

ORDINANCE NO. 840

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A LEASE BETWEEN KANSAS GAS AND ELECTRIC COMPANY AND THE CITY OF BURLINGTON, KANSAS; APPROVING AND AUTHORIZING THE EXECUTION OF A SUBLEASE BETWEEN THE CITY AND SAID COMPANY; APPROVING AND AUTHORIZING THE EXECUTION OF A TAX EXEMPTION CERTIFICATE AND AGREEMENT AMONG THE CITY, SAID COMPANY AND THE TRUSTEE HEREIN REFERRED TO; APPROVING AND AUTHORIZING THE EXECUTION OF AN INDENTURE OF TRUST BETWEEN THE CITY AND THE TRUSTEE; AUTHORIZING \$50,000,000 POLLUTION CONTROL REFUNDING REVENUE BONDS (KANSAS GAS AND ELECTRIC COMPANY PROJECT) SERIES 2016 OF THE CITY FOR THE PURPOSE OF REFUNDING A PRIOR ISSUE OF POLLUTION CONTROL REFUNDING REVENUE BONDS OF THE CITY; APPROVING AND AUTHORIZING THE SALE OF SAID BONDS AND THE EXECUTION OF A BOND PURCHASE AGREEMENT THEREFOR; APPROVING AND AUTHORIZING THE FILING OF CERTAIN DOCUMENTS WITH THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS; APPROVING AND AUTHORIZING THE REDEMPTION OF OUTSTANDING BONDS, AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN RELATED INSTRUMENTS.

WHEREAS, the City of Burlington, Kansas (the "City"), desires to promote, stimulate and develop the general welfare and economic prosperity of the City and its environs and thereby to further promote, stimulate and develop the general welfare and economic prosperity of the State of Kansas; and

WHEREAS, pursuant to the provisions of the Kansas Industrial Revenue Bond Act, K.S.A. Section 12-1740, et seq., as amended (the "Act"), the City is authorized to issue industrial revenue bonds of the City, and it is hereby found and determined, in order to promote, stimulate and develop the general welfare and economic prosperity of the State of Kansas, and particularly the City and its citizens, to be advisable that industrial revenue bonds be issued for the benefit of Kansas Gas and Electric Company, a Kansas corporation (the "Company"), for the purpose of refunding \$50,000,000 principal amount of Pollution Control Refunding Revenue Bonds (Kansas Gas and Electric Company Project) Series 2004B-1 of the City (the "Series 2004B-1 Bonds") which were issued to refund a portion of a prior series of bonds issued to refinance the cost of the acquisition, construction and installation of the Company's undivided interest in certain pollution control facilities and facilities for sewage and/or solid waste disposal at the Wolf Creek Generating Station located near the City, which facilities constitute the Project as defined in the Lease hereinafter referred to; and

WHEREAS, the City will again acquire, and will continue to hold, a leasehold interest in the Project from the Company pursuant to the Lease; and

WHEREAS, the City will again sublease, and will continue to sublease, the Project to the Company pursuant to the Sublease hereinafter referred to; and

WHEREAS, the Indenture hereinafter referred to and this Ordinance provide for the authorization of such bonds and for the issuance of a series of such bonds; and

WHEREAS, the Series 2004B-1 Bonds will be refunded and redeemed with the proceeds of the bonds authorized herein, together with other funds provided by the Company;

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

Section 1. The City hereby determines that the issuance of the Series 2016 Bonds, hereinafter described and defined in Section 6, under the Act to refinance the Project by refunding the Series 2004B-1 Bonds will be in furtherance of the public purposes as set forth in the Act, and declares that the existence of the Project promotes the welfare of the City.

Section 2. Approval and Authorization of Lease. The Lease to be dated as of the date shown thereon (the "Lease"), between the Company as lessor and the City as lessee, in substantially the form and content as the Lease on file with the City Clerk and presented to the Governing Body of the City, be and the same is in all respects hereby approved, authorized and confirmed, and the Mayor and the City Clerk be and they are hereby authorized and directed to execute and deliver the Lease, in substantially the form and content as said Lease on file with the City Clerk and presented to the Governing Body of the City, for and on behalf of the City.

Section 3. Approval and Authorization of Sublease. The Sublease to be dated as of the date shown thereon (the "Sublease"), between the City as sublessor and the Company as sublessee, in substantially the form and content as the Sublease on file with the City Clerk and presented to the Governing Body of the City, be and the same is in all respects hereby approved, authorized and confirmed, and the Mayor and the City Clerk be and they are hereby authorized and directed to execute and deliver the Sublease, in substantially the form and content as said Sublease on file with the City Clerk and presented to the Governing Body of the City, for and on behalf of the City.

Section 4. Approval and Authorization of Tax Exemption Certificate and Agreement. The Tax Exemption Certificate and Agreement to be dated the date when it is executed and delivered by the parties thereto, and the supplement thereto to be dated, the date of issuance of the Series 2016 Bonds (together, the "Tax Agreement"), among the City, the Company and the Trustee hereinafter referred to, in substantially the form and content as the Tax Agreement on file with the City Clerk and presented to the Governing Body of the City, be and the same is in all respects hereby approved, authorized and confirmed, and the Mayor and the City Clerk be and they are hereby authorized and directed to execute and deliver the Tax Agreement, in substantially the form and content as said Tax Agreement on file with the City Clerk and presented to the Governing Body of the City, for and on behalf of the City.

Section 5. Approval and Authorization of Indenture of Trust; Designation of Trustee. The Indenture of Trust to be dated as of the date shown thereon (the "Indenture"), between the City and U.S. Bank National Association, as Trustee (the "Trustee"), in substantially the form and content as the Indenture of Trust on file with the City Clerk and presented to the Governing Body of the City, be and the same is in all respects hereby approved, authorized and confirmed, and U.S. Bank National Association is hereby designated to act as Trustee thereunder and is hereby designated to act as Paying Agent and bond registrar for the Series 2016 Bonds, and the Mayor and the City Clerk be and they are hereby authorized and directed to execute and deliver the Indenture, in substantially the form and content as said Indenture of Trust on file with the City Clerk and presented to the Governing Body of the City, for and on behalf of the City. As provided in the Indenture, the City assigns and pledges to the Trustee certain payments under the Sublease with respect to the Series 2016 Bonds and moneys and securities held by the Trustee under the terms of the Indenture, including the Mortgage Bonds (as defined in the Indenture) of the Company, as security for the Series 2016 Bonds.

Section 6. Approval, Authorization and Issuance of Series 2016 Bonds. To provide for the refunding of the Series 2004B-1 Bonds on, or within 90 days of, the date of issuance of the Series 2016 Bonds, the City does hereby create and establish an issue of pollution control refunding revenue bonds of the City in the principal amount of \$50,000,000 to be designated the City of Burlington, Kansas Pollution Control Refunding Revenue Bonds (Kansas Gas and Electric Company Project) Series 2016 (the "Series 2016 Bonds"), to be initially issued in one series, to mature on June 1, 2031, to be dated and to bear interest from their date of issuance, to bear interest at the rates per annum set forth in, or determined in accordance with the provisions of, the Indenture, to be payable on the Interest Payment Dates as provided in the Indenture, to be subject to redemption as provided in the Indenture, and to be subject to purchase and to re-setting of the interest rate in connection therewith as provided in the Indenture. The final terms of the Series 2016 Bonds shall be specified in the Indenture, and the signatures of the officers of the City executing the Indenture shall constitute conclusive evidence of their approval and the City's approval of such terms. The Series 2016 Bonds shall be in the form and content and include such other details as specified herein and in the Indenture.

The issuance of the Series 2016 Bonds is in all respects hereby approved, authorized and confirmed, the Mayor and the City Clerk are hereby authorized and directed to execute (either manually or by facsimile) and to imprint the seal of the City on the Series 2016 Bonds as provided in the Indenture, and the Trustee is hereby authorized and directed to authenticate the Series 2016 Bonds on their date of issuance upon receipt by the Trustee of the purchase price for the Series 2016 Bonds from the Original Purchaser, as described in Section 7 hereof, and upon receipt of the Mortgage Bonds of the Company, to deliver the Series 2016 Bonds on their date of issuance for and on behalf of the City to or on the order of the Original Purchaser upon receipt and at the purchase price therefor, and to deposit the proceeds of the sale of the Bonds with itself as Trustee, in the manner provided in the Indenture, which proceeds shall be transferred by the Trustee to the trustee for the Series 2004B-1 Bonds and used, together with moneys from the Company, to redeem the Series 2004B-1 Bonds on, or within 90 days of, the date of issuance of, the Series 2016 Bonds. The Series 2016 Bonds, together with the interest thereon, shall not be general obligations of the City, but shall be special obligations payable solely from the Subrentals (as that term is defined in the Indenture) under the Sublease and any funds derived

from the Mortgage Bonds of the Company and other moneys held by the Trustee, as provided in the Indenture. Neither the credit nor the taxing power of the State of Kansas, of the City or of any political subdivision of such State is pledged to the payment of the principal of such Bonds or interest thereon or other costs incident thereto.

Section 7. Authorization of the Sale of the Bonds. The sale of the Series 2016 Bonds to Kansas City Financial Corporation, an affiliate of UMB Bank, N.A., and its permitted successors, as the Original Purchaser of the Series 2016 Bonds pursuant to the Bond Purchase Agreement to be dated the date when it is executed and delivered by the parties thereto, in substantially the form and content as the Bond Purchase Agreement on file with the City Clerk and presented to the Governing Body of the City (the “Bond Purchase Agreement”), at a purchase price of 100% of the principal amount of the Series 2016 Bonds is hereby approved, authorized and confirmed. The Mayor is hereby authorized and directed to execute and deliver the Bond Purchase Agreement, in substantially the form and content as said Bond Purchase Agreement on file with the City Clerk and presented to the Governing Body of the City, for and on behalf of the City.

Section 8. Approvals of Board of Tax Appeals and Coffey County. The Series 2016 Bonds shall not be issued until the Chairperson of the Kansas Board of Tax Appeals makes the findings required pursuant to K.S.A. Section 12-1744b. The Board of County Commissioners of Coffey County, Kansas approved the issuance by the City of the Series 2016 Bonds pursuant to K.S.A. Section 12-1741a by Resolution No. 825 adopted on October 5, 2015.

Section 9. Redemption of Series 2004B-1 Bonds. The redemption in whole of the Series 2004B-1 Bonds with the proceeds of the Series 2016 Bonds, and other moneys from the Company, on, or within 90 days of, the date of issuance of the Series 2016 Bonds, and all notices and actions of the trustee for the Series 2004B-1 Bonds in connection with such redemption, are hereby authorized and the Mayor, City Clerk, City Manager, City Treasurer, City Attorney, President of the City Council and other City officials are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, agreements, documents or other papers and to perform all other acts as they may deem necessary or appropriate in order to complete the redemption of the Series 2004B-1 Bonds as aforesaid.

Section 10. Authority to Make Changes, Etc. The Mayor and City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed which they may approve, such approval to be conclusively evidenced by their execution of the documents aforesaid.

Section 11. Severability. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. It shall not be necessary for the Lease, the Sublease, the Tax Agreement, the Indenture or the Bond Purchase Agreement on file with the City Clerk to be published in the official City newspaper, but all such documents shall be on file in the office of the City Clerk and shall be available for inspection by any interested party during normal business hours.

Section 12. Further Authority. All of the acts of the members, officers, directors, agents and employees of the City which are in conformity with the intent and purposes of this Ordinance, whether heretofore or hereafter taken or done, shall be and are hereby ratified, confirmed and approved. The Mayor, City Clerk, City Manager, City Treasurer, City Attorney, President of the City Council and other City officials are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents or other papers and to perform all other acts as they may deem necessary or appropriate in order to implement and carry out the matters herein authorized including, without limitation, an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, and an Informational Statement to the Board of Tax Appeals of the State of Kansas pursuant to K.S.A. 12-1744a, both relating to the proposed issuance of the Series 2016 Bonds.

Section 13. Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication in the official City newspaper.

PASSED by the City Council this 7th day of October, 2015.

SIGNED by the Mayor.



Mayor

[SEAL]

ATTEST:



Regina R. Kewley
City Clerk

Burlington, Kansas
October 7, 2015

The Governing Body of the City of Burlington, Kansas met in regular session on the above date at 6:00 p.m. at the City Hall in said City, the following members being present:

Robert S. Luke, Mayor, and the following Council Members: Lewis Lenard, Jerilyn M. Curtiss, Jane Griffith, Thomas P. Tschantz, Sharon Hall, Dallas Scothorn.

Absent: None.

The City Clerk, Regina Kewley, was present and performed the duties of said office.

The Mayor called the meeting to order. Minutes of the last meeting of the City Council were read and approved.

* * *

(Other Proceedings)

The following ordinance was introduced in written form by the Mayor, was read in full, and pursuant to motion made by Council Member Lenard and seconded by Council Member Curtiss, was adopted by the following vote:

Aye: Lewis Lenard, Jerilyn Curtiss, Jane Griffith, Thomas Tschantz, Sharon Hall, Dallas Scothorn.

Nay: None.

The ordinance was thereupon signed by the Mayor of the City of Burlington, attested by the City Clerk, entered in the official records of said City Council, and is as follows:

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* * *

(Other Proceedings)

There being no further business, on motion duly made, seconded and carried, the meeting duly adjourned.


Mayor

[SEAL]

ATTEST:


City Clerk