

ORDINANCE NO. 2019

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF \$7,300,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION SALES TAX BONDS, SERIES 2010-B, OF THE CITY OF DERBY, KANSAS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City is a city of the second class, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, pursuant to K.S.A. 12-187 *et seq.* and a special question election held in the City on October 16, 2007, the electors of the City authorized the imposition, upon the expiration of the existing one-half percent (1/2%) city-wide retailers' sales tax imposed in the City to finance the costs of a municipal aquatic park facility and related appurtenances thereto and payment of operating and maintenance costs thereof (the "Aquatic Park Sales Tax"), to: (1), impose a one-half percent (1/2%) city-wide retailers' sales tax (the "Library Sales Tax"), the proceeds of which shall be used only to finance the costs of construction and equipping of a new public library and related appurtenances thereto (the "Derby Public Library Project") and payment of operating and maintenance costs thereof; the collection of such Library Sales Tax to commence upon the expiration of the Aquatic Park Sales Tax and shall terminate upon the earlier of the following: (a) accumulation of sufficient revenues to provide for: (i) payment of the principal of and interest on the Bonds and (ii) provision of an operation and maintenance reserve; or (b) ten years after its commencement; and (2) issue sales tax/general obligation bonds in a principal amount of not to exceed \$9,435,000 to pay the costs of the Derby Public Library Project and associated financing costs; and

WHEREAS, none of such general obligation sales tax bonds heretofore authorized at the 2007 election have been issued and the City proposes to issue its general obligation sales tax bonds to permanently finance the costs of the Derby Public Library Project and to retire the Refunded Notes (the "Series 2010-B Bonds;" and

WHEREAS, the governing body of the City has advertised the sale of the Series 2010-B Bonds and at a meeting held in the City on this date, awarded the sale of such Series 2010-B Bonds to the best bidder.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, 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.* and K.S.A. 12-187 *et seq.*, all as amended and supplemented from time to time.

“Additional Bonds” means any bonds secured by the Sales Tax Revenues hereafter issued pursuant to the Bond Resolution.

“Additional Obligations” means any leases or other obligations of the Issuer payable from the Sales Tax Revenues, other than the Bonds.

“Bond Resolution” means the resolution to be adopted by the governing body of the City prescribing the terms and details of the Series 2010-B Bonds and making covenants with respect thereto.

“Bonds” means the Series 2010-B Bonds and any Additional Bonds.

“City” means the City of Derby, Kansas.

“Clerk” means the duly appointed and acting Clerk of the Issuer or, in the Clerk's absence, the duly appointed Deputy Clerk or Acting Clerk.

“Indebtedness” means collectively the Bonds and any Additional Obligations which are payable out of, or secured by an interest in, the Sales Tax Revenues.

“Library” means the public library owned by the City financed, in part, by the Series 2010-B Bonds.

“Library Sales Tax” means the one-half percent (1/2%) city-wide retailers' sales tax authorized under the Act by a special election held October 16, 2007 and implemented by an ordinance of the Issuer, the collection of which commenced January 1, 2010 and shall terminate upon the earlier of the following: (a) accumulation of sufficient Sales Tax Revenues to provide for: (i) payment of the Debt Service Requirements on all Indebtedness and (ii) provision of the Operation and Maintenance Reserve Account at the Operation and Maintenance Reserve Requirement; or (b) ten years after its commencement.

“Mayor” means the duly elected and acting Mayor or, in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

“Ordinance” means this Ordinance authorizing the issuance of the Series 2010-B Bonds.

“Parity Bonds” means the Outstanding Series 2010-B Bonds, and any Additional Bonds hereafter issued pursuant to the Bond Resolution and standing on a parity and equality with the Series 2010-B Bonds with respect to the lien on the Sales Tax Revenues.

“Parity Obligations” means any Additional Obligations hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Parity Bonds with respect to the lien on the Sales Tax Revenues.

“Project” means the construction and equipping of a new public library and related appurtenances thereto, as referred to in the preamble to this Ordinance.

“Refunded Notes” means jointly: (a) the Series 2008-2 Notes, in the aggregate principal amount of \$3,025,000; and (b) the Series 2009-2 Notes, in the aggregate principal amount of \$4,125,000.

“Revenue Fund” means the Sales Tax Revenue Fund referred to in the Bond Resolution.

“Sales Tax Revenues” all sales tax revenues received by the Issuer from the collection of the Library Sales Tax.

“Series 2010-B Bonds” means the Issuer's General Obligation Sales Tax Bonds, Series 2010-B, in the aggregate principal amount of \$7,300,000, authorized by this Ordinance.

“Series 2008-2 Notes” means the Issuer's General Obligation Sales Tax Temporary Notes, Series 2008-2, dated May 15, 2008.

“Series 2009-2 Notes” means the Issuer's General Obligation Sales Tax Temporary Notes, Series 2009-2, dated May 15, 2009.

“State” means the State of Kansas.

Section 2. Authorization of the Series 2010-B Bonds. There shall be issued and are hereby authorized and directed to be issued the General Obligation Sales Tax Bonds, Series 2010-B, of the City in the aggregate principal amount of \$7,300,000 for the purpose of providing funds to: (a) pay the costs of the Project; (b) pay costs of issuance of the Series 2010-B Bonds; and (c) retire the Refunded Notes.

Section 3. Security for the Series 2010-B Bonds. The Series 2010-B Bonds shall be general obligations of the City payable as to both principal and interest from a pledge of the Sales Tax Revenues and, if not so paid and to the extent necessary, 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 2010-B as the same become due.

The covenants and agreements of the City contained herein and in the Series 2010-B Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2010-B Bonds, all of which Series 2010-B Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Series 2010-B Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Series 2010-B Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Sales Tax Revenues with any Parity Bonds and Parity Obligations. The Series 2010-B Bonds shall not have any priority with respect to the payment of principal or interest from said Sales Tax Revenues or otherwise over the Parity Bonds or Parity Obligations; and the Parity Bonds and Parity Obligations shall not have any priority with respect to the payment of principal or interest from said Sales Tax Revenues or otherwise over the Series 2010-B Bonds.

Section 4. Terms, Details and Conditions of the Series 2010-B Bonds. The Series 2010-B 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.

Section 5. Levy and Collection of Annual Tax. The governing body of the City shall annually, to the extent necessary, after applying the Sales Tax Revenues pledged herein, make provision for the payment of principal of, premium, if any, and interest on the Series 2010-B 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 Series 2010-B 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 Series 2010-B 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 and/or assessments 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 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 2010-B 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 of the City, approval by the Mayor and publication in the official City newspaper.

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PASSED by the governing body of the City on May 11, 2010 and **APPROVED AND SIGNED** by the Mayor.

(SEAL)



Mayor

ATTEST:



Clerk

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