

(Published in *The Derby Informer* on June 24, 2020)

**ORDINANCE NO. 2432**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES TAX SPECIAL OBLIGATION REVENUE BONDS (DERBY STAR BOND PROJECT), SERIES 2020, IN AN AGGREGATE ORIGINAL PRINCIPAL AMOUNT NOT TO EXCEED \$14,375,000 FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE CERTAIN COSTS RELATING TO THE DERBY STAR BOND PROJECT PLAN AMENDMENT; 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.**

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**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**, 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**, the City has heretofore issued its Sales Tax Special Obligation Revenue Bonds (Derby STAR Bond Project) Series 2017 (the “Series 2017 Bonds”) for the purpose of implementing the Project Plan; and

**WHEREAS**, by Ordinance No. 2394, passed August 27, 2019, and published September 4, 2019, the City added certain property, increased the boundaries of the District (the “Expanded District Area”) and adopted a substantial change to the District Plan, all pursuant to K.S.A. 12-17,171(a); and

**WHEREAS**, the City prepared the First Amendment to STAR Bond Financing Project Plan, dated January 2020 (the “STAR Project Plan Amendment”), which further modifies the scope of the major commercial entertainment and tourism area, adds a major multi-sport athletic complex and modifies related infrastructure improvements described in the STAR Project Plan (the “Phase 2 Project”); and

**WHEREAS**, pursuant to the provisions of the Act, and following a public hearing, the City passed Ordinance No. 2422 on January 28, 2020, adopting the STAR Project Plan Amendment; and

**WHEREAS**, on January 28, 2020, the Secretary: (a) determined that the Phase 2 Project constitutes a “major multi-sport athletic complex” and is therefore an “eligible area” under the Act, (b) approved the Phase 2 Project and the Expanded District Area as a “STAR bond project” within the meaning of the Act; (c) approved the issuance of up to \$8,095,564 (exclusive of approved financing costs) of STAR Bonds to be issued to finance the Phase 2 Project; and (d) authorized the City to use \$3,158,197.50 in unexpended Series 2017 proceeds to finance a portion of the Phase 2 Project; and

**WHEREAS**, the City prepared the Second Amendment to STAR Bond Financing Project Plan, dated May 2020 (the “STAR Project Plan Second Amendment”), which further modifies the scope of the major commercial entertainment and tourism area, adds a major multi-sport athletic complex consisting of an indoor rock-climbing facility for training and regional competitions, an outdoor covered BMX bike facility and related infrastructure improvements described in the STAR Project Plan Second Amendment (the “Phase 3 Project”); and

**WHEREAS**, pursuant to the provisions of the Act, and following a public hearing, the City passed Ordinance No. 2431 on May 28, 2020, adopting the STAR Project Plan Second Amendment; and

**WHEREAS**, on May 27, 2020, the Secretary: (a) determined that the Phase 3 Project constitutes a “major multi-sport athletic complex” and is therefore an “eligible area” under the Act, (b) approved the Phase 3 Project as a “STAR bond project” within the meaning of the Act; and (c) approved the issuance of up to \$4,500,000 (exclusive of approved financing costs) of STAR Bonds to be issued to finance a portion of the Phase 3 Project; and

**WHEREAS**, pursuant to the Act, the City is authorized to issue its Sales Tax Special Obligation Revenue Bonds (Derby STAR Bond Project), Series 2020, (the “Series 2020 Bonds”) in the aggregate original principal amount not to exceed \$14,375,000 under the hereinafter described Bond Indenture, for the purpose of implementing the STAR Project Plan Amendment and STAR Project Plan Second Amendment by providing funds to: (a) finance a portion of the Costs of the Phase 2 Project (as defined in the Bond Indenture); (b) finance a portion of the Costs of the Phase 3 Project (as defined in the Bond Indenture); (c) fund a deposit to the Debt Service Reserve Fund; and (d) pay certain costs related to the issuance of the Series 2020 Bonds; and

**WHEREAS**, the Governing Body hereby finds and determines that the issuance of the Series 2020 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 Series 2020 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 Series 2020 Bonds.** The City is hereby authorized to issue and sell the Series 2020 Bonds in an aggregate original principal amount not to exceed \$14,375,000, the proceeds of which will be used to: (a) pay a portion of the Costs of the Phase 2 Project; (b) pay a portion of the Costs of the Phase 3 Project; (c) fund a deposit to Debt Service Reserve Fund with respect to the Series 2020 Bonds; and (d) pay certain costs related to the issuance of the Series 2020 Bonds. The Series 2020 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 Series 2020 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 Series 2020 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. 08-2020 of the City, as amended by Resolution 22-2020 of the City, is hereby ratified and confirmed.

The Series 2020 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 Series 2020 Bonds be payable out of any funds or properties other than those pledged or acquired under the Bond Indenture, and the Series 2020 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 Series 2020 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 Series 2020 Bonds, the Bond Indenture, the proceedings of the City authorizing the Series 2020 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) First Supplemental Bond Trust Indenture dated as of the date stated therein (the "First Supplemental Bond Indenture"), between the City and Security Bank of Kansas City, Kansas City, Kansas, as trustee (the "Trustee"), authorizing the issuance of the Series 2020 Bonds, which supplements the Bond Trust Indenture, dated as of March 1, 2017, between the City and the Trustee (the "Master Indenture," together with the First Supplemental Bond Indenture, collectively, the "Bond Indenture").

(b) Tax Compliance Agreement dated as of the date stated therein, between the City and the Trustee, relating to the Series 2020 Bonds.

(c) City Continuing Disclosure Undertaking, dated as of the date stated therein, relating to the Series 2020 Bonds.

(d) Amended and Restated 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 Series 2017 Bonds and Series 2020 Bonds (collectively, the "Bonds").

(e) Real Estate Transfer Restriction Agreement, dated as of the date stated therein, between the City and Derby Destination Development, LLC, a Kansas limited liability company, in a form approved by the Secretary.

**Section 3. Approval of Use of Official Statement.** The City hereby ratifies and confirms the use of the Amended and Restated Preliminary Official Statement dated June 4, 2020 and Supplement thereto dated June 8, 2020, for the Series 2020 Bonds, from which a final Official Statement for the Series 2020 Bonds shall be drafted (the "Official Statement"), in connection with the sale of the Series 2020 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 Series 2020 Bonds and Documents.** The Mayor of the City is hereby authorized and directed to execute the Series 2020 Bonds and to deliver the Series 2020 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 Series 2020 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 Series 2020 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 Series 2020 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.

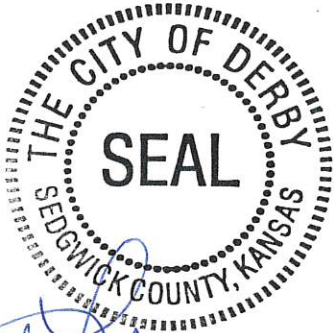
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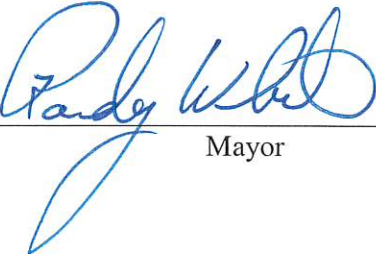
**PASSED** by the City Council of the City of Derby, Kansas on June 18, 2020 and **APPROVED** by the Mayor.

(Seal)

ATTEST:

  
\_\_\_\_\_  
City Clerk



  
\_\_\_\_\_  
Mayor

(Published in *The Derby Informer* on June 24, 2020)

**SUMMARY OF ORDINANCE NO. 2432**

On June 18, 2020, the Governing Body of the City of Derby, Kansas (the "City") passed an ordinance entitled:

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES TAX SPECIAL OBLIGATION REVENUE BONDS (DERBY STAR BOND PROJECT), SERIES 2020, IN AN AGGREGATE ORIGINAL PRINCIPAL AMOUNT NOT TO EXCEED \$14,375,000 FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE CERTAIN COSTS RELATING TO THE DERBY STAR BOND PROJECT PLAN AMENDMENT; 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.**

The Ordinance authorizes the City to issue its Sales Tax Special Obligation Revenue Bonds (Derby STAR Bond Project), Series 2020, in the aggregate principal amount not to exceed \$14,375,000 (the "Series 2020 Bonds"), for the purpose of financing certain costs relating to the Derby STAR Bond Project Amendment and Derby STAR Bond Project Second Amendment within a STAR Bond District created by the City, as more fully described in the Bond Trust Indenture referenced in the Ordinance. The Series 2020 Bonds are special obligations of the City payable from incremental sales tax revenues received from retail sales and transient guest tax revenues within the District.

A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, City Hall, 611 Mulberry Road, Suite 300, Derby, Kansas 67037. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at [www.derbyks.com](http://www.derbyks.com).

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: June 18, 2020.

  
City Attorney