

(Published in *The Herington Times* on September 14, 2017)

ORDINANCE NO. 1794

AN ORDINANCE OF THE CITY OF HERINGTON, KANSAS, AUTHORIZING THE ISSUANCE OF THE CITY'S GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES A, 2017, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$725,000, FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY AND FINANCING THE COSTS OF CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

WHEREAS, the governing body of the City of Herington, Kansas (the "City"), under the authority of K.S.A. 12-685 *et seq.*, as amended and supplemented (the "Main Trafficway Act"), has adopted Ordinance No. 1791 on August 1, 2017 and published August 10, 2017, which ordinance designates and confirms the designation of certain main trafficways through the City and authorizes the construction and installation of certain improvements thereto (collectively the "Project"); and

WHEREAS, the governing body of the City is authorized by the Main Trafficway Act and K.S.A. 10-101 to 10-125, inclusive, as supplemented and amended (the "Bond Act"), to issue, sell and deliver its general obligation bonds for the purpose of providing financing for the combined otherwise unpaid costs of improving and repaving certain main trafficways within the City (the "Project"), and is not required to sell such general obligation bonds at public sale if such bonds are issued simultaneously with refunding bonds issued pursuant to K.S.A. 10-427 *et seq.* (the "Refunding Act"); and

WHEREAS, the City finds and determines it is necessary and appropriate to issue certain general obligation refunding and improvement bonds (i) pursuant to the Refunding Act for the purpose of refunding and redeeming a portion of the City's General Obligation Bonds, Series 2008 (the "Refunded Bonds") and (ii) pursuant to the Main Trafficway Act for the purpose of paying the otherwise unpaid costs of the aforesaid Project.

WHEREAS, the governing body has, pursuant to the Bond Act and by Resolution No. 894, adopted August 1, 2017, authorized the underwriting of general obligation bonds of the City; and

WHEREAS, the governing body determines it necessary and appropriate to authorize and provide for the issuance of such general obligation refunding and improvement bonds for the purpose of providing the necessary funds for the purposes described; and to specify the terms, details, form and conditions of the general obligation refunding and improvement bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HERINGTON, KANSAS:

SECTION 1. Authorization of the Bonds. General Obligation Refunding and Improvement Bonds, Series A, 2017, of the City in the total principal amount of Seven Hundred Twenty-Five Thousand Dollars (\$725,000.00) (the "Bonds") are authorized to be issued for the purpose of providing funds to refund the Refunded Bonds (as defined above) and pay a portion of the costs of the Project (as defined above).

SECTION 2. Security for the Bonds. The Bonds are general obligations of the City. The full faith, credit and resources of the City are pledged to secure the payment of the principal of and the interest on the Bonds as the same severally become due and payable. The governing body of the City covenants that it shall annually make provision for the payment of the principal of and the interest on the Bonds as and when the same become due and payable by levying and collecting the necessary special assessment taxes upon the properties liable therefor, and/or by levying and collecting the necessary ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City, in such amounts as are necessary to provide for such annual payment.

SECTION 3. 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 maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution hereafter adopted by the governing body of the City (the "Resolution").

SECTION 4. Designation of Paying Agent and Bond Registrar; Issuer/Agent Agreement. Pursuant to K.S.A. 10-620 *et seq.*, the governing body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds and designates and appoints the Treasurer of the State of Kansas, Topeka, Kansas, as the Bond Registrar and Paying Agent for the Bonds (the "Paying Agent"). The terms, conditions and provisions under which the Paying Agent will perform its duties are set forth in an Agreement between Issuer and Paying Agent dated as of September 20, 2017 (the "Issuer/Agent Agreement"). The form and text of the Issuer/Agent Agreement are approved and accepted by the governing body, and all of the covenants, duties and responsibilities therein to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and City Clerk are authorized to execute and deliver the Issuer/Agent Agreement for and on behalf of the City. The Issuer/Agent Agreement is incorporated in and made a part of this Ordinance as though fully set forth at this place; provided however, the inclusion of the Issuer/Agent Agreement in the publication of this Ordinance shall not be required.

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 and/or assessments upon taxable tangible property within the City in the manner provided by law.

The taxes and/or assessments 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 other 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 and/or assessments shall be deposited in the Series A, 2017 Principal and Interest Account, as defined in the Resolution.

If at any time said taxes and/or assessments are not collected in time to pay the principal of or interest on the Bonds when due, the City 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. Tax Covenants. The governing body of the City covenants that so long as any of the Bonds remain outstanding and unpaid, no use will be made of the proceeds thereof which, if such use had been reasonably expected on the date of issuance and delivery, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 103(b)(2) of the Internal Revenue Code of 1986, as amended (the “Code”); and that it will comply with all applicable requirements of Section 148 of the Code and the Rules and Regulations of the United States Treasury Department thereunder for so long as any of the Bonds remain outstanding and unpaid. The governing body further covenants to take all such action in its power as may be required from time to time in order to ensure the continued tax-exempt status of the interest on the Bonds, and to comply with all provisions of the Code, as the same be amended, and any applicable Rules and Regulations of the United States Treasury Department thereunder.

SECTION 7. Authorization of Official Statement. The governing body of the City hereby ratifies and confirms its prior approval of the form and content of the “deemed final” Preliminary Official Statement dated August 24, 2017 and the use of the final Official Statement in the reoffering of the Bonds by George K. Baum & Co., Wichita, Kansas, as Original Purchaser is approved and authorized; and the Mayor is authorized to execute and the City Clerk to attest the Official Statement on behalf of the City.

SECTION 8. Designation as Qualified Tax-Exempt Obligations. The governing body of the City designates the Bonds as “qualified tax-exempt obligations” as defined in Section 265(b)(3) of the Code.

SECTION 9. Further Authority. The City and its officers, agents and employees are authorized and directed to, take such actions, expend such moneys and execute such other documents, certificates and instruments as may be necessary or desirable in order to carry out and comply with this Ordinance and to give effect to the transactions contemplated hereby, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all without further action by the governing body.

SECTION 10. Severability. If any provision of this Ordinance shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or

provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever.

SECTION 11. Governing Law. This Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

SECTION 12. Effective Date. This Ordinance shall be in force and take effect from and after its adoption and approval and its publication one time in the City's official newspaper.

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ADOPTED AND APPROVED by the governing body of the City of Herington, Kansas
on September 5, 2017.

CITY OF HERINGTON, KANSAS

[seal]

By *Kat Souza*
Kat Souza, Mayor

ATTEST:

By *Brenda Wildman*
Brenda Wildman, City Clerk

EXCERPT OF MINUTES

The governing body of the City of Herington, Kansas, met in regular session at the usual meeting place in the City on September 5, 2017, at 6:00 p.m., with the Mayor Kat Souza presiding, and the following members of the governing body present:

Mark Hager, Dave Jones, Sarah Nistler and Michelle Stanford

and the following members absent:

None

Thereupon, there was presented to the governing body an Ordinance entitled:

AN ORDINANCE OF THE CITY OF HERINGTON, KANSAS, AUTHORIZING THE ISSUANCE OF THE CITY'S GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES A, 2017, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$725,000, FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY AND FINANCING THE COSTS OF CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

Thereupon, the Ordinance was considered and discussed, and upon the motion of Michelle Stanford, seconded by Sarah Nistler, the Ordinance was adopted by a majority vote of the governing body, it was given No. 1794 and was directed to be signed by the Mayor and attested by the City Clerk; and the City Clerk was directed to publish the Ordinance one time in the City's official newspaper as required by law and as provided therein.

Thereupon, and among other business, there was presented to the governing body a Resolution entitled:

A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES A, 2017, IN THE TOTAL AGGREGATE PRINCIPAL AMOUNT OF \$725,000, OF THE CITY OF HERINGTON, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 1794 OF THE CITY; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.

Thereupon, the Resolution was considered and discussed; and on motion of Michelle Stanford, seconded by Sarah Nistler, the Resolution was adopted by a majority vote of all members present.

Thereupon, the Resolution having been adopted by a majority vote of the members of the governing body present, it was given No. 896, and was directed to be signed by the Mayor and attested by the City Clerk.

CITY CLERK'S
CERTIFICATION OF EXCERPT OF MINUTES

I hereby certify that the foregoing is a true and correct Excerpt of Minutes of the September 5, 2017 meeting of the governing body of the City of Herington, Kansas.

[seal]



Brenda Wildman, City Clerk