

ORDINANCE NO. _1355_____

AN ORDINANCE OF THE CITY OF KALAMA, WASHINGTON, AUTHORIZING THE ISSUANCE OF A LIMITED TAX GENERAL OBLIGATION BOND OF THE CITY IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$400,000 TO PROVIDE FINANCING FOR THE COSTS OF ACQUIRING AND IMPROVING PROPERTY; FIXING THE DATE, FORM, TERMS, MATURITY AND COVENANTS OF SUCH BOND; AND AUTHORIZING THE SALE OF THE BOND TO THE UNITED STATES OF AMERICA, ACTING THROUGH THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL HOUSING SERVICE.

WHEREAS, the City of Kalama, Cowlitz County, Washington (the “City”), is a municipal corporation organized and operating under the laws of the State of Washington; and

WHEREAS, the United States of America, acting through its Department of Agriculture, Rural Housing Service (the “Government”), has agreed to loan the City up to \$400,000, which will be used, together with other available funds of the City, to finance and/or reimburse the City for costs related to acquiring and improving property (the “Project”); and

WHEREAS, chapters 35A.40 and 39.48 of the Revised Code of Washington, authorizes the sale of bonds at private sale to the United States of America, and the City Council has determined that it is in the best interests of the City to sell the bond at a private sale to the United States of America, without prior publication of notice, for the purpose of financing the Project; and

WHEREAS, the City now desires to issue a limited tax general obligation bond (the “Bond”) in the principal amount of not to exceed \$400,000 to evidence the loan from the Government;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF KALAMA, WASHINGTON DO ORDAIN as follows:

Section 1. Definitions. As used in this ordinance the following terms shall have the following meanings:

Authorized Officer means the Mayor of the City, or his or her authorized designee.

Bond means the “City of Kalama, Washington, Limited Tax General Obligation Bond, 2015”, authorized to be issued by this ordinance.

Bond Fund means the “USDA Loan Fund” maintained by the City for the payment of debt service on the Bond.

Bond Register means the books or records maintained by the Bond Registrar containing the name and mailing address of the owner of the Bond.

Bond Registrar means the Clerk/Treasurer of the City, or the successor to the duties of such office.

Council means the City Council of the City, the general governing body of the City as the same shall be duly and regularly constituted from time to time.

City means City of Kalama, Washington, a municipal corporation duly organized and existing under the laws of the State of Washington.

Construction Account means the “USDA Construction Account” maintained by the Clerk/Treasurer on behalf of the City to pay the costs of the Project.

Government means the United States of America acting through the United States Department of Agriculture, Rural Housing Service.

Interest Rate means the rate of interest set forth in Section 10.

Letter of Conditions means the Letter of Conditions from the Government delivered in connection with the Bond.

Loan Resolution means the Loan Resolution (Form RD 1942-47) adopted by the Council pursuant to the loan conditions established by the Government.

Outstanding Principal Balance means on any particular day the aggregate of all funds that the City has drawn from the Government under the Bond to that day, less the aggregate of all principal payments on the Bond made by the City on or before that day.

Project means the acquisition of and improvements to property to be used for city hall/library space and other City purposes.

Registered Owner means the person named as the registered owner of the Bond in the Bond Register.

Request for Draw means a written request signed by an Authorized Officer for a draw on the Bond, in substantially the form set forth in Exhibit A attached hereto.

Section 2. Authorization of Project. The Council hereby approves the Project. The total cost of the Project is estimated to be at least \$400,000, which shall be financed with proceeds of the Bond and other available sources of funds of the City.

Section 3. Authorization of Bond; Registration. For the purpose of financing costs of the Project and costs of issuing the Bond, the City shall issue a limited tax general obligation bond (the “Bond”) in the principal amount of not to exceed \$400,000. The Bond shall be designated “City of Kalama, Washington, Limited Tax General Obligation Bond, 2015,” shall consist of a single, transferable, amortized general obligation bond, shall be dated as of the date of delivery thereof to the Government, as the initial purchaser, shall be

numbered R-1, shall be in one denomination, and shall be fully registered as to both principal and interest.

Amounts drawn on the Bond shall bear interest at the Interest Rate, pursuant to a Request for Draw in substantially the form set forth on Exhibit A, which is hereby incorporated by this reference. The aggregate amount of draws thereunder may not exceed \$400,000. Request for Draws may be submitted to the Government during the term of the Bond in accordance with the Letter of Conditions. The City Clerk/Treasurer shall maintain records of amounts drawn on the Bond. The Council hereby delegates to the Authorized Officer authority to make written Request for Draws pursuant to the terms of this ordinance.

The Bond shall bear interest from its dated date at the Interest Rate (computed on the basis of a 365-day year for actual number of days elapsed). Principal and interest shall be payable as provided in the Bond, with the last payment to be made not later than the 30th anniversary date of the Bond, except that the last payment may be more or less than the annual installment as required to pay the remaining principal and interest due. If the date of loan closing is the 29th, 30th or 31st of the month, the due date will be the 28th. Payments shall be applied first to interest and then to principal. If any installment of principal and interest is not paid when due, the City shall be obligated to pay interest on that installment at the same rate provided in the Bond from and after its due date until that installment is paid in full. Nothing herein shall prevent or limit the Government from pursuing any other remedy that is lawfully available under the Loan Resolution so long as it is the holder of the Bond. Payments shall be applied first to interest and then to principal.

Both principal of and interest on the Bond shall be payable in lawful money of the United States of America to the owner or owners thereof at the address appearing on the

registration books of the City maintained by the Bond Registrar; provided, however, that as long as Government is the owner and holder of the Bond, the Clerk/Treasurer shall withdraw the amount required to make payments on the Bond directly to the Government office serving the City and such payments will be made electronically by Pre-Authorized Debit (PAD), or if unavailable, by automatic deposit. The Bond is a general obligation of the City.

The Bond shall be registered as to both principal and interest as long as any of the installments of the Bond remain unpaid, and the City shall maintain in the office of the Clerk/Treasurer books for the registration and transfer of the Bond. No transfer of the Bond so registered shall be valid unless made on said books upon the written request of the registered owner or its duly authorized agent.

The Bond Registrar shall keep, or cause to be kept, at the office of the Registrar, sufficient records for the registration and transfer of the Bond. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver the Bond in accordance with the provisions of the Bond and this ordinance, to serve as the City's paying agent for the Bond and to carry out all of the Bond Registrar's powers and duties under this ordinance.

Section 4. Prepayment. The City reserves the right, at its option, to prepay, on any principal payment date, the Outstanding Principal Balance, in whole or in part. Partial prepayments shall be made in the amount of \$1,000 or multiples thereof. No partial prepayment shall extend or postpone the due date of any subsequent installment. Prepayments shall be made without penalty. Notice of any intended prepayment shall be mailed by certified mail to the Registered Owner of the Bond at its address appearing on the Bond Register, at least thirty (30) days prior to the prepayment date.

So long as the Bond is held by the Government, the Bond shall not be subject to defeasance prior to maturity, in whole or in part.

So long as the Bond is held by the Government, the City agrees to prepay and redeem the Bond in whole or in part, upon the request of the Government, if at any time it should appear to the Government that the City is able to obtain a loan or other financing for such purposes from responsible cooperative or private sources at reasonable rates and terms.

Section 5. General Obligation. The Bond Fund has been established by the City and shall be drawn upon for the purpose of paying the principal of and interest on the Bond.

The City hereby irrevocably covenants and agrees for as long as the Bond is outstanding and unpaid that each year it will include in its budget and levy an *ad valorem* tax, within and as a part of the tax levy permitted to cities without a vote of the people, upon all the property within the City subject to taxation in an amount which will be sufficient, together with other lawfully available funds, to pay the principal of and interest on the Bond as the same shall become due. All of such taxes and any of such other money so collected shall be paid into the Bond Fund. Money in the Bond Fund not needed to pay the interest or principal next coming due may temporarily be deposited in such institutions or invested in such obligations as may be lawful for the investment of City money. Any interest or profit from the investment of such money shall be deposited in the Bond Fund.

The City hereby irrevocably pledges that a sufficient portion of each annual levy to be levied and collected by the City prior to the full payment of the principal of and interest on the Bond will be and is hereby irrevocably set aside, pledged and appropriated for the payment of the principal of and interest on the Bond. The full faith, credit and resources of the City are

hereby irrevocably pledged for the annual levy and collection of said taxes and for the prompt payment of the principal of and interest on the Bond as the same shall become due.

Section 6. Specific Covenants.

(a) *General.* So long as the Government is the holder of the Bond, the City hereby agrees to comply with the requirements of the Government contained in the Letter of Conditions and in the Loan Resolution, pertaining to the Project, and consistent Washington State law.

(b) *Tax Covenants.* In accordance with Section 149(a) of the Internal Revenue Code of 1986, as amended (the “Code”), the Bond shall be issued and remain in fully registered form in order that interest thereon be excluded from gross income of the owner or owners for federal income tax purposes. The City covenants and agrees that it will take no action to permit the Bond, or any serial bonds to which it may be converted, to be issued in or converted to bearer or coupon form. The Bond is hereby designated as a “qualified tax-exempt obligation” within the meaning and for the purposes of Section 265(b)(3) of the Code, and the City does not reasonably anticipate that it will designate more than \$10,000,000, including the Bond, as qualified tax-exempt obligations during the calendar year in which the Bond is issued. None of the proceeds of the Bond will be used, directly or indirectly, (i) to make or finance loans to persons or (ii) in any trade or business carried on by any person (other than as a member of the general public). For purposes of the preceding sentence, the term “person” does not include a government unit other than the United States or any agency or instrumentality thereof, and the term “trade or business” means any activity carried on by a person other than a natural person. The City further covenants and agrees to take no action which would cause the Bond to be a “private activity bond,” nor will it omit to take any action necessary to prevent the Bond from becoming a “private activity bond,” within the meaning of Section 141 of the Code. The City has general

taxing powers. The Bond is not a “private activity bond” within the meaning of Section 141 of the Code. 95% or more of the net proceeds of the Bond is to be used for the local governmental activities of the City.

The City covenants and agrees that no use will be made of the proceeds of the Bond, or any funds of the City which may, pursuant to Section 148 of the Code and applicable regulations, be deemed to be proceeds of the Bond, which would cause the Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code. The City further covenants to comply throughout the term of the Bond with the requirements of Section 148 of the Code and the regulations promulgated thereunder in order to prevent the Bond from becoming an “arbitrage bond.”

The City will comply with the information reporting requirements of Section 149(e) of the Code. None of the proceeds of the Bond will be used to reimburse the City for capital expenditures made prior to the date of delivery of the Bond unless the City, not later than 60 days after the payment of such expenditure, shall have adopted an official intent resolution as provided by Section 1.150-2 of the Treasury Regulations.

Section 7. Lost or Destroyed Bond. In case the Bond shall be lost, stolen or destroyed, the City may execute and deliver a new bond of like date, number and tenor to the registered owner thereof in the manner provided by law and upon the owner’s paying the expenses and charges of the City in connection therewith.

Section 8. Form of Bond. The Bond shall be in substantially the form set forth at Exhibit B.

Section 9. Execution of the Bond. The Bond shall be signed on behalf of the City with the manual or facsimile signature of the Mayor and shall be attested by the manual or facsimile signature of the Clerk/Treasurer.

In case either or both of the officers who shall have executed the Bond shall cease to be an officer or officers of the City before the Bond so signed shall have been authenticated or delivered by the Bond Registrar, or issued by the City, the Bond may nevertheless be authenticated, delivered and issued, and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. The Bond also may be signed and attested on behalf of the City by such persons as at the actual date of execution of the Bond shall be the proper officers of the City although at the original date of the Bond any such person shall not have been such officer of the City.

Section 10. Sale of Bond. The City hereby approves the Letter of Conditions and the Loan Resolution and authorizes the sale of the Bond to the Government at a price of par under the terms and conditions of this ordinance, the Loan Resolution and the Letter of Conditions. The City hereby accepts the Letter of Conditions in substantially the form on file with the City Clerk/Treasurer. The Authorized Officer is hereby authorized to approve the Interest Rate, to approve the principal amount of the Bond, and to agree to any other terms, conditions and covenants that are in the best interest of the City and in accordance with the Letter of Conditions and the Loan Resolution so long as (a) the principal amount of the Bond does not exceed \$400,000, and (b) the Interest Rate for the Bond does not exceed 4.00%.

The appropriate City officials, including but not limited to the Mayor and the Clerk/Treasurer, are hereby authorized and directed to do everything necessary for the prompt issuance, execution and delivery of the Bond and for the proper application and use of the proceeds thereof.

Section 11. Application of Bond Proceeds. There is hereby authorized to be created a “USDA Construction Account” (the “Construction Account”). Proceeds of the Bond shall be deposited into the Construction Account. The proceeds of the Bond shall be used to pay for the cost and expense of the construction of the Project upon the written concurrence of the Government, in accordance with the Letter of Conditions, including, but not limited to, the reasonable and necessary costs of issuance of the Bond. Money in the Construction Account shall be segregated from other funds and may be invested as permitted by law. Any interest earnings on money invested from the Construction Account shall be retained in the Construction Account.

When the Project has been completed and all costs incidental thereto, including the costs of the issuance of the Bond, have been paid in full, any money remaining in the Construction Account shall be transferred to the Bond Fund for the uses and purposes herein provided, and the Construction Account may be closed.

Section 12. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 13. General Authorization. The Mayor of the City, the Clerk/Treasurer, and each of the other appropriate officers of the City are each hereby authorized and directed to take such steps, to do such other acts and things, and to execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this ordinance.

Section 14. Prior Acts. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 15. Effective Date. This ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

Adopted by the City Council of the City of Kalama, Washington, at a regular meeting thereof held this 18th of February, 2015.

By _____
Mayor Pete Poulsen

ATTEST

Coni McMaster, City Clerk/Treasurer

APPROVED AS TO FORM:

PASSED: _____
APPROVED: _____
PUBLISHED: _____

CERTIFICATE

I, the undersigned, Clerk/Treasurer of City of Kalama, Washington, and keeper of the records of said City Council (herein called the "Council"), DO HEREBY CERTIFY:

1. That the attached is a true and correct copy of Ordinance No. ____ (herein called the "Ordinance") of the Council, duly passed at a regular meeting thereof held on the 18th day of February, 2015.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of said Ordinance; that all other requirements and proceedings incident to the proper passage of said Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

DATED this 18th day of February, 2015.

Clerk/Treasurer

Exhibit A
Form of Request for Draw

CITY OF KALAMA, WASHINGTON

Request for Draw No. _____

To: United States of America Acting through the United States Department of Agriculture, Rural Housing Service

Attn: _____

On behalf of the City of Kalama, Washington (the "City"), I hereby certify that:

1. I am an Authorized Officer the City authorized by Ordinance No. ___ of the City Council passed on February 18, 2015 (the "Ordinance") to request this draw and to make the representations on behalf of the City set forth herein.

2. The City requests a draw in the amount of \$_____.

The amount of this draw plus the amount of all outstanding draws on the Bond does not exceed \$400,000. Please disburse the draw to the City on _____, 20__, by depositing funds to the City as follows:

ABA Number _____

Account No. _____

Draw No. _____

3. The draw will be expended to finance the Project or costs of issuance for the Bond, as authorized by the Ordinance.

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Ordinance.

Dated as of this _____ day of _____, 20__.

CITY OF KALAMA, WASHINGTON

By: _____
Its: _____

**Exhibit B
Bond Form**

UNITED STATES OF AMERICA

NO. R-1

\$400,000
(or as much thereof
as may be
drawn hereunder)

STATE OF WASHINGTON

CITY OF KALAMA
LIMITED TAX GENERAL OBLIGATION BOND, 2015

REGISTERED OWNER: UNITED STATES OF AMERICA, ACTING THROUGH THE
UNITED STATES DEPARTMENT OF AGRICULTURE,
RURAL HOUSING SERVICE

PRINCIPAL AMOUNT: NOT TO EXCEED FOUR HUNDRED THOUSAND AND
N0/100 DOLLARS

INTEREST RATE: 3.75%

FINAL MATURITY DATE: _____

THE CITY OF KALAMA, a municipal corporation of the State of Washington (the “City”), hereby acknowledges itself to owe and for value received promises to pay, but only from the sources and as hereinafter provided, to the Registered Owner identified above, or registered assigns, the Outstanding Principal Balance as defined in Ordinance No. _____ adopted by the City Council of the City on February 18, 2015 (the “Bond Ordinance”) and interest on such amount as provided in the Bond Ordinance. Reference is made to the Bond Ordinance for the definitions of the capitalized terms used and not otherwise defined herein.

Interest on each draw making up the Outstanding Principal Balance shall accrue at the Interest Rate stated above from the date money is drawn, pursuant to a Request for Draw, until paid and shall be computed per annum on the principal amount outstanding as provided in the Bond Ordinance. The aggregate amount of draws hereunder may not exceed \$400,000. Principal and interest shall be payable semi-annually as provided in the schedule attached hereto.

This bond, designated as the “City of Kalama, Washington, Limited Tax General Obligation Bond, 2015”, is issued by the City in fully registered form to provide funds to

finance the costs of acquiring and improving City property as further described in the Bond Ordinance.

Both principal of and interest on this bond shall be payable in lawful money of the United States of America to the owner or owners thereof at the address appearing on the registration books of the City maintained by the Bond Registrar; provided, however, that as long as the United States of America, acting through its Department of Agriculture, Rural Housing Service (the "Government") is the owner and holder of this bond, the Clerk/Treasurer shall withdraw the amount required to make payments on this bond directly to the Government office serving the City and such payments will be made electronically by Pre-Authorized Debit (PAD), or if unavailable, by automatic deposit.

The City has irrevocably covenanted with the owner of this bond that it will annually include in its budget and levy taxes, within and as a part of the tax levy permitted to cities without a vote of the electorate, upon all the property subject to taxation in amounts sufficient, together with other money legally available therefor, to pay the principal of and interest on this bond as the same shall become due. The full faith, credit and resources of the City are hereby irrevocably pledged for the annual levy and collection of such taxes and the prompt payment of such principal and interest.

This bond is issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Washington and duly adopted ordinances of the City. The City hereby covenants and agrees with the owner of this bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed, and reference is hereby made to the Bond Ordinance for a complete statement of such covenants.

This bond is subject to prepayment prior to maturity at any time in accordance with the terms set forth in the Bond Ordinance.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

It is hereby certified that all acts, conditions, and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done, and performed precedent to and in the issuance of this bond have happened, been done, and performed.

IN WITNESS WHEREOF, City of Kalama, Washington, by its City Council, has caused this bond to be executed in its name with the manual or facsimile signature of the Mayor, and attested by the manual or facsimile signature of the Clerk/Treasurer and the seal of said City to be impressed or imprinted hereon, all as of the ____ day of _____, 2015.

CITY OF KALAMA, WASHINGTON

(SEAL)

Mayor

Attest:

Clerk/Treasurer

REGISTRATION CERTIFICATE

This bond is registered in the name of the owner on the books of the City in the office of the Clerk/Treasurer as to both principal and interest as noted in the registration blank below. No transfer hereof shall be valid unless made by the registered owner or his/her duly authorized agent in writing, and similarly noted hereon and on the bond registration books of the City.

<u>Date of Registration</u>	<u>Name and Address of Registered Owner</u>	<u>Signature of Registrar</u>
_____, 2015	United State of America acting through its Department of Agriculture, Rural Housing Service	_____ Clerk/Treasurer