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ORDINANCE NO. 3114

AN ORDINANCE OF THE CITY OF PAOLA, KANSAS, APPROVING THE ISSUANCE OF \$9,800,000 AGGREGATE PRINCIPAL AMOUNT OF THE MARAIS DES CYGNES PUBLIC UTILITY AUTHORITY, MIAMI COUNTY, KANSAS (“AUTHORITY”), WATER FACILITIES REFUNDING REVENUE BONDS, SERIES 2017 TO REFUND A PORTION OF THE AUTHORITY’S WATER FACILITIES REVENUE BONDS, SERIES 2007; AUTHORIZING THE EXECUTION OF ANY NECESSARY DOCUMENTS RELATED TO THE TRANSACTIONS AUTHORIZED HEREIN; AND AMENDING, RATIFYING AND CONFIRMING THE CITY’S ORDINANCE NO. 2949.

WHEREAS, pursuant to provisions of K.S.A. 12-2901 *et seq.* (the “Act”), the City of Paola, Kansas (the “City”) entered into an Interlocal Cooperation Agreement with the City of Louisburg, Kansas, to organize and create the Marais Des Cygnes Public Utility Authority (the “Authority”); and

WHEREAS, the governing body of the Authority has previously issued its Water Facilities Revenue Bonds, Series 2007 (Cities of Paola and Louisburg, Kansas Project), dated November 15, 2007 (the “Series 2007 Bonds”); and

WHEREAS, the governing body of the Authority has previously issued its Water Facilities Refunding Revenue Bonds, Series 2015 (Cities of Paola and Louisburg, Kansas Project), dated June 10, 2015 (the “Series 2015 Bonds”); and

WHEREAS, the governing body of the Authority has previously issued its Water Facilities Refunding Revenue Bonds, Series 2016 (Cities of Paola and Louisburg, Kansas Project), dated March 30, 2016 (the “Series 2016 Bonds”); and

WHEREAS, the Series 2007 Bonds were issued to finance the acquisition, construction, furnishing and equipping of a water supply, treatment and distribution system (the “Project”) to provide a long-term wholesale public water supply for the mutual benefit of members of the Authority under the Interlocal Cooperation Agreement (the “Contracting Members”); and

WHEREAS, the Series 2015 Bonds were issued to refund a portion of the outstanding Series 2007 Bonds as shown in the First Supplemental Indenture dated as of June 10, 2015; and

WHEREAS, the Series 2016 Bonds were issued to refund a portion of the outstanding Series 2007 Bonds as shown in the Second Supplemental Indenture dated as of March 30, 2016; and

WHEREAS, the City is a Contracting Member in the Authority and owns and operates a separate water utility system (the “City System”); and

WHEREAS, the Series 2007 Bonds, the Series 2015 Bonds and the Series 2016 Bonds are secured in part by revenues generated, and the assignment of the Authority's rights under, a Water Supply Service Agreement dated as of September 1, 2007 (the "2007 Agreement"), as amended by a First Supplemental Water Supply Service Agreement, dated as of June 10, 2015 (the "First Supplemental Agreement"), each with the City, and similar agreements with other Contracting Members); and

WHEREAS, in connection with issuance by the Authority of the Series 2007 Bonds, the City passed and approved its Ordinance No. 2949 on August 14, 2007, in which the City authorized execution of the 2007 Agreement between the City and the Authority and making agreements and covenants of the City to provide for payment and security of the City's obligations under the Agreement, including a pledge of the Revenues of the City System to the payment of its Agreement Obligations, all as defined in Ordinance No. 2949; and

WHEREAS, in connection with issuance by the Authority of the Series 2015 Bonds, the City passed and approved its Ordinance No. 3085 on May 12, 2015, in which the City (i) authorized execution of the First Supplemental Agreement, which supplements and amends the 2007 Agreement (collectively, the Agreement"), between the City and the Authority, and (ii) makes and ratifies agreements and covenants of the City to provide for payment and security of the City's obligations under the Agreement, including a pledge of the Revenues of the City System to the payment of its Agreement Obligations, all as defined in Ordinance Nos. 2949 and 3085; and

WHEREAS, in connection with issuance by the Authority of the Series 2016 Bonds, the City passed and approved its Ordinance No. 3092 on March 8, 2016, in which the City makes and ratifies agreements and covenants of the City to provide for payment and security of the City's obligations under the Agreement, including a pledge of the Revenues of the City System to the payment of its Agreement Obligations, all as defined in Ordinance Nos. 2949 and 3085 and 3092; and

WHEREAS, in order to accomplish a comprehensive and more orderly plan of financing for the Project and to achieve interest cost savings, the Authority and the City, as a Contracting Member of the Authority, have determined it is necessary and desirable to provide for the refunding and redemption of a portion the un-refunded and outstanding Series 2007 Bonds in advance of their scheduled maturity; and

WHEREAS, to provide funds to finance the partial refunding of the Series 2007 Bonds, the Authority will issue its Water Facilities Refunding Revenue Bonds, Series 2017 (the "Series 2017 Bonds"), to be secured equally, ratably and on a parity with the Series 2007 Bonds, the Series 2015 Bonds and the Series 2016 Bonds; and

WHEREAS, the Series 2007 Bonds, the Series 2015 Bonds, the Series 2016 Bonds and the Series 2017 Bonds were issued pursuant to a Trust Indenture, as amended and supplemented by the First Supplemental Trust Indenture, Second Supplemental Trust Indenture and a Third

Supplemental Indenture, between the Authority and Security Bank of Kansas City (collectively, the “Indenture”); and

WHEREAS, the City finds and determines it is necessary and desirable in connection with the issuance of the Authority’s Series 2017 Bonds (1) to enter into necessary amendments to the Agreement by and between the City and the Authority, if any, (2) to execute any and all other documents, certificates and instruments as may be necessary or desirable in connection with issuance and securing of the Series 2017 Bonds, and (3) to ratify and confirm the pledge of Revenues and other covenants of the City with respect to the City’s Agreement Obligations as contained in Ordinance No. 2949, as amended.

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

Section 1. Amendments. All terms and phrases not otherwise defined herein shall have the meanings given them in Ordinance No. 2949 and the Agreement, each as amended and supplemented (as defined above).

Section 1101 of Ordinance No. 2949 is amended to read as follows:

(A) The City covenants and agrees that (1) it will comply with all applicable provisions of the Code, including Code §§ 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Series 2007 Bonds, the Series 2015 Bonds, the Series 2016 Bonds, the Series 2017 Bonds, and all Additional Bonds issued on a tax-exempt basis under the Code (collectively referred to in the balance of this Section as “Tax-Exempt Bonds”) and (2) it will not use or permit the use of any proceeds of the Tax-Exempt Bonds or any other funds of the City, will not take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Tax-Exempt Bonds. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published ruling and judicial decisions, in order to ensure that the interest on the Tax Exempt Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

(B) The City covenants and agrees that, to the extent within its control, (1) it will use any proceeds of the Tax-Exempt Bonds as soon as practicable and with all reasonable dispatch for the purposes for which such proceeds are intended, and (2) it will not invest or directly or indirectly use or permit the use of any proceeds of the Tax-Exempt Bonds or any other funds of the City in any manner, or take or omit to take any action, that would cause the Tax-Exempt Bonds to be “arbitrage bonds” within the meaning of Code § 148(a).

(C) The City covenants and agrees that it will not use any portion of the proceeds of the Tax-Exempt Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Tax-Exempt Bonds to be a “private activity bond within the meaning of Code § 141(a), or to make or finance a loan to any Person other than the State or a political subdivision thereof.

Section 2. Agreement Obligations. The governing body of the City acknowledges and approves the issuance of the Series 2017 Bonds by the Authority and acknowledges and agrees that payments with respect to the Series 2017 Bonds are secured in part by the City's Agreement Obligations as defined in the Agreement. The City acknowledges that and agrees the Authority has assigned its interest in the Agreement to the Trustee as security for the Bonds (as defined in the Indenture) and the City here ratifies and approves its prior approval of such assignment in Ordinance Nos. 2949, 3085 and 3092.

Section 3. Official Statement; Continuing Disclosure. The City approves the form and content of Appendix A-2 of the Preliminary Official Statement prepared in the offering and sale of the Series 2017 Bonds, and approves and authorizes the use of the Appendix A-2 containing information regarding the City in the Preliminary Official Statement and the Final Official Statement prepared by the Authority in connection with the Series 2017 Bonds. For purposes of permitting the Purchaser to comply with requirements of Rule 15c2-12 (b)(1) of the Securities and Exchange Commission (the "Rule"), the City deems the information contained in Appendix A-2 of the Preliminary Official Statement to be "final" as of its date, except for the omission of such information as is permitted by the Rule, and appropriate officers of the City are authorized, if requested, to provide the Purchaser of the Series 2017 Bonds with a certification to such effect and take such other actions or execute other documents as such officers in their reasonable judgment determine necessary to enable the Purchaser to comply with the Rule.

The City agrees with the Purchaser and the Beneficial Owners of the Bonds (as defined in the Indenture) to provide and disseminate such information as is required by the Rule as set forth in the Continuing Disclosure Undertaking for the Series 2017 Bonds, and the form of the Continuing Disclosure Undertaking, in substantially the form shown in Appendix B to the Official Statement, is approved and the Mayor and City Clerk are authorized and directed to execute it on behalf of the City.

Section 4. Execution of Documents; Further Authority. The Mayor or the President of the Council is authorized and directed to execute and deliver the documents authorized by this Ordinance, for and on behalf of and as the act and deed of the City, with such minor corrections or amendments as the Mayor or President of Council shall approve, which approval shall be evidenced by her or his execution thereof, and any other documents, certificates and instruments as may be necessary or desirable to carry out and perform the duties of the City with respect to the Agreement and comply with the purposes and intent of this Ordinance and carry out the transactions contemplated here and by such documents. The City Clerk or any deputy or assistant city clerk, is authorized and directed to attest the execution of documents authorized to be executed by the Mayor by this Ordinance, and to execute and attest any other documents, certificates and instruments as may be necessary or desirable to carry out and perform the duties of the City with respect to the Agreement and comply with the purposes and intent of this Ordinance and carry out the transactions contemplated here and by such documents.

Section 5. Ratification of Ordinance No. 2949. This Ordinance supplements and amends Ordinance No. 2949 of the City only to the extent and for the purposes stated herein. The provisions of Ordinance No. 2949 are incorporated herein by this reference as if fully set

forth herein. Except as specifically amended, supplemented or modified by this Ordinance, Ordinance No. 2949, as amended and supplemented by Ordinance Nos. 3085 and 3092, is ratified and confirmed by the City.

Section 6. 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.

PASSED AND APPROVED by the governing body of the City of Paola, Kansas on May 9, 2017.

CITY OF PAOLA, KANSAS

[seal]

By _____
Artie Stuteville, Mayor

ATTEST:

By _____
Daniel G. Droste, City Clerk