

(PUBLISHED IN THE GALENA SENTINEL-TIMES ON FEBRUARY 23, 1994)

ORDINANCE NO. 94-3

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF \$300,000 PRINCIPAL AMOUNT OF WATER UTILITY SYSTEM REVENUE BONDS, SERIES 1994, OF GALENA, KANSAS, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY A PORTION OF THE COSTS OF REPAIRS, ALTERATIONS, EXTENSIONS, RECONSTRUCTIONS, ENLARGEMENTS OR IMPROVEMENTS TO THE SYSTEM OF THE CITY; AND MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO.

WHEREAS, the City of Galena, Kansas (the "City"), is a municipal corporation duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the City is authorized under the provisions of the Act, to issue and sell revenue bonds for the purpose of paying all or part of the cost of the acquisition, construction, reconstruction, alteration, repair, improvement, extension or enlargement of the System, provided that the principal of and interest on such revenue bonds shall be payable solely from the net revenues derived by the City from the operation of the System; and

WHEREAS, the governing body of the City has pursuant to Resolution No. 93-20 declared its intention under the Act to make repairs, alterations, extensions, reconstructions, enlargements or improvements to the System (the "Project") at an estimated cost of \$750,000 and to issue Water Utility revenue bonds in an amount of not to exceed \$400,000; notice of such intention was published one time in the official newspaper of the City and no sufficient written protest thereto was filed with the Clerk within fifteen (15) days after said publication date all as set forth in the Act; and

WHEREAS, the governing body of the City has caused plans and specifications for the Project and an estimate of the cost thereof to be made by the Consulting Engineer and the same are hereby accepted and approved and shall be placed on file in the office of the Clerk, the amount of said estimated cost being not less than \$300,000; and

WHEREAS, the City does not have outstanding any bonds or other obligations payable from the revenues derived by the City from the operation of the System; and

WHEREAS, the City hereby finds and determines that it is necessary to authorize the issuance of the Bonds for the purposes set forth herein.

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

**Section 1. Definitions of Words and Terms.** In addition to the words and terms defined elsewhere in this Ordinance and in the Resolution, the following words and terms as used in this Ordinance shall have the following meanings:

"Resolution" means the resolution to be adopted by the governing body of the City prescribing the terms and details of the Bonds and making covenants with respect thereto.

"System" means the Water Utility System of the City together with all repairs, alterations, extensions, reconstructions, enlargements or improvements hereafter made or acquired by the City.

**Section 2. Authorization of the Bonds.** There shall be issued and are hereby authorized and directed to be issued the Water Utility System Revenue Bonds, Series 1994, of the City in the aggregate principal amount of \$300,000 for the purpose of providing funds to pay a portion of the costs of the Project as provided in this Ordinance.

**Section 3. Security for the Bonds.** The Bonds shall be special obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues. The taxing power of the City is not pledged to the payment of the Bonds either as to principal or interest. The Bonds shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction.

The Bonds shall stand on a parity and are equally and ratably secured with respect to the payment of principal and interest from the Net Revenues derived by the City from the operation of the System and in all other respects with the Parity Bonds. The covenants and agreements of the City contained herein, in the Resolution and in the Bonds shall be for the equal benefit, protection, and security of the legal Owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in the Resolution.

**Section 4. 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 the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Resolution hereinafter adopted by the governing body of the City.

**Section 5. Rate Covenant.** The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the System, including all repairs, alterations, extensions, reconstructions, enlargements or improvements thereto hereafter constructed or acquired by the City, as will produce revenues sufficient to (a) pay the cost of the operation and maintenance of the System; (b) pay the principal of and interest on the Bonds as and when the same become due; and (c) provide reasonable and adequate reserves for the payment of the Bonds and the interest thereon and for the protection and benefit of the System of the City as provided in this Ordinance and the Resolution. The Resolution may establish requirements in excess of the requirements set forth herein.

**Section 6. Tax Covenants.** The City covenants and agrees that (1) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds; (2) it will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds, (3) it will use the proceeds of the Bonds as soon as practicable and with all reasonable dispatch for the purposes for which the Bonds are issued, (4) it will not invest or directly or indirectly use or permit the use of any

"Act" shall mean the Constitution and Statutes of the State of Kansas including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-620 *et seq.*, as amended and supplemented and K.S.A. 10-1201 *et seq.*

"Additional Bonds" shall mean any bonds hereinafter issued pursuant to Article X of the Resolution.

"Bonds" means the City's Water Utility System Revenue Bonds, Series 1994, dated February 1, 1994, in the aggregate principal amount of \$300,000 authorized and issued pursuant to this Ordinance, and any Additional Bonds.

"City" means the City of Galena, Kansas.

"City Clerk" shall mean the duly appointed and acting City Clerk or, in the City Clerk's absence, the duly appointed Deputy City Clerk or Acting City Clerk of the City.

"Code" means the Internal Revenue Code of 1986, as amended, together with any regulations applicable thereto or promulgated thereunder by the United States Department of the Treasury.

"Consulting Engineer" means an independent engineer or engineering firm, having a reputation for skill and experience in the construction and operation of public utilities, at the time employed by the City for the purpose of carrying out the duties imposed on the Consulting Engineer by this Ordinance or the Resolution.

"Current Expenses" means all necessary expenses of operation, maintenance and repair of the System, including, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance, and all other expenses incident to the operation of the System, but shall exclude depreciation, all general administrative expenses of the City not related to the operation of the System, and the payments into the Bond Reserve Account provided for in the Resolution.

"Gross Revenues" means all charges, fees, income and revenues (including interest earnings and transfers from the Surplus Account to the Revenue Fund of Net Revenues derived in a prior Fiscal Year) derived and collected by the City from the operation and Ownership of the System.

"Mayor" means the duly elected and acting Mayor of the City or, in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

"Net Revenues" means Gross Revenues less Current Expenses.

"Ordinance" means this Ordinance authorizing the issuance of the Bonds.

"Parity Bonds" means the Bonds and any bonds hereinafter issued pursuant to Sections 1002 or 1004 of the Resolution.

"Project" means the repairs, alterations, extensions, reconstructions, enlargements or improvements to be made to the System described in Resolution No. 93-20 of the City and referred to in the Preamble to this Ordinance.

proceeds of the Bonds or any other funds of the City in any manner, or take or omit to take any action, that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of Bonds or any other funds of the City nor 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 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 rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a "private activity bond" within the meaning of Section 141(a) of the Code.

**Section 7. Further Authority.** The Mayor, Clerk and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

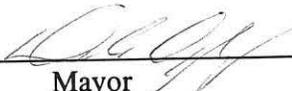
**Section 8. Governing Law.** The Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

**Section 9. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

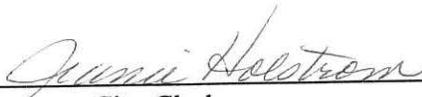
PASSED by the governing body of the City and approved by the Mayor on February 15, 1994.

AAJ430

(SEAL)

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
City Attorney

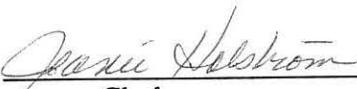
APPROVED by the Mayor this February 15, 1994

  
\_\_\_\_\_  
Mayor

**CERTIFICATE**

I, the undersigned, hereby, certify that the above and foregoing is a true and correct copy of the Ordinance No. 94-3 of the Galena, Kansas, adopted by the governing body on February 8, 1994 as the same appears of record in my office, and that said Ordinance No. 94-3 has not been modified, amended or repealed and is in full force and effect as of this date.

DATED: 2-15-94.

  
\_\_\_\_\_  
Clerk