

ORDINANCE NO. 1388

OF

THE CITY OF PHILLIPSBURG, KANSAS

PASSED

MAY 4, 2015

**GENERAL OBLIGATION BONDS
SERIES 2015**

ORDINANCE NO. 1388

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2015, OF THE CITY OF PHILLIPSBURG, KANSAS, FOR THE PURPOSE OF PROVIDING FUNDS TO PREPAY AND REFUND CERTAIN LOANS OF THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS AS THEY BECOME DUE; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

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

WHEREAS, pursuant to the legislative enactment referenced below (the "Authorization") the City has heretofore authorized certain internal improvements described as follows (the "Improvements"):

<u>Project Description</u>	<u>Res. No.</u>	<u>Authority</u>	<u>Amount</u>
Sewer system improvements	202	Charter Ordinance No. 11, Article 12, Section 5 of the Kansas Constitution and K.S.A. 12-101	\$918,677.97
Water system improvements	202	K.S.A. 65-163d through 65-163u	2,855,518.62

; and

WHEREAS, the City has arranged for financing of the Improvements by the execution of loan agreements (the "KDHE Loans"), described as follows:

<u>Lender</u>	<u>Loan No.</u>	<u>Maturity Date</u>	<u>Original Amount</u>	<u>Outstanding Amount</u>	<u>Prepayment Date</u>
KDHE	KPWSLF No. 2415	2/1/2026	\$918,677.97	\$494,051.96*	6/5/2015
KDHE	KWPCRF No. C20-1441-01	9/1/2022	2,855,518.62	1,226,461.40*	6/5/2015

* excluding interest and service fee; and

WHEREAS, the City heretofore issued and has outstanding the Refunded Bonds and is authorized by K.S.A. 10-427 *et seq.* to issue general obligation refunding bonds of the City for the purpose of refunding a \$1,000 portion of the September 1, 2015 interest on the Refunded Bonds; and

WHEREAS, in order to restructure debt payments and to provide an orderly plan of finance for the City, it has become desirable and in the best interest of the City and its inhabitants for the City to issue its general obligation bonds in order (1) to permanently finance the costs of the Improvements, and to refund and prepay the KDHE Loans; and (2) to refund a \$1,000 portion of the September 1, 2015 interest on the Refunded Bonds; and

WHEREAS, the governing body of the City now finds and determines that the total cost of the Improvements and the retiring of the Refunded Obligations (including interest, fees and issuance costs of the Bonds) and related expenses are at least \$1,754,678.46, with all of said cost to be paid by the City at large, and there is \$119,678.46 available in the City Treasury to pay part of said cost, leaving \$1,635,000 to paid for by the issuance of general obligation bonds; and

WHEREAS, Article 12, §5 of the Constitution of the State of Kansas (the “Home Rule Amendment”): (a) empowers cities to determine their local affairs and government; and (b) provides that such power and authority granted thereby to cities: (1) shall be liberally construed for the purpose of giving to cities the largest measure of self-government and (2) shall be exercised by ordinance, subject only to: (i) enactments of the Kansas legislature of statewide concern applicable uniformly to all cities, (ii) other enactments of the legislature applicable uniformly to all cities, (iii) enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other action and (iv) enactments of the legislature prescribing limits of indebtedness; and

WHEREAS, the Kansas Supreme Court has considered the Home Rule Amendment and determined that: (a) home rule legislation should be permitted to stand unless an actual conflict exists between the home rule legislation and a state legislative enactment, or unless the legislature has clearly preempted the field so as to preclude municipal action; and (b) legislative intent to reserve to the state exclusive jurisdiction to regulate an area must be clearly manifested by statute before it can be held that the state has withdrawn from the cities the power to regulate in the field (*McCarthy v. City of Leawood*, 257 Kan. 566 (1995); *Junction City v. Lee*, 216 Kan. 495 (1975)); and

WHEREAS, the Authorization authorizes the City to issue general obligation bonds to finance the Improvements, but neither authorizes nor prohibits the issuance of general obligation bonds to prepay and retire the KDHE Loans incurred under such enactments for the Improvements; and

WHEREAS, K.S.A. 10-427 *et seq.* authorizes the City to issue general obligation bonds to refund previously issued general obligation bonds of the City, but neither authorizes nor prohibits the issuance of general obligation bonds to prepay and retire the KDHE Loans; and

WHEREAS, the governing body of the City now further finds and determines that: (a) there are no enactments of the Kansas legislature of statewide concern applicable uniformly to all cities or applicable to the City relating to the issuance of general obligation bonds to prepay and retire the KDHE Loans; (b) no conflict would exist between the City ordinance authorizing the issuance of general obligation bonds to prepay and retire the KDHE Loans and any legislative enactment applicable to the City; and (c) the legislature has not clearly preempted, or clearly manifested its intent to preempt, the field of municipal finance so as to preclude a City ordinance authorizing the issuance of general obligation bonds to prepay and retire the KDHE Loans; and

WHEREAS, the City is a city within the meaning of the Home Rule Amendment; and

WHEREAS, the City proposes to issue its general obligation bonds to retire the KDHE Loans and thereby finance the costs of the Improvements and to refund a \$1,000 portion of the September 1, 2015 interest on the Refunded Bonds.

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

Section 1. Definitions of Words and Terms. In addition to words and terms defined elsewhere herein, the following words and terms in this Ordinance shall have the meanings hereinafter set forth.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

“Act” means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-427 *et seq.*, K.S.A. 10-620 *et seq.*, K.S.A. 65-163d through 65-163u, Article 12, Section 5 of the Kansas Constitution, K.S.A. 12-101, and Charter Ordinance No. 11 of the City, all as amended and supplemented from time to time.

“Bond and Interest Fund” means the Bond and Interest Fund of the City for its general obligation bonds.

“Bond 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.

“Bonds” means the City's General Obligation Bonds, Series 2015, dated June 1, 2015, authorized by this Ordinance.

“City” means the City of Phillipsburg, Kansas.

“Clerk” means the duly appointed and acting Clerk of the City or, in the Clerk's absence, the duly appointed Deputy, Assistant or Acting Clerk.

“Improvements” means the improvements referred to in the preamble to this Ordinance and any Substitute Improvements.

“KDHE” means the Kansas Department of Health and Environment.

“KDHE Loans” means, jointly, the Loan Agreement relating to KPWSLF No. 2415 between the Issuer and KDHE, maturing February 1, 2026, in the aggregate outstanding principal amount of \$494,142.96, and the Loan Agreement relating to KWPCRf No. C20-1441-01 between the Issuer and KDHE, maturing September 1, 2022, in the aggregate outstanding principal amount of \$1,226,461.40.

“KDHE Loan Paying Agent” means KDHE for the purposes of prepaying the KDHE Loans.

“KDHE Loan Redemption Date” means June 5, 2015 for prepayment, or such date occurring as soon thereafter as possible.

“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.

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

“Refunded Bonds” means the Issuer's General Obligation Bonds, Series 2011.

“State” means the State of Kansas.

Section 2. Authorization of the Bonds. There shall be issued and hereby are authorized and directed to be issued the General Obligation Bonds, Series 2015, of the City in the principal amount of \$1,635,000, for the purpose of providing funds to: (a) pay the costs to prepay the KDHE Loans and

thereby finance the costs of the Improvements; and (b) pay costs of issuance of the Bonds; and (c) refund a \$1,000 portion of the September 1, 2015 interest amount due on the Refunded Bonds.

Section 3. Security for 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 hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

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 Bond Resolution hereafter adopted by the governing body of the City.

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 the 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 said taxes shall be deposited in the Bond and Interest Fund.

If at any time said taxes are not collected in time to pay the principal of or interest on the Bonds when due, the 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. 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, and 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.

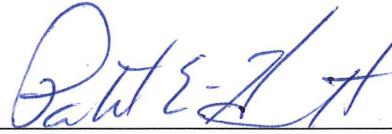
Section 7. Governing Law. This Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

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, approval by the Mayor and publication in the official City newspaper.

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PASSED by the governing body of the City on May 4, 2015 and **APPROVED AND SIGNED** by the Mayor.

(SEAL)



Mayor

ATTEST:



Clerk

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