

B-569

ORDINANCE NO. [ ]

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2021, OF THE CITY OF VICTORIA, 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 Victoria, 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. 65-163d through 65-163u, 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 authorized the following improvements (the "Improvements") to be made in the City, to-wit:

<i>Project Description</i>	<i>Res No.</i>	<i>Authority</i>	<i>Amount</i>
Public water supply improvements ; and	C-293	K.S.A. 65-163d through 65-163u	\$4,507,000

**WHEREAS**, the City has arranged for financing a portion of the Improvements (the "Existing Improvements") by the execution of a loan agreement (the "KDHE Loan") described as follows:

<u>Lender</u>	<u>Loan No.</u>	<u>Maturity Date</u>	<u>Original Amount</u>	<u>Outstanding Amount*</u>
KDHE	KPWSLF Project No. 2612	08/01/2030	\$465,455.72	\$233,381.11

\*as of April 28, 2021  
; and

**WHEREAS**, the City has heretofore issued the following temporary notes (the "Refunded Notes") to temporarily finance a portion of the costs of the Improvements (the "Current Improvements"):

<u>Series</u>	<u>Dated Date</u>	<u>Maturity Date</u>	<u>Original Amount</u>
2019	07/01/2019	07/01/2021	\$2,775,000

; and

**WHEREAS**, in order finance the Existing Improvements and thereby prepay a portion of the KDHE Loan, to pay costs of the Current Improvements and to retire the Existing Notes, and to permanently finance costs of the Improvements, it has become desirable and in the best interest of the City and its inhabitants for the City to issue its general obligation 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 KDHE Loan (including interest and issuance costs of the Bonds) and related expenses is at least \$2,966,000, with all of said cost to be paid by the City at large; and

**WHEREAS**, the City has received a commitment from the United States of America, acting through the Department of Agriculture – Rural Development (“RD/USDA”) to purchase the City’s general obligation bonds in an amount of \$2,966,000, the proceeds of which, together with funds derived from a grant from RD/USDA in the expected amount of \$1,441,000 and City funds in the expected amount of \$100,000 will be used to fund the Improvements and prepay a portion of the KDHE Loan, all pursuant to a letter of conditions dated August 28, 2018; and

**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 Improvements; 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 and retire the KDHE Loan incurred for the Existing 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 Loan; 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 Loan; (b) no conflict would exist between the City ordinance authorizing the issuance of general obligation bonds to prepay and retire the KDHE Loan 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 Loan; and

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

**WHEREAS**, none of such general obligation bonds heretofore authorized have been issued and the City now proposes to issue \$2,966,000 of its general obligation bonds to pay costs of the Improvements, including all finance, administrative and interest costs, to prepay the KDHE Loan, and to retire the Refunded Notes.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF VICTORIA, 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. 10-620 *et seq.*, K.S.A.65-163d through 65-163u, K.S.A. 12-101 *et seq.*, Article 12, Section 5 of the Kansas Constitution, 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 Issuer's General Obligation Bonds, Series 2021, in the aggregate principal amount of \$2,966,000, and dated as of the Dated Date, authorized by this Ordinance.

**"City"** means the City of Victoria, Kansas.

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

**"Dated Date"** means June 1, 2021.

**"Governing Body"** means the City Council of the City.

**"Improvements"** means the improvements referred to in the preamble to this Ordinance.

**"KDHE"** means the Kansas Department of Health and Environment.

**"KDHE Loan"** means the Loan Agreement by and between the Issuer and the Kansas Department of Health and Environment, acting on behalf of the State of Kansas, KPWSLF Project No. 2612.

**"KDHE Loan Paying Agent"** means KDHE for the purposes of paying the KDHE Loan.

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

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

**"Owner"** when used with respect to any Bond means the Person in whose name such Bond is registered on the Bond Register.

**"Paying Agent"** means the State Treasurer, and any successors and assigns.

"RD/USDA" means Rural Development, United States Department of Agriculture.

"Refunded Notes" means the Series 2019 Notes maturing on July 1, 2021 in the aggregate principal amount of \$2,775,000.

"Series 2019 Notes" means the City's General Obligation Temporary Notes, Series 2019, dated July 1, 2019.

"Refunded Notes Resolution" means ordinance and the resolution which authorized the Refunded Notes.

"Refunded Obligations" means, collectively, the Refunded Notes and the KDHE Loan.

"Refunded Obligations Redemption Date" means, collectively: (a) June 26, 2021, with respect to the KDHE Loan, and (b) June 11, 2021, with respect to the Refunded Notes.

"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 2021, of the City in the principal amount of \$2,966,000, for the purpose of providing funds to: (a) retire the KDHE Loan on the Refunded Obligations Redemption Date, and thereby finance costs of the Existing Improvements, (b) refund the Refunded Notes on the Refunded Obligations Redemption Date and finance costs of the Current Improvements; and (c) pay costs of issuance of the 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, approval by the Mayor and publication of the Ordinance or a summary thereof in the official City newspaper.

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PASSED by the governing body of the City on May 18, 2021, and APPROVED and SIGNED by the Mayor.



*[Handwritten Signature]*  
Clerk

*[Handwritten Signature]*  
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Mayor

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