANSAS, AUTHORIZING THE ISSUANCE OF THE CITY'S GENERAL OBLIGATION BONDS, SERIES B, 2012, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$2,444,000, FOR THE PURPOSE OF FINANCING THE OTHERWISE UNPAID COSTS OF MULTIPLE CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

WHEREAS, the governing body of the City of Andover, Kansas (the "City"), under the authority of K.S.A. 12-6a01 *et seq.*, as amended and supplemented (the "Special Assessment Act"), has adopted Resolution No. 10-19 on September 28, 2012 and published October 1, 2012, as later amended by Resolution No. 11-03 adopted on February 8, 2011 and published on February 11, 2012 (the "Authorizing Resolution"), which authorizes the construction and installation of Andover Landing Water Distribution Phase 1 Improvements, Andover Landing Water Distribution Phase 2 Improvements, Andover Landing Sewer Improvements, Andover Landing Paving Phase 1 Improvements, Andover Landing Paving Phase 2 Improvements, Andover Landing Storm Drainage Improvements, Andover Landing 21<sup>st</sup> Street Water Main Improvements, Andover Landing 21<sup>st</sup> Street Sidewalk Improvements and Andover Landing Andover Road Sidewalk Improvements (collectively, the "Project"), which Project benefited various identified real properties; and

WHEREAS, the final total cost of Project has been determined by the governing body and such final costs and amount of special assessments paid in cash are as follows:

| <u>Project</u>  | <u>Final Cost</u> | <u>% Chargeable to City-At-Large</u> | <u>% Chargeable to Properties Benefiting from Improvements</u> | <u>Amount of Special Assessments Paid in Cash</u> |
|---|-------------------|--------------------------------------|--|---|
| Andover Landing Water Distribution Phase 1 Improvements | \$60,400          | 0.00%                                | 100.00%  | \$0.00  |
| Andover Landing Water Distribution Phase 2 Improvements | \$66,825          | 0.00%                                | 100.00%  | \$0.00  |

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|---|-------------------|--------------------------------------|--|---|
| Andover Landing Sewer Improvements                              | \$219,700         | 0.00%                                | 100.00%  | \$0.00  |
| Andover Landing Paving Phase 1 Improvements                     | \$600,075         | 0.00%                                | 100.00%  | \$0.00  |
| Andover Landing Paving Phase 2 Improvements                     | \$300,750         | 0.00%                                | 100.00%  | \$0.00  |
| Andover Landing Storm Drainage Improvements                     | \$1,084,400       | 0.00%                                | 100.00%  | \$0.00  |
| Andover Landing 21 <sup>st</sup> Street Water Main Improvements | \$99,900          | 49.51%                               | 50.49%   | \$0.00  |
| Andover Landing 21 <sup>st</sup> Street Sidewalk Improvements   | \$33,700          | 0.00%                                | 100.00%  | \$0.00  |
| Andover Landing Andover Road Sidewalk Improvements              | \$26,825          | 0.00%                                | 100.00%  | \$0.00  |

WHEREAS, the City is authorized by the Special Assessment Act and K.S.A. 10-101 to 10-125, inclusive, as supplemented and amended (the "Bond Act"), to issue, sell and deliver its general obligation bonds for the purpose of providing financing for the combined otherwise unpaid costs of the Project, and is required to sell such general obligation bonds at public sale if the principal amount thereof exceeds \$2,000,000; and

WHEREAS, the governing body has, pursuant to the Bond Act and by Resolution No. 12-11, adopted September 25, 2012, authorized the public sale of general obligation bonds of the City, and notice of the public sale was published, the public sale was held, and the general obligation bonds have been awarded to the best bidder; and

WHEREAS, the governing body determines it necessary and appropriate to authorize and provide for the issuance of such general obligation bonds for the purpose of providing the necessary funds for the purposes described; and to specify the terms, details, form and conditions of the general obligation bonds.

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

SECTION 1. Authorization of the Bonds. General Obligation Bonds, Series B, 2012, of the City in the total principal amount of Two Million Four Hundred Forty-Four Thousand Dollars (\$2,444,000.00) (the “Bonds”) are authorized to be issued for the purpose of providing funds to pay a portion of the costs of the Project (as defined above).

SECTION 2. Security for the Bonds. The Bonds are general obligations of the City. The full faith, credit and resources of the City are pledged to secure the payment of the principal of and the interest on the Bonds as the same severally become due and payable. The governing body of the City covenants that it shall annually make provision for the payment of the principal of and the interest on the Bonds as and when the same become due and payable by levying and collecting the necessary special assessment taxes upon the properties liable therefor, and/or by levying and collecting the necessary ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City, in such amounts as are necessary to provide for such annual payment.

SECTION 3. Terms, Details and Conditions of the Bonds. The 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 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 hereafter adopted by the governing body of the City (the “Resolution”).

SECTION 4. Designation of Paying Agent and Bond Registrar; Issuer/Agent Agreement. 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 and designates and appoints the Treasurer of the State of Kansas, Topeka, Kansas, as the Bond Registrar and Paying Agent for the bonds (the “Paying Agent”). The terms, conditions and provisions under which the Paying Agent will perform its duties are set forth in an Agreement between Issuer and Paying Agent dated as of November 30, 2012 (the “Issuer/Agent Agreement”). The form and text of the Issuer/Agent Agreement are approved and accepted by the governing body, and all of the covenants, duties and responsibilities therein to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and City Clerk are authorized to execute and deliver the Issuer/Agent Agreement for and on behalf of the City. The Issuer/Agent Agreement is incorporated in and made a part of this Ordinance as though fully set forth at this place; provided however, the inclusion of the Issuer/Agent Agreement in the publication of this Ordinance shall not be required.

SECTION 5. Levy and Collection of Annual Tax. The governing body of the City shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by levying and collecting the necessary taxes and/or assessments upon all of the taxable tangible property within the City in the manner provided by law.

The taxes and/or assessments above referred to shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as other general ad valorem taxes of the City are levied and collected, shall be used solely for the payment of the principal of and interest on the Bonds as and when the same

become due and the fees and expenses of the Paying Agent. The proceeds derived from said taxes and/or assessments shall be deposited in the Series B, 2012 Principal and Interest Account, as defined in the Resolution.

If at any time said taxes and/or assessments are not collected in time to pay the principal of or interest on the Bonds when due, the City Treasurer is hereby authorized and directed to pay said principal or interest out of the general funds of the City and to reimburse said general funds for money so expended when said taxes and/or assessments are collected.

SECTION 6. Tax Covenants. The governing body of the City covenants that so long as any of the Bonds remain outstanding and unpaid, no use will be made of the proceeds thereof which, if such use had been reasonably expected on the date of issuance and delivery, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 103(b)(2) of the Internal Revenue Code of 1986, as amended (the “Code”); and that 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 for so long as any of the Bonds remain outstanding and unpaid. The governing body further covenants to take all such action in its power as may be required from time to time in order to ensure the continued tax-exempt status of the interest on the Bonds, and to comply with all provisions of the Code, as the same be amended, and any applicable Rules and Regulations of the United States Treasury Department thereunder.

SECTION 7. Authorization of Official Statement. The governing body of the City hereby ratifies and confirms its prior approval of the form and content of the “deemed final” Preliminary Official Statement dated November 13, 2012 and the use of the final Official Statement in the reoffering of the Bonds by UMB Bank, n.a., Kansas City, Missouri, as Original Purchaser is approved and authorized; and the Mayor is authorized to execute and the City Clerk to attest the Official Statement on behalf of the City.

SECTION 8. Designation as Qualified Tax-Exempt Obligations. The governing body of the City designates the Bonds as “qualified tax-exempt obligations” as defined in Section 265(b)(3) of the Code.

SECTION 9. Further Authority. The City and its officers, agents and employees are authorized and directed to, take such actions, expend such moneys and execute such other documents, certificates and instruments as may be necessary or desirable in order to carry out and comply with this Ordinance and to give effect to the transactions contemplated hereby, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all without further action by the governing body.

SECTION 10. Severability. If any provision of this Ordinance shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or

unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever.

SECTION 11. Governing Law. This Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

SECTION 12. Effective Date. This Ordinance shall be in force and take effect from and after its adoption and approval and its publication one time in the City's official newspaper.

*[Remainder of Page Intentionally Left Blank]*

ADOPTED AND APPROVED by the governing body of the City of Andover, Kansas on November 13, 2012.



CITY OF ANDOVER, KANSAS

By [Signature]  
Ben Lawrence, Mayor

ATTEST:

By [Signature]  
Susan C. Renner, City Clerk

I hereby certify that the foregoing is the original ordinance; that said ordinance was passed on the 13 day of November, 2012; that the record of the final vote on its passage is found on page 3 of the minutes from November 13, 2012; that it was published in the Augusta Daily Gazette on the 17 day of November, 2012.

City Clerk [Signature]

## EXCERPT OF MINUTES

The governing body of the City of Andover, Kansas, met in regular session at the usual meeting place in the City on November 13, 2012, at 7:00 p.m., with the Mayor Ben Lawrence presiding, and the following members of the governing body present:

Bryon Stout IV, Sheri Geisler, Troy Tabor, Caroline Hale, Kris Estes, and Clark Nelson

and the following members absent: n/a

Thereupon, pursuant to a Summary Notice of Bond Sale heretofore published as required by law and directed by Resolution No. 12-11, adopted by the governing body on September 25, 2012, the governing body formally acknowledged the receipt prior to the deadline of sealed bids on not to exceed \$2,444,000 principal amount of the City's General Obligation Bonds, Series B, 2012. All bids having been examined, compared and verified, on motion of Council Member Clark Nelson, seconded by Council Member Sheri Geisler, it was determined that the Bonds should be awarded to the following bidder:

UMB  
Kansas City, Missouri

whose bid represents the lowest net interest cost to the City. The Mayor and City Clerk were directed to execute and return a copy of the successful bidder's Official Bid Form; and the City Clerk was further directed to return the good faith checks or other deposits of all unsuccessful bidders.

Thereupon, there was presented to the governing body an Ordinance entitled:

AN ORDINANCE OF THE CITY OF ANDOVER, KANSAS, AUTHORIZING THE ISSUANCE OF THE CITY'S GENERAL OBLIGATION BONDS, SERIES B, 2012, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$2,444,000, FOR THE PURPOSE OF FINANCING THE OTHERWISE UNPAID COSTS OF MULTIPLE CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

Thereupon, the Ordinance was considered and discussed, and upon the motion of Council Member Caroline Hale, seconded by Council Member Sheri Geisler, the Ordinance was adopted by a majority vote of the governing body, it was given No. 1522 and was directed to be signed by the Mayor and attested by the City Clerk; and the City Clerk was directed to publish the Ordinance one time in the City's official newspaper as required by law and as provided therein.

Thereupon, and among other business, there was presented to the governing body a Resolution entitled:

A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF GENERAL OBLIGATION BONDS, SERIES B, 2012, IN THE TOTAL AGGREGATE PRINCIPAL AMOUNT OF \$2,444,000, OF THE CITY OF ANDOVER, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 12-15 OF THE CITY; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.

Thereupon, the Resolution was considered and discussed; and on motion of Council Member Sheri Geisler, seconded by Council Member Caroline Hale, the Resolution was adopted by a majority vote of all members present.

Thereupon, the Resolution having been adopted by a majority vote of the members of the governing body, it was given No. 12-15, and was directed to be signed by the Mayor and attested by the City Clerk.

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CITY CLERK'S  
CERTIFICATION OF EXCERPT OF MINUTES

I hereby certify that the foregoing is a true and correct Excerpt of Minutes of the  
November 13, 2012 meeting of the governing body of the City of Andover, Kansas.



  
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Susan C. Renner, City Clerk