

**ORDINANCE NO. 3043**

**AN ORDINANCE OF THE CITY OF PAOLA, KANSAS, AUTHORIZING ISSUANCE OF THE CITY’S GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2012, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$7,525,000, FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY, FINANCING THE COSTS OF CAPITAL IMPROVEMENTS IN THE CITY AND PREPAYING AND REFUNDING CERTAIN LOANS ENTERED INTO TO PAY COSTS OF SUCH IMPROVEMENTS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.**

WHEREAS, the governing body of the City of Paola, Kansas (the “City”), by authority of K.S.A. 12-1736 to 12-1739, and Article 12, § 5 of the Constitution of the State of Kansas, all as amended and supplemented (collectively, the “Project Act”), has adopted Ordinance No. 3042 on March 13, 2012 and published on March 16, 2012, which authorizes the construction, improvement, and equipping a waste water treatment plant and related structures and facilities (collectively, the “Improvements”), and the prepayment of an outstanding loan between the City and the Kansas Department of Health and Environment entered into to pay costs of the Improvements and described as follows (the “Loan”):

<u>Loan</u>	<u>Original Loan Amount</u>	<u>Estimated Balance Outstanding for Prepayment</u>
A. WPC Loan #C20 1652-01 (Waste Water Plant and Related Structures)	\$6,955,248.00	\$6,267,397.45

WHEREAS, the governing body of the City is authorized by the Project Act and K.S.A. 10-101 to 10-125, inclusive, as supplemented and amended (the “Bond Act”), to issue its general obligation bonds to pay costs of the Improvements and costs of prepaying and refunding the Loans, and is not required to sell such general obligation bonds at public sale if such bonds are issued simultaneously with refunding bonds issued pursuant to K.S.A. 10-427 *et seq.* (the “Refunding Act”); and

WHEREAS, pursuant to the Refunding Act, the City finds and determines it is necessary and appropriate to issue general obligation refunding bonds for the purpose of refunding in advance of their maturity the City’s outstanding (i) General Obligation Bonds, Series A, 2005 and (ii) General Obligation Bonds, Series 2006-A (collectively, the “Refunded Bonds”); and

WHEREAS, the governing body has determined that in the current market for municipal bonds, the City has the opportunity to issue its general obligation bonds to achieve interest cost

savings on the obligations represented by the Refunded Bonds and to structure a more orderly plan of finance with respect to the projects financed by the Loan; and

WHEREAS, the governing body finds it necessary and appropriate to authorize and provide for the issuance of such general obligation bonds for the purposes described herein.

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

SECTION 1. Authorization of the Bonds. The City's General Obligation Refunding and Improvement Bonds, Series 2012, of the City in the total principal amount of \$7,525,000 (the "Bonds") are authorized to be issued for the purposes of (i) providing funds to refund the Refunded Bonds; (ii) to prepay and refund the Loan; and (iii) to pay costs of issuing the Bonds.

SECTION 2. Security for the Bonds. The Bonds are general obligations of the City, payable as to principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, both real and personal, within the territorial limits 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.

Payment of the principal of and interest on the Bonds is insured by a policy of bond insurance issued by Assured Guaranty Municipal Corp., New York, New York.

SECTION 3. Terms, Details and Conditions of the Bonds. The Bonds shall be dated and bear interest, mature and be payable at such times, and in such forms, be subject to redemption and payment prior to maturity, and be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution adopted by the governing body of the City (the "Resolution") concurrently with this Ordinance.

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 Agent dated as of April 17, 2012 (the "Issuer/Agent Agreement"). The Issuer/Agent Agreement, in substantially the form presented to the governing body with this Ordinance, is approved and the Mayor and City Clerk are authorized to execute and deliver the Issuer/Agent Agreement for and on behalf of the City. The provisions of the Issuer/Agent Agreement are incorporated here by this reference.

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 upon all of the taxable tangible property within the City in the manner provided by law.

The taxes 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 such taxes shall be deposited in the Series 2012 Principal and Interest Account, as defined in the Resolution.

If at any time said taxes 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 are collected.

SECTION 6. Tax Covenants. The governing body of the City covenants and agrees that as long as any of the Bonds remain outstanding and unpaid, it will not use or permit the use of the proceeds of the Bonds in a manner which, if such use had been reasonably expected on the date of issuance and delivery of the Bonds, 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 applicable rules and regulations of the United States Treasury Department promulgated under the Code. The governing body further covenants to take all such action in its power as may be required from time to time in order to assure 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 issued thereunder.

SECTION 7. Authorization of Official Statement; Continuing Disclosure. The governing body of the City ratifies its previous approval of the form and content of the Preliminary Official Statement for the Bonds dated March 20, 2012 and “deems final” the Preliminary Official Statement, except for the omission of certain information as permitted by Securities and Exchange Commission Rule 15c2-12 (the “Rule”). The City approves the form and content of those additions to the Preliminary Official Statement necessary to prepare the final Official Statement and authorizes the use of the final Official Statement (in its entirety) in the reoffering of the Bonds by the original purchaser of the Bonds. The Mayor is authorized to execute and the City Clerk to attest the final Official Statement on behalf of the City. Under the Rule the City “deems final” the final Official Statement. The City covenants and agrees to provide continuing disclosure as required by the Rule and as set forth in the Continuing Disclosure Undertaking submitted to the governing body with this Ordinance. The Mayor is authorized to execute and the City Clerk to attest the Continuing Disclosure Undertaking 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 (including certificates or agreements of the City evidencing compliance with the tax covenants applicable to the Bonds as described in Section 6), all without further action by the governing body.

SECTION 10. Severability. If any section, paragraph, clause or provision of this Ordinance is, for any reason, held invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any remaining provisions of this Ordinance.

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.

ADOPTED AND APPROVED by the governing body of the City of Paola, Kansas on March 27, 2012.

CITY OF PAOLA, KANSAS

[seal]

By \_\_\_\_\_  
Artie Stuteville, Mayor

ATTEST:

By \_\_\_\_\_  
Daniel G. Droste, City Clerk