

ORDINANCE NO. B-3335

AN ORDINANCE AUTHORIZING THE ISSUANCE AND DELIVERY OF \$28,120,000 PRINCIPAL AMOUNT OF INTERNAL IMPROVEMENT AND REFUNDING BONDS, SERIES 2021A, OF THE CITY OF OVERLAND PARK, KANSAS, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF REFUNDING CERTAIN OUTSTANDING INTERNAL IMPROVEMENT REFUNDING BONDS OF THE CITY AND THE COSTS OF CERTAIN IMPROVEMENTS, AND PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON THE SERIES 2021A BONDS AS THEY BECOME DUE.

WHEREAS, the City of Overland Park, Kansas (the “City”) is a municipal corporation and a city of the first-class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, pursuant to Ordinance No. B-2920 and Resolution No. 3877, the City has previously issued its Internal Improvement Refunding Bonds, Series 2011B (the “Series 2011B Bonds”), in the original principal amount of \$6,665,000 for the purpose of providing funds to pay the costs of refunding certain outstanding internal improvement bonds of the City; and

WHEREAS, \$1,135,000 principal amount of the Series 2011B maturing in the years 2022 through 2024 (the “Refunded Bonds”) are appropriate to refund in advance of their maturity; and

WHEREAS, pursuant to K.S.A. 10-101 to 10-125, inclusive, K.S.A. 12-685 *et seq.*, K.S.A. 12-687 *et seq.*, and Charter Ordinance No. 53, all as amended, and other provisions of the laws of the State of Kansas and the ordinances of the City applicable thereto, by proceedings duly had, the Governing Body of the City has authorized the following improvements (the “Improvements”) to be made in the City, to wit:

PUBLIC BUILDINGS

PB-1688	Fire Station #48
PB-2068	City Facility Energy Conservation Upgrades

PARKS & RECREATION

PR-1891	Arboretum Visitors Center Phase 1
PR-2051	91 st Street Intermodal Trail
PR-2054	Youngs Aquatic Center Pool Renovation – Phase 1

BRIDGE REPLACEMENT

BR-1664	167 th Street Bridges over Coffee Creek
---------	--

STREET LIGHTING

SL-2550	Streetlights LED Conversion
---------	-----------------------------

THOROUGHFARES

TH-1083	159 th Street from Quivira to Pflumm
TH-1665	Quivira Road from 159 th to 179 th
TH-1836	Switzer Road from 159 th to 167 th
TH-1914	167 th Street from Switzer to Antioch

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 and related expenses are not less than \$28,120,000; and

WHEREAS, the Governing Body of the City is authorized to issue its general obligation bonds of the City to refund the Refunded Bonds pursuant to K.S.A. 10-427 and 10-427a, and to pay the costs of the Improvements and related expenses; and

WHEREAS, the Governing Body of the City hereby finds and determines in order to achieve interest cost savings and to provide a more economical and efficient program for the retirement of the indebtedness represented by the Refunded Bonds it has become desirable and in the best interest of the City and its inhabitants and that it is necessary for the City to authorize the issuance and delivery of its internal improvement and refunding bonds in the principal amount of \$28,120,000 to pay refund the Refunded Bonds and to pay the costs of the Improvements and related expenses;

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

Section 1. Definitions of Words and Terms.

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

“Chief Financial Officer” means the Chief Financial Officer of the City or in said officer’s absence the acting Chief Financial Officer.

“City” means the City of Overland Park, Kansas.

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

“City Treasurer” means the Chief Financial Officer, acting in the capacity of City Treasurer, or such other person appointed by the City as the City Treasurer.

“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.

“Improvements” mean the improvements referred to in the preamble to this Ordinance or any Substituted Improvement as defined in the Resolution.

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

“**Ordinance**” means this Ordinance of the City authorizing the issuance of the Series 2021A Bonds.

“**Resolution**” means the Resolution of the City containing the terms and details of the Series 2021A Bonds.

“**Series 2021A Bonds**” mean the Internal Improvement and Refunding Bonds, Series 2021A, authorized by this Ordinance in the principal amount of \$28,120,000 and dated October 21, 2021.

Section 2. Authorization of and Security for the Series 2021A Bonds. There shall be issued and hereby are authorized and directed to be issued Internal Improvement and Refunding Bonds, Series 2021A (the “Series 2021A Bonds”), of the City in the principal amount of \$28,120,000, for the purpose of providing funds to refund the Refunded Bonds and to pay the costs of the Improvements and related expenses.

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 Series 2021A Bonds as the same become due.

Section 3. Terms, Details and Conditions of the Series 2021A Bonds. The Series 2021A 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 thereof, 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 Series 2021A Bonds as the same become due by levying and collecting any 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 said taxes and/or assessments are not collected in time to pay the principal of or interest on the Series 2021A Bonds when due, the City 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 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 Series 2021A Bonds; (2) it will comply with all requirements of Section 148 of the Code to the extent applicable to the Series 2021A Bonds; (3) it will use the proceeds of the Series 2021A Bonds as soon as practicable and with all reasonable dispatch for the purposes for which the Series 2021A Bonds are issued; (4) it will not invest or directly or indirectly use or permit the use of any proceeds of the Series 2021A Bonds or any other funds of the City in any manner, or take or omit to take any action, that would cause the Series 2021A 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 Series 2021A 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 Series 2021A 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 Series 2021A 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 Series 2021A Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Series 2021A Bond to be a “private activity bond” as described in the Code.

Section 6. Further Authority. The Mayor, the City Manager, the Deputy City Manager, the Chief Financial Officer, the City 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 this 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 7. Governing Law. This Ordinance and the Series 2021A Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

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 an official City newspaper.

PASSED by the City Council this 20th day of September, 2021.

APPROVED by the Mayor this 20th day of September, 2021.

CITY OF OVERLAND PARK, KANSAS

By: /s/ Carl Gerlach
Carl Gerlach
Mayor

(SEAL)

ATTEST:

By: /s/ Elizabeth Kelley
Elizabeth Kelley
City Clerk

APPROVED AS TO FORM:

By: /s/ Michael Koss
Michael Koss
Deputy City Attorney

APPROVED AS TO FORM:

By: /s/ Joseph D. Serrano
Joseph D. Serrano, Kutak Rock LLP
Bond Counsel