

ORDINANCE NO. 900

AN ORDINANCE AUTHORIZING AND APPROVING THE ISSUANCE AND SALE OF NOT TO EXCEED \$79,480,000 OF CITY OF BURLINGTON, KANSAS ENVIRONMENTAL IMPROVEMENT REVENUE REFUNDING BONDS (EVERGY METRO, INC. PROJECT) SERIES 2023; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE BETWEEN CITY OF BURLINGTON, KANSAS (THE “ISSUER”) AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE (THE “TRUSTEE”); AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE AGREEMENT BETWEEN THE ISSUER AND EVERGY METRO, INC. (THE “COMPANY”), AN EQUIPMENT SUBLEASE AGREEMENT BETWEEN THE ISSUER AND THE COMPANY, A TAX EXEMPTION CERTIFICATE AND AGREEMENT AMONG THE ISSUER, THE COMPANY AND THE TRUSTEE, AND A BOND PURCHASE AGREEMENT AMONG THE ISSUER, BOFA SECURITIES, INC. AND THE COMPANY; AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT AND A FINAL OFFICIAL STATEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS AND CERTIFICATES IN CONNECTION WITH THE FOREGOING, AND RELATED MATTERS.

WHEREAS, the City of Burlington, Kansas (the “*Issuer*”) previously determined it necessary and advisable to finance the costs of acquisition, construction and equipping of the individual ownership interest of Evergy Metro Inc. (formerly known as Kansas City Power & Light Company) (the “*Company*”) in certain pollution control facilities and solid waste disposal facilities (the “*Project*”) for Unit No. 1 of the Wolf Creek Generating Station, owned and operated by the Company and others, located at 1550 Oxen Lane, N.E., approximately three miles northeast of the City of Burlington in Coffey County, Kansas;

WHEREAS, the Issuer, pursuant to powers granted it by the provisions of the Kansas Industrial Revenue Bond Act, Section 12-1740 *et seq.* of the Kansas Statutes Annotated, as amended, and Section 10-116a of the Kansas Statutes Annotated, as amended (collectively, the “*Act*”), previously issued \$40,000,000 of its Environmental Improvement Revenue Refunding Bonds (Kansas City Power & Light Company Project) Series 1993A (all of which are currently outstanding) and \$39,480,000 of its Environmental Improvement Revenue Refunding Bonds (Kansas City Power & Light Company Project) Series 1993B (all of which are currently outstanding) (collectively, the “*Prior Bonds*”);

WHEREAS, the Company has requested the Issuer to refund the Prior Bonds by issuing the Issuer’s Environmental Improvement Revenue Refunding Bonds (Evergy Metro, Inc. Project) Series 2023 (the “*Bonds*”) to pay a portion of the costs of refunding all or a portion of the Prior Bonds in an aggregate principal amount not to exceed \$79,480,000;

WHEREAS, the Issuer now desires to refund the Prior Bonds by the issuance of the Bonds to be payable by the Issuer solely out of subrentals derived in connection with the sublease of the Project to the Company;

WHEREAS, pursuant to the provisions of Section 147(f) of the Internal Revenue Code of 1986 (the “Code”), and applicable regulations issued and/or proposed pursuant thereto, a public hearing on the proposed plan of refunding of the Prior Bonds through the issuance of the Bonds was held on behalf of the Issuer on November 1, 2023;

WHEREAS, pursuant to the provisions of Section 12-1741a of the Kansas Statutes Annotated, as amended, the City previously requested approval of Coffey County, Kansas, to issue the Bonds, and the Board of County Commissioners of Coffey County, Kansas, adopted Resolution No. 2023-919, on October 30, 2023, approving the issuance of the Bonds by the City;

WHEREAS, pursuant to the provisions of Section 12-1744e of the Kansas Statutes Annotated, as amended, the City on October 26, 2023, published notice of its intent to enter a lease agreement with the Company and notice that the Company may be considered a retailer as such term is defined in Section 79-3602 of the Kansas Statutes Annotated, as amended;

WHEREAS, the Bonds will be issued under the Indenture dated as of December 1, 2023 (the “*Indenture*”) between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the “*Trustee*”);

WHEREAS, pursuant to the terms of the Equipment Lease Agreement dated as of December 1, 2023 (the “*Lease*”) between the Issuer and the Company, the Issuer will agree to issue the Bonds to refund the Prior Bonds;

WHEREAS, in consideration of the issuance of the Bonds, the Company pursuant to the terms of the Equipment Sublease Agreement dated as of December 1, 2023 (the “*Sublease*”) between the Issuer and the Company, will covenant and agree to pay subrentals thereunder in an amount sufficient to provide for the payment of the principal of, premium, if any, and interest on the Bonds and to issue a mortgage bond pursuant to its General Mortgage Indenture and Deed of Trust, dated as of December 1, 1986, between the Company and UMB Bank, N.A. (formerly United Missouri Bank of Kansas City, N.A.) to secure such payment;

WHEREAS, the Bonds will be sold to BofA Securities, Inc. (the “*Underwriter*”) pursuant to a Bond Purchase Agreement (the “*Purchase Agreement*”), among the Issuer, the Underwriter and the Company;

WHEREAS, the Company, the Issuer and the Trustee will make certain covenants and representations with respect to the Project and the use of Bond proceeds in the Tax Exemption Certificate and Agreement among the Company, the Issuer and the Trustee (the “*Tax Agreement*”);

WHEREAS, it is necessary for the Issuer to authorize the execution and delivery of other certificates, documents and papers and the performance of acts necessary or convenient in connection with the issuance and sale of the Bonds and the implementation of this Ordinance; and

WHEREAS, there have been prepared for and presented before this Issuer and are on file with the City Clerk forms of the Indenture, the Lease, the Sublease, the Purchase Agreement, the Tax Agreement, the Preliminary Official Statement and the Bond (contained in the Indenture);

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Burlington, Coffey County, Kansas, as follows:

Section 1. The Issuer hereby determines that the issuance of the Bonds under the Act to refinance the Project by refunding the Prior 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 of Burlington, Kansas.

Section 2. To provide for the refunding of the Prior Bonds, the Issuer does hereby authorize the issuance of revenue bonds of the Issuer under the Act, to be designated "Environmental Improvement Revenue Refunding Bonds (Every Metro, Inc. Project) Series 2023" in the aggregate principal amount of not to exceed \$79,480,000.

Section 3. The Bonds shall be limited obligations of the Issuer and shall be payable solely from the revenues and receipts and other amounts received by or on behalf of the Issuer pursuant to the Sublease and a pledge of the mortgage bond of the Company. The Bonds and interest thereon shall not constitute a general obligation of the City of Burlington, Coffey County or the State of Kansas and shall not be payable in any manner by taxation and none of the City of Burlington (except from payments received pursuant to the Sublease), Coffey County or the State of Kansas shall be liable on the Bonds.

Section 4. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk. The official seal of the Issuer shall be impressed or a facsimile of such seal shall be imprinted on the Bonds.

If any of the officers who shall have signed or sealed any of the Bonds shall cease to be such officers of the Issuer before the Bonds so signed and sealed shall have been actually authenticated by the Trustee or delivered by the Issuer, such Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds had not ceased to be such officer or officers of the Issuer; and also any such Bonds may be signed and sealed on behalf of the Issuer by those persons who, at the actual date of the execution of such Bonds, shall be the proper officers of the Issuer, although at the nominal date of such Bonds any such person shall not have been such officer of the Issuer.

Section 5. The Indenture is hereby approved in substantially the form submitted to the City and on file with the City Clerk, and the Mayor of the Issuer is hereby authorized and directed to execute and deliver the Indenture with such changes therein as shall be approved by the person executing such document on behalf of the Issuer, such person's execution to constitute conclusive evidence of such approval, and the City Clerk is hereby authorized and directed to attest and affix to the Indenture the corporate seal of the Issuer. The Bonds shall mature no later than March 1, 2045, and have the form, details and specifications set out in the Indenture. Interest on the Bonds shall accrue and be payable in accordance with the provisions of the Indenture.

Section 6. The Lease is hereby approved in substantially the form submitted to the City and on file with the City Clerk, and the Mayor of the Issuer is hereby authorized and directed to execute and deliver the Lease with such changes therein as shall be approved by such person executing such document on behalf of the Issuer, such person's execution to constitute conclusive evidence of such approval, and the City Clerk is hereby authorized and directed to attest and affix to the Lease the corporate seal of the Issuer.

Section 7. The Sublease is hereby approved in substantially the form submitted to the City and on file with the City Clerk, and the Mayor of the Issuer is hereby authorized and directed to execute and deliver the Sublease with such changes therein as shall be approved by such person executing such document on behalf of the Issuer, such person's execution to constitute conclusive evidence of such approval, and the City Clerk is hereby authorized and directed to attest and affix to the Sublease the corporate seal of the Issuer.

Section 8. The Purchase Agreement is hereby approved in substantially the form submitted to the City and on file with the City Clerk, and the Mayor of the Issuer is hereby authorized to execute and deliver said Purchase Agreement on behalf of the Issuer with such changes therein as shall be approved by such person executing such document on behalf of the Issuer, such person's execution to constitute conclusive evidence of such approval, and the City Clerk is hereby authorized and directed to attest and affix to the Purchase Agreement the corporate seal of the Issuer. The sale of the Bonds pursuant to the Purchase Agreement is hereby authorized, approved and directed, provided that the price of the Bonds shall not be less than par, plus accrued interest to the date of delivery, if any, as determined by the person executing the Purchase Agreement on behalf of the Issuer as evidenced by such execution.

Section 9. The Tax Agreement is hereby approved in substantially the form submitted to the City and on file with the City Clerk, and the Mayor of the Issuer is hereby authorized and directed to execute and deliver the Tax Agreement with such changes therein as shall be approved by such person executing such document on behalf of the Issuer, such person's execution to constitute conclusive evidence of such approval, and the City Clerk is hereby authorized and directed to attest and affix to the Tax Agreement the corporate seal of the Issuer.

Section 10. The distribution by the Underwriter of the Preliminary Official Statement relating to the Bonds in substantially the form submitted to the City and on file with the City Clerk is hereby in all respects authorized and approved and the proposed use by the Underwriter of a final Official Statement (in substantially the same form as the Preliminary Official Statement but with appropriate variations to reflect the final terms of the Bonds) is hereby approved.

Section 11. The Issuer hereby specifically approves the language contained in the Indenture and Preliminary Official Statement with respect to establishing a book-entry system with The Depository Trust Company ("*DTC*"). To that end, the Mayor of the Issuer is hereby authorized to execute and deliver to DTC any Letter of Representation as may be required by DTC to establish said book-entry system.

Section 12. The Mayor or City Clerk is hereby authorized and directed to execute, attest, seal and deliver any and all documents and certificates and do any and all things deemed necessary to effect the issuance and sale of the Bonds and the execution and/or delivery of the Lease, the

Sublease, the Tax Agreement, the Indenture, the Purchase Agreement, the final Official Statement and other instruments (including financing statements and documents relating to compliance with federal tax laws) and to carry out the intent and purposes of this Ordinance, including the preambles hereto.

Section 13. No Bonds shall be issued until the Chairperson of the Kansas Board of Tax Appeals makes the findings required to be made by him pursuant to Section 12-1744b of the Kansas Statutes Annotated.

Section 14. This City Council does hereby declare that this Ordinance constitutes the public approval of the Bonds required by Section 147(f)(2)(A)(i) of the Code.

Section 15. This City Council does hereby approve and ratify the publication on October 19, 2023 in *The Coffey County Republican* of the notice of the public hearing of this City Council with respect to the Issuer's intention to issue the Bonds and on October 26, 2023 of the Issuer's intention to enter into the Lease and Sublease.

Section 16. All of the acts of the members, officers, directors, agents and employees of the Issuer 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.

Section 17. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Section 18. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Indenture.

Section 19. All ordinances and parts thereof heretofore enacted by this City Council in conflict herewith are hereby repealed to the extent of such conflict.


Section 20. Immediately after its adoption this Ordinance shall be signed by the Mayor and the City Clerk, shall be recorded in a book kept for that purpose and shall take effect and be in force from and after its passage and publication in the official City newspaper.

{*Signature page follows.*}

Passed and approved November 2, 2023.




Mayor


City Clerk