

ORDINANCE NO. 1292

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2013A, OF THE CITY OF BALDWIN CITY, KANSAS; 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 Baldwin City, Kansas (the “City”) is a city of the third class, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, pursuant to K.S.A. 12-6a01 *et seq.*, K.S.A. 12-1736 *et seq.*, and K.S.A. 12-685 *et seq.*, as amended, and other provisions of the laws of the State of Kansas applicable thereto, by proceedings duly had, the governing body of the City has caused or authorized the following improvements (the “Improvements”) to be made in the City, to-wit:

<u>Project Description</u>	<u>Ord./Res. No.</u>	<u>Authority</u>	<u>Amount</u>
Main Trafficway Improvements (6 th , High and Lawrence Streets)	2011-14 and 2013-03	K.S.A. 12-685 <i>et seq.</i>	\$2,350,000 and \$250,000
Sanitary Sewer improvements (Ames and 6 th)	2011-13	K.S.A. 12-6a01 <i>et seq.</i>	\$155,000
Library expansion	2013-02	12-1736 <i>et seq.</i>	\$510,000
Total:			\$3,265,000

; and

WHEREAS, all legal requirements pertaining to the Improvements have been complied with, and the governing body of the City now finds and determines that the total cost of the Improvements (including interest on temporary notes of the City and issuance costs of the Bonds) and related expenses are at least \$3,062,215.35, with \$129,270 of said cost to be paid by the owners of the property within the City benefited by certain of the Improvements, and that the owners of the property benefited by the Improvements have paid \$38,657 in cash into the City Treasury on account of the Improvements and the City has derived \$113,558.35 in bond sale premium in connection with the Improvements, leaving \$2,910,000 to be paid for by the issuance of general obligation bonds; and

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

<u>Project Description</u>	<u>Res. No.</u>	<u>Authority</u>	<u>Amount*</u>
Sewer system improvements	2013-04	Charter Ord. No. 24	\$4,621,161

*plus associated costs of issuance and interim financing; and

WHEREAS, the Issuer has arranged for financing of such sewer system improvements by the execution of various loan agreements described as follows:

<u>Lender</u>	<u>Loan No.</u>	<u>Original Amount</u>	<u>Outstanding Amount</u>	<u>Redemption Date*</u>
KDHE	Project No. 1303-01	\$409,438	\$161,669	03/20/2013
KDHE	Project No. 1571-01	\$2,955,074	\$2,151,700	03/20/2013
KDHE	Project No. 1748-01	\$1,256,649	\$986,474	03/20/2013

* or as soon thereafter as possible (the “KDHE Loans”); and

WHEREAS, the City heretofore issued and has outstanding certain general obligation 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 portion of such general obligation bonds (the “Refunded Bonds”), described as follows:

<u>Series</u>	<u>Dated Date</u>	<u>Years</u>	<u>Amount</u>	<u>Redemption Date</u>
Series A, 1998	02/01/1998	2013	\$40,000	March 20, 2013
Series 2007A	10/01/2007	2016 - 2027	\$950,000	September 1, 2015

; and

WHEREAS, in order to restructure debt payments, achieve interest cost savings and 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 to permanently finance the costs of the improvements initially financed by the KDHE Loans, and to refund and prepay the Refunded Bonds and KDHE Loans; and

WHEREAS, the governing body of the City now finds and determines that the total cost of (a) prepaying the KDHE Loans and related expenses are at least \$3,357,725.40, to be paid for by the issuance of general obligation bonds of the City in an amount of \$3,225,000, and (b) refunding and retiring the Refunded Bonds and related expenses are at least \$1,060,395.50, to be paid for by the issuance of general obligation bonds of the City in an amount of \$1,030,000; 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, no legislative enactment either authorizes or prohibits the issuance of general obligation bonds to prepay, refund and retire the KDHE Loans incurred 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, refund 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, refund and retire the KDHE Loans; (b) no conflict would exist between a City ordinance authorizing the issuance of general obligation bonds to prepay, refund 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, refund 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 in the amount of \$7,165,000 to finance the costs of the Improvements, to prepay, refund and retire the KDHE Loans and thereby finance the costs of the improvements initially financed thereby, and to refund the Refunded Bonds; and

WHEREAS, the governing body of the City has advertised the sale of the Bonds in accordance with the law and at a meeting held in the City on this date awarded the sale of such Bonds to the best bidder.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BALDWIN CITY, 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.*, Article 12, Section 5 of the Kansas Constitution, K.S.A. 12-101 *et seq.*, Charter Ordinance No. 24 of the City, K.S.A. 12-6a01 *et seq.*, K.S.A. 12-1736 *et seq.*, and K.S.A. 12-685 *et seq.*, all as amended and supplemented from time to time.

“Advance Refunded Bonds” means the Series 2007A Bonds portion of the Refunded Bonds.

“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 Refunding and Improvement Bonds, Series 2013A, dated March 19, 2013, authorized by this Ordinance.

“City” means the City of Baldwin City, 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.

“Current Refunded Bonds” means the Series A, 1998 Bonds portion of the Refunded Bonds.

“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 the Loan Agreements relating to KDHE Loans for (a) KWPCRF 1303-01 between the Issuer and KDHE, maturing March 1, 2020, in the aggregate outstanding principal amount of \$161,669, (b) KWPCRF 1571-01 between the Issuer and KDHE, maturing September 1, 2022, in the aggregate outstanding principal amount of \$2,151,700 and (c) KWPCRF 1748-01 between the Issuer and KDHE, maturing September 1, 2029, in the aggregate outstanding principal amount of \$986,474.

“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 collectively: (a) the Series A, 1998 Bonds maturing in September 1, 2013, inclusive, in the aggregate principal amount of \$40,000; and (b) the Series 2007A Bonds maturing in the years 2016 to 2027, inclusive, in the aggregate principal amount of \$950,000.

“Refunded Bonds Paying Agent” means the respective paying agent for each series of the Refunded Bonds as designated in the respective Refunded Bonds Resolution, and any successor or successors at the time acting as paying agent for any of the Refunded Bonds.

“Refunded Bonds Redemption Date” means March 20, 2013 for the Series A, 1998 Bonds and September 1, 2015 for the Series 2007A Bonds.

“Refunded Notes” means the Series 2011 Notes.

“Refunded Notes Paying Agent” means the paying agent for the Refunded Notes as designated in the Refunded Notes Resolution, and any successor or successors at the time acting as paying agent of the Refunded Notes.

“Refunded Notes Redemption Date” means March 20, 2013.

“Refunded Obligations” means, collectively, the Refunded Bonds, the KDHE Loans and the Refunded Notes.

“Refunded Obligations Paying Agent” means: (a) the Refunded Bonds Paying Agent, (b) KDHE, for the purposes of the KDHE Loans, and (c) the Refunded Notes Paying Agent.

“Refunded Obligations Redemption Date” means, collectively: (a) the Refunded Bonds Redemption Date, with respect to the Refunded Bonds, (b) March 20, 2013, with respect to the KDHE Loans and (c) the Refunded Notes Redemption Date, with respect to the Refunded Notes.

“**Series A, 1998 Bonds**” means the Issuer's General Obligation Bonds, Series A, 1998, dated February 1, 1998.

“**Series 2007A Bonds**” means the Issuer's General Obligation Bonds, Series 2007A, dated October 1, 2007.

“**Series 2011 Notes**” means the General Obligation Temporary Notes, Series 2011, maturing September 1, 2013, in the aggregate principal amount of \$2,325,000.

“**State**” means the State of Kansas.

“**Substitute Improvements**” means the substitute or additional improvements of the City authorized in the manner set forth in the Bond Resolution.

Section 2. Authorization of the Bonds. There shall be issued and hereby are authorized and directed to be issued the General Obligation Refunding and Improvement Bonds, Series 2013A, of the City in the principal amount of \$7,165,000, for the purpose of providing funds to: (a) pay the costs of the Improvements and retire the Refunded Notes; (b) refund the Refunded Bonds and prepay, refund and retire the KDHE Loans and thereby finance the costs of the improvements initially financed by such KDHE Loans; (c) pay costs of issuance of the Bonds; and (d) pay a portion of the interest on the Bonds (attributed to refunding the Advance Refunded Bonds) to the Refunded Bonds Redemption Date.

Section 3. Security for the Bonds. The Bonds shall be general obligations of the City payable as to both principal and interest in part from special assessments levied upon the property benefited by the construction of the Improvements and, if not so paid, 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 balance of the principal and interest on the Bonds is payable 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 interest on that portion of the Bonds attributed to refunding the Advance Refunded Bonds to and including the Refunded Bonds Redemption Date for the Advance Refunded Bonds shall be primarily payable from the proceeds of certain United States government securities and cash held in an escrow fund. 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 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, 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 and/or assessments shall be deposited in the Bond and Interest Fund.

If at any time said taxes and/or assessments 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 and/or assessments 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 March 4, 2013 and **APPROVED AND SIGNED** by the Mayor.

(SEAL)



ATTEST:

Clerk

Mayor

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