

(Published in *The Derby Weekly Informer* on March 8, 2017)

ORDINANCE NO. 2311

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES TAX SPECIAL OBLIGATION REVENUE BONDS (DERBY STAR BOND PROJECT) IN AN AGGREGATE ORIGINAL PRINCIPAL AMOUNT NOT TO EXCEED \$20,465,000 FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE CERTAIN COSTS RELATING TO THE DERBY STAR BOND PROJECT PLAN; AUTHORIZING AND APPROVING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

WHEREAS, the City of Derby, Kansas (the “City”), is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State of Kansas (the “State”) as a city of the second class; and

WHEREAS, pursuant to the provisions of K.S.A. 12-17,160, *et seq.*, as amended (the “Act”), the City Council of the City (the “Governing Body”), adopted on July 16, 2015, Resolution No. 19-2015 establishing its intent to create a STAR bond project district within the City (the “STAR Bond District”) and setting a date for a public hearing with respect thereto; and

WHEREAS, on July 30, 2015, the Secretary of Commerce of the State of Kansas (the “Secretary”) determined that the STAR Bond District is an “eligible area” under provisions of the Act; and

WHEREAS, pursuant to the provisions of the Act, and following a public hearing, the Governing Body passed Ordinance No. 2242 on September 8, 2015, which created the STAR Bond District; and

WHEREAS, the City prepared the STAR Bond Project Plan for the STAR Bond District (the “Project Plan”) in consultation with the City’s Planning Commission, which Project Plan provides for the redevelopment of real property within the STAR Bond District as described therein (the “Project”); and

WHEREAS, on June 6, 2016, the Governing Body adopted Resolution No. 25-2016 setting a date for a public hearing with respect the Project Plan; and

WHEREAS, pursuant to the provisions of the Act, and following a public hearing, the City passed Ordinance No. 2279 on July 26, 2016, adopting the Project Plan; and

WHEREAS, on October 19, 2016, the Secretary: (a) determined that the STAR Bond District is an “eligible area” under the Act, (b) approved the Project as a “STAR bond project” within the meaning of the Act and (c) approved the issuance of up to \$18,900,000 (exclusive of approved financing costs) of STAR Bonds to be issued to finance the Project; and

WHEREAS, pursuant to the Act, the City is authorized to issue its Sales Tax Special Obligation Revenue Bonds (Derby STAR Bond Project) (the "Bonds") in the aggregate original principal amount not to exceed \$20,465,000 under the hereinafter described Bond Indenture, for the purpose of implementing the Project Plan by providing funds to (a) finance a portion of the Costs of the Project (as defined in the Bond Indenture), (b) fund a deposit to the Debt Service Reserve Fund, (c) fund a deposit to the Capitalized Interest Fund, and (d) pay certain costs related to the issuance of the Bonds; and

WHEREAS, the Governing Body hereby finds and determines that the issuance of the Bonds to provide funds for the purposes described herein in the manner provided in the Act and pursuant to the provisions of the Bond Indenture, will serve one or more of the public purposes set forth in the Act and will promote, stimulate and develop the general and economic welfare of the City; and

WHEREAS, the Governing Body further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds that the City enter into certain agreements, and that the City take certain other actions and approve the execution of certain other documents as herein provided.

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

Section 1. Authorization of the Bonds. The City is hereby authorized to issue and sell the Bonds in an aggregate original principal amount not to exceed \$20,465,000, the proceeds of which will be used to (a) pay Costs of the Project, (b) fund deposits to debt service reserve fund with respect to the Bonds, (c) fund capitalized interest on the Bonds and (d) pay certain costs related to the issuance of the Bonds. The Bonds shall be issued and secured pursuant to the herein authorized Bond Indenture and shall be dated, shall be in such denominations, shall be in such forms, shall mature on the dates and in the principal amounts and maturity amounts, shall bear interest at rates not to exceed the maximum rate permitted by law and shall be subject to redemption on the dates and in the principal amounts as provided in the Bond Indenture and Purchase Contract (as hereinafter defined), and shall have such other terms and provisions, shall be issued, executed, authenticated and delivered in such manner and shall be subject to such provisions, covenants and agreements, as are set forth in the Bond Indenture. The Bonds shall be sold and delivered in accordance with the terms and conditions of the Purchase Contract dated as of the date stated therein (the "Purchase Contract"), between the City and Crews & Associates, Inc., as underwriter, relating to the purchase of the Bonds, at such prices as are set forth therein. The execution and delivery of the Purchase Contract by the Mayor pursuant to the authority granted by Resolution No. 8-2017 of the City is hereby ratified and confirmed.

The Bonds, together with interest and premium, if any, thereon are not general obligations of the City but are limited obligations payable solely from the trust estate pledged to the payment thereof under the Bond Indenture and shall be a valid claim of the respective holders thereof only against the trust estate and other moneys held by the Trustee and the revenues so pledged as aforesaid. In no event shall the Bonds be payable out of any funds or properties other than those pledged or acquired under the Bond Indenture, and the Bonds shall not be deemed to constitute a debt or liability of the State of Kansas, the City or of any political subdivision thereof and the issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the State of Kansas or any political subdivision thereof to levy any form of taxation therefor or to budget or make any appropriation for their payment. Nothing in the Bonds, the Bond Indenture, the proceedings of the City authorizing the Bonds or the Act shall be construed to be a debt or loan of credit of the City, the State of Kansas or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

Section 2. Authorization and Approval of Documents. The following documents are hereby approved in substantially the forms presented to the Governing Body at this meeting, and the City is hereby authorized to execute and deliver each of such documents (the "City Documents") with such changes therein as shall be approved by the officer or officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval and the City's approval thereof:

(a) Bond Trust Indenture dated as of the date stated therein (the "Bond Indenture"), between the City and Security Bank of Kansas City, Kansas City, Kansas, as trustee (the "Trustee"), authorizing the issuance of the Bonds.

(b) Tax Compliance Agreement dated as of the date stated therein, between the City and the Trustee, relating to the Bonds.

(c) City Continuing Disclosure Undertaking, dated as of the date stated therein, relating to the Bonds.

(d) Tax Distribution Agreement dated as of the date stated therein (the "Tax Distribution Agreement") among the City, the Trustee and the other parties named therein, which provides for certain distributions of tax revenues for the benefit of the Bonds.

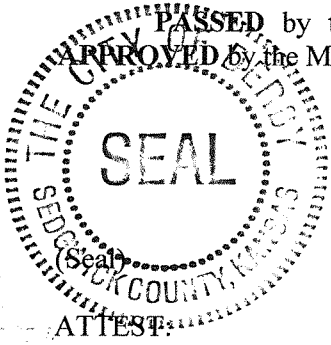
Section 3. Approval of Use of Official Statement. The City hereby ratifies and confirms the use of the Preliminary Official Statement for the Bonds dated February 16, 2017, as supplemented on February 23, 2017, from which a final Official Statement for the Bonds shall be drafted (the "Official Statement"), in connection with the sale of the Bonds, in substantially the form presented to the City, with such changes therein as shall be approved by the officer of the City executing the Official Statement, such officer's signature thereon being conclusive evidence of his approval and the City's approval thereof.

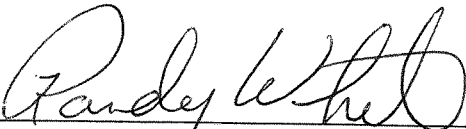
Section 4. Execution of Bonds and Documents. The Mayor of the City is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Bond Indenture. The Mayor of the City is hereby authorized and directed to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, with such changes as the Mayor deems necessary or appropriate, for and on behalf of and as the act and deed of the City. The Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds, the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 5. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments, including without limitation documents relating to the qualifications of the Bonds under the "blue sky" laws of the various states of the United States of America, documents necessary to obtain approvals of the Kansas Secretary of Commerce as required by law, and any agreements with respect to the investment of funds held under the Bond Indenture, as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents.

Section 6. Effective Date. This Ordinance shall take effect and be in full force after its adoption by the City and publication once in the official newspaper of the City.

PASSED by the City Council of the City of Derby, Kansas on February 28, 2017 and APPROVED by the Mayor.





Mayor

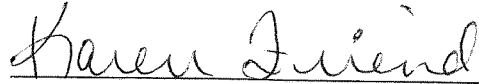


City Clerk

CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on February 28, 2017; that the record of the final vote on its passage is found on page ____ of journal ____; and that the Ordinance or a summary thereof was published in *The Derby Weekly Informer* on March 8, 2017.

DATED: March 8, 2017.



City Clerk

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