

ORDINANCE NO. 920

AN ORDINANCE AUTHORIZING THE ISSUANCE AND DELIVERY OF \$6,140,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2013, OF THE CITY OF EDWARDSVILLE, KANSAS; AND PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON THE BONDS AS THEY BECOME DUE AND AUTHORIZING SUCH BONDS TO BE ISSUED TO PAY THE COST OF CERTAIN WATER IMPROVEMENTS.

WHEREAS, the City of Edwardsville, Kansas (the "City"), is a city of the second class, created, organized and existing under the laws of the State of Kansas (the "State");

WHEREAS, the City previously issued its General Obligation Bonds, Series 2006, dated June 1, 2006, originally issued in the principal amount of \$5,260,000 (the "Series 2006 Bonds");

WHEREAS, the City has previously entered into a Loan Agreement effective as of November 12, 2003, as amended by a First Amendment to Loan Agreement effective as of January 27, 2004 (collectively, the "Agreement"), with the Kansas Department of Health and Environment ("KDHE") acting on behalf of the State of Kansas, and pursuant to such Agreement, KDHE loaned funds to the City (the "Loan") to provide financing to pay the cost of certain sewer improvements (the "Sewer Improvements");

WHEREAS, the City has provided notice to KDHE of its intent to prepay the Loan on May 29, 2013, using the proceeds of tax-exempt general obligation bonds of the City;

WHEREAS, the City has previously issued its General Obligation Temporary Notes, Series 2012, in the original principal amount of \$1,000,000 (the "Notes"), to provide interim financing to pay to cost of certain street improvements (the "Street Improvements"; the Sewer Improvements and the Street Improvements collectively, the "Improvements");

WHEREAS, in order to achieve interest cost savings and to provide an orderly plan of finance for the City, the Governing Body of the City has determined it is in the best interest of the City and its inhabitants to refund prior to their maturity the Series 2006 Bonds maturing in the years 2016 to 2021 (the "Advance Refunded Bonds") and prepay the Loan;

WHEREAS, the Governing Body has further determined it advisable and in the best interests of the City to provide permanent financing for the outstanding Notes through the issuance of general obligation bonds;

WHEREAS, the City is authorized by K.S.A. 10-427 *et seq.*, to issue general obligation refunding bonds of the City for the purpose of refunding the Advance Refunded Bonds;

WHEREAS, the Governing Body of the City is authorized by law to issue general obligation bonds of the City to pay the costs of the Sewer Improvements, including the prepayment of the Loan, and to pay the costs of the Street Improvements;

WHEREAS, pursuant to K.S.A. 12-685 *et seq.*, and K.S.A. 12-617 and 12-618 (collectively, the “Act”), and proceedings duly taken by the City, the City has authorized the issuance of general obligation bonds to finance the Improvements;

WHEREAS, the Governing Body of the City finds and determines that it is desirable and necessary for the City to authorize the issuance and delivery of its general obligation bonds in a principal amount of \$6,140,000 to provide funds to pay the cost of refunding the Advance Refunded Bonds, provide funds to provide permanent financing for the Sewer Improvements through the prepayment of the Loan, provide permanent financing for the Street Improvements through the redemption of the Notes, and pay the costs of issuance of such bonds;

WHEREAS, in order to provide for the payment of the Advance Refunded Bonds it is desirable to enter into an Escrow Trust Agreement, by and between the City and the Escrow Trustee (as herein defined); and

WHEREAS, the Governing Body of the City has advertised the sale of its general obligation bonds and, at a meeting held in the City on this date, has or will award the sale of such bonds to the lowest bidder;

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

Section 1. Definitions of Words and Terms.

“**Advance Refunded Bonds**” means the portion of the Series 2006 Bonds being refunded by the Bonds as described in the recitals to this Ordinance.

“**Bond and Interest Fund**” means the Bond and Interest Fund of the City for its General Obligation Refunding and Improvement Bonds, Series 2013 created by the Resolution.

“**Bonds**” means the City’s General Obligation Refunding and Improvement Bonds, Series 2013, authorized by the Ordinance in the aggregate principal amount of \$6,140,000, and dated May 15, 2013.

“**City**” means the City of Edwardsville, Kansas.

“**City Clerk**” means the appointed and acting City Clerk or, in the City Clerk’s absence, the appointed acting City Clerk of the City.

“**City Treasurer**” means the appointed and acting City Treasurer or, in the City Treasurer’s absence, the appointed acting City Treasurer of the City.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the applicable regulations proposed or promulgated thereunder of the United States Department of the Treasury.

“Escrow Trust Agreement” means the Escrow Trust Agreement, dated as of May 15, 2013, between the City and the Escrow Trustee.

“Escrow Trustee” means Security Bank of Kansas City, Kansas City, Kansas, and its successors and assigns.

“Improvements” means the Sewer Improvements and the Street Improvements referred to in the recitals to this Ordinance or any Substitute Improvements, as defined in the Resolution.

“Loan” means the loan obligation being prepaid by the Bonds as described in the recitals to this Ordinance.

“Mayor” means the elected and acting Mayor of the City or, in the Mayor’s absence, the appointed acting Mayor of the City.

“Notes” means the outstanding general obligation temporary notes of the City to be redeemed with the proceeds of the Bonds as described in the recitals to this Ordinance.

“Ordinance” means this Ordinance of the City authorizing the issuance of the Bonds.

“Rebate Fund” means the Rebate Fund of the City for its General Obligation Refunding and Improvement Bonds, Series 2013, created by the Resolution.

“Resolution” means the Resolution of the City containing the terms and details of the Bonds.

“State” means the State of Kansas.

Section 2. Authorization and Security for the Bonds. There shall be issued and are authorized and directed to be issued the Bonds of the City, in the principal amount of \$6,140,000, for the purpose of providing funds, along with other available funds of the City, to pay the cost of the Improvements including the cost of any interim financing for the Improvements, to refund the Advance Refunded Bonds and to pay the cost of issuance of the Bonds.

The Bonds shall be general obligations of the City payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City. The full faith, credit and resources of the City are irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

Section 3. 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 form, shall be subject to redemption and payment prior to the maturity and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Resolution adopted by the Governing Body of the City.

Section 4. 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 and/or assessments upon all of the taxable tangible property within the City in the manner provided by law.

The taxes and/or assessments 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 the general ad valorem taxes of the City are levied and collected, and the proceeds derived from the taxes and/or assessments shall be deposited in the Bond and Interest Fund.

If at any time the taxes and/or assessments are not collected in time to pay the principal of or interest on the Bonds when due, the City Treasurer is authorized and directed to pay the principal or interest out of the general funds of the City and to reimburse the general funds for money so expended when the taxes and/or assessments are collected.

Section 5. 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 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" as described in the Code.

Section 6. Further Authority. The Mayor, City Manager, Finance Director, City Clerk and other City officials are 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 this Ordinance and to make alterations, changes or additions in the agreements, statements, instruments and other documents 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 7. Governing Law. This Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 8. 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.

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PASSED AND APPROVED by the Governing Body for the City of Edwardsville,
Kansas this 22nd day of April, 2013.





John McTaggart, Mayor

ATTEST:



Tamara A. Harris, City Clerk

APPROVED AS TO FORM:



Dorothea K. Riley, Bond Attorney